Public Procurement and Infrastructure Governance: Initial policy responses to the Coronavirus (COVID-19) crisis

30 July 2020

The coronavirus (COVID-19) outbreak has presented governments with unprecedented challenges in ensuring not only the health of their citizens but also public service continuity. Governments had to purchase vital health products swiftly whilst ensuring smooth and accountable management of ongoing contracts to continue providing public services to their citizens. Critical infrastructure is also particularly important during the COVID-19 response not only for public health and safety, but for broader community well-being. The pandemic has created a radically new, and constantly changing, purchasing environment. The sudden reduction in economic activity has equally put severe stress on the infrastructure sector. This policy brief examines the immediate infrastructure governance and public procurement policy responses taken by OECD and selected non-OECD countries during the first phase of the crisis. It also highlights which dimensions of these responses need to be revisited in order to strengthen resilience for future emergencies.

Introduction

Unprecedented times for ensuring public service continuity throughout the coronavirus (COVID-19) crisis

Providing essential public services and managing critical infrastructure is particularly important throughout the COVID-19 response for broader community well-being. Certain critical public services and infrastructure industries have a unique responsibility to continue operations even during these unprecedented times. Infrastructure development and public procurement, therefore, are at the frontline of the wider governmental response to the COVID-19 outbreak.

The crisis, however, has brought unparalleled challenges for governments to ensure not only the health of their citizens but also public service continuity. In response to the crisis, governments all over the globe have simultaneously taken extraordinary steps to ensure the safety of their citizens, including general lockdown measures and large-scale shutdown of economic activity, which have created concurrent effects in different policy areas. Such disruptions are affecting the way governments plan and conduct their procurements and manage their ongoing contracts, not only for health products[1] and services needed to tackle the coronavirus, but also for goods and services necessary to provide essential public services to citizens (including, for example, digital tools to ensure wide scale remote office operations and extended online services in the public sector). Governments are also facing demand to maintain and adjust infrastructure assets to rapidly changing needs in order to respond to the crisis.

The COVID-19 outbreak is still ongoing and the current phase might be only the beginning of what could become a protracted, longer-term pandemic. Learning lessons from the first few months of the crisis is critical to ensure targeted responses in the event of both a potential second wave and future pandemics.

This policy brief therefore examines:

- the key challenges of the coronavirus (COVID-19) crisis for public buyers (concerning not only the health sector or emergency contracting) and,
- the key challenges of identifying critical infrastructure and ensuring infrastructure service continuity at the height of the pandemic.

It summarises the immediate policy responses (crisis management responses) on infrastructure governance and public procurement taken by OECD and some selected non-OECD countries during the first phase of the crisis.

The policy brief also assesses the impact of the crisis on infrastructure governance and public procurement systems, and intends to highlight which dimensions need to be revisited in order to build up resilience for the second wave of the pandemic or future emergencies. As further analysis and evidence are still needed, the policy brief extracts key lessons learned and provides “policy insights” about the potential way forward, without providing firm policy recommendations. In some cases, the policy brief highlights policy issues that require further research, in order that evidence-based policy recommendations could be developed in the future.

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[1] The products identified by the WCO HS Classification reference for Covid-19 medical supplies includes: I. COVID-19 Test kits, instruments and apparatus used in Diagnostic Test, II. Protective garments and the like, III. Thermometers, IV. Disinfectants/ Sterilisation products, V. Other medical devices (such as Computed tomography (CT) scanners, Medical ventilators (artificial respiration apparatus), Patient monitoring devices - Electro-diagnostic apparatus) and VI. Medical Consumables (such as Wadding, gauze, bandages, cotton sticks and similar articles, Syringes, with or without needles, Intubation kits). http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/natural-disaster/covid_19/hs-classification-reference_en.pdf?la=en

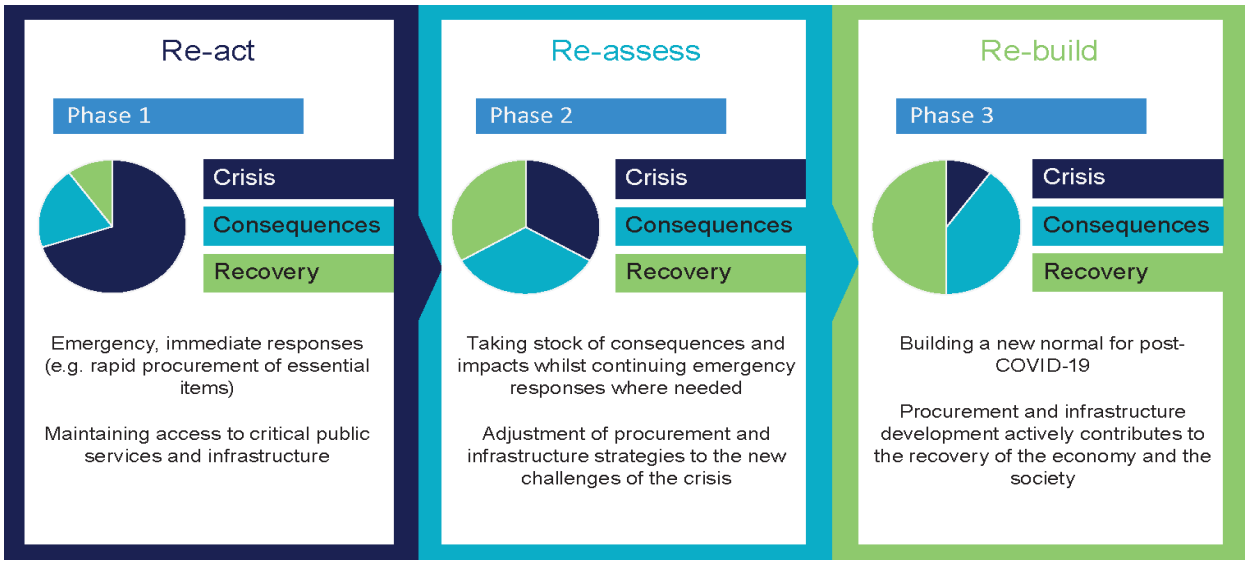
This is the first in a series of policy briefs that will lay out public investment practices and strategies of governments to re-assess the crisis situation (second stage) and re-build economy and society (third stage). (See: Infographic 1.)

Indeed, governments have already started to shift the focus to recovery, and procurement and infrastructure delivery will play a decisive and strategic role in wider governmental responses for the post-crisis recovery. Used strategically, both policy areas can contribute significantly to building a more resilient and sustainable economy and society for future generations. This global crisis, however, will certainly reshape the way governments invest public money in essential goods, public services and infrastructure. Public investment and public spending practices will not, and cannot, simply return to "business as usual", but rather transition to a resilient "new normal", addressing the vulnerabilities revealed by the COVID-19 crisis.

A more strategic approach to the role of public procurement and infrastructure investment in kick-starting the economy and economic recovery will be addressed in separate, forthcoming policy brief(s). OECD is already collecting evidence on how public procurement responses as part of a co-ordinated public governance response are promoting inclusive growth and increasing trust in governments. The key to a government providing a more streamlined delivery of public services to its citizens – in terms of both quality and time – is to use procurement as the interface through which their citizens can "plug in" to a new normal where trust is the standard. Creating more resilient and innovative government through better equipped public procurement systems will help governments to react properly to future crises.

A constantly evolving coronavirus (COVID-19) crisis with different stages demanding different policy responses

Infographic 1. Coronavirus (COVID-19) Phases



As the COVID-19 crisis moves through different stages, governments (central and other levels of government) face different challenges across each of them. The strategies and approaches are, and will be, different depending on the phase of the crisis and the challenges encountered at each one, equally diverse. Yet, all phases rely on one common denominator; targeted and effective public investment to ensure governments react swiftly to the consequences of the pandemic, which is necessary now more than ever. This public investment – be it for obtaining necessary health products and supplies, or for providing essential public services and maintaining relevant infrastructures (physical and digital) – is

channelled mainly through public procurement. Therefore, the impacts of chosen procurement strategies have an immediate effect on the effectiveness of policies for dealing with the pandemic and its social and economic consequences. For example, procurement strategies developed prior to the COVID-19 crisis in some countries have failed to ensure the sufficient provision of supplies – face masks or reliable tests – needed in times of a pandemic. As shown above, the three stages are not necessarily linear and may even overlap, particularly stages 2 and 3, but to structure the analysis, the policy brief follows these three phases. Furthermore, not all countries experienced these phases in the same way. As every country has its own administrative organisation, with different levels of governments having different responsibilities, the responses of one country might not work in another one.

- First phase: **"RE-ACT"**

In the first phase of the crisis, the focus is on managing and ensuring the emergency reaction, providing immediate responses to a global pandemic. This phase requires mainly rapid, reactive procurement and infrastructure responses to provide immediate relief amid critical events that have a direct impact on life or public safety, and where any delay would result in increased harm to individuals and the community. This phase also represents a stress test for the risk management, control, and integrity systems in place.

- Second phase: **"RE-ASSESS"**

The second phase can open the opportunity for re-assessing the situation; gaining a better understanding of the consequences and impacts of the global pandemic and adjusting the procurement and infrastructure strategies to address the new challenges of the crisis. In this phase, emergency responses are still required due to the need to respond urgently to sustain and maintain public services and thus communities.

- Third phase: **"RE-BUILD"**

In the third phase, the focus shifts towards recovery policies, addressing consequences and impacts of the crisis, and the rebuilding of societies and economies. This phase comes once the emergency has been contained and activities are returning to normal, including the procurement processes and infrastructure delivery. There is no longer an urgent need to respond, but there may still be a need to rapidly activate non-essential procurement activities and infrastructure services to contribute to the recovery of the economy and society, building on the strategic role that public procurement and public investment can play in the recovery phase. This phase could also provide an opportunity to revisit existing procurement and public investment plans and make the necessary adjustments with the view of meeting recovery needs and answer growing demand for sustainability, resilience and technological adaptation.

Background to the policy brief

The policy brief is the result of a mapping exercise carried out by the OECD Secretariat, using publicly available information. This mapping exercise resulted in country factsheets that present the immediate public investment policy responses taken by OECD countries, some selected non-OECD countries, and the European Commission. The country factsheets were validated by country representatives and delegates of the Working Party of the Leading Practitioners on Public Procurement[2] and have already been published in a separate stocktaking report[3].

[2] https://www.oecd.org/fr/gov/ethique/working-party-leading-practitioners-on-public-procurement.htm

[3] Stocktaking report on immediate public procurement and infrastructure responses to COVID-19, OECD, 2020, http://www.oecd.org/coronavirus/policy-responses/stocktaking-report-on-immediate-public-procurement-and-infrastructure-responses-to-covid-19-248d0646/

Given the emergency context, this document was prepared and released as rapidly as possible, without the regular process of review and revision by the Public Governance Committee, and is thus not in any way a final or formal set of recommendations, and is likely to be edited and improved over time as more information becomes available and consultation proceeds. The importance of providing information and guidance as soon as possible was deemed, in this case, to outweigh that of going through the regular review process.

Summary

The first phase of the COVID-19 crisis leaves important lessons on sustainability, governance and inter-institutional co-operation, particularly an emphasis on use of information technologies, risk-based approaches, enhanced collaboration on national, regional and international level as well as open and innovative ways to promote dialogues between public and private stakeholders.

This policy brief highlights that:

- public procurement was at the frontline of many countries' responses to the crisis.
- countries generally used their established frameworks for emergency contracting ensuring the necessary flexibility to respond the extremely urgent needs, whilst at the same time providing additional guidance and support to their contracting authorities on how to use them correctly.
- the radically different purchasing environment public buyers faced during the crisis requires adaptive policy responses.
- unprecedented conditions heightened and sometimes changed exposure of procurement systems to integrity risks and therefore, more emphasis was put on improved transparency and accountability related to emergency contracting.
- responses to the global pandemic, notably lockdowns and confinement measures, put government supply chains at risk.
- as many countries have been affected by the COVID-19 crisis almost simultaneously, incentives exist to increase collaborative approaches in procurement strategies at national, regional and supranational levels.
- the crisis "forced" governments, public buyers to find new, innovative approaches to engage with the market for more sustainable solutions.
- execution delays, economic impact of lower demand and the risk of default/bankruptcy are some of the main challenges faced by governments and private contractors in terms of infrastructure governance.
- the crisis has revealed many weaknesses and fractures in our infrastructure from health care to digital technology at schools.

Knowing how different countries around the world have overcome the same issues is a key factor for preparing resilient infrastructure governance and public procurement systems for future emergencies. It is now clear that more focus is needed on these vulnerable areas in the future, and with a clear 'sustainability' test. Procurement and infrastructure strategies should serve inclusiveness and sustainability as well as build resilience, beyond delivering economic goals.

Public procurement and infrastructure investment will play a decisive role in the recovery phase. To serve effectively the recovery, countries need resilient and robust public procurement and infrastructure governance structure. The relevant OECD instruments are providing comprehensive frameworks for governments to build more resilient systems:

- The **2015 OECD Recommendation of the Council on Public Procurement** provides a holistic approach with principles, tools and guidance to support countries overcoming the new challenges, bringing adaptive policy responses and new approaches.
- The **2020 OECD Recommendation of the Council on the Governance of Infrastructure** is not only a key tool for responsive and efficient decision-making to increase infrastructure capacity in the short-term, but it further provides good practices and tools to support the linkages between economic stimulus interventions, long-term infrastructure programmes and multidisciplinary objectives.

Initial policy insights on the impact of the coronavirus (COVID-19) crisis on procurement systems and public infrastructure

The coronavirus (COVID-19) outbreak has created hitherto unseen challenges in procurement systems and in the delivery of public services, in particular public infrastructure. The replication of solutions and experiences from previous crises is limited, as the nature of this current crisis is so different from any other previous health crisis, natural disaster or other emergency. In addition, the crisis is affecting countries in unprecedented proportions at the same time, with lasting effects of which the scale and duration are still unknown. The situation calls for new policy responses and new alliances. Impacts on procurement systems and public infrastructure do not only affect governments, but also suppliers competing for or being awarded public contracts and citizens benefitting from public services alike.

A radically different purchasing environment requires adaptive policy responses

What has been observed?

Procuring essential products and services under extreme urgency is not a new concept for public authorities. However, this worldwide health crisis has created a purchasing environment never before experienced by governments and public bodies. They are not only required to purchase with extreme urgency, but also under high uncertainty and within a rapidly changing landscape. In fact, many countries had to face the upending of procurement strategies (e.g. optimising the management of stocks versus urgent provision of large volumes) for items which were, until the crisis, regarded as easily available and therefore seen as a low priority in procurement strategies. Public procurement practitioners across the world were under immense pressure as they responded to the exponential demand and shortage of supply for medical equipment, such as disinfectant, masks, gloves, medicines, ventilators, and other essential items in containing the new coronavirus outbreak.

Furthermore, in the immediate response phase, governments are experiencing extremely high demands for the very same specific medicines and personal protective equipment, due to the worldwide nature of the epidemic. Not only are countries competing against each other for the same products and services, within each country as well, central governments are being made to compete with their regional and local authorities for the same vital supplies.[4] In many jurisdictions, the procurement of health products falls within the remit of regions, municipalities and, sometimes, even individual hospitals, increasing the risks of counterproductive rivalry among public buyers, instead of reaping the benefits of co-ordinated approaches to procure these products.

[4] *Cities policy responses*, OECD, 2020 http://www.oecd.org/coronavirus/policy-responses/cities-policy-responses-fd1053ff/

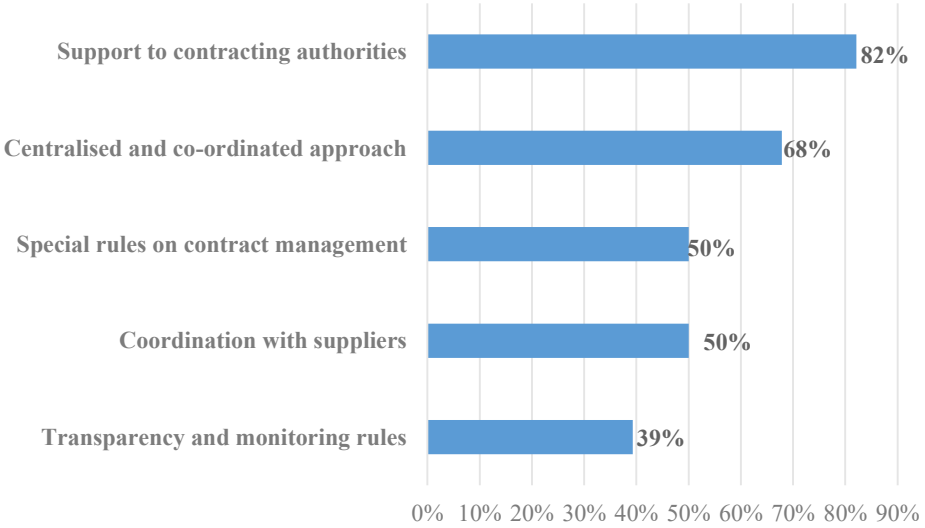
The rivalry among public buyers has changed the behaviour of suppliers too. The demand-driven approach that is common for procurements under normal circumstances has changed to supplier-driven approaches. Another new development in the market, especially in the health sector, is intermediaries (brokers) stepping in between the public sector and the suppliers, despite most public buyers having little or no experience in or knowledge of dealing with them. In addition, many suppliers are demanding advance payments to secure supplies (which is legally forbidden in public contracts in most countries), but in some cases even this was not enough of a guarantee to secure the goods.

Public buyers are experiencing significant price volatility of essential goods and services. The extremely high demand for certain products has also increased the risks of fraud and misconduct, such as price gouging, by suppliers and service providers. For example, the European Anti-Fraud Office (OLAF) recently launched investigations into imports of fake health and hygienic products[5] linked to the fight against the virus, such as masks, testing kits and disinfectant.[6]

What have countries been doing?

Figure 1 shows the types of measures that OECD governments have taken in public procurement to respond to the pandemic situation caused by COVID-19. The details of these measures are introduced in the following sections.

Figure 1. What kind of measures have governments taken in public procurement to respond to the coronavirus (COVID-19)?



Note: Support to contracting authorities refers to support provided by central government institutions to contracting authorities, such as publication of guidelines on emergency procurement, help-desk, and capacity-building activities.
Centralised and co-ordinated approach refers to centralisation and coordination mechanisms across governments to procure critical items.
Special rules on contract management refer to special rules applied to contract management to alleviate the burden of the contracts due to force majeure. These measures include, but not limited to, suspension of contracts, extension of contract (including waive of penalties for delay), waive of financial guarantees, quicker payment, and advance payment.
Coordination with suppliers refers to coordination mechanisms to facilitate the coordination with suppliers. These measures include, but not limited to, exchanging information such as the stock of critical items, seeking innovative solution, and redirecting industries to supply critical items.

5 OECD/EUIPO (2020), Trade in Counterfeit Pharmaceutical Products, Illicit Trade, OECD Publishing, Paris, https://doi.org/10.1787/a7c7e054-en

6 https://ec.europa.eu/anti-fraud/media-corner/news/07-04-2020/olafs-fight-against-fraud-continues-amid-covid-19-crisis_en

Transparency and monitoring rules refers to measures to ensure transparency, in particular, in emergency procurement such as the disclosure of contract information related to COVID-19.
Source: Country fact-sheets in the Stock-taking report on the immediate public procurement and infrastructure policy responses to COVID-19 crisis.

Early efforts in most countries focused on increasing capacity and equipping the health care system using emergency contracting frameworks. In almost all countries, particularly in the OECD area, there are already well-designed and tested special rules and/or institutional arrangements related to tendering and contracting during emergencies, as timeframes associated with standard procurement procedures would be too long; in many cases even the conventional accelerated procedures take longer than permissible in emergency cases where lives are at risk.

Most of the countries are using their established rules on emergency contracting for urgent purchasing needs, as the existing procurement frameworks provide many flexible options for rapid and appropriate responses to essential procurement needs in times of emergency. These rules usually allow public buyers to negotiate directly with potential contractor(s); there are no prior publication requirements, no time limits, no minimum number of candidates to be consulted, and some other procedural requirements are also released (such as shorter bid validity period, no requirement for bid security, lighter checks on firms' past experience, electronic/virtual opening of bids). In practice, this means that authorities can act as quickly as technically and physically feasible. The procedure may constitute a *de facto* direct award. In some countries, like in the **United States** and **Slovenia**, the threshold for applying simplified tender procedure[7] or direct award was elevated. Governments and central procurement institutions are encouraging contracting authorities to use e-procurement platforms and functionalities, even in cases where it would not have been mandatory under normal circumstances. In **Korea**, for example, public entities that do not have an electronic evaluation system can use the e-ordering system of the central purchasing body, the Public Procurement Service (PPS). In **Slovakia**, it is possible for contracting authorities and entities to conclude contracts and framework agreements with tenderers not previously registered in the registry of public sector partners[8].

Flexibility can be applied to not only the procedural rules, but also regarding the contractual terms in emergency contracts. Potential measures can include flexible terms for the volume and the date of delivery, waived requirements for performance security, or introduction of special *force majeure* clauses. In terms of delivery, quality control and payment during the contract implementation phase, simplification might include flexibility of (on-the-spot) inspections of the goods and services, flexibility of payment terms and insurance terms, or advance payments without bank guarantee.

In most countries, the emergency contracting procedures are regulated by the general procurement frameworks and enacted by an emergency decree that sets out when normal rules can be circumvented, and the conditions that justify the use of the emergency contracting. However, some countries were facing a situation where their existing emergency procurement rules were not equipped to face the task at hand – a combination of massive and urgent purchase of specific products with a global economic activity slowdown – and have since developed and implemented new emergency procurement laws or guidance that deals specifically with the COVID-19 crisis. Indeed, in consideration of the growing emergency situation, **Italy**[9] adopted some specific regulations aimed at tackling the epidemic, with validity limited to the necessary time to face the emergency itself. These specific rules increased, for example, the possibilities for contracting authorities to use simplified procurement procedures and negotiated procedure without a prior call for tenders, they simplified the procedure of verification of anomalous bidding, reduced the deadlines for the ordinary award procedures on duly justified grounds of urgency and gave the

7 See the Country factsheets for USA and Slovenia in the Stocktaking report

8 See the Country factsheets for Korea and Slovakia in the Stocktaking report

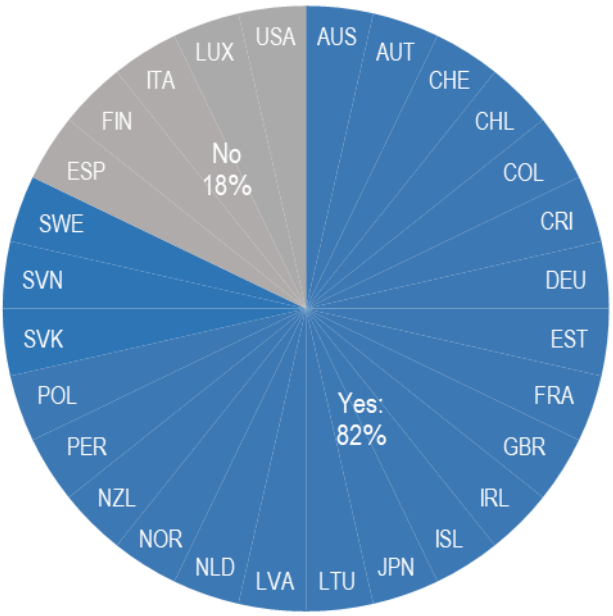
9 Ordinance of the Head of the Civil Protection Department n. 630 of 3 February 2020

opportunity for the contracting authorities to sign the contract and execute it immediately after the end of the procedure without having to comply with the standstill period[10] of 35 days (in specific cases).

Some other countries, such as **Colombia**[11] and **Ukraine**[12] excluded the procurement of medical devices and personal protection items needed for the fight against the virus from the "general" public procurement regime, and allowed public buyers to purchase these items without any formal tender procedures. However, they reinforced transparency and monitoring rules for contracts concluded without using the normal procurement framework.

Beyond the clear policy and legal framework, contracting authorities need clear guidance on the distinction between emergency procurement and non-emergency procurement. Figure 2 shows which countries gave direct support to their contracting authorities for the COVID-19 related procurements.

Figure 2. Direct support to contracting authorities



Note: Direct support to contracting authorities refers to support provided to contracting authorities such as publishing guidelines on emergency procurement, help-desk, capacity-building activities etc.
Source: Country fact-sheets in the Stock-taking report on the immediate public procurement and infrastructure policy responses to COVID-19 crisis, OECD, 2020

10 Once the winning bidder for a tender has been announced, a certain period must elapse between the notification of the contract award and the signing of the contract.

11 https://www.colombiacompra.gov.co/sala-de-prensa/comunicados/nuevas-normas-ante-covid-19

12 https://www.kmu.gov.ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrayini-vid-20-bereznya-2020-r-225-248290320

In almost all countries, the government or the body in charge of the public procurement policy issued, in the early days of the crisis, guidance to support public buyers with the correct application of the existing rules for emergency. Examples include:

- The Cabinet Office in the **United Kingdom** issued a *Procurement Policy Note – Responding to COVID-19*[13] setting out information and associated guidance on the use of the public procurement regulations for responding to the COVID-19 outbreak;
- In **Ireland**, the Office of Government Procurement (OGP) produced an information note to support contracting authorities in managing procurements where urgency is required[14]. The information note clearly establishes that for procurements unaffected by COVID-19 related issues, contracting authorities should ensure their procurements use competitive processes as detailed in the national public procurement guidelines.
- In **Australia**, at the federal level, the Australian Health Sector Emergency Response Plan for COVID-19 has been published on the Australian Government website, and is designed to guide the Australian health sector response, including the procurement response[15]. At the state level, most states and territories have issued emergency procurement guidance for contracting authorities.[16]
- In **Germany**, the Federal Ministry for Economic Affairs and Energy (the federal ministry in charge of public procurement law) published a circular[17] that clarified how urgent needs could be met using the existing scope of Germany's public procurement law above and below the EU thresholds.
- In **Slovakia**, the Public Procurement Office (PPO) prepared a document specifically for the COVID-19 situation called "Guidance for Procuring Entities".[18]
- In **Peru**, the public procurement authority, OSCE (*Organismo Supervisor de las Contrataciones del Estado*), published the *Guideline for Local Governments for the procurement of basic necessities in the framework of the State of National Emergency* as well as its accompanying Frequent Q&As, which include how to carry out direct award procedures, in order to facilitate the procurement procedures of local governments.[19]

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13 Procurement Policy Note 01/20: Responding to COVID-19; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873521/PPN_01-20_-_Responding_to_COVID19.v5__1_.pdf

14 Information Note on Covid-19 (Coronavirus) and Public Procurement, Update - 22 March 2020 https://ogp.gov.ie/information-note-covid-19-coronavirus-and-public-procurement/

15 https://www.health.gov.au/sites/default/files/documents/2020/02/australian-health-sector-emergency-response-plan-for-novel-coronavirus-covid-19_2.pdf

16 https://www.wa.gov.au/sites/default/files/2020-03/State%20response%20to%20Coronavirus%20%28COVID-19%29%20Buyers%20Alert%20March%202020_0.pdf
https://www.wa.gov.au/government/cuas/common-use-arrangements-cuas
https://www.forgov.qld.gov.au/procurement-key-messages-during-covid-19

17 https://www.bmwi.de/Redaktion/DE/Downloads/P-R/rundschreiben-anwendung-vergaberecht.pdf?__blob=publicationFile&v=6

18 See the Country factsheet for Slovakia in the Stocktaking report

19 https://www.gob.pe/institucion/osce/informes-publicaciones/466049-protocolo-para-los-gobiernos-locales-para-la-adquisicion-de-productos-de-primera-necesidad-de-la-canasta-basica-familiar-en-el-marco-del-estado-de-emergencia-nacional

Similar documents have been published throughout OECD countries and beyond.[20] A common feature of these responses is that they are publicly and easily available for the interested stakeholders. They are usually "living documents" and are revised and updated regularly to respond to new challenges. The guiding documents always highlights that emergency procurement is only an exception under the general rules on open and competitive tendering practices, therefore its use should be limited exclusively to satisfy the unforeseeable, immediate needs of extreme urgency to tackle the coronavirus. Most guidelines also emphasise that whenever possible, contracting authorities should favour recourse to existing collaborative procurement instruments such as framework agreements to avoid direct award and conduct emergency procurement within an already established contractual framework.

A similar example at a regional level is the guidance that the **European Commission** has issued for the Member States of the European Union (EU) on the use of the existing EU public procurement framework in the emergency related to the COVID-19 outbreak.[21] EU Member States have to design their public procurement framework in compliance with the EU framework; therefore, they also need to follow the EU rules on emergency contracting. Several ministries and other central bodies in charge of public procurement policy in the different EU Member States had re-published the guidance on their webpages[22] or made clear references to the guidance in their own resources. The Commission's guidance provides an overview of the tendering procedures available to public buyers, applicable deadlines, and examples of how public buyers could find alternative solutions and ways of engaging with the market to supply much needed medical supplies. The guidance highlights that for an unprecedented situation such as the current COVID-19 crisis, the EU Directives enable public buyers to purchase within days, or even hours, if necessary. The guidance goes further than a simple presentation of the provisions of the EU Directives and provides practical tips for public buyers on how to speed up their procurements. Solutions suggested include engaging with the market in a more intense way than they did earlier (such as: contacting potential contractors in and outside the EU by phone, e-mail or in person; contacting potential suppliers to agree to an increase in production, or the start or renewal of production).

In order to better serve and support public buyers with the unprecedented challenges, some countries (**Slovenia, Poland** and **Chile**) have introduced special helpdesk functions for coronavirus-related procurements, or have offered virtual trainings for contracting authorities (such as **Peru**).[23] Capacity-building on emergency contracting is extremely important, as procurement professionals are usually

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[20] For further examples:

- **New Zealand:** COVID-19 – Emergency procurement guidance https://www.procurement.govt.nz/about-us/news/covid-19-emergency-procurement-guidance/
- **Latvia**'s central public procurement body, the Procurement Monitoring Bureau ("PMB") has published an explanatory note in its website on 25 March 2020 regarding purchases during the state of emergency. https://www.iub.gov.lv/lv/node/1063
- In **Poland**, the Public Procurement Office of Poland provide all contracting authorities with the assistance through the dedicated section of its website from the beginning of the COVID-19 crises. All contracting authorities may find all necessary and latest information relevant to public procurement in time of crises, including related guidelines. Help-desk is also available to answer to any concern on public procurement related to Covid-19.

[21] Communication from the Commission Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis 2020/C 108 I/0, C/2020/2078, OJ C 108I, 1.4.2020, p. 1–5 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.CI.2020.108.01.0001.01.ENG

[22] See for example the Hungarian Public Procurement Authority's (Közbeszerzési Hatóság) webpage: https://www.kozbeszerzes.hu/2020/4/az-europai-bizottsag-kozlemenye-kozbeszerzesi-keretnek-covid-19-valsag-okozta-szukseghelyzetben-torteno-alkalmazasarol

[23] For both examples, see the Stocktaking report.

trained on how to conduct competitive tender procedures and public procurement rarely involves direct contracting under normal operations. Public procurement professionals, therefore, need to be properly guided and trained on methods and means for direct contracting.

Competition authorities can also have a decisive role in promoting competition, even during the emergency. They can intensify their competition advocacy initiatives vis-à-vis procurement entities to alert governments and public buyers of the risks of emergency contracting and conditions that should be met for emergency direct awards to be considered[24]. Where possible, the government or the body in charge of public procurement should co-operate more intensively with competition authorities to ensure that procurement procedures, even during the emergency, are designed to be as competitive as possible.

What policy insights could be drawn?

Policy Insights in terms of *frameworks on emergency contracting*:

- Emergency contracting is an exception under the general rules on open and competitive tendering practices, therefore its use should be limited exclusively to satisfy the unforeseeable, immediate needs of extreme urgency to tackle the coronavirus (COVID-19). There should be a causal link between the unforeseen event and the extreme urgency. Also, emergency contracting should be used only when existing public contract arrangements cannot be renewed, extended or otherwise used. The justification of resorting to emergency contracting must be assessed on a case-by-case basis, and kept on file to be used in future audits or eventual legal challenges against the procurement.
- If extreme urgency is invoked, the purchasing need has to be satisfied without delay. Emergency contracting must only be used to fill the gap until a more stable solution can be found; it is therefore a first-phase-only response.
- To ensure that public spending remains transparent, traceable and accountable, even during emergency, the exceptional usage of emergency contracting needs to be governed by clear policy and legal framework.
- Providing clear, easily available and regularly updated guidance and support (including a helpdesk function) on emergency procurement for public buyers is a key success factor for better understanding the distinction between emergency procurement and non-emergency procurement, and thus preventing the unjustified use of emergency contracting. Competition authorities can be useful partners to ensure that procurement remains as competitive as possible.
- As public procurement rarely involves direct contracting under normal operations, public procurement professionals need to be properly guided on methods and means for direct contracting (or even trained as far as possible under the emergency circumstances).

[24] *COVID-19: Competition and emergency procurement*, OECD, 2020, https://www.oecd.org/competition/COVID-19-competition-and-emergency-procurement.pdf

Unprecedented conditions heightened and sometimes changed exposure of procurement systems to integrity risks[25]

What has been observed?

The exceptional increase in the demand for similar products and services, and the significant disruptions occurring in supply chains, created new challenges for public buyers. In several cases, it became technically impossible to procure necessary items, even using the fastest available procedures for emergency situations. The lack of stockpile preparedness across many OECD governments has led to increased rivalry for necessary supplies globally. In such cases, the mechanics and bargaining powers of the public and the private sectors have completely reversed. Thousands of contracting authorities (and private institutions) are looking to the market for the same specific products produced by a small number of companies. Furthermore, the production in some of these companies is suspended or seriously affected due to the lockdown measures introduced by countries.

Several countries imposed export bans or restrictions on essential goods, such as masks and ventilators, to mitigate critical shortages at the national level[26]. According to the **World Trade Organisation (WTO)**, as of 18 May 2020, 85 countries and separate customs territories had introduced export bans or restrictions to combat the COVID-19 pandemic (EU Members and the UK are counted individually). These measures took many different forms, including export bans and non-automatic export licensing procedures, but shared the common objective of restricting exports of certain essential products; most focused on medical supplies (e.g. facemasks and shields), pharmaceuticals and medical equipment (e.g. ventilators), but others extended the controls to additional products, such as foodstuffs and toilet paper. This has limited the availability of products for new procurement procedures and may put existing contracts at risk. Figure 3 shows the export bans and restrictions introduced by WTO members and some non-WTO members to combat the COVID-19 pandemic.

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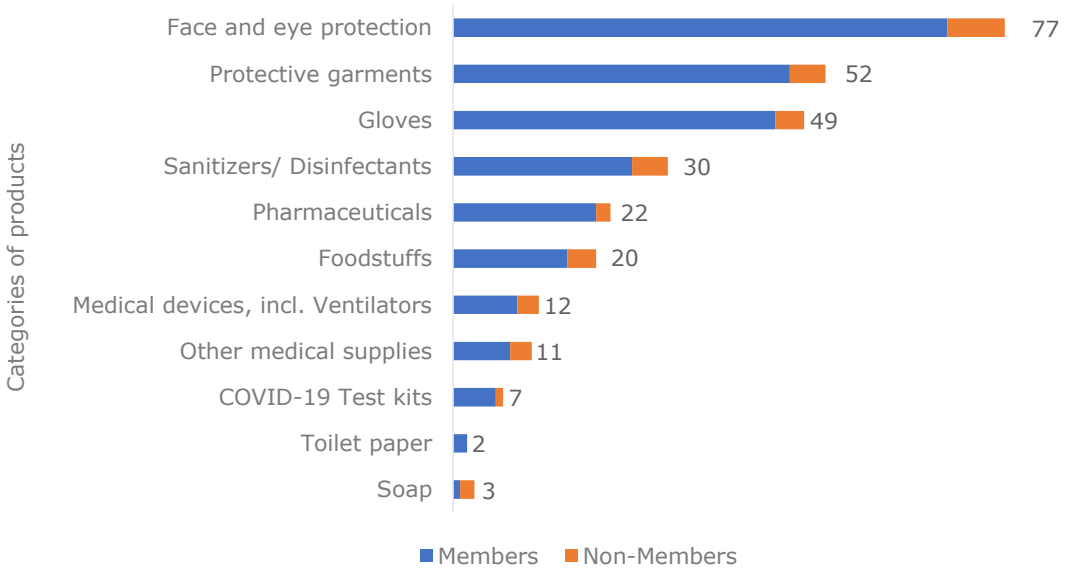
[25] See also the public procurement section of the following OECD publication: *Public Integrity for an Effective COVID-19 Response and Recovery*, OECD 2020; http://www.oecd.org/coronavirus/policy-responses/public-integrity-for-an-effective-covid-19-response-and-recovery-a5c35d8c/

[26] In: *Report on G20 Trade Measures (Mid-October 2019 to Mid-May 2020),* World Trade Organisation (WTO), Committee on Market Access, 29 June 2020, https://www.wto.org/english/news_e/news20_e/report_trdev_jun20_e.pdf

See also: *Export Prohibitions and Restrictions, Information Note*, https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf

See also: *OECD Policy Responses to Coronavirus (Covid-19): Trade interdependencies in Covid-19 goods*, OECD 2020, http://www.oecd.org/coronavirus/policy-responses/trade-interdependencies-in-covid-19-goods-79aaa1d6/

Figure 3. Export bans and restrictions introduced to combat the COVID-19 pandemic, by type of product



Note: The data include 76 WTO Members (counting the EU member States and the UK individually) and nine non-WTO members from all regions. Non-members refers to Algeria, Azerbaijan, Belarus, Iran, Lebanese Republic, Libya, Serbia, Sudan, and Uzbekistan. The data reflects the situation as of 18 May 2020.
Source: WTO Secretariat based on data available in the Trade Monitoring Report.

As noted above, the soaring demand for these essential products increased the risks of fraud and misconduct by suppliers and service providers, especially in a market where public buyers may need to purchase brand-new products without being able to use traditional ways of verifying their quality. There have been several reports in the media[27] about the purchase of fake health and hygiene products (such as COVID-19 tests) that simply do not work.

On the other hand, companies all over the world are actively putting resources, logistics, skills and innovative approaches at the service of the fight against the COVID-19 pandemic[28]. Several companies have taken extraordinary measures to redirect their production to manufacture protective products and health equipment[29] and **Japan** even introduced financial incentives for companies to redirect production. The Ministry of Economy, Trade and Industry (METI) decided to provide subsidies to manufacturers that agreed to make capital investments to increase the supply of face masks. Indeed, a redirection of production helped to cover the shortages of these essential products within countries. It poses, however,

27 https://www.nytimes.com/2020/04/16/world/europe/coronavirus-antibody-test-uk.html?smid=tw-share

28 World Business Council for Sustainable Development: Business as unusual, reshaping the present and the future
Business response to COVID-19
https://www.wbcsd.org/Overview/News-Insights/Insights-from-the-President/Business-as-unusual-reshaping-the-present-and-the-future

29 See for example:

- https://www.fooddrinkeurope.eu/uploads/publications_documents/20_03_31_FoodDrinkEurope_-_FoodHeroes.pdf
- https://www.web24.news/u/2020/03/its-factories-launch-to-produce-disinfectants-to-combat-shortages.html

a challenge for public buyers in terms of verifying the selection criteria in a given tender procedure to ensure quality, to prevent procuring substandard goods and to avoid contracting non-reliable companies.

Responding to urgent needs for the timely and sufficient delivery of essential goods and services may require potential market collaboration among companies, which under normal circumstances would compete with each other. Some businesses may need to temporarily collaborate and combine their production, distribution, or service networks together to facilitate production and distribution of COVID-19 related supplies that they may not have traditionally manufactured or distributed. These sorts of joint efforts may be a necessary response in difficult circumstances that in the end provides the respective community with products or services that might not have been available otherwise. However, companies still need to comply with competition laws. Many competition authorities have guidelines (general or COVID-19 specific) clarifying under which circumstances co-operation among competitors may be acceptable.[30] While in certain instances, collaboration between businesses can help overcome the short-term market failure of the mismatch between supply and demand, others may use it as an opportunity to restrict competition[31], through increased prices, lower wages, decreased output, or reduced quality, bid-rigging, or allocating markets. As public buyers need to ensure suppliers' compliance with competition laws, co-operation with competition authorities will be essential.

On top of these challenges, public buyers are also experiencing price volatility of essential goods and services[32]. Indeed price spikes may be the legitimate consequence of a change in the market due to the crisis, such as shortages of essential products in high demands or disruption in international supply chains. However, there is also the risk that firms might strategically exploit their customers, private or public. This kind of exploitation through pricing policies (e.g. excessive pricing) may also be referred to as price gouging when it involves significant and rapid price increase after some type of shock in the demand or supply (especially when demand is high and supply limited).[33] Under certain circumstances, this conduct may be sanctioned by competition authorities, if undertaken by dominant players, and/or other bodies[34].

All these factors exacerbate rivalry between public agencies and introduce irregular practices in what could be described as an extremely chaotic market.[35] Many transactions are happening off-the-books, price volatility is extreme and significant advanced payments are often required by vendors[36]. This could

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30 *Co-operation between competitors in the time of COVID-19*, OECD, 2020 http://www.oecd.org/competition/Co-operation-between-competitors-in-the-time-of-COVID-19.pdf

31 Joint Antitrust Statement of the Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission of the United States of America Regarding Covid-19, https://www.justice.gov/atr/joint-antitrust-statement-regarding-covid-19

Joint statement by the European Competition Network (ECN) on application of competition law during the Corona crisis https://ec.europa.eu/competition/ecn/202003_joint-statement_ecn_corona-crisis.pdf

32 https://www.propublica.org/article/in-desperation-new-york-state-pays-up-to-15-times-the-normal-price-for-medical-equipment

33 *OECD competition policy responses to COVID-19*, OECD 2020 https://read.oecd-ilibrary.org/view/?ref=130_130807-eqxgniyo7u&title=OECD-competition-policy-responses-to-COVID-19

34 *Exploitative pricing in the time of COVID-19*, OECD, 2020 https://www.oecd.org/daf/competition/Exploitative-pricing-in-the-time-of-COVID-19.pdf

35 https://www.reuters.com/article/us-health-coronavirus-masks-specialrepor/special-report-the-mask-middlemen-how-pop-up-brokers-seek-big-paydays-in-a-frenzied-market-idUSKBN21I32E

36 https://www.lemonde.fr/idees/article/2020/03/30/la-concurrence-entre-etats-dans-les-chaines-d-approvisionnement-public-aggrave-la-crise-sanitaire_6034848_3232.html

contribute to a change of paradigm in corrupt schemes traditionally observed, whereby buyers could corrupt vendors in order to receive essential goods and services and not vice-versa. Furthermore, this risk could diffuse throughout the supply chain since many of the sought-after supplies rely on scarce raw materials, such as chromium, cobalt, copper, magnesium, manganese, molybdenum, sodium, nickel and many others[37].

What have countries been doing?

Central price tracking and verifying the quality of supplies

Setting up a central price and supplier tracking system for key products and services can help with identifying red flags, collusion, price gouging, counterfeits and other misconduct. The Public Procurement Institute (IMPIC) in **Portugal** has introduced measures to deter price-gouging by pharmacies and other economic operators as part of its emergency procurement legal framework.[38] In **Argentina,** the government imposed a ceiling for prices to be charged by suppliers to contracting authorities that are purchasing goods needed for the fight against the coronavirus. In its technical guidance, the World Health Organisation (**WHO**) recommends that public buyers be vigilant against price hikes and ask for justification where there are concerns. The WHO also suggests considerations such as introducing mandatory reporting and publishing of prices of key products so that public buyers and the public can check and track them.[39]

However, whether this suspicious pricing behaviour can be considered as unfair or abusive, and thus unlawful, depends on jurisdictions and requires complex and thorough investigation by competition authorities.[40]

Whilst governments all over the world are grappling with the COVID-19 pandemic, the outbreak has offered new opportunities for fraudsters, for example, as demand has soared for medical, personal protective equipment and hygiene products. The verification of quality and suppliers is therefore more vital than ever. This verification, however, presents a major challenge during the pandemic. In **Italy**, the central purchasing body, Consip for example, only makes use of verified suppliers in terms of eligibility for contract and ensures, by specific controls made before the conclusion of each contract, that supplies comply with technical specifications elaborated by health authorities[41]. In **Lithuania**, the central public procurement institution, the Public Procurement Office (PPO), requests that contracting authorities share information with other contracting authorities and with the PPO in cases where supplies received do not comply with the qualitative requirements established in tender documents, in order to prevent the spread of low-quality

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37 Securing critical raw materials supply is key to the response to COVID-19, *United Nations Economic Commission for Europe,* 2020 https://www.unece.org/info/media/presscurrent-press-h/sustainable-energy/2020/securing-critical-raw-materials-supply-is-key-to-the-response-to-covid-19/doc.html

38 http://www.base.gov.pt/Base/pt/Homepage

39 WHO Strengthening the Health Systems Response to COVID-19 Technical guidance #3 Supply of essential medicines and health technologies (6 April 2020), http://www.euro.who.int/__data/assets/pdf_file/0007/437470/TG3-AccessSupplyMedicines-eng.pdf?ua=1

40 *OECD competition policy responses to COVID-19*, OECD 2020, https://read.oecd-ilibrary.org/view/?ref=130_130807-eqxgniyo7u&title=OECD-competition-policy-responses-to-COVID-19

41 Country factsheet, Italy

supplies within the market. This request also includes the recommendation to establish contractual clauses regarding the return of low-quality supplies and related sanctions for the supplier.

Global partners also developed tools that can help public buyers to ensure quality purchasing, such as the **World Health Organisation** (**WHO)** that has developed technical specifications for medical devices fit to be used for the COVID-19 response[42] or the joint **WHO-UNICEF** initiative, which has developed technical specifications and guidance for oxygen therapy devices.[43]

Data-driven approaches for emergency contracting

Emergency contracting gives the opportunity for governments to respond to unforeseeable, extremely urgent and critical purchasing needs as swiftly as possible. However, even when the general rules on call for tender and other transparency related provisions are suspended, governments still need to ensure that public spending is both effective and transparent, as well as preventing any contracting with unqualified and non-reliable suppliers (such as with companies based in tax heavens, shadow companies or those with dubious business practices). Country examples throughout the OECD show that ex-post transparency and auditing could play a role in maintaining trust in public spending. **Colombia** and **Ukraine**[44] for example introduced special provisions on publishing emergency contracts (tagged specifically as COVID-19 contracts) as well as provisions on publishing reports on the execution of contracts. These publication obligations make it possible for the respective oversight institutions and the general public (including the civil society and investigative journalists) to monitor public spending, even under these extreme circumstances.

Transparency inevitably has a vital role in ensuring integrity and accountability in emergency contracting. However, the commonly used indicators for measuring accountability and integrity of a procurement system can only be applied with limitations, because what would otherwise be considered integrity risk practices under normal circumstances are being adopted in emergency contracting of the critical items for tackling COVID-19, such as the high ratio of direct award and other forms of non-competitive procedures, and single-bidding, or the extremely short bid submission period. As traditional procurement datasets are not relevant for identifying integrity risks in emergency contracting, the question is what kind of indicators can be applied instead. Even until a new set of indicators can be developed, control bodies definitely need to pay more attention to supplier history, collect quality data on production costs and retail prices (as increasing production costs might justify the increase in the price) and get better data on quality of delivery and execution of the contract.[45]

Collecting and tracking information on emergency contracts and the respective suppliers would not only help to ensure transparency and accountability, but at the same time, it might help with co-ordinating and planning of forthcoming procurements, thus minimising the risks of the future mismanagement of public funds.

The role of digital tools in ensuring integrity and accountability

Several countries are also leveraging or expanding the functionalities of existing e-procurement platforms to record transactional information on the procurement of emergency items, so that a database could be

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42 https://www.who.int/emergencies/what-we-do/prevention-readiness/diseasecommodity-packages/en/

43 https://www.who.int/medical_devices/publications/tech_specs_oxygen_therapy_devices/en/

44 https://docs.google.com/document/d/1dBDIjDiCb_dOD80Nwz83YjZ7eY84uKL_ZiI-6KhbLNw/edit

45 Mihály Fazekas: Indicators of corruption risk in time of pandemic, presentation at the Webinar on Fighting Fraud in COVID-19 Sourcing https://publicprocurementinternational.com/2020/04/06/fighting-fraud-in-covid-19-sourcing-webinar-april-9-2020/

created to analyse bidding patterns, and identify potential red flags signalling risks posed to integrity. A few examples:

- In **Colombia**[46], regardless of the procurement method used, every contract must be disclosed in the SECOP platform ("System for Electronic Public Procurement"). This obligation even applies to contracts exempted from the public procurement law. Contracting authorities are required to use the word "COVID-19" in the subject-matter of any contract, in order to facilitate control and monitoring by citizens and civil society. In addition, the National Health Institute, even when awarding contracts directly, discloses not only tender data and information but also all the technical comments received from potential suppliers. A report on the purchase of medical devices and personal protection items has to be submitted to the corresponding controller authority within three days of the execution of the contract.
- In **Lithuania**, the Public Procurement Office has established a transparency platform exclusively for COVID-19 related contracts. The open data on Covid-19 contracts can be analysed from various angles such as contracting parties, type of purchase, the duration of the contract and the volume of the contract, unlike the case for the usual publication of public procurement contracts.[47]
- In **Ukraine**[48], where the emergency contracts to tackle the COVID-19 pandemic are excluded from the public procurement law and can be concluded outside of the ProZorro system (Ukraine's e-procurement platform), they have introduced a strengthened monitoring system for these contracts. Within 24 hours of conclusion of the contract, the contracting entity is obliged to upload it with all annexes and with a structured report detailing all the main information about the contract to ProZorro. Another structured report has to be submitted after the contract is executed. The business intelligence tool of ProZorro (bi.prozorro.org) includes a new section that shows all the COVID-19 related emergency procurements enabling all interested stakeholders to monitor and control all the contracts[49]. All data is structured according to the Open Contracting Data Standard (OCDS). [50]
- In **Peru,** the public procurement authority, OSCE (*Organismo Supervisor de las Contrataciones del Estado*), is publishing information on procurements executed during the COVID-19 emergency in the National Open Data Portal of the Presidency of the Council of Ministers[51]. Any citizen is able to download the contracting information related to COVID-19 in Excel format. OSCE also established a *transparency tool*[52] that visualises the information on the direct awarding of goods and services carried out under the state of emergency. The information available in this tool includes, among others, the name of the contracting authority, publication date, procurement method, procurement items, awarded amount, and successful bidder. The information can be filtered according to region, sector, contracting authority, product category and supplier. The tool

46 https://www.colombiacompra.gov.co/sites/cce_public/files/cce_documentos/v5_guia_de_transparencia_en_la_contratacion_en_la_pandemia_covid-19.pdf

47 https://vpt.lrv.lt/sudarytos-sutartys-kovai-su-covid-19

48 *Open Contracting Partnership - Data & transparency of emergency COVID-19 procurement: an example from Ukraine* https://docs.google.com/document/d/1dBDIjDiCb_dOD80Nwz83YjZ7eY84uKL_ZiI-6KhbLNw/edit

49 https://docs.google.com/document/d/1dBDIjDiCb_dOD80Nwz83YjZ7eY84uKL_ZiI-6KhbLNw/edit

50 https://standard.open-contracting.org/latest/en/

51 https://www.datosabiertos.gob.pe/dataset/contrataciones-ante-la-emergencia-sanitaria-por-la-existencia-del-coronavirus-organismo

52 https://public.tableau.com/profile/osce.bi#!/vizhome/COVID19_15859458012840/COVID-19

visually ranks each sector and contracting authority in terms of the contract amount and the number of procedures so that citizens know who is carrying out procurement processes under the state of emergency.

- In **Costa Rica**, the *Comptroller General of the Republic* (CGR) set up a transparency portal of public funds in response to the emergency cause by the COVID-19. It also publishes the information on public procurement (item, amount, public entity etc.) related to direct award procedures under emergency approved by the CGR.[53]

Country examples show that creating easily accessible digital tools enables oversight bodies and the public to track all emergency purchases.[54] These tools make it possible to analyse the number of tenders and the total amounts of contracts, as well as the price evolution of essential goods and services (such as medical masks). Several countries allowed remote access for auditors and oversight bodies to all procurement records to ensure that audits would not be prevented due to COVID-19 restrictions on physical inspections.[55] Competition authorities can also monitor market conditions in critical sectors to detect and eventually pursue potential cases of collusion or excessive pricing[56].

53 https://sites.google.com/cgr.go.cr/covid-19

54 https://www.open-contracting.org/2020/03/25/monitoring-covid-19-emergency-procurement-with-data/

55 *Public Integrity for an Effective Covid-19 Response and Recovery,* OECD 2020, https://read.oecd-ilibrary.org/view/?ref=129_129931-ygq2xb8qax&title=Public-Integrity-for-an-Effective-COVID-19-Response-and-Recovery

56 *COVID-19: Competition and emergency procurement*, OECD 2020, https://www.oecd.org/competition/COVID-19-competition-and-emergency-procurement.pdf

What policy insights could be drawn?

Policy Insights in terms of *transparency and accountability of emergency contracting:*

- Increased requirements on ex-post transparency and ex-post auditing of emergency contracts could help ensure accountability of emergency purchasing and as a result, trust in public spending. These measures can include initiatives, such as publishing all COVID-19 related emergency contracts as quickly as possible (including a written justification for emergency) and publishing reports on the execution of these contracts.
- Publishing all COVID-19 related procurements in open, downloadable and machine-readable formats would facilitate better planning, supplier mapping and help stimulate new sources of supply. This open publication should apply not only to competitive tenders, but also to direct contracts and framework call-offs.
- Audit and oversight strategies and the methodology for analysing potential corrupt patterns need to be adapted to the dynamics created by the COVID-19 situation where bargaining powers of the public and the private sectors are drastically reversed.
- Expanding the functionalities of existing e-procurement platforms to record transactional information on emergency procurements can help analyse the bidding patterns and identify potential red flags for integrity risks. However, new indicators need to be designed for analysing the special integrity risks emerged during the COVID-19 crisis.
- Creating easily accessible digital tools would enable control bodies, competition authorities and the public to track all emergency contracts.
- The crisis confirmed the importance of data-driven procurement practices in ensuring transparent and accountable emergency contracting: setting up a central price and supplier tracking system for key products and services can help with identifying red flags, collusion, price gouging, counterfeits and other misbehaviours.
- The COVID-19 crisis shed light on the need to put further emphasis on supplier and contract management, so established procedures are applied as a means to reinforce accountability and transparency.
- Countries should increase regulatory co-operation with their trade partners so that products imported during an emergency meet the safety and quality standards.

Even in the midst of the COVID-19 crisis incentives exist to increase collaborative approaches in procurement strategies

What has been observed?

In the context of a global pandemic, contracting authorities within and across countries are in need of the same goods and services, and are bound by the same timeframes. Yet, lack of co-ordination or centralisation of purchases results in competing requests sent to the markets. This may in turn increase the risk of suppliers using the lack of co-ordination to their benefit (and increase significantly their prices).

Countries all over the globe are faced with this challenge and have felt the need for more collaborative approaches for procuring the necessary goods and services, all the while ensuring that local points of use are effectively provided with items they need most. Contracting countries and authorities have sought for possibilities to join efforts to collectively purchase necessary goods and services, at both the national and international level.

What have countries been doing?

Joining forces through launching joint procurements

Joining forces could help governments respond to urgent needs of their citizens, while concurrently sustaining competition in the market. It can also reduce the risk of duplication of purchased goods and fragmentation of the market.

The **World Health Organisation (WHO)** recommends to its members to make greater use of centralised request management and procurement to avoid duplication of stock.[57]

Centralised or co-ordinated purchasing can be carried out in several ways, from facilitating purchasing through framework agreements to a more direct service involving the aggregated purchasing and warehousing of products.[58] Even countries with a more decentralised public procurement system can support joint purchasing and other forms of co-ordination to enable more contracting authorities to group their needs together to tackle COVID-19. Several examples of this collaboration were seen during the crisis.

Member States of the **European Union** for example joined forces under the Joint Procurement Agreement[59] (JPA) to buy personal protective equipment, respiratory ventilators and items necessary for coronavirus testing. The European Commission has launched four different calls for joint procurement procedures[60]. The JPA[61] now covers around 537 million people, with the participation of all EU Member

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57 WHO Strengthening the Health Systems Response to COVID-19 Technical guidance #3 Supply of essential medicines and health technologies (6 April 2020) http://www.euro.who.int/__data/assets/pdf_file/0007/437470/TG3-AccessSupplyMedicines-eng.pdf?ua=1

58 OECD (2019), *Reforming Public Procurement: Progress in Implementing the 2015 OECD Recommendation*, OECD Public Governance Reviews, OECD Publishing, Paris, https://doi.org/10.1787/1de41738-en.

59 https://ec.europa.eu/health/preparedness_response/joint_procurement_en

60 The European Commission launched four different calls for tender for medical equipment and supplies on 28 February 2020 (gloves and surgical gowns), on 17 March 2020 (personal protective equipment for eye and respiratory protection, as well as medical ventilators and respiratory equipment), and on 19 March 2020 (laboratory equipment, including testing kits)

61 List of EU and other countries signed the Joint Procurement Agreement: https://ec.europa.eu/health/preparedness_response/joint_procurement/jpa_signature_en

States, the United Kingdom, the EEA countries (such as Norway, Iceland and Lichtenstein) and almost all EU Candidate Countries (Albania, Serbia, North Macedonia and Montenegro) and Potential Candidates (Bosnia and Hercegovina and Kosovo[62]). The voluntary JPA has enabled the joint purchase of vital products, minimising potential shortages. The European Commission has a co-ordinating role, while the Member States purchase the goods. The idea behind the "Joint procurement of medical counter-measures" goes back to the outbreak of the 2009 H1N1 flu pandemic that exposed weaknesses in the access and purchasing power of EU countries to vaccines and medications. As a response, the European Commission started the preparation of joint procurement of vaccines for a potential future pandemic in 2010.[63]

Examples show that joint procurement provides the opportunity for participating entities to avoid directly awarding a contract to a specific supplier based on emergency reasons. Working together in this way also gives the opportunity for the participating contracting countries and authorities to be present with a stronger position in the (world) market. Initiatives like the EU joint procurement agreement, and broader international co-operation, could help to avoid excessive purchases and stockpiling in one place creating shortages in others.[64]

Centralisation of purchasing

Centralisation of purchasing[65] activities has been a major driver of the efficient performance of public procurement systems. The overall benefits of centralised purchasing activities – such as better processing through economies of scale, lower transaction costs, stronger purchasing power and improved capacity and expertise – are widely acknowledged. Country examples show that a centralised approach can also have a significant role in responding to COVID-19 challenges. Existing collaborative procurement instruments such as framework agreements or dynamic purchasing systems (DPS) can ensure immediate responses and at the same time help avoid direct award and emergency contracting. **WHO** also recommends to its members: *"to increase procurement volume by aggregating demand and centralising the purchase of medicines and health products on the essential lists to avoid duplications and internal*

All key documents on Joint Procurement of medical countermeasures: https://ec.europa.eu/health/preparedness_response/key_documents_en#anchor0

62 This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

63 Provisions for the joint procurement of medical countermeasures are included in Article 5 of Decision 1082/2013/EU on serious cross-border threats to health. The Joint Procurement Agreement (JPA) was approved by the Commission on 10 April 2014, and as of March 2020 has been signed by 27 EU countries, Iceland, Norway, the UK and Bosnia and Herzegovina.https://ec.europa.eu/health/preparedness_response/joint_procurement_en

64 *Beyond Containment: Health systems responses to COVID-19 in the OECD*, OECD 2020, p. 9. https://read.oecd-ilibrary.org/view/?ref=119_119689-ud5comtf84&title=Beyond_Containment:Health_systems_responses_to_COVID-19_in_the_OECD

65 *Joint procurement* means combining the procurement actions of two or more contracting authorities. The key defining characteristic is that there should be only one tender published on behalf of all participating authorities. *Centralised purchasing activities* means activities conducted on a permanent basis, in one of the following forms: (a) the acquisition of supplies and/or services intended for contracting authorities, (b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities.

competition for limited supplies. This could be facilitated by emergency legislation or ministerial orders. In addition, larger volumes could attract more potential suppliers and could lower prices."[66]

Throughout OECD countries, increased centralisation of purchasing medical and health products is one of the key policy responses to the challenges created by the crisis; it has been adopted in **Canada, Colombia, Latvia, Germany, Estonia, Italy, Lithuania, Poland, Spain, Switzerland** and **Slovakia**, to name a few. Even in countries where centralisation is traditionally low, a higher level of centralisation was experienced. For example, in **Germany** health procurement is generally conducted in a decentralised way, in line with Germany's general tendency towards decentralisation and its federal state set-up. Before the pandemic, centralisation of procurement has been met with great reluctance by the German administration on all levels. However, under the current circumstances, the Federal Ministry of Health pushed for increased centralisation to meet the need for medical equipment. The Federal Ministry of Health ordered aggregated procurement of equipment needed to tackle the COVID-19 crisis (masks, gowns, sanitiser, etc.) for all doctor's offices and clinics in Germany. In doing so, purchases of different items were assigned to three of Germany's five Central Purchasing Bodies (CPBs), but the Ministry of Health was in charge of co-ordination, distribution and designation of the purchased items.

To ensure a speedy, secure and timely distribution of face masks for the public, healthcare providers, and residents of the hardest hit areas, the **Korean** Government authorised the central purchasing body, PPS (Public Procurement Service) to centralise the mask supply contracting process. Without this government intervention, each Korean public entity would have signed contracts with multiple mask manufacturers on their own. PPS organised a Mask Emergency Procurement Task Force Team to oversee the mask supply situation and monitor contracting and allocation processes. Prompt payment, which is made possible by executing revolving funds and using the electronic procurement system, KONEPS, helped ease the financial burdens of manufacturers to allow all efforts to be put into mask production. In addition, through its accumulated overseas material contracts and supply function, PPS provided essential supplies of raw materials to mask manufacturers.

In several countries, decentralised approaches are also still working, giving the opportunity for regions or even individual contracting authorities to purchase items by themselves. In **Italy**, for example, a combination of the centralised and decentralised approaches aims to best serve the emergency. The Civil Protection Department at the national level supported the Italian regions with the procurement of supplies needed to face the crisis. The regions kept the responsibility for maintaining the supply chain of health products. The Civil Protection Department assumed the co-ordination function of the emergency as well as the role of purchasing additional necessary supplies. It also exercised monitoring and control of expenditure by implementing bodies. The Italian Central Purchasing Body (Consip) was tasked to support the emergency procurement with the acquisition of emergency supplies, as well as medical equipment. It co-operates, in a strict synergy regulated by a specific decree, with the Special Commissioner, the Civil Protection Department and the Ministry of Health to accomplish this task[67]. On this basis, Consip purchased only the typology and amount of goods and services indicated by the Civil Protection Department. The purchases were made either by means of framework agreements with multiple suppliers, negotiated ad hoc procedures or by using the Public Administration Electronic Market place (MePA). Once the contract was concluded with the selected supplier (the conclusion of the contract was made after the verifications of the conditions for eligibility), Consip issued purchasing orders determining goods and quantities needed by the beneficiary of the contract (in this case mainly structures of the national health system). The distribution of emergency supplies was managed by the Civil Protection Department, while

66 Strengthening the Health Systems Response to COVID-19, Technical guidance #3 Supply of essential medicines and health technologies, 6 April 2020, http://www.euro.who.int/__data/assets/pdf_file/0007/437470/TG3-AccessSupplyMedicines-eng.pdf?ua=1

67 https://www.consip.it/media/news-e-comunicati/emergenza-covid-19-precisazioni-sulla-qualit-e-le-modalit-di-distribuzione-dei-dispositivi-di-protezione-individuale

the technical verification was managed by the national health system which will receive the supply. A decentralised approach remained unchanged for the purchasing of the necessary drugs, as it comes under the competency of the regional agencies.

Whole-of-government co-ordination

The fight against COVID-19 requires a whole-of-government approach, and public procurement responses need to be part of this nation-wide co-ordination and collaboration.[68] Several examples throughout the OECD show the increased level of co-operation and co-ordination, such as:

- **Ireland**'s national response to COVID-19 supported by a dedicated governance structure to ensure a public health-led, whole-of-society approach. The National Public Health Emergency Team (NPHET) for COVID-19 is chaired by the Chief Medical Officer, and it oversees and provides direction, guidance, support and expert advice on the development and implementation of a strategy to respond to COVID-19 in Ireland. The NPHET is supported by an Expert Advisory Group and a number of subgroups. The Office for Government Procurement (OGP), the national central purchasing body, has been supporting the national response to the virus through the structures established by Government. The OGP has co-ordinated the aggregated demand of the Personal Protective Equipment (PPE) needs of the non-Health essential public services such as Defence Forces, Civil Defence, Prison Service, Direct Provision Centres, Local Authorities, Department of Agriculture, Food and the Marine and Food, and the Revenue Commissioners.
- In **Lithuania**, a whole-of-the-government co-ordination mechanism was introduced as a response to manage the purchasing needs for the fight against the coronavirus. The Ministry of Health is responsible for co-ordinating the purchases for goods and services needed for tackling COVID-19. Special IT tools were created to manage the needs for supplies and services of the health sector institutions in order to obtain the actual data for the procurement needs. The Central Purchasing Office of Lithuania (CPO LT), in the name of the Ministry of Health, is organising the centralised procurement of medical equipment and drugs needed for COVID-19. A team of experts, led by the public institution "Enterprise Lithuania", was assembled to co-ordinate Lithuanian business support and commercial offers, which helps to find the best solutions offered in the market to meet the needs of medical institutions and pharmacies. The Ministry of Foreign Affairs is negotiating with foreign partners the terms of acquisitions via diplomatic channels. The Ministry of Transport and Communications is managing the delivery of supplies.
- In **Luxembourg**, to better address the needs for medical equipment, authorities introduced a logistics unit headed by the Ministry of Health, tasked with the collection of needs related to the pandemic, the analysis and prioritisation of distribution, as well as distribution to users. An additional team has been assigned to procurement. The unit is supported by the Luxembourgish Army[69]. The Army has also set up a 'drive-in' distribution site for masks dedicated to businesses in the construction sector to allow for the reopening of the industry[70]. Local administrations are also

[68] *The territorial impact of COVID-19: Managing the crisis across levels of government*, OECD, 2020 http://www.oecd.org/coronavirus/policy-responses/the-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government-d3e314e1/

[69] https://www.armee.lu/covid-19/actualites/cellule-logistique-au-ministere-de-la-sante-pour-faire-face-au-covid-19

[70] https://www.armee.lu/covid-19/actualites/l-armee-a-mis-en-place-un-site-de-distribution-de-masques-pour-les-entreprises-de-l-artisanat

involved in the distribution of face masks to the wider population, since the wearing masks has been made obligatory[71].

- The Government of **Switzerland** enhanced measures to ensure the supply of medical equipment and personal protective equipment (PPE) by introducing provisions supporting centralised procurement of essential medical goods that cannot be acquired through regular procurement channels. The army's pharmacy is tasked with procurement of medical devices and PPE while the Federal Office of Public Health is responsible for procurement of medicines. Distribution of such goods is ensured through a distribution centre for each canton. Should the provision of essential medical goods not be sufficiently available, the Ordinance also allows for the possibility of the Federal Department of Home Affairs to require the cantons that have adequate stocks to redistribute part of their stocks to others. The Ordinance also allows the Federal Council to require the prioritisation of production of necessary medical goods from Swiss manufacturers.
- In the **United Kingdom,** the Policy paper on "COVID-19: personal protective equipment (PPE) plan"[72] has set up a new, dedicated unit within the Department of Health and Social Care to focus on securing supplies of PPE.[73] Procurement professionals from the NHS Supply Chain have been seconded to this dedicated new unit to work with a cross-government team of over 200 staff from the Government Commercial Function. This unit identifies PPE suppliers from across the globe to meet the increasing demand for a growing list of PPE products. The Foreign and Commonwealth Office (FCO) teams across the world have ensured that local sources are able to deliver the products required, as well as working with central teams to secure inbound logistics and freight operations at speed. The Department for International Trade has also established a global network to co-ordinate the PPE sourcing, supplementing the FCO's work to achieve faster delivery. The aim of this whole-of-government collaboration is to pull together a global list of the UK's PPE needs. As the Secretary of State for Health and Social Care emphasised in the foreword of the policy paper, with the new sourcing system, "*it will no longer be necessary for each organisation to compete for supplies in a very restricted market.*" There are no restrictions in place on individual organisations sourcing PPE from suppliers, providing the PPE is compliant with requirements. However, they are encouraged, where a supplier has further stock, to direct these suppliers to "*offer coronavirus (COVID-19) support from your business*"[74], so that the national buying team can follow up these suppliers to secure wider stock for the NHS.
- The Government of **Canada** created the COVID-19 Supply Council in support of Canada's response and recovery.[75] The COVID-19 Supply Council brings together a diverse group of leaders to provide the government with advice on the procurement of critical goods and services required

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71 https://coronavirus.gouvernement.lu/fr/communications-officielles.gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bcommuniques%2B2020%2B04-avril%2B15-distribution-masques.html

See also: *Cities policy responses*, OECD, 2020

http://www.oecd.org/coronavirus/policy-responses/cities-policy-responses-fd1053ff/

72 Policy paper - COVID-19: personal protective equipment (PPE) plan https://www.gov.uk/government/publications/coronavirus-covid-19-personal-protective-equipment-ppe-plan/covid-19-personal-protective-equipment-ppe-plan

73 PPE deliveries include aprons, body bags, eye protectors, face masks, fit test kits and solutions, gloves, gowns. These figures also include deliveries of hand hygiene, pulse oximeters, swabs, clinical waste containers, cleaning equipment and detergent to NHS trusts in their response to the COVID-19 outbreak

74 https://www.gov.uk/coronavirus-support-from-business

75 https://www.canada.ca/en/public-services-procurement/news/2020/05/government-of-canada-creates-covid-19-supply-council-in-support-of-canadas-response-and-recovery.html

as part of Canada's COVID-19 response and recovery. The Council's task is to provide advice on building innovative and agile supply chains for goods in wide use such as masks, gloves and disinfectants, including production, sourcing, shipping and distribution strategies as the situation surrounding the virus continues to evolve. This partnership with the private and non-profit sectors complements Canada's whole-of-government response to COVID-19.

Co-ordinating efforts through exchanging information

Beyond joint procurements and centralisation, exchanging information and co-ordinating efforts can also play a vital role in avoiding a scenario where different government departments or different governments compete against each other. Public buyers should co-ordinate their purchases and prioritise the implementation of their contracts with key suppliers. Procurement data can successfully support these co-ordinated efforts to identify and profile key contracts and suppliers.

The **European Health Public Procurement Alliance (EHPPA)**, which is an alliance of non-profit health central purchasing bodies, aims at pooling expertise, leveraging performance and providing its members with a strategic position in the European health procurement market, and holds regular (online) co-ordination meetings for its members on a weekly basis[76]. The objective of these meetings is to co-operate, exchange valuable information, and help each other in this critical situation, as all countries are tackling similar yet specific problems. Members share good practices that are being implemented in different countries and that could benefit everybody, such as how to deal with the shortages of various products and devices in hospitals and pharmacies or the behavior of suppliers. EHPPA Members acquired valuable knowledge from Italy that had been dealing with the outbreak for a longer period of time. A European Commission representative is also invited for the meetings to facilitate co-ordination at regional level.

As COVID-19 and its effects spread around the world and put strain on traditional supply chains, it is paramount for public buyers to find critical suppliers during this crisis. Therefore, tools that can match demand for medical equipment and other goods needed to tackle the virus, or allow public buyers to search for suppliers providing critical goods and services around the world, are of utmost importance. The **European Commission** for example has set up a 'Clearing House for medical equipment', for a period of six months, that facilitates the identification of available supplies, including testing kits, and accelerates their matching with demand by the EU Member States[77]. The European Commission has contact with hundreds of companies specialised in the production of medical devices and personal protective equipment, including ventilators, who have confirmed their intention to increase, or already have increased, their production to meet demand. Where necessary, the Clearing House will match these proposals with Member States' needs and demands, and mediate technical or regulatory obstacles or bottlenecks in supply chains to ensure the swift delivery of this equipment. Another example for a supplier search tool that allows anyone to quickly find lists of suppliers that have previously provided services to the public sector comes from outside of the public sector and is being developed by the **Spend Network** (OpenOpps).[78]

The **European Commission** collects all COVID-19 related tenders throughout the EU on a dedicated webpage[79] to facilitate access to such tenders.

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[76] EHPPA was founded in 2012 and it is a registered association under French law with headquarters in Paris, France. http://www.ehppa.com/0/1/1/1018

[77] https://ec.europa.eu/commission/presscorner/detail/en/IP_20_652

[78] https://openopps.com/insights/contracts/summary/

[79] https://simap.ted.europa.eu/web/simap/covid-related-tenders

The **WHO** emphasises the need for establishing communication channels between all those involved in the purchase of essential health products, including between ministries of health, national medicines agencies, procurement agencies, and those involved in distribution and logistics. Good communication, including with the private sector, is essential to maintain supplies to the population.

Many countries have also taken initiatives to provide information on the suppliers of critical items, their products, and stock. A few examples:

- In **Australia**, *New South Wales* has created a COVID-19 Emergency Supplies registration portal, where suppliers that have the capacity to provide critical supplies, raw materials or manufacturing capability to produce critical supplies during the crisis can register their interest to provide such supplies.
- In **Chile**, *ChileCompra* publishes and updates the list of suppliers providing critical products (*Listado de proveedores con disponibilidad de productos críticos*). In order to prepare and update this list of suppliers, *ChileCompra* invited suppliers to provide the information on the products such as masks and alcohol gels as well as the availability of their stocks.
- In **Slovenia** the *Agency for Medicinal Products and Medical Devices* started its activities before the outbreak of the epidemic in the country, by announcing an invitation to all stakeholders for dialogue and proactive reporting of disruptions or problems in the supply of medicines to improve market preparedness. The Agency has also established regular direct communication with major manufacturers and suppliers of medicines.

Stockpiling and distributing supplies and equipment

The current crisis showed the anomalies in purchasing that a lack of stockpile preparedness created throughout OECD countries. **Finland** was one of the few countries that maintained a stockpile, and was consequently relatively well-positioned to respond swiftly to the crisis. Finland's experience illustrates how stockpiles can be included in an overall procurement strategy. Finland largely met needs for medical supplies by opening the respective stock of the National Emergency Supply Agency (NESA), re-opening its warehouses for the first time since the Second World War in March 2020 and supplying a wide range of critical materials to hospitals. The stockpile is not entirely kept in NESAs warehouses. Some suppliers have been mandated by law to keep a certain level of stock of certain products (including medical equipment) in their own warehouses. In addition, goods in NESA's warehouses are part of the stock maintained by suppliers. During normal periods, suppliers can sell goods located in NESA's warehouse to exchange older models for new equipment. Three staff from Finland's Central Purchasing Body work for NESA to ensure continuity of supply.

Establishing a stockpile of medical equipment and other vital supplies can serve as one of the mechanisms that enable addressing future supply chain disruptions for critical goods or services that have become evident during the crisis (e.g. in the provision of personal protection equipment). Strategic stockpiling can also mitigate some other risks that are more often associated with emergency contracting, such as integrity related risks, or it can reduce the incentives for countries to put in place restrictions on exports on medical products. For example, the **European Union** has already decided to create a stockpile of emergency medical equipment. On 19 March 2020, as an additional safety net, the European Commission proposed creating a strategic **RescEU stockpiling**[80] – a common European reserve – of medical equipment such as ventilators, personal protective equipment, reusable masks, vaccines and therapeutic and laboratory supplies. The Commission will finance 90% of the cost of the stockpiling and will manage the distribution of the equipment to ensure it goes where it is needed most. An EU-wide stockpile will also create an opportunity for targeted intervention. On the other hand, the **WHO** in its technical guidance on *Supply of*

[80] https://ec.europa.eu/commission/presscorner/detail/en/ip_20_476

essential medicines and health technologies highlights that in emergency situations public buyers should avoid stockpiling as this will threaten the global supply.[81] Instead, they could increase buffers in accordance with lead times, which should be monitored and increased where necessary. Even the **European Commission** is suggesting to the EU Member States that they should "avoid national stockpiling". Preventive stockpiling by Member States puts supply at risk for all countries. *"While a certain level of stockpiling of essential medicines for emergency use is understandable, generally speaking, the more localised the stockpiling, the greater will be the tendency towards an unsustainable increase in aggregate anticipatory demand which, if supply cannot follow suit, will lead to shortages in places where needs have materialised. Stockpiling at EU level is therefore the optimal solution for all Member States, and any stockpiling by Member States should be at national level and for moderate quantities based on epidemiological indications."*[82]

Unleashing the potential of industry to deliver alternative and innovative products – new forms of engaging with the market and suppliers offering services and donations to government

Governments, and their contracting authorities, may have to look for alternative and innovative solutions which may already be available on the market or could be capable of being deployed at very short notice. Public buyers have to identify solutions and interact with potential suppliers in order to assess whether these alternatives meet their needs. Interaction with the market may offer good opportunities to also take into account strategic public procurement aspects, where environmental, innovative and social requirements, including accessibility to any services procured, can be integrated in the procurement process. The existing policy and legal framework in most countries fully empowers contracting authorities to engage with the market in match-making activities. Even in countries where neither the legal framework nor the administrative culture are prone to market engagement, this practice could upgrade supplier management and facilitate tackling the current and future potential crises.

There are various ways to interact with the market to stimulate supply. Some countries addressed companies directly to solicit their services to the government. A few examples for the new ways of communicating with the market:

- The Government of **Canada**, through Public Works and Government Services Canada (PWGSC), has set up a specific webpage[83] seeking suppliers' support to provide key goods and services, including disposable masks, gloves, gowns, hand sanitiser, ventilators, COVID-19 testing kits, flock swabs and other prevention products, nursing services, laundry services, accommodation maintenance services, IT support services. This is in line with Canada's whole-of-government response to Coronavirus disease and Canada's Plan to Mobilise Industry to fight COVID-19[84] announced by Prime Minister Trudeau on March 20, 2020. The plan includes direct support to businesses to rapidly scale up production or re-tool manufacturing lines to develop products made in Canada to help in the fight against COVID-19. Suppliers are able to indicate through the portal

[81] WHO Strengthening the Health Systems Response to COVID-19 Technical guidance #3 Supply of essential medicines and health technologies (6 April 2020) http://www.euro.who.int/__data/assets/pdf_file/0007/437470/TG3-AccessSupplyMedicines-eng.pdf?ua=1

[82] Communication from the Commission: Guidelines on the optimal and rational supply of medicines to avoid shortages during the COVID-19 outbreak, 2020/C 116 I/01, *OJ C 116I , 8.4.2020, p. 1–6*

[83] https://buyandsell.gc.ca/calling-all-suppliers-help-canada-combat-covid-19

[84] https://pm.gc.ca/en/news/news-releases/2020/03/20/prime-minister-announces-canadas-plan-mobilize-industry-fight-covid

what emergency goods and services they can provide, along with delivery timeframes and contact details, in order for the government to get in touch with them immediately.

- The **UK government** asked suppliers to come up with solutions for ventilators[85], which resulted in a major consortium coming forward to help.
- Consip in **Italy** published an announcement[86] on its webpage with regard to the health emergency for the COVID-19 disease, and invited all Italian and foreign companies manufacturing and/or distributing surgical masks as well as FFP2/FFP3 and N95 masks to register on the Public Administration Electronic Marketplace (Mepa)[87], to publish their catalogue of products and thus facilitate purchases by public administrations. Consip, thanks to an accurate and timely market analysis, has also made available – during the first phase of the emergency – 300 lung ventilators ready for delivery, identifying the only national manufacturer, the Siare Engineering company of Bologna, with which the Department of Civil Protection finalised a special agreement.
- In **Ireland**, the OGP established a central database of offers and donations. Businesses can use the website to provide details about the goods or services they can supply or donate[88].
- In **Luxembourg**, an online platform was set up by the national innovation agency, *Luxinnovation* to facilitate the interaction between buyers and Luxembourgish suppliers of personal protective equipment (PPE). The platform aims to collect information about the production and supply of the following items: surgical masks and FFP2-type masks, non-certified masks, visors, plastic protective screens, aprons and disinfectants.
- In the **United States**, the Department of Homeland Security issued a solicitation to support the efficient acquisition and testing of innovative commercial products from legitimate suppliers, as well as the efficient production and fielding of the successfully tested innovative commercial products. The Department is seeking to identify new solutions to support the detection of exposure, prevention, containment and treatment of COVID-19 and similar microbial threats. Proposed innovative commercial products may be, but are not limited to, (i) supplement shortages and/or emerging needs for personal protective equipment, (ii) enhance or expedite screening capabilities, (iii) enhance or expedite facility cleaning capabilities, (iv) extend testing capabilities, (v) utilise technology to support the COVID-19 response, or (vi) convert existing production and logistics operations to support the COVID-19 response.
- The *Hack the Crisis movement* that started in **Estonia**, has reached over 40 countries and more than 100,000 participants. In mid-March 2020, immediately after the government declared an emergency situation in Estonia, the public and private sector organised a two-day online hackathon. It aimed at sharing and developing ideas for urgently needed solutions during the current crisis, as well as to build resilience post-pandemic. Several technological solutions emerged as a result, such as the map that displays current data about the spread of the coronavirus[89], the chatbot SUVE, a source of reliable information about the crisis[90] or the health questionnaire that assess one's risk of infection. As a result of the *Hack the Crisis* movement, a

85 https://www.gov.uk/government/news/production-and-supply-of-ventilators-and-ventilator-components

86 https://www.consip.it/media/news-e-comunicati/covid-19-emergency-notice-for-companies

87 www.acquistinretepa.it

88 The OGP has received offers from businesses both in Ireland and abroad. These include PPE, hand sanitiser, accommodation, conference centre facilities, transport, etc. Offers have been made to the HSE and through IDA/EI/DBEI contacts. All donations and offers are submitted to the HSE in the first instance. Where such offers are for consideration that they are examined in context of public procurement rules and procedures.

89 https://koroonakaart.ee

90 https://eebot.ee/

new digital solution by MASC (Management of Acute Supply during Crises) will enable hospitals and public institutions to monitor personal protective equipment stockpiles and demand. The database can be supplemented with a prognosis of supply needs in accordance with the situation.

What policy insights could be drawn?

Policy Insights in terms of *collaborative approaches:*

- Collaborative and co-ordinated approaches on national, supranational and regional levels can help avoid sending counterproductive messages to the market and join forces against the pandemic.
- Joint procurement provides the opportunity for participating entities to avoid directly awarding a contract to a specific supplier based on emergency reasons. Working together in this way also gives the opportunity for the participating contracting authorities (and for countries) to be present with a stronger position in the (world) market.
- A centralised purchasing approach can have a significant role in responding to COVID-19 challenges. Already existing collaborative procurement instruments such as framework agreements or dynamic purchasing systems (DPS) can ensure immediate responses and at the same time help avoid direct award and emergency contracting. The use of centralised purchasing can also help avoid duplication of stock.
- Cross-border collaboration in procurement can take different forms, with varying intensity and scope of activities. Even only sharing information about prices and suppliers between different countries can be useful tool to have better understanding on the constantly changing purchasing environment.
- Close communication with suppliers, with national, regional and global partners may help to be aware of all potential solutions. Procurement data can also successfully support these co-ordinated efforts to identify and profile key contracts and suppliers.
- Tools that can match demand for medical equipment and other goods needed for fighting COVID-19 or allow public buyers to search for suppliers providing critical goods and services could help public buyers to find critical suppliers during the crisis.
- Establishing a stockpile of medical equipment and other vital supplies can serve as one of the mechanisms that enable addressing future supply chain disruptions for critical goods or services. Strategic stockpiling can also mitigate some other risks that are more often associated with emergency contracting, such as integrity related risks, or it can reduce the incentives for countries to put in place restrictions on exports on medical products.
- Public buyers can engage with suppliers more often and in more experimental ways to find innovative and alternative solutions for their needs as well as to find alternative sourcing.

Responses to the global pandemic, notably lockdowns and confinement measures, put government supply chains at risk

What has been observed?

As the coronavirus outbreak combines an exceptional peak in demand of the same specific products across the globe, and the total stoppage of production activities in certain regions of the world, supply chains are put under extreme stress. These major disrupting factors are affecting public institutions not only in the health sector but also more broadly across administrations providing essential public services.

Beyond procuring items directly needed for the fight against the virus, contracting authorities are required to properly manage their ongoing contracts (and tender procedures, if any) as they are not automatically suspended, in spite of the challenges posed by the crisis. The constantly evolving COVID-19 situation, however, strongly affects existing contractual relations between governments and the private sector, creating many uncertainties for procurement professionals, as well as for the supply chain.

Many suppliers of ongoing public contracts are struggling to meet their contractual obligations because of restrictions introduced by governments all over the globe (for example suppliers whose payment mechanisms are defined against the use of services, such as the operators of transport infrastructure), putting their financial viability and their own supply chain at risk. Many of these contractors are no longer able to continue business at a normal level, due to quarantine measures, sickness, and reduced operations. Contracting authorities therefore need to take action in response to supplier claims of "force majeure" or contract "frustration".

On the other hand, public bodies may also struggle to meet their contractual obligations due to budgetary cuts, putting their suppliers' financial viability and staff retention at risk.

What are countries doing?

Governments, alongside their contracting authorities, with their quick and proportionate actions, can ensure suppliers at risk are in a position to resume normal contract delivery once the outbreak is over. This will ensure the swift provision of effective responses for suppliers seriously affected by the crisis and its impact on economic development.

For example, in **Ireland**, the Office of Government Procurement (OGP) is advising contracting authorities to examine their supplier bases to assess their exposure to supply chain disruption because of COVID-19[91]. This information-gathering exercise should identify the extent to which contracting authorities are relying on each and any market hit by restrictions as result of the virus. The potential impact on their ability to provide services if there is a disruption to these markets should also be considered. Contracting authorities should then consider and implement mitigation steps to ensure the continuation of services.

Similar approaches have been taken by countries that do not have such centralised body, as is the case in **Japan**. The Ministry of Internal Affairs and Communications issued "Measures to be taken for public procurement by local governments in response to COVID-19" on 3 March, 2020[92]. In the **United Kingdom**, the Cabinet Office issued a procurement policy note on "Supplier relief due to COVID-19"[93]. To ensure business and service continuity, the policy note states that contracting authorities should pay all suppliers

[91] Information note on good practices for contracting authorities during the COVID-19 outbreak https://ogp.gov.ie/information-note-covid-19-coronavirus-and-public-procurement/

[92] https://www.soumu.go.jp/main_content/000673056.pdf

[93] Procurement Policy Note 02/20: Supplier relief due to COVID-19; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874178/PPN_02_20_Supplier_Relief_due_to_Covid19.pdf

as quickly as possible to maintain cash flow and protect jobs. The policy note also emphasises that contracting authorities and suppliers should work collaboratively to ensure there is transparency during this period. Suppliers in receipt of public funds during this period must agree to operate on an 'open book' basis. This means they must make available to the contracting authority any data, including from ledgers, cash-flow forecasts, balance sheets, and profit and loss accounts, as required and are requested to demonstrate the payments made to the supplier under contract have been used in the manner intended. The note also states that suppliers "*should not expect to make profits on elements of a contract that are undelivered during this period and all suppliers are expected to operate with integrity*." Suppliers were made aware that where they found to be taking undue advantage or failing to act transparently and with integrity, contracting authorities would take action to recover payments made.

France has also issued an ordinance to support the contracting authorities who faced the difficulties of execution of the current contracts. [94]

New Zealand is providing advice and guidance to agencies, suppliers and other stakeholders on sourcing and contract management issues, such as options to consider whether a contract has come to term and encouraging agencies to show leniency in contract management, for example if a supplier is unable to deliver due to the lockdown [95]. Furthermore, requirements on government agencies to pay invoices promptly to improve cash flow and support business sustainability were confirmed. In September 2019, central government agencies were set a target to pay 95% of domestic invoices within 10 business days. This target was due to take effect from June 2020. However, with many businesses suffering significant hardship resulting from the crisis, the Prime Minister announced the introduction of the 10-day payment processing target with immediate effect (March 2020). Contracting authorities have also been encouraged to consider making payments earlier and/or more frequently to support suppliers experiencing acute cash flow issues.

In **Korea,** the contracting authorities are encouraged by the *Emergency Procurement Guidelines* published by PPS, the central purchasing body of Korea, to shorten the payment period form 15 days to 5 days. The reduced payment period should be reflected in new contracts, too. Furthermore, PPS offers prompt payments during the emergency to ease financial burdens of manufacturers (mostly small and medium-enterprises) that put efforts into production of vital supplies needed for the fight against COVID-19. Under the Practice Guideline of Procurement Service Charter, payments shall be made within 4 hours upon receipt of invoice. Fast payment is possible due to integration and real time data interchange between KONEPS (the e-procurement system of Korea) and *dBrain* that supports all fiscal activities and transactions of government finance managed by the Ministry of Economy and Finance.

Governments across the world have often set up interim legislative provisions recognising the existence of events of *force majeure*, which allow contractors to be immune from claims and contractual penalties. In this new crisis environment, further emphasis and a more strategic approach is needed in the areas of contract and supplier relationship management, and not only in the healthcare suppliers' portfolio. Traditionally, contract management activities are given lesser consideration than preceding stages of the procurement cycle, with purchasing entities counting on strict contract compliance. However, a number of researchers [96] have shown that shifting contract management from supplier compliance to supplier

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94 Ordinance No. 2020-319 of 25 March 2020 to adapt the rules of public procurement contracts based on the emergency Law No. 2020-290 of 23 March 2020 to deal with the Covid-19 epidemic.

95 COVID-19 – Emergency procurement guidance, https://www.procurement.govt.nz/about-us/news/covid-19-emergency-procurement-guidance/

96 Decarolis, F., R. Pacini and G. Spagnolo (2016), "Contractors' Past Performance and Procurement Outcomes: A Firm-level Experiment", Stanford Institute for Economic Policy Research Discussion Paper, No. 16-036, Stanford Institute for Economic Policy Research, Stanford, https://siepr.stanford.edu/sites/default/files/publications/16-036.pdf (accessed on 21 April 2020).

performance brings benefits. The current situation puts an even stronger emphasis on closer relationships between governments and critical healthcare suppliers.

An immediate response to this situation could be to invest and engage more in proactive risk management strategies. Supply network mapping and segmentation of suppliers' portfolios are a few examples of supply chain risk management.

What policy insights could be drawn?

Policy Insights in terms of *supply chain risk management:*

- A more strategic approach is needed in the areas of contract and supplier relationship management in order to build up resilience against future crises.
- Governments, alongside their contracting authorities, with their quick and proportionate actions, can ensure suppliers at risk are in a position to resume normal contract delivery once the outbreak is over. First, contracting authorities should examine their supplier bases to assess their exposure to supply chain disruption because of COVID-19. This information-gathering exercise could identify suppliers seriously affected by the crisis and give them the opportunity to take effective steps to ensure the continuation of services.
- Governments should put strategies and clear guidelines in place to support their contracting authorities with managing their suppliers' portfolio and contractual relationships in a fair, transparent and equitable way. These policy interventions can include exceptional measures for paying on-going contracts, allowing specific advanced payments or exempting suppliers from penalties for deficient performance of contracts.
- Public buyers should engage in proactive risk management strategies, such as supply network mapping (encouraging gathering of more data on supply chain risks) and segmentation of suppliers' portfolio. Medicines and other vital supplies that are being purchased from a single supplier are particularly vulnerable; these vital products should be identified and other sourcing routes to protect suppliers should be identified, including purchasing from alternative sources, such as wholesalers.
- Identifying additional suppliers and exploring other options for products at risk, such as repurposing local manufacture and repair, can counterbalance the risks of supply chain disruptions.
- Continuous monitoring of the market situation and logistics challenges to procure and deliver essential products.
- Use public procurement as a tool to offset economic downturn, in particular through attention to vulnerable suppliers (e.g. SMEs).

Defining critical services and infrastructure

What has been observed?

The sudden reduction in economic activity put severe stress on businesses and multiple industries, including the infrastructure sector. The severity of disruptions has differed drastically across countries and projects. While some infrastructure services have been disrupted in order to stop the spread of the pandemic disease (i.e. air transport, railway, urban public transportation), other public services and infrastructure industries have been key enablers for government responses to the crisis (i.e. health infrastructure, digital infrastructure and telecommunications). Ensuring the provision of such critical public services and infrastructure has been particularly important during the first stage of the COVID-19 response, for public health and safety, communication and community well-being.

Mobility restrictions have also been an obstacle in the sense that workers have been unable to access the countries or regions where construction sites are located. No contractual provisions were designed to deal with the interruption of social and economic interactions of this magnitude. Therefore, accurately identifying the losses suffered by each infrastructure contractor, and bolstering negotiation between public and private parties to swiftly settle these damages, is a growing priority amongst countries.

In a policy area where implementation and operation are mostly decentralised, it is also an additional challenge for governments to find the most effective co-ordination tools to work collaboratively across levels of government and with the private sector. Disruptions and restrictions imposed to cope with the spread of the virus also raised concerns related to health and safety in construction sites. Ensuring health and safety for workers and local communities in places where critical infrastructure sites had to continue operations has been a challenging task. Governments have had to ensure constant communication channels with the private sector and the dissemination of new policies and procedures that responded to evolving conditions.

What have countries been doing?

Ensuring continuity of critical infrastructure services

Although initial policy responses have been different across jurisdictions, they have all been aimed at ensuring continuity of services during these unprecedented times. Examples from all over the globe show that countries urgently identified critical services and infrastructure, adapted existing infrastructure to the crisis, and introduced strategies to maintain operations including negotiations with suppliers, which contribute to these operations. What is distinctive about the impact of COVID-19 on infrastructure projects is the safety and security implications for their execution. Dealing with these issues remotely has been a common challenge across countries, for both the public and private sector. Likewise, ensuring safety and efficient functioning of telecommunications infrastructure has been a priority given the mobility restrictions and new teleworking arrangements. For example in **Austria**, the coronavirus crisis led to the activation of the Masterplan for the Protection of Critical Infrastructure[97]. Another key issue is ensuring continuity of activities in face of potential lack of personnel due to contraction of the virus[98]. In **Italy**, the Critical Infrastructure Secretariat of the Presidency of the Council of Ministries issued guidance for operators in

[97] https://www.bundeskanzleramt.gv.at/dam/jcr:bb6a1a41-eb1d-4552-96da-9b460bbc5c0b/%C3%96sterreichisches%20Programm%20zum%20Schutz%20kritischer%20Infrastrukturen%20(APCIP).pdf

[98] https://www.derstandard.at/story/2000115804994/corona-wie-sich-infrastrukturkritische-unternehmen-auf-den-ernstfall-vorbereiten

the field[99]. The guidance addresses several issues related to the management of critical infrastructure during the pandemic, most notably managing the protection of employees. This involves measures to sanitise structures and provide personal protective equipment to staff, but also to maximise working from home via a secure connection. Wherever physical presence of staff is required, operational plans should be devised to minimise physical presence of employees. The Critical Infrastructure Secretariat set up a functional mailbox to collect feedback from operators. In **Belgium**, in terms of management of critical infrastructure, a dedicated Operational Unit co-ordinated by the National Crisis Centre ensures that the crisis infrastructure is fully operational, and guarantees that the crisis units will be alerted if necessary[100]. The Flemish government has adopted an emergency decree that introduces a temporary derogation for notification and request of environmental permits for the construction of hospitals, production facilities for medicines and medical equipment, as well as research facilities for the purposes of assessing the public health emergency[101]. In **Ireland**, to ensure the smooth delivery of Project Ireland 2040 even after the crisis, and to proactively manage risks that arise from these necessary impositions, the Minister for Public Expenditure and Reform announced a suite of measures to manage these risks in the short term, safeguarding the integrity of Project Ireland 2040. The measures include, for example, the extension of tender deadlines by six weeks for all tenders associated with construction and construction services contracts, giving businesses the opportunity to assess the impact of restrictions on their tender or ensuring that pre-construction design work continues up to a state of pre-tender readiness so that projects are ready to go to tender once the public health measures are relaxed.

Adaptation of existing infrastructure assets

Modification of existing infrastructure and setting up temporary or portable infrastructure are also part of the policy responses to the health emergency. This involves the creation of temporary (camp) hospitals and testing centres, or the repurposing of health care units into intensive care units. The **Australian** Government for example, in order to ensure health system capacity during the pandemic, has partnered with the private hospital sector to ensure that their health system is fully prepared to treat as many patients as possible. This new partnership[102] has guaranteed the viability and capacity of the private hospital sector, to ensure that over 30,000 hospital beds, and the sector's 105,000 strong skilled workforce, is available alongside the public hospital sector. The Commonwealth will offer agreements to all 657 private and not-for-profit hospitals to ensure their viability, in return for maintenance and capacity during the COVID-19 response. In exchange, these facilities will be required to make infrastructure, essential equipment (including ventilators), supplies (including PPE), workforce and additional resources fully available to the state and territory hospital system of the Australian Government. In **Colombia**, hospitals were repurposed to serve as intensive care units (ICU) for COVID-19 patients. The Colombian government purchased 2,100 mechanic ventilators to increase current capacity[103] and a temporary health facility to host non-critical patients was set up in Bogota's largest conference centre, with a maximum capacity of 1,200 beds[104]. In **France**, the intensive care capacity in the Eastern part of the country was overstretched and the authorities decided to set-up a military camp ICU centre to provide more bed capacity. The army

[99] http://presidenza.governo.it/AmministrazioneTrasparente/Organizzazione/ArticolazioneUffici/UfficiDirettaPresidente/UfficiDiretta_CONTEII/Allegati/Principi%20precauzionali%20Infracrit%20COVID-19.pdf

[100] https://www.info-coronavirus.be/en/what-is-the-government-doing-about-it/

[101] http://docs.vlaamsparlement.be/pfile?id=1543297

[102] https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/australian-government-partnership-with-private-health-sector-secures-30000-hospital-beds-and-105000-nurses-and-staff-to-help-fight-covid-19-pandemic

[103] https://www.minsalud.gov.co/Paginas/Expansion-hospitalaria-una-estrategia-para-atencion-de-la-covid-19-.aspx

[104] https://bogota.gov.co/mi-ciudad/salud/hospital-de-corferias-todo-lo-que-debes-saber

was also asked to transfer patients from regions not able to treat patients to those having less activity, so as to spread to burden more evenly across the entire country.[105]

Management of ongoing infrastructure contracts

Throughout the first stages of the crisis, governments had to adopt measures to manage ongoing infrastructure contracts and address the obstacles that economic disruptions may have posed in their execution. The most common response has been to ensure service continuity, even under strict lockdown measures. Since the construction sector is mainly a cash flow driven business, some OECD governments have designed different strategies to ensure project liquidity. For instance, the **United Kingdom** is providing finance support mechanisms at various levels, from SMEs to larger infrastructure corporations such as corporate finance facilities[106], business interruption loans[107] schemes and bounce-back loans[108].

Ongoing collaboration between the public and the private sectors has been key in overcoming the crisis. Constant communication channels to disseminate new policies and procedures have been critical for service continuity. The **Japanese** government has engaged in meaningful dialogues with contractors to address the impact of the crisis on the infrastructure sector and has adopted guidelines for companies to maintain proper relationships with their subcontractors, as they are key players in the supply chain. In **Colombia**, the *National Infrastructure Agency* (ANI) held more than 60 virtual meetings with governors, mayors, COVID-19 regional managers and social leaders to define uniform parameters that address safety and well-being concerns. To ensure safety and security for workers and local communities, the ANI adopted bio-security guidelines, previously socialised with local governments and the private sector, to avoid the spread of the pandemic disease in open construction sites[109]. In the **United Kingdom**, industry task forces were also created by the Department for Transport to support ongoing dialogues between public sector and private contractors in the aviation sector[110].

With respect to the application of *force major* clauses and methodologies for contract renegotiation, the response has differed across OECD countries. The **United Kingdom** adopted general guidelines for Private Finance Initiatives (PF1 and PF2), indicating that the COVID-19 emergency is not, and will not be, regarded as an event of force majeure[111]. On the other hand, the **French** government has deployed a unit within the Ministry of Finance to provide assistance to public agencies on how to settle the damages suffered by the private sector and to individually deal with the application of provisions to re-balance contracts in case of unforeseen events[112]. Likewise, **Spain** passed a decree stating the conditions under

[105] *Beyond containment: Health systems responses to COVID-19 in the OECD*, OECD, 2020. http://www.oecd.org/coronavirus/policy-responses/beyond-containment-health-systems-responses-to-covid-19-in-the-oecd-6ab740c0/

[106] https://www.bankofengland.co.uk/markets/covid-corporate-financing-facility

[107] https://www.gov.uk/government/publications/coronavirus-covid-19-ministerial-direction-for-the-coronavirus-business-interruption-loan-scheme

[108] https://www.gov.uk/guidance/apply-for-a-coronavirus-bounce-back-loan

[109] https://www.ani.gov.co/sites/default/files/20201000000164.pdf

[110] https://www.gov.uk/government/news/government-announces-roadmap-taskforces

[111] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878059/2020_04_02_PFI_and_COVID19_final.docx.pdf

[112] https://www.tresor.economie.gouv.fr/Articles/2020/06/08/covid-19-fin-infra-ouvre-un-guichet-pour-aider-les-personnes-publiques-a-gerer-les-impacts-de-la-crise-sur-leurs-projets-d-investissement

which concession agreements can be rebalanced due to the effects generated by COVID-19[113]. This measure aims to compensate private contractors for losses in revenue and over-costs generated during execution of the contract (including additional wage costs). **Portugal** also adopted similar guidelines to rebalance concession agreements in case of losses suffered by private contractors as a result of measures adopted by the government during the state of emergency[114].

What policy insights could be drawn?

Policy Insights in terms of *defining critical services and infrastructure:*

- The first step for a structured infrastructure response has been to identify critical infrastructure services whose continuity must be ensured and put in place extraordinary measures to support public and private service delivery.
- Management of relationships with infrastructure operators whose economic activity has been interrupted has been a common approach.
- Open dialogue with local authorities and stakeholders has been the most useful tool to provide co-ordinated and efficient responses and guidelines.
- Constant communication channels and collaboration between the public and the private sector have been key to ensure service continuity.

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Find out more about OECD work on Public Procurement and Infrastruture here:
www.oecd.org/gov/public-procurement

[113] https://www.boe.es/eli/es/rdl/2020/03/17/8

[114] https://dre.pt/web/guest/pesquisa/-/search/131908497/details/maximized