

Let's lose control: public procurement policy before, during, and after EU membership



***David Clayton** and **David Higgins** assess UK public procurement policy since the early 1970s. They explain why the EU's common legal regime has had a positive impact on the UK economy, and therefore why leaving it will have negative implications.*

Public procurement was raised during the 2016 Referendum campaign as part of a Leave critique of 'red-tape', and to claim that Britain would save '£1.6 billion' if no longer bound by EU rules. [No evidence was presented](#) to back this disputed claim. Since then, this important issue had been side lined and obscured in opaque debates about regulatory alignment or divergence. Under 'Chequers', the government will *probably* have to negotiate separate provisions regarding public procurement. The Labour Party [proposes](#) to use discriminatory state purchasing as a component in a new industrial/regional policy but it has not explained this in terms of its own ambiguous stance on Brexit.

The failure of politicians to engage the public in debates about this issue is deeply troubling because public procurement is big business: in 2015 the UK's public procurement market was [valued at over £260 billion](#) – 13.6% of gross domestic product, excluding expenditure on utilities. The total public procurement market in the EU, to which UK firms have access as part of our membership of the EU, was worth £1.5 trillion in 2015, which is approximately 15-20% of EU GDP. And these contracts affect the everyday lives of British citizens – from those seeking to get to work to those seeking hospital treatment.

Brexit has generated considerable uncertainty about public procurement. Consequently, how likely it is that Brexit will allow UK governments to 'take back control' over public procurement? By looking at this problem using new historical perspectives we conclude that changes to public procurement policy post-Brexit are unlikely and that populist rhetoric about 'control' has been confusing. We reach our conclusions via analysis of two periods: before and after the UK's effective membership of the EEC in 1973.

Before EEC membership, Britain was subject to international treaty obligations with respect to public procurement: the UK was a signatory to the GATT, and the European Free Trade Association (Stockholm Convention). The effects of these obligations were weak. The legal evidence shows that they were not rules-based systems, enforced by international courts but vague protocols. The economic history evidence, based on government records held at the National Archives for 1970-71, indicates that over 90% of central government expenditure on public procurement was awarded to domestically.

This might suggest that a UK government can redeploy nationalist public procurement once the UK exits the EU, but this is doubtful. Firstly, UK companies will need to compete internationally for contracts which will require legal convergence with overseas regimes; secondly, Britain has enjoyed 45 years working within a common EU legal framework, and this may generate path-dependent effects beyond March 2019.

For the UK, the initial years of EU membership circa 1973 to 1979 were a period of transition. British governments gave qualified acceptance of EU principles that contracts must be advertised and awarded to the most competitive tender. But at this stage, EU rules were poorly developed and highly flexible; nationalised industries, a large part of the economy, were exempt, and EU rules did not insist that contracts should be awarded to the lowest bid.

The middle years of EU membership circa 1979-1992 culminated in the Single European Act. During this period the effects of EU law strengthened, and included attacks on the monopoly power of major British companies. But this process of legal convergence worked with, rather than against the direction of UK government policy: this was an epoch of privatisation, a 'supply-side' revolution by which all economic sectors were opened up to greater levels of competition.

During the latter years of EU membership, 1992 to date, Conservative and Labour governments have had a profound effect on the revision of EU directives, culminating in the current EU common legal framework, based on [three 2016 directives](#). The [outcome has been](#) less (not more) bureaucracy, and the opening up of tendering to small and medium sized enterprises, combined with safeguards for public bodies to ensure that private firms are contracted to meet tougher social and environmental standards.

Although economic-historical evidence is scant for the post-1973 period, it seems safe to assume that this ever-evolving common legal regime had a positive impact on the UK economy, replacing an administrative system that dominated pre-1973 with a law-based system.

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