

EU conditionality on public procurement reforms: convergence or divergence in candidate and member states? The case of Romania, the Czech Republic, Albania and Croatia

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Abstract. Objective: This paper analyses the impact of European Union (EU) conditionality on public procurement reforms in Romania, the Czech Republic, Albania, and Croatia. In the paper, public procurement is considered as both a significant fiscal instrument and a governance test, where EU legal harmonization meets domestic institutional realities. **Method:** Using EU directives, acquis requirements, European Commission reports, EU Innovation Procurement Observatory benchmarking results and as well national case studies, the study compares legislative alignment, institutional capacity, digitalization, and anti-corruption measures. Directive 2014/24/EU, the European Single Procurement Document (ESPD), exclusion provisions, and green and digital strategies are examined as core reform drivers. **Results:** Findings indicate strong formal convergence across all cases, but persistent divergence in implementation, shaped by administrative capacity and political will. The Czech Republic shows high compliance, Romania and Croatia mixed but improving performance, while Albania, still in accession talks, advances in digitization yet struggles with fair competition. The analysis concludes that EU conditionality fosters legal convergence, but requires targeted support to reduce the implementation gap.

Keywords: EU conditionality, public procurement, enlargement, governance, legal harmonization.

JEL classification: D73, H54, H80.

1. Introduction

The successful and efficient procurement of goods, services, and public works represents a critical dimension of any procurement system seeking to manage resources in the most optimal way possible (Arrowsmith, Treumer, Fejø, & Jiang, 2011: 5). Public procurement, despite its central role in public administration, is often underestimated and perceived as being outside the core framework of administrative policies and governance (Snider & Rendon, 2012: 327). Public procurement practitioners, whether in developed or developing countries, consistently meet significant challenges in implementing agreed and issued procurement policies and procedures (Thai, Araujo, Carter, Callender, & Telgen, 2005: 1). This also holds true for EU Candidate countries, such as Albania, where public procurement in itself remains a relatively recent concept within the institutional

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environment (Kashta, 2015) and its needs to implement EU procurement procedures and policies as well as part of the EU harmonization legislation.

Within the framework of European Union (EU) accession commitments and conditionality, Albania has undertaken substantial efforts to align its public procurement system with EU standards. This process has involved aligning both its legislation and institutional practices to comply with *acquis* and EU public procurement directives (Kashta, 2015). Based on official documents and reports, progress in Chapter 5 of the EU *acquis*, which concerns public procurement, has been treated as a key priority in Albania's preparations for EU membership negotiations. This chapter, as part of Cluster 1, Fundamentals, is among the first to be opened and requires compliance with the EU's core legal and administrative standards (Eurokonventa, 2023).

Albania has made considerable progress, particularly in harmonizing its legal framework and digitizing procurement processes (Eurokonventa, 2023). A new Public Procurement Code has been adopted and is broadly harmonized with the EU *acquis*. Supplementary secondary legislation has been issued to support the legal framework, and institutional reforms have included the strengthening of the Public Procurement Agency (APP), the Public Procurement Commission (PPC), and other oversight and appeals bodies. The implementation of the Electronic Public Procurement Platform (e-procurement) has contributed to increased transparency and public access. More recently, the use of AI tools to detect anomalies in procurement procedures has been promoted. Nonetheless, the European Commission has assessed Albania as having made 'good progress', while also identifying serious shortcomings in practical implementation, especially regarding: (1) ensuring fair competition; (2) avoiding single-bidder tenders; and (3) preventing the artificial division of contracts to favor particular entities (European Commission, 2023).

For these reasons, it is essential to analyze the current state of public procurement in Albania, not only in relation to the EU model, but also through comparative perspectives with other countries in the Balkans and Eastern Europe, which are similarly striving to meet European standards. It must be emphasized, however, that public procurement falling outside the scope of the EU Treaty is, under no circumstances, subject to EU regulations (Arrowsmith & Kazlik, 2009: 55). In the context of public contracts, Article 296(1)(b) of the EU Treaty is particularly relevant, as it excludes measures related to the 'production of or trade in arms, munitions, and war material' from the scope of the Treaty (Arrowsmith & Kazlik, 2009: 55). Although the EU Treaty contains no specific provisions regulating Member States' procurement systems, it does guarantee the free movement of goods (Article 28), the freedom of establishment (Article 43), and the freedom to provide services (Article 49)—freedoms that also extend to public procurement activities (Arrowsmith & Kazlik, 2009: 56).

All EU Member States, and candidate countries like Albania, operate within their own unique economic, social, cultural, and political environments. Consequently, officials involved in the implementation of procurement legislation encounter different types of challenges based on their national contexts, or face similar challenges, but at varying degrees of intensity compared to their counterparts in other countries (OECD, 2020). Given that public procurement plays a crucial role in government resource management and has a direct impact on a country's economic development, it is imperative that Albania continues to reform and adapt its procurement system in line with European Union standards. This must remain a core priority within the country's governance strategies. Beyond legal harmonization, continuous efforts are needed to enhance the transparency, efficiency, and integrity of the system.

The challenges associated with implementing these reforms within a dynamic political and economic context, and adapting national procedures to the best international practices, will be further examined in the subsequent sections of this study. Particular attention is given to the role of public procurement in promoting fair competition, enabling sustainable development, and strengthening institutional and managerial capacities in Albania and the broader Balkan region. This discussion will be grounded in comparative analysis with the cases of Croatia, Romania, and the Czech Republic, the latter being widely recognized as a top-performing country in this sector.

2. Aims of the study and research questions

This study aims to contribute to the expanding body of research on public procurement systems in economies in transition, with a specific focus on Albania and its efforts to align with European Union (EU) standards. Public procurement, representing a significant share of national expenditure, is not only a technical and legal matter, but also a deeply political one, often shaped by institutional legacies, administrative capacity, and broader governance dynamics. In the context of Albania's EU integration process, procurement reform has emerged as a key policy domain through which transparency, accountability, and efficiency are expected to be achieved. However, implementation challenges persist, particularly in balancing compliance with *EU acquis* and domestic institutional realities.

The primary aim of this paper is to assess the evolution, challenges, and outcomes of public procurement reforms in Albania, with a comparative lens on similar trajectories in selected Central and Eastern European countries, namely, Romania, Croatia, and the Czech Republic. By focusing on this, the study examines the interplay between legal harmonization, institutional performance, and political will in shaping procurement outcomes. Moreover, the research seeks to understand whether the adoption of EU directives, particularly Directive 2014/24/EU (European Parliament & Council of the European Union, 2014) and the introduction of mechanisms like the European Single Procurement Document (ESPD), has effectively reduced administrative burdens and increased market competition. By addressing these issues, the paper aims to advance both theoretical and policy-oriented understandings of procurement governance in transitional and EU candidate states.

For the above explained arguments, the overall research question of this paper is:

- How does EU conditionality shape public procurement reforms and their implementation in candidate and member states?

Other sub-questions are:

- In what ways do EU regulatory frameworks and domestic procurement practices affect the efficiency and integrity of procurement processes?
- Which EU-promoted innovative practices and anti-corruption mechanisms are most effective in preventing corruption risks in public procurement?
- Under what conditions can EU-driven procurement reforms advance sustainable development objectives?
- How can monitoring and enforcement mechanisms be strengthened to ensure transparency, fairness, and compliance with EU procurement standards?

From these questions, the following hypotheses guide the analysis:

H1. EU conditionality promotes legal convergence in procurement systems, but practical implementation depends on domestic administrative capacity.

H2. Adoption of EU procurement directives reduces administrative burdens, though their impact on market competition is shaped by political will.

H3. EU anti-corruption and digitalization measures are more effective where rule-of-law institutions are stronger.

H4. Procurement reforms advance sustainable development only when green and digital strategies are matched by sufficient enforcement capacity.

3. Methodology

This study employs a qualitative comparative approach, focusing on four country cases: Romania, the Czech Republic, Albania, and Croatia. We selected these countries based on both theoretical and empirical grounds, reflecting the logic of the comparative method as outlined by Ragin (2014) and Lim (2010). Comparative analysis is particularly useful in public policy research, as it allows the researcher to uncover patterns of similarity and divergence across different institutional and historical contexts (Dodds, 2013).

The main reason for choosing these four case studies is based on their shared post-socialist legacy and their distinct trajectories of European Union integration. Romania and Croatia, both EU member states that joined in 2007 and 2013 respectively, represent countries that have undergone extensive institutional reforms under EU conditionality, with varying degrees of success in

implementation. The Czech Republic, as a Central European state that acceded in 2004, provides a contrasting case of earlier accession and comparatively higher administrative capacity. Albania, still a candidate country engaged in accession negotiations, represents a critical test case of ongoing alignment with EU procurement standards, where reforms are more recent and implementation challenges remain still critical.

This variation across cases enables the application of both the Most Similar Systems Design (MSS) and the Most Different Systems Design (MDS) (Ragin, 2014; Lim, 2010). On the one hand, the countries share a post-socialist background and the pressures of EU integration, allowing for control over certain common variables (MSS). On the other hand, based on EU and individual national progress reports they differ in timing and depth of EU membership, levels of administrative capacity, and experiences with corruption and state capture, thereby enabling an analysis of how these different conditions shape procurement reforms (MDS).

By comparing these four cases, the study seeks to identify how EU conditionality interacts with domestic institutional capacity, political will, and historical legacies to influence procurement reform outcomes. The comparative framework thus serves three interrelated goals: to control for shared legacies, to understand divergent institutional pathways, and to explain variation in reform effectiveness (Dodds, 2013). In this way, the selection of all four countries is based in a clear comparative logic that balances historical interpretation with causal regional and local analysis.

Table 1. Main indicators to measure institutional capacity or compliance

Indicator	Description	Method of measurement	Related hypothesis
Contracting authority performance	Institutional performance and reforms underpinning procurement systems.	Review of institutional performance, national and international reports.	H1, H2
Transparency of procurement	Level of publicly available information and stakeholder involvement.	Analysis of tender documents, stakeholder consultations, surveys.	H2, H4
Competition in tenders	Degree of competition and opportunities for firms to win contracts.	Number of bidders per tender, analysis of market openness.	H2
Political influence	Extent of political or interest-group interference in procurement processes.	In-depth interviews, analysis of politicization in tenders.	H2, H3
Oversight and monitoring institutions	Strength and effectiveness of audit and supervisory bodies.	Review of oversight institutions, audit reports.	H3, H4
Anti-corruption measures	Strategies and institutions addressing corruption risks in procurement.	Corruption reports, case analysis, review of anti-corruption legislation.	H3
Innovation and e-procurement	Extent of digital reforms and modernization of procedures.	Review of e-procurement reforms and EU recommendations.	H4
Legal convergence with EU	Alignment of national procurement legislation with EU directives.	Analysis of legislative reforms, EU progress reports.	H1

Source: Authors' assessment based on a qualitative analytical synthesis derived from a systematic review of the European Commission's EU Progress Reports and country-specific monitoring documents, complemented by relevant indicators from the Single Market and Competitiveness Scoreboard (European Commission, 2025b) and thematic EU public procurement recommendations. The assessment draws on evidence from the cases of Romania, the Czech Republic, Croatia, and Albania, encompassing both EU Member States and an EU candidate country. It reflects a comparative interpretation of recurring evaluative findings related to institutional capacity and compliance with EU public procurement principles, rather than a country-specific or standalone measurement exercise.

4. Research results and comments

Role of the European Union as a unifying factor in the regulation of public procurement

The EU plays a significant role in harmonizing the legal framework for public procurement across both its member states and candidate countries. Romania, Czech Republic, Croatia, and Albania, despite being at different stages of European integration, share a common connection through the EU's requirements and standards in the field of public procurement. While Romania and the Czech Republic have been EU members since 2007, and Croatia since 2013, Albania remains in the process of accession negotiations. As of mid-2025, Albania has opened 16 out of 33 negotiating chapters, amounting to nearly 50% of the overall process (European Commission, 2025).

Within the public procurement sector, Albania is transitioning from the legislative alignment phase (screening/opening) to the practical focus of closing the relevant chapter. The country's legal framework and the reporting mechanisms in place have been assessed as 'moderately prepared', with only partial progress made toward alignment with the EU *acquis* in the areas of concessions and public contracts (European Commission, 2024). These countries, including Albania, despite their differing statuses, are committed to aligning their national public procurement legislation with the EU *Acquis Communautaire*. Bovis (2024) emphasizes that the EU's public procurement laws, through the harmonization of standards and the reinforcement of the principles of equality, transparency, and competition, have established a stable environment for the internal market. The EU has been regulating public procurement among member states since 1964, with the primary goal of eliminating discrimination and restrictions within the internal market.

"Two key directives were passed to coordinate public procurement in the areas of public works and public supplies" (Williams-Elegbe, 2012). This marked the beginning of harmonization efforts, not the fully developed modern system. Through successive directives, most notably Directive 2004/18/EC and Directive 2004/17/EC (European Parliament & Council of the European Union, 2004b; 2004a), the EU has pursued the modernization of its procurement system by strengthening control mechanisms and expanding the application of rules to various economic sectors (Williams-Elegbe, 2012). The overarching aim of these directives has been to modernize procurement legislation in response to evolving developments in the field and to simplify the European procurement framework by consolidating the provisions into a single legal instrument. This initiative aimed to replace three previous directives and was to be implemented by member states no later than 31 January 2006 (European Commission, 2024). Member states were obliged to amend or adopt new laws to comply with the EU regulations/directives. "The major changes introduced by the directives include a general exemption from the rules applicable to utilities for entities which operate in competitive markets, reflecting the liberalisation of that sector and the introduction of new award procedures, providing greater flexibility in relation to complex contracts and electronic procurement" (cited in Williams-Elegbe, 2012).

Further reforms in the EU's public procurement legislation have continued throughout the last decade. In 2014, the EU adopted a new package of directives aimed at further simplifying and modernizing public procurement. These included Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement in the water, energy, transport, and postal services sectors (European Parliament & Council of the European Union, 2014c), and Directive 2014/23/EU on concessions (European Parliament & Council of the European Union, 2014a). The primary objectives of these reforms were to enhance transparency, streamline procedures, and facilitate access for small and medium-sized enterprises (SMEs) to public procurement markets (European Commission, 2025a). A significant development in recent years has been the integration of the European Green Deal and the Digital Europe strategy into public procurement policies. The EU has increasingly emphasized the importance of green and innovative procurement, encouraging the introduction of environmental/sustainable and social criteria in the evaluation of public contracts.

Furthermore, the EU has strengthened measures against corruption and conflicts of interest in public procurement. The new directives and European Commission guidelines have promoted the use of digital tools to increase transparency and prevent unlawful practices, including the implementation of e-procurement platforms and mechanisms for reporting irregularities. In 2023, the European

Commission launched a review of the existing public procurement legislation, aiming to improve the efficiency of public fund usage and to support the EU's strategic goals, such as the green and digital transitions (Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 2024). This process is expected to lead to new legislative proposals in the coming years.

For Romania, the Czech Republic, and Croatia, EU integration has brought both benefits and challenges in the implementation of these regulations. These countries have been required to adopt a stringent legal framework and oversight mechanisms to ensure compliance with EU standards. For Albania, which remains in the accession negotiation phase, alignment with EU public procurement legislation represents a key step toward full membership. The EU has emphasized the need for increased transparency, the elimination of corrupt practices, and the improvement of institutional capacities in the Western Balkan countries, including Albania (European Commission, 2023). One of the most essential components of the EU's regulation of public procurement is the reduction of member states' discretion in shaping their procurement policies (Williams-Elegbe, 2012). This process has been essential for ensuring fair competition among economic operators and for guaranteeing a more efficient usage of public money. In this context, the reforms undertaken by all four countries in the field of public procurement reflect the EU's broader trend toward creating an open and well-regulated market.

Table 2. Key public procurement reforms under EU directives

Reform Area	Albania	Romania	Czech Republic	Croatia	EU Directive / Relevance
Legal harmonization	<i>Partial</i>	<i>Full</i>	<i>Full</i>	<i>Full</i>	2004/17/EC, 2004/18/EC, 2014/24/EU
E-procurement & digital tools	<i>Moderate</i>	<i>High</i>	<i>High</i>	<i>High</i>	2014/24/EU, Digital Strategy
Transparency & competition	<i>Moderate</i>	<i>High</i>	<i>High</i>	<i>High</i>	2014/24/EU, Green Deal
Anti-corruption measures	<i>Developing</i>	<i>Advanced</i>	<i>Advanced</i>	<i>Advanced</i>	Anti-Corruption Package 2023, EPPO 2021
Exclusion of economic operators	<i>Adopted</i>	<i>Enforced</i>	<i>Enforced</i>	<i>Enforced</i>	Articles 44–45, 2014/24/EU
Green & social criteria	<i>Pilot</i>	<i>Applied</i>	<i>Applied</i>	<i>Applied</i>	Green Deal, 2014/24/EU
Rule of law & oversight	<i>Moderate</i>	<i>Strong</i>	<i>Strong</i>	<i>Strong</i>	Proportionality principle, CJEU
Integration with EU market	<i>In progress</i>	<i>Integrated</i>	<i>Fully integrated</i>	<i>Integrated</i>	2004/17, 2004/18, 2014/24; Internal market principles

Source: Authors' assessment based on a qualitative analytical synthesis derived from a systematic review of the European Commission's EU Progress Reports and country-specific monitoring documents, complemented by relevant indicators from the Single Market and Competitiveness Scoreboard (European Commission, 2025b) and thematic EU public procurement recommendations. The assessment draws on evidence from the cases of Romania, the Czech Republic, Croatia, and Albania, encompassing both EU Member States and an EU candidate country. It reflects a comparative interpretation of recurring evaluative findings related to institutional capacity and compliance with EU public procurement principles, rather than a country-specific or standalone measurement exercise.

Table 2 summarizes the main public procurement reforms implemented in Albania, Romania, the Czech Republic, and Croatia, highlighting the influence of EU directives, anti-corruption measures, digitalization, and green and social criteria. It captures both the legal and practical dimensions of reform, including alignment with the EU acquis, adoption of e-procurement, institutional oversight, and exclusion mechanisms for economic operators. By presenting the reforms comparatively, the table illustrates the common trajectory shaped by EU integration, while also

reflecting country-specific variations in implementation and enforcement. It is essential to specify that the findings presented in the matrix are synthesized from secondary sources and policy documentation, as discussed in the following sections of this paper. Specifically, they draw on EU legislative texts (Directives 2004/18/EC, 2004/17/EC, 2014/24/EU, 2014/25/EU, and 2014/23/EU), reports on Albania's EU accession progress, and analyses of Romania, the Czech Republic, and Croatia's implementation of EU procurement rules. Additionally, the matrix incorporates findings from EU Innovation Procurement Observatory, EU anti-corruption policies, mechanisms for the exclusion of economic operators, and initiatives promoting digitalization and green procurement (European Commission, 2024; Bovis, 2024). These sources collectively provide a comparative outline of pivotal procurement reforms across the four countries.

Discretion and the rule of law in EU law

In the framework of the European Union, the rule of law is closely associated with limiting arbitrariness through mechanisms of checks and balances. The expansion of this principle in the late 1980s and early 1990s led to an increased recognition of rights by the Court of Justice of the European Union (CJEU), particularly in the areas of economic freedoms and general principles of law, often considered fundamental to the rule of law itself (Bogojević, Groussot, & Hettne, 2019: 5). One of the primary instruments used to limit the discretion of Member States in public procurement is the proportionality test (Bogojević et al., 2019). This test ensures that the measures adopted by Member States in the context of their public procurement policies are justified, necessary, and not excessive in relation to the objectives they aim to achieve. In this way, the EU guarantees that no Member State can implement measures that, although formally legal, restrict competition or create barriers for suppliers from other EU countries.

Discretion and the separation of powers in the EU

The concept of discretion within the European Union is also connected to the separation of powers and the functioning of the EU's quasi-federal system. According to Bogojević et al. (2019), discretion can manifest at three main levels:

- Legislative discretion, which refers to the space granted to Member States to design new policies or adapt EU directives within their national legal frameworks.
- Executive discretion, exercised by contracting authorities and public administrations responsible for implementing EU public procurement rules.
- Judicial discretion, relating to how national courts interpret and apply EU law in public procurement matters.

A central challenge is ensuring that none of these forms of discretion undermine the overarching goals of European integration and the internal market. From this perspective, the principle of 'constitutional tolerance' plays a vital role. It allows for a degree of flexibility for Member States, but within the boundaries set by the EU to ensure a fair and efficient public procurement system (Bogojević, Groussot, & Hettne, 2019: 6).

The EU's public procurement policy is centered on a balance between the need for harmonization and respect for Member States' sovereignty. Nevertheless, by limiting national discretion and establishing oversight mechanisms, the EU seeks to create a more transparent, competitive, and efficient public procurement system at the European level. Public procurement remains a challenging domain for all countries, regardless of their level of EU integration. However, through EU directives and oversight mechanisms, Romania, the Czech Republic, Croatia, and Albania share a common approach toward reforming and strengthening their public procurement systems. Their collective efforts aim at improving governance, enhancing transparency, and reducing corruption. This positions the EU as the principal unifying factor guiding and aligning these countries toward greater standardization in the management of public contracts.

The EU anti-corruption policy

The European Union's anti-corruption policy has significantly evolved over the last two decades, aligning itself with broader international efforts to combat corruption more decisively. According to Williams-Elegbe (2012: 41-42), the EU's anti-corruption policy is guided by three interrelated but distinct objectives:

a) Protection of the European Union's financial interests

Initially, the EU's anti-corruption policy has been centered on safeguarding its own financial resources, particularly in response to corruption cases involving EU institutions themselves. Over time, however, the scope of anti-corruption efforts has expanded and now forms an integral part of both internal and external EU policies. Countries that benefit from EU assistance or trade concessions are required to implement domestic anti-corruption reforms.

b) Security and justice for EU citizens

"The second objective of EU anti-corruption policy is to provide EU citizens with a high level of safety in an area of freedom, security and justice, devoid of criminal activity, corruption, fraud, terrorism etc. The power to act against corruption is derived from Article 4 of the Treaty on the Functioning of the European Union (TFEU), under which the EU and Member States share competence over matters relating to freedom, security and justice" (Williams-Elegbe, 2012: 42). Additionally, Article 67 of the TFEU obliges the EU to maintain a high level of security through prevention efforts, while Article 83 empowers the EU to set minimum norms and sanctions in cases of major cross-border crime, including corruption. In this context, a wide range of legislative and non-legislative initiatives have been introduced to strengthen the fight against corruption. A key initiative was the creation of the EU Anti-Corruption Report, launched in 2013 to monitor and assess Member States' anti-corruption efforts. However, this report was discontinued in 2017 and replaced by newer assessment mechanisms, including a broader role for the European Rule of Law Mechanism. In 2020, the EU introduced the Action Plan for Combating Money Laundering and the Financing of Terrorism, aimed at reinforcing measures against illicit financial activities often linked to corruption. Another major step was the establishment of the European Public Prosecutor's Office (EPPO) in 2021, which holds the authority to investigate and prosecute fraud and corruption affecting the EU's financial interests.

c) Liberalization of the internal market

Corruption poses a direct obstacle to integration and fair competition within the internal market (Williams-Elegbe, 2012: 42). While there is no explicit provision in the EU treaties relating the elimination/eradication of corruption to integration into the common market, corruption conflicts inherently with the key values of non-discrimination and open competition supported by the EU market. Eliminating corruption helps ensure that such behaviors do not interfere with the open, fair and transparent functioning of trade. In a free market, corruption can have cross-border consequences, creating what has been described as a 'contagion effect', where countries that normally do not tolerate corruption may feel pressured to do so in order to remain competitive with others that ignore it. Corruption also affects the cost of economic activities, leading to suboptimal resource allocation within the EU.

In recent years, the European Union has strengthened mechanisms for monitoring and thwarting corruption in the public procurement sector, including the use of digital technologies and AI to detect suspicious practices. A major development in the EU's anti-corruption policy was the adoption of the EU Anti-Corruption Package in May 2023, which reinforces the legal framework for all Member States and, for the first time, proposes a common Directive establishing minimum sanctions for corruption-related offenses. This package reaffirms three clear objectives:

1. The safeguard of the EU's financial interests,
2. The enhancement of security and justice for citizens, and
3. The protection of the integrity of the internal market.

Notably, the establishment of harmonized standards for defining and penalizing corruption is directly linked to Articles 67 and 83 of the TFEU, thereby reinforcing the Union's competence to address cross-border corruption-related phenomena. Furthermore, the 2025 Resolution of the European Parliament underscores that respect for the rule of law and the fight against corruption are essential conditions for the proper and competitive functioning of the single market, as well as for ensuring a trustworthy environment for investment and innovation. These recent developments further

consolidate the EU's approach, turning anti-corruption efforts into a transversal component of both its internal and external policies. The EU's new strategy on anti-corruption emphasizes the importance of stricter sanctions, the protection of whistleblowers, and international cooperation, making the fight against corruption a strategic priority at both European and global levels (European Commission, 2025).

Exclusion of economic operators from EU public contracts

The exclusion of economic operators from public contracts within the European Union is not a new concept. Historically, the EU procurement directives have incorporated provisions that allow Member States to exclude economic operators or suppliers from public contracts for reasons ranging from legal infringements to professional misconduct (Council Directive 77/62/EEC: art. 20). Previous EU regulations gave Member States a degree of discretion to decide whether or not to use exclusions in public procurement procedures, enabling them to support their national policies.

These directives allowed Member States to exclude a supplier who:

- i. was undergoing bankruptcy or liquidation proceedings;
- ii. had failed to fulfill obligations related to social security contributions or taxes;
- iii. had been found guilty of fraud in the context of procurement;
- iv. had been convicted of a criminal offense related to their professional conduct.

Such provisions enabled the exclusion of a supplier based on factors connected to their professional integrity, including corruption-related offenses, as well as not paying taxes or social security obligations, violating immigration and labor regulations, and disregarding environmental laws. Previous directives also allowed for the exclusion of suppliers due to 'grave professional misconduct', permitting exclusion for corruption and other violations even in the absence of a judicial conviction. Furthermore, suppliers could be excluded for breaches of professional standards (Williams-Elegbe, 2012). These provisions empowered contracting authorities to exclude suppliers or economic operators for past misconduct as well as for violations committed during a specific procurement procedure. Similar provisions continue to exist in the current directives. Article 45(2) of the Public Procurement Directive (PPD) stipulates that:

Any business entity may be excluded from participation in a contract where they:

- have been convicted by a definitive judgment, in accordance with national laws, of an offense related to their professional conduct;
- are found to have engaged in serious professional misconduct proven by any means which contracting authorities can demonstrate (Williams-Elegbe, 2012: 44).

The actual directives introduce a new approach to exclusion. In addition to maintaining Member States' discretion to exclude suppliers, they impose a mandatory obligation on contracting authorities to exclude enterprises that have been convicted of certain criminal offenses (*participation in criminal organization, corruption, fraud, money laundering*). Accordingly, Article 45(1) of Directive 2004/18/EC provides that:

'Any candidate or tenderer who has been subject to a final judgment for one or more of the reasons listed below, and of which the contracting authority is aware, shall be excluded from participation in a public contract' (European Parliament & Council of the European Union, 2004b).

Categories of exclusion of economic operators in the EU

Exclusion provisions in the EU are divided into two main categories: 1) discretionary exclusions, where contracting authorities are entitled to exclude suppliers or economic operators sentenced or found culpable of professional misconduct, and 2) mandatory exclusions, where contracting authorities are compelled to exclude suppliers found guilty of specific offences.

As discussed above, although mandatory exclusion provisions for major criminal infractions in the EU are characterized as such, they still grant contracting authorities some discretion to apply limited exceptions for reasons of public interest, deciding whether or not to enforce mandatory exclusions. It should be emphasized that mandatory exclusion for serious criminal offenses supports the EU's policy against crime and serves multiple purposes, including protecting the internal market from criminal activities; eliminating legal loopholes caused by discrepancies between Member States'

criminal justice systems that may be exploited by organized crime; and promoting harmonization and coherence in combating crime at the European level, particularly in the field of “public procurement, where the reduction of trade barriers could provide criminal elements access to Member States’ procurement systems” (Williams-Elegbe, 2012: 45).

In some jurisdictions within certain Member States, exclusion serves a punitive function (Williams-Elegbe, 2012). However, Arrowsmith, Treumer, Fejø, and Jiang (2011) argue that the exclusion of economic operators in EU Member States does not have a punitive aim. Within the EU framework, both discretionary and mandatory exclusions are not directly linked to a contractor’s ability to perform the work, since there are separate provisions addressing the assessment of financial stability, technical or professional capacity, and prior performance. The EU directives stipulate that “these criteria are relevant only insofar as they relate to the contract”, meaning contracting authorities cannot impose qualification or selection criteria unrelated to the contract or the objectives they seek to achieve (Williams-Elegbe, 2012: 46). Regarding discretionary exclusions, and potentially also mandatory ones, there is an ongoing debate on whether they also serve to assess suppliers’ reliability. “In La Cascina, Advocate-General Maduro opined that discretionary exclusions in Italian law which excluded firms that had not complied with tax and social security obligations were intended to ensure the reliability and solvency of suppliers as well ensuring that a level playing field was maintained between suppliers” (Williams-Elegbe, 2012: 46-47). This argument could equally apply to mandatory exclusions, since a supplier sentenced for corruption, scam, or money laundering can be deemed unreliable.

Exclusion in the EU for serious crimes as an independent category

However, it appears that the EU directives treat exclusions from major criminal offenses as a distinct category, separate from other selecting criteria during public procurement procedures. Article 44(1) of the Public Procurement Directive (2014/24/EU) provides for the verification of financial and technical performance criteria only for those not excluded under mandatory exclusions. Scholars argue that exclusions are related to ‘eligibility’ rather than ‘capability,’ as eligibility conditions do not depend on the contractor’s ability to fulfil the contract but determine whether they are permitted to participate in the tender regardless of their capacities. This position is supported by Piselli (2000), who emphasizes that exclusions based on criminal violations are unrelated to the capacity to fulfil the contract; otherwise, they would be included within conditions concerning financial and technical character. If exclusions for major crimes constitute another category of qualification criteria, they need not be tied to the contractor’s capacity to complete a contract and can serve other purposes, like e.g. safeguarding the EU against the cross-border effects caused by organized crime (Piselli, 2000). It is important to be noted that criminal offenses leading to exclusion in EU Member States include both general crimes and those specifically related to public procurement.

5. Conclusions and comments

The EU’s rigorous rules on exclusion of economic operators and enhanced anti-corruption frameworks exemplify a key aspect of EU conditionality, the process by which candidate and member states align their public procurement systems with EU norms and standards. Countries like Romania, the Czech Republic, Albania, and Croatia face both opportunities and challenges in implementing these reforms.

The main discussion in this paper highlighted how EU directives and policies push for harmonization (convergence) by mandating exclusion criteria related to serious criminal offenses and professional misconduct, improving transparency, and fostering fair competition. This reflects the EU’s strategic goal to integrate national procurement markets and protect the internal market from corruption and criminal influence. However, conditionality also exposes areas of divergence, as these countries differ in their legal traditions, enforcement capacities, and administrative practices. For instance, while the Czech Republic and Croatia, as member states, have more advanced institutional frameworks, candidate countries like Albania and Romania continue grappling with inconsistent enforcement, judicial independence issues, and resistance to reforms (Sqapi, 2021; Sqapi & Shurdha, 2025). The EU’s conditionality thus acts as both a catalyst for convergence, by promoting common

standards, digital monitoring tools, and anti-corruption measures, and a spotlight on divergence, where local political, institutional, and economic factors shape the pace and depth of reforms. This dual dynamic informs ongoing debates about the effectiveness of EU conditionality and its role in shaping procurement governance across the region.

The European Union's evolving regulatory framework on the exclusion of economic operators from public procurement represents a cornerstone in promoting integrity, fairness, and transparency within both the internal market and candidate or associated countries such as Albania, Romania, the Czech Republic, and Croatia. Historically, EU procurement directives have empowered member states to exclude suppliers based on a range of legal and professional violations, including serious criminal offenses such as corruption, fraud, and other forms of organized crime. The 2023 EU Anti-Corruption Package and recent public procurement directives have further strengthened mandatory exclusion rules, ensuring that companies convicted of serious crimes are systematically barred from contracting opportunities, thereby protecting the public interest and market trust. These exclusion provisions serve not only as protective measures against criminal infiltration but also reinforce competition fairness, financial security, and sustainable public spending. Importantly, the distinction between discretionary and mandatory exclusions offers contracting authorities flexibility while upholding essential standards. For countries in transition or integration phases, adopting these frameworks supports harmonization with EU norms, strengthens governance, and builds investor confidence. Moreover, the increasing use of digital tools and AI in monitoring procurement activities reflects the EU's commitment to transparency and efficiency. As such, these combined efforts contribute to more robust anti-corruption strategies and facilitate economic growth across the region, enhancing the credibility of public procurement systems within and beyond the EU.

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