Creating a common European market for the construction industry:

Are contractors going abroad thanks to European procurements?
Creating a common European market for the construction industry

“Are contractors going abroad thanks to European procurements?”

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Foreword

This report has been created for the Technical University of Delft at the faculty of Architecture for the department Real Estate & Housing. This rapport is the final part of the process of the research for the final thesis.
I started at the Technical University of Delft after graduating from the Haagse Hogeschool in The Hague. After finishing my hbo study I realised that I could do more. After the bridging program at the faculty of Architecture I started my Master at the Real Estate & Housing department. This is the final year of this study and this is the last part of the graduation process.

There are some people who I would like to thank for their support and input during the making of this rapport.
My first mentor Mr L. Lousberg who helped me with his guidance during the graduation period. His perspective on the subject helped me on the way every time.
My second mentor Mrs M. Chao-Duivis who was at great help during the process. With her wide network she introduced me to a lot of people. Her extended knowledge on procurements helped me during this research.
Finally I would like to thank Johan Dekker from Burdock Bouw & Infra. With his help he made the last final part of my research possible.
This report has been created with the help of my mentors and the input of many other people whom I would like to thank through this way.
Abstract

Background European Union
The Netherlands is one of the 27 member states that form the European Union. These governments and government agencies of the member states have to procure their works, services and supplies with a value above a certain threshold on the European market. This law has as objectives to:

- The further development of the internal market within the European Union.
- Which makes it necessary to have the legislation on procurement law in the EU Member States. The guidelines are binding and the national legislation must be adapted to it.
- Promoting free and fair competition within the EU by a public notice of contracts and thereby promoting transparency of the market.
- Reducing the costs of government agencies.
- Ensuring publication for 20% of the total volume of procurement that is an approximately equivalent of 80% from the total value of the market.

The threshold amounts are shown in table 1. These procurements must be done for services, supplies and works. They all have different thresholds for procuring.

<table>
<thead>
<tr>
<th>Central Government</th>
<th>Supplies</th>
<th>Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>€ 6,242,000</td>
<td>€ 162,000</td>
<td>€ 162,000</td>
</tr>
<tr>
<td>Decentral government</td>
<td>€ 6,242,000</td>
<td>€ 249,000</td>
</tr>
</tbody>
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Table 1: Threshold for procuring (Directive 2004/18/EC)

As a result of the European treaty, which all member states signed as an agreement with each other, there are a few principles active. These principles are equal treatment, free movement of goods, persons, services and capital, non-discriminatory behaviour and transparency.

Problem
A short observation makes clear what the problem is with procurement law and its ambitious goals. Looking at the biggest construction projects in The Netherlands one sees that they are almost all done by Dutch construction companies. The few that are done with the help of foreign construction companies are done so because the foreign contractor has a particular and needed knowledge. For example the North-South line in Amsterdam is done in cooperation with German contractors because they have more knowledge about tunnelling.

The 10 largest construction companies in The Netherlands are: BAM, Volker Wessels, Heijmans, TBI, Boskalis, Van Oord, Ballast Nedam, Strukton, Dura Vermeer and Koop. These construction companies are responsible for the majority of the largest construction projects. This can be explained because they have the financial means and the experience. There are construction companies abroad with the same financial stability and also the experience. But these companies are not often present during big Dutch construction projects.

The European Union has as an objective to open the European market for all its member states. By treating everybody equally, and with a non-discriminatory and transparent policy the European commission tries to achieve this. Also the prestige projects with a possible across the border interest must be procured in Europe even if the threshold is not in sight. So for each construction project in

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1 Directive 2004/18/EC Art. 78 Sec. 1
3 Publication from Bouwend Nederland, Podium 16-04-2009, Interview Nico de Vries BAM group
4 Consolidated version of the treaty on European Union, part one, Art. 3
Europe which is estimated above € 6.2 million there is a chance for a foreign construction company to get this project. With this in mind it would be easy to say that construction companies could do their work in every European member state. But, in most cases, this is not the case.

It is difficult to go abroad as a construction company. Different laws and legislations, culture and language can be a barrier for a construction company to go abroad. The European Union tries to coordinate all the legislations in Europe but still there are many differences for each member state.

**Research Question**

In this research the European procurement law is central. Therefore the literature and the laws will be first used to find out how this law is used. This gives the first sub question that needs to be answered:

1. How does the European procurement law works?

Because of the problem of the construction companies not going abroad the second sub question is:

2. What are the most commonly used ways of going abroad for construction companies?

After these questions are answered the following questions need to be answered. This will help to answer the main research question:

3. Is there flexibility in the way procurements are done, or is there no room for other infill of the procedures?
4. What dangers are there for construction companies when going abroad?
5. Does the European procurement law really help the construction companies with more projects?

After these questions are answered the main research question can be answered:

6. Are construction companies going abroad thanks to European procurements?

**Objectives**

The objective of this research is in twofold:

1 - Researching the use of the current system of the European procurement law for construction companies. Here the research focuses on how the European procurement law is applied. This can also be used for further research. For example it can be used to look at this subject on a wider, European, scope.

2- Creating a tool for the public and private parties who are involved with European procurements. The public party is the party which buys the work and the private party is the party which brings out their offer for that work. This tool will help to deal with procurements abroad for private parties, and for foreign parties working with procurements in The Netherlands. This tool will help both parties to understand where the obstacles are and how to deal with them.

**Research method**

For this research the method used consists of 2 parts. First the subject has been looked at from an outsider point of view. With the help of literature, publications, legislations and interviews with people who are involved the subject has been approached. After that with the help of a survey the discovered information from the first part has been tested among the construction companies. The objective of this survey was to find out why construction companies do not go abroad thanks to European procurements. The survey helped to get an inside in the organization of the construction company. The 5 sub research questions will be answered throughout the research. The final research question will be answered in the conclusion and recommendation. In appendix II a figure is shown with the link between the different research components. During the interviews the different ways of
going abroad and the possible obstacles were discovered. In the literature study these ways of going abroad and obstacles were looked deeper at and different questions were answered. The survey has been set up with the help of the found information during the interviews and literature study. The figure in appendix II shows the link between the 3 research components.

**European procurements**

The function of procurement refers to purchasing goods or services from an outside body.\(^5\) With the addition that multiple companies are given the opportunity to make an offer to purchase the goods or services through a procurement.

**Why procuring?**

The European community consists of 27 member states. The European community has the objectives to create a common market. This is done by eliminating barriers for trading goods and the movement of business, labour and capital between member states.\(^6\) As a result, removing these barriers will improve the welfare and growth of the economy.

Removing these barriers will also lead to savings up to 30% on the spending for supplies, works and services.\(^7\) It is important these barriers are taken away to become an open market.

The barriers that must be taken away are customs duties, discriminatory taxation, quota systems and subsidies. Also procurement practices that do not allow fair competition, like corruption or bribes, might be seen as a barrier.\(^8\)

**Principles**

The principles of the European procurement law have a long history. From the EEC treaty\(^9\) signed in Rome (1957) to the EC treaty signed in Lisbon (2009). The EC treaty that is currently in place holds the principles for the European community. These principles are the base for the European procurement directives. The European community has been created with the principal of free movement of goods, persons, services and capital.\(^10\) By doing this a free market is created where goods, business, services and capital can be transported easily within the member states. Although the EC treaty doesn’t express mention procurements, the context from the EC Treaty is relevant for controlling government procurements.\(^11\)

The 2 most important principles from the directive are the equal treatment and transparency principles.\(^12\) The oldest principle is the free movement of goods, this has already been mentioned in the treaty of Rome in 1957. From the free movement principle 2 principles can be derived: equal treatment and transparency. For procurements these are the most important for the European community, to create an internal market.

**Procurement obliged**

Public entities don’t always have to use procurement procedures. There are threshold values above which they have to use the European procurement law. In other words, in which they have to open up the contract to the whole European Union. Therefore the procuring entity has to know how to estimate the value of a contract they have. The directive holds guidelines for calculating the value of the assignments. The problem comes when public entities need a supply, work or service and it’s calculated below the threshold. Technically it means they don’t have to procure it on European level. But this is against the principles of free movement and non-discrimination. The sort of contract can also be interesting enough that businesses from other member states are willing to have it. A crossing border interest means that all member states must have an equal opportunity to get the

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\(^5\) S. Arrowsmith, The law of public and utilities procurement, p. 1
\(^6\) S. Arrowsmith, The law of public and utilities procurement, p. 121
\(^7\) M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 17
\(^8\) S. Arrowsmith, p. 6 & 7
\(^9\) European Economic Community Treaty
\(^10\) Consolidated version of the treaty on European Union, Art. 14, sect. 2
\(^11\) S. Arrowsmith, The law of public and utilities procurements, p. 181
\(^12\) M.J.J.M. Essers, p. 36
contract, even if the directive doesn’t require it to be European procured. Procurement below the threshold can also be done when this is the policy of the procuring entity. The choice of procuring under the threshold can therefore be done when there is a crossing border interest or when this is the policy of the procuring entity.

Procedures
When an authority has a need for a work, supply or service which needs to be procured they need to decide what procedure to use during procurements. The most commonly used are the open and restricted procedures. The open procedure gives everybody the chance to subscribe to the contract. During the restricted procedure potential providers are selected who can make an offer. In most of the procedures the contract notice needs to be published through the official publication office and online on TED. Only the negotiation procedure without a notice differs from this. Here the participants are selected by the procuring entity to join in the negotiations. The negotiation procedure with notice looks a lot like the restricted procedure with the difference that it is more flexible. In this procedure the parties negotiate the contractual agreements.

After the announcement people get the chance to ask for an invitation to the procurement. The request for an invitation happens with the restricted procedure and the negotiation procedure with notice. After selecting the right providers they get to make an offer. With the open procedure everybody is welcome to make an offer. The announcement holds the selection criteria on which the applicants are assessed. After the selected candidates made their offer the procuring entity assesses all applicants and then awards the contract.

With the competitive dialogue and the negotiation procedure without a notice the procuring entity selects their participants with whom they will have a dialogue about the context of the specifications and conditions. After this dialogue the participants of the dialogue have a chance to make an offer. The procuring entity then decides on the basis of most economically advantageous which participant will receive the contract.

Publication
With the exception of the negotiation procedure without a notice a procurement must be noticed for through the official channels. When a contract requires a European procurement it has to be announced in the publication magazine. This is done through the office of official publications of the European Union. The contract will also be announced online. The European Union has their own website called Tender Electronic Daily (TED).

Working abroad
The interviews and the literature found 4 distinct ways a construction company can use to go abroad. These are:

Subsidiary
The most common way of going abroad is setting up a subsidiary abroad. This can be done by buying an already existing company and consolidating this with the parent company. By doing this knowledge about the foreign country is already present in the purchased company. Between the European member states the treaty makes it possible to divide the taxes and the social obligations for each country the companies are in.

Partnerships
Some countries already very integrated in the way of working is getting into a partnership, and in some not yet. Most commonly known is the public-private partnership where a public and private party work together. This can also be done with foreign parties. Because of the equal treatment principle of the European Union a government needs to justify their reasons why they choose a specific company to partner up with.

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13 M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 202
Expertise
A construction company might which has developed a certain skill or method might be asked to do projects abroad. When this skill or method is so unique other countries can be interested in using this skill or method. When a company develops these skills it has a lot of knowledge on the subject. This knowledge is unique to others and very valuable.

Procurements
In Europe all member states have to procure their works, services and supplies above a certain threshold. All suppliers from these member states can subscribe for such procurements. A Dutch construction company can subscribe for procurements in Spain and vice versa. The European Union is eliminating as many barriers as possible to make it easier to work abroad. The European procurement law is a tool to open the European market. As this is the least favourite reason to go abroad it is interesting to find out why this is and how to deal with the problems abroad. The research will be focused on the European procurement part of going abroad.

Obstacles
There are many difficulties companies can find on their path of working abroad. The interviews and the literature found the following important obstacles a construction might face when going abroad:

Different ways of working abroad
Each country has its own culture and its own ways of working. When construction companies take on work abroad this means they have to operate outside the borders. They have to work with foreign companies. The way of working may be different from what a company is used to. While the European Union is trying to set the same rules for all their member states there still is a difference in culture and national legislation.

Communication/language
The most understandable problem companies might face while working abroad is the language barrier. As hard as the European Union tries to be one there are still different languages in each member state. Inevitably when working in other countries other languages will be involved. When people don’t understand each other communication becomes difficult and working will be almost impossible.

Cultural differences
The cultural differences from each country can be a bottleneck to work abroad. The way people think, feel and act are learnt throughout his or her life. This cultural behaviour is also involved in the organization he/she is working in. There are 5 aspects on which culture can be measured: power distance, individualism, masculinity, uncertainty avoidance and long term orientation. Each culture has a different view on these aspects and this might lead to irritation and problems when cultures are mixed in the working area.

National legislation/taxes/social security’s/insurances
While the European Union is straightening out most of all differences in legislation, taxes, social securities and insurances, there are still a lot of differences. The legislation in each country is different. If a company wants to work abroad they have to know the laws and regulations in order to do a good job. Taxes, social security and insurances are currently better coordinated among each member state.
Especially for construction companies the construction laws might vary for each country. Construction companies therefore need to understand these before they can build abroad.

New market to explore
Other countries mean new markets to work in. A company might know the market in its own country, but working abroad means a different market. When going abroad a company will probably miss its network that its used to have in its own country. They have to build it up again and gain trust in that new country.
A construction company going abroad need to this new market. The company has to explore this market on its economic, legal, environmental and social aspects. This exploration is needed to understand the market it’s operating in.

Construction companies
With the open borders in Europe it would be easier for construction companies to expand their work field abroad. In The Netherlands the residential and non-residential construction market counts for almost 50% of the construction market\(^{14}\). Civil engineering and other sectors accounted for 17% and 37% respectively. Taken this into account it is easy to say that the Dutch market is not a very open market to go to as foreign construction company. Residential and non-residential buildings are subjected to a lot of Dutch regulations\(^{15}\). These regulations are set by the government. Companies going abroad need to know all the regulations which can be a difficult and time consuming job.

Another difficulty for construction companies to go abroad is in most countries there is already a satisfied market for construction.\(^{16}\) Almost all European member states have big construction companies that are willing to do the big projects. Because these projects are in their own country they have an advantage on foreign companies.

Results survey
The survey had a scope of 30 people. From these 30 people 10 people filled in the survey. Another 5 people thought that the survey wasn’t interesting because they didn’t work abroad or didn’t do procurements. These 5 people cancelled by email. In table 2 the response statistics are shown.

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Amounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total scope</td>
<td>100%</td>
</tr>
<tr>
<td>Response</td>
<td>33%</td>
</tr>
<tr>
<td>Cancellations</td>
<td>17%</td>
</tr>
<tr>
<td>No reaction</td>
<td>50%</td>
</tr>
</tbody>
</table>

| Table 2: Response survey |

On a scale from 1 to 10, where 1 is the least important and 10 the most important reason. They were asked to rank each aspect. In table 3 the different aspects are shown with the highest, the lowest and the average rank.

The average overall grade is 5.3, this is also known as the mean in statistics. The mean is leading and everything above the mean is in this case interesting. Each average above the mean gives the top 3 for reasons why construction companies do not work abroad thanks to European procurements.

The top 3 consists of the following 3 reasons:
1. The legislation in other countries is difficult.
2. European procurements are time consuming, and therefore expansive to do.
3. The high costs that are linked to working abroad.

\(^{14}\) Deloitte, European powers of construction 2009

\(^{15}\) This is regulated in the Dutch “Bouwbesluit” created by the Ministry of Housing, Spatial Planning and the Environment.

\(^{16}\) Looking at the figures published in Deloitte, European powers of construction 2009
From the answers given by the respondents the 2 aspects that are decisive for choosing a European procurement are the time and costs that come with a specific project abroad. And because more time means more costs, choosing a foreign project is all about money. In the annual reports the construction companies express their opinion about foreign projects. They are willing to go abroad but it has to be as financially advantageous as possible. The survey shows that the construction companies use this for choosing why they should or why they shouldn’t choose a foreign project.

**Respondent statistics**

Different kinds of construction companies were approached. To try to get a good overall response construction companies different from size were approached. In figure 1 the size of the companies who filled in the survey are shown. Here you can see that a good section was reached. The respondents vary from each other in size. From companies having 1-25 employees to companies having more than 500 employees filled in the survey.

![Figure 1: Amount of employees](image)

The survey also showed what the companies do as a core business in the construction industry. There are different kinds of disciplines a construction company can be in.

The choices they had where:
- Construction
- Infrastructure
- Ground works
- Technique
- Other, namely

In this survey 90% of the respondents are in construction and 10% is in infrastructure.

**Overall conclusion**

This research showed that the legislation in Europe is still the biggest obstacle when it comes to working abroad. Even though the European Union is trying to set a standard for legislation in Europe there are still too many national differences. It takes time, and therefore money, to understand the foreign legislation. Construction companies are not eager to do this. Especially with the current credit crunch the construction industry had a hard hit when it came to their activities, and so their cash flow.

Within the European Union there is no strong European construction market. Because each country has developed a strong national market this has not (yet) expanded abroad. The construction companies have a strong presents in their own country but on European scale this is still fragmented. Building is a standard procedure for most of the construction companies. As long as there is work in
own country it is not interesting to cross the borders. It is only when an expertise is wanted which is not available in its own country that it will be sought across the border.

Finally, this research mainly focused on the Dutch construction market. It would therefore be useful for future research to expand this to other European and maybe non-European markets. This research can be the base for future research on the topic.

**Recommendations**

The recommendations are based on the founded information in this research. It will be divided in 3 levels of interested parties: the European Commission, national and the construction companies. The first level is the group that develops the rules and sees if they are executed well. The second group has to comply with the legislation from the first group. The third level has to work with the second group during procurements.

**Europe**

At this moment there is not a strong European construction market. All the construction markets are fragmented in each member state. The European Commission is trying to stimulate a common market in Europe by removing all barriers were possible. The European procurement law is an example of removing a barrier. By requiring all their member states to procure their works, services and supplies above a certain threshold they make it available for everybody in the member states. Even though the legislation is not everywhere the same this is a currently going process. It is impossible to change all the legislation at once. Equalizing the construction legislation is not feasible. Each country has its own conditions and demands. It is not possible to set a standard for construction legislation. A construction project is different in each country and this calls for specific legislation. There always will be some national legislation which differs in each country, but when this is available in multiple languages it would be more easily accessible, and therefore less a problem. It is the task of the European commission to make this obligatory for all their member states. It is important however that the European commission always keeps controlling the compliances of the principles. A government should never favour a national company above a foreign company. The principles of the European Union are an important aspect for Europe, and this should always be overseen.

The one thing that should be done by the European commission is to make a law for languages during procurement announcements. English is the most accepted language and by setting a standard even more people and companies can be reached. The European commission can oblige their member state to use the same languages everywhere.

**Contracting agencies**

For the national procurement obliged entities there are a lot of regulations but also a lot of flexibility when they have to procure. The European commission sets the regulations for procurements and sees over it that the national procurement obliged entities comply with these regulations. This way the principles of the European Union are kept intact.

When a work, service or supply has to be procured this has to be published through the official channels. These channels are available for everybody. This way all the companies in the European member states have the same opportunities. When choosing a procurement procedure the requirements of this procurement have to be made public in the publication. You might argue that when a procurements happens under a procedure where the applicants are invited there would be a favour for national companies. The European commission and the European court of justice are overseeing that this does not happen and that everybody has the same equal opportunities.

The thresholds amounts make sure that all the procurement obliged entities have to procure. It is prohibited to phase these projects to avoid having to procure. Also projects with cross border interests have to be procured. This way the work that is available in Europe is accessible for everybody. There is, however, something the government can do in order to make it easier for foreign construction companies. The Dutch building regulations (Bouwbesluit) is only available in
Dutch. A translation to English or maybe even more languages would help foreign construction companies. This applies for all European member states but it has to be made obligatory by the European commission. The national governments can already translate their national legislation as a courtesy to foreign companies. Translating their national legislation would help foreign construction companies to work there. As long as this is not obliged by the European commission the governments can hand this to the market as a gesture to open their market.

The European procurement law isn’t the issue why construction companies don’t go abroad. The reason for this has to be found with the construction companies. Even though there are a lot of rules when it comes to procurements it also removes a lot of barriers for working abroad. There are plenty of opportunities for construction companies to go abroad. The European procurement law helps these companies to go abroad. But they choose not to use it in a positive way.

Construction companies

The construction companies have a lot of obstacles to overcome when they go abroad. Within the company they can change some processes so they are more aware of the obstacles they face. Where legislation, taxes, insurances and social aspects are secured by governments there are some measures the construction companies can do to overcome the obstacles. Obstacles like culture, language, organizational model and contracts can be improved within the organization. When going abroad they should be more aware of the possible cultural differences in countries and organizations. Each country has different cultures and this translates itself to the way people work.

An exchange programme between construction companies for employees can help raising more awareness. When employees exchange they both see the differences in culture and the other employees are exposed to other cultures.

When working abroad the construction companies should agree on the main language that is spoken. When all the people involved in the project speak the same language this will stimulate a better communication. A good communication will help during the process of construction to have good project.

The organizational model during a project can help to determine the controllability of a project. Choosing the right organization model will help to structure the projects organization and eliminates certain unknown elements like who makes which decision and who is responsible for what. Decisions should be contractual agreed. This way there will be no misunderstanding and it can be used to check if everybody keeps to their agreement. The construction company is responsible for these contractual agreements in order to avoid misunderstandings later on.

The construction companies can also choose to get help from a foreign company which has the knowledge about foreign national legislation. This partnership might help to eliminate the barrier of unknown foreign national legislation.

To be more aware of the obstacles they face this research resulted in a checklist the construction companies can use. This check list can be found in appendix V. For good project management there are 5 aspects which have to be kept in mind: Finance, Organization, Time, Information and Quality. The checklist is structured according these 5 aspects. By each aspect questions can be found a construction company has to ask itself when going abroad. When these questions are positively answered the construction company is aware of the treats abroad. These questions make the construction company aware of the obstacles they might face when going abroad. In chapter 4.6 the 5 management aspects are described. This research focused on construction companies going abroad for 1 project through a European procurement. When they would go abroad for just one project the 5 management aspects can be used to control the project. The found information has been used to create the checklist together with the results from the survey.
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Chapter 1: Introduction

With an average growth of 7.3% each year the amount of procurements in the year 2012 will be more than 200,000 each year, for works only.

§ 1.1.1

This chapter provides a general introduction to the research subject. Firstly the background of the research subject will be discussed. Secondly the objectives and the final goals and results will be explained. Finally, a readers guide will explain the structure of this document.
1.1 Background procurements

The subject of this research is working abroad by winning European procurements. The basic idea behind the European procurement will first be discussed. Only the basic characteristics will be discussed. A more extensive explanation of European procurements can be found in chapter 4.1.

The Netherlands is one of the 27 member states that form the European Union. These governments and government agencies of the member states have to procure their works, services and supplies with a value above a certain threshold on the European market. This law has as objectives to:

- The further development of the internal market within the European Union.
- Which makes it necessary to have the legislation on procurement law in the EU Member States. The guidelines are binding and the national legislation must be adapted to it.
- Promoting free and fair competition within the EU by a public notice of contracts and thereby promoting transparency of the market.
- Reducing the costs of government agencies.
- Ensuring publication for 20% of the total volume of procurement that is an approximately equivalent of 80% from the total value of the market.

The threshold amounts are shown in table 1.1. These procurements must be done for services, supplies and works. They all have different thresholds for procuring.

<table>
<thead>
<tr>
<th></th>
<th>Works</th>
<th>Supplies</th>
<th>Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Government</td>
<td>€ 6.242.000</td>
<td>€ 162.000</td>
<td>€ 162.000</td>
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<tr>
<td>Decentral government</td>
<td>€ 6.242.000</td>
<td>€ 249.000</td>
<td>€ 249.000</td>
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</table>

Table 1.1: Threshold for procuring (Directive 2004/18/EC)

The European Union has two guidelines for procuring; these are 2004/17/EG and 2004/18/EG. These European guidelines are converted to Dutch legislation. These laws in The Netherlands are called BAO & BASS. When the state procures they will use the ARW 2005 the legal framework which the governments’ agencies have to use.

There are different procedures for procuring, these are:

- Public procedure
- Non-public procedure
- Negotiated procedure without prior notice
- Negotiated procedure with prior notice
- Contest
- Competitive Dialogue
- Procuring under the threshold
- Framework agreement

During the research the European procurement will be subjected to its validity of success factors for construction companies working abroad through a European procurement. Because the principles of the European Union are to operate on a non-discriminatory and transparent way it must be easy for construction companies to work abroad. With the equal treatment of persons and organizations all governments must give national and international organizations a chance to do the work they have.

---

17 Directive 2004/18/EC Art. 78 Sec. 1
18 Besluit Aanbestedingsregels voor Overheidspopdrachten
19 Besluit Aanbestedingen Speciale Sectoren
20 Aanbestedingsreglement Werken 2005
21 ARW 2005
1.1.1 Europe

The principles the European Union has are based on the following notions: Non-discriminatory behaviour, transparent and a competitive market. All member states must operate in a way that these principles are fulfilled.

The European Commission is constantly evaluating their system of procuring so that they can adjust it if necessary. This way they try to create the best environment for procurements and the system only improves over time. Because the European commission is subjected to the transparency principle they have to publish all their results. There are a lot of publications about procurements and the way it is working at the moment.

The European commission published figures for the number of tenders that were done in the different member states throughout the last years. In table 1.2 you find the figures for the number of procurements from 2004 till 2008 for each member state, for only works. Looking at these figures you can see that the numbers of procurements are increasing. This means that there is more work throughout Europe and that for many contractors their operating area is increasing rapidly. With an average growth of 7.3% each year the number of procurements in the year 2012 will be more than 200,000 each year, for works only.

As a side note the economic climate needs to be taken into consideration. In October 2008 the worldwide economy collapsed and is still recovering. This has consequences for both the public and the private sectors.

The given 7,3% growth is based on previous years with a nominal growth. It might very well be possible that from 2008/2009 there will be no growth but a contraction in these figures. But at the moment of writing this these figures were not available.

<table>
<thead>
<tr>
<th>Country</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
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<td>4,390</td>
<td>3,485</td>
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<td>2,318</td>
<td>1,904</td>
<td>2,354</td>
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<td>2,587</td>
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<td>3,188</td>
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<td>10,418</td>
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<td>505</td>
<td>619</td>
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<tr>
<td>Finland</td>
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<tr>
<td>Sweden</td>
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<td>3,455</td>
<td>4,007</td>
<td>3,909</td>
<td>3,936</td>
</tr>
<tr>
<td>United Kingdom</td>
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<td>12,665</td>
<td>12,699</td>
<td>12,849</td>
<td>13,360</td>
</tr>
<tr>
<td>Total EU 27</td>
<td>114,405</td>
<td>127,923</td>
<td>134,124</td>
<td>142,691</td>
<td>151,448</td>
</tr>
</tbody>
</table>

Table 1.2: Amount of Procurements (source: EU public procurements indicator 2008)

22 EC treaty – The consolidated version of the EC treaty
23 European commission – Public procurements, indicators 2008, p. 6
What the study doesn’t say is from which member state the contractor is that wins the procurement. From the 3.972 procurements in The Netherlands in 2008, how many went to Dutch contractors and how many to contractors from other member states in the European Union?

1.1.2 Contractors
Looking at the annual results the Dutch contractors publish each year it is hard to say which way they used to go abroad. They annual reports show foreign activities. But as this is just a financial overview it is impossible to say what reasons they had to go abroad, and what way they did it. So if this has been done because they won a European procurement abroad is impossible to find out. But fact is that they have activities abroad. But looking at most of the Dutch construction projects, these are done by Dutch construction companies.
It must also be mentioned that only the big construction companies publish information about their operations abroad and the smaller ones don’t.

1.2 Problem, Question, Objective and Result
The construction industry is a big part of the worldwide economy. In The Netherlands alone the construction industry has a money flow of € 60 billion each year. This is about 10% of the gross domestic product. It is therefore an industry which is important for the economy. This industry will be subjected to the research. Together with the European procurement law it will be the subject of the research.

1.2.1 Problem
A short observation makes clear what the problem is with procurement law and its ambitious goals. Looking at the biggest construction projects in The Netherlands one sees that they are almost all done by Dutch construction companies. The few that are done with the help of foreign construction companies are done so because the foreign contractor has a particular and needed knowledge. For example the North-South line in Amsterdam is done in cooperation with German contractors because they have more knowledge about tunnelling.
The 10 largest construction companies in The Netherlands are: BAM, Volker Wessels, Heijmans, TBI, Boskalis, Van Oord, Ballast Nedam, Strukton, Dura Vermeer and Koop. These construction companies are responsible for the majority of the largest construction projects. This can be explained because they have the financial means and the experience. There are construction companies abroad with the same financial stability and also the experience. But these companies are not often present during big Dutch construction projects.

The European Union has as an objective to open the European market for all its member states. By treating everybody equally, and with a non-discriminatory and transparent policy the European commission tries to achieve this. Also the prestige projects with a possible across the border interest must be procured in Europe even if the threshold is not in sight. So for each construction project in Europe which is estimated above € 6.2 million there is a chance for a foreign construction company to get this project. With this in mind it would be easy to say that construction companies could do their work in every European member state. But, in most cases, this is not the case.

It is difficult to go abroad as a construction company. Different laws and legislations, culture and language can be a barrier for a construction company to go abroad. The European Union tries to coordinate all the legislations in Europe but still there are many differences for each member state.

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24 Centraal Bureau statistieken
26 Publication from Bouwend Nederland, Podium 16-04-2009
27 Consolidated version of the treaty on European Union, part one, Art. 3
According to the Regieraad Bouw in their publication “Beter aanbesteden in de bouw” the problem is not with the European procurement law.\textsuperscript{28} The problem is with the procurement policy. This research showed a lot of flexibility within the European procurement law, but the policy of executing this law had too many restraints. This reason why construction companies don’t go abroad has not been discussed yet. But it must be taken into consideration during this research.

1.2.2 Research Question
In this research the European procurement law is central. Therefore the literature and the laws will be first used to find out how this law is used. This gives the first sub question that needs to be answered:
1. How does the European procurement law works?

Because of the problem of the construction companies not going abroad the second sub question is:
2. What are the most commonly used ways of going abroad for construction companies?

After these questions are answered the following questions need to be answered. This will help to answer the main research question:
3. Is there flexibility in the way procurements are done, or is there no room for other infill of the procedures?
4. What dangers are there for construction companies when going abroad?
5. Does the European procurement law really help the construction companies with more projects?

After these questions are answered the main research question can be answered:

6. Are construction companies going abroad thanks to European procurements?

1.2.3 Objectives
The objective of this research is in twofold:

1 - Researching the use of the current system of the European procurement law for construction companies. Here the research focuses on how the European procurement law is applied. This can also be used for further research. For example it can be used to look at this subject on a wider, European, scope.

2- Creating a tool for the public and private parties who are involved with European procurements. The public party is the party which buys the work and the private party is the party which brings out their offer for that work. This tool will help to deal with procurements abroad for private parties, and for foreign parties working with procurements in The Netherlands. This tool will help both parties to understand where the obstacles are and how to deal with them.

1.2.4 Results
The result of this research will be in the form of recommendations on how to see where the obstacles are during procurements and how to deal with them. It will be presented in the form of two checklists, one for the procuring entity and one for the construction companies. With this checklist the procuring entities can get aware of the problems with foreign construction companies. The construction companies can use the checklist to see what they have to be aware of during procurements and in which phase.

\textsuperscript{28} Regieraad Bouw, Sleutelpublicatie: Beter aanbesteden in de bouw, p. 12
The structure of the checklist for the construction companies is divided in 5 project management aspects: Finance, Organization, Time, Information and quality\(^{29}\). These 5 aspects need to be taken into consideration during projects. For each of these 5 control aspects the criteria for successful working abroad will presented. For each of these control aspects the phase where it's important during the projects process will be given. This way the construction company will know about what they should be aware in each phase.

After this research the procuring entities might use it to see where they can adjust the process of procurements on how to deal with foreign construction companies.

The private party might use this to see where the obstacles are when a procurement presents itself. They might use it to help them develop their strategy on how to deal with foreign procurements. At this moment almost every construction company has the ambition to go abroad\(^{30}\) but this is not formed in a real strategy yet. The construction companies keep it to a few lines in their annual reports where they speak about the favourable aspects on which a project has to meet in order to take on a project abroad. These aspects are mostly about the financial aspects that need to be favourable in their advantage.

The results from this research will show what aspects construction companies find difficult when working abroad. These results will be used to create the final conclusions and recommendations, and this will result in the checklist. The checklist will be

For the procuring entity the results of this research are interesting because they can use it to make procurements more interesting and more successful for potential foreign candidates.

1.3 Readers Guide

This rapport is divided in 3 parts: Context, Research and implementation. The first parts handle the context in which, and how, this research has been done. The second part is the actual research. The last part is the implementation and analyses of the collected data and this will form the conclusion and recommendation.

1.3.1 Context

As already said the first part will explain the context. Here the research question and the objectives and intended result will be explained. The background of the subject will be discussed. Also the methodology will be explained. This first part contains all the information on which the research will be done.

\(^{29}\) J.W.F. Wamelink, Inleiding bouwmanagement, p. 49

\(^{30}\) According to the annual reports of the 10 biggest construction companies
1.3.2 Research
The second part is the collection of the data. The topic will be looked at from different perspectives and data will be collected. First a literature study will be done. This will be followed by interviews with people who have experience in the topic. Finally a survey will be done among a wider group of relevant people.

1.3.3 Implementation
The last phase of the research is the analyses of the collected data followed by the conclusion and recommendation. The information gathered in the previous phases will be analysed and with this analysis a conclusion and recommendation will be given. This conclusion and recommendation will help both public and private parties to understand the obstacles and advantages when working with European procurements.
Chapter 2: Research Design

This chapter will explain the research method. This research method will be used to do the research. With the help of literature a method has been chosen and this has been translated into the research for this subject. Firstly the method will be explained. Secondly this method will be discussed in the way it will be used.

§ 2.3

This research will be looked at from the two basic attitudes: the idea from the researcher and the practical reality.
2.1 Introduction

The research started with the observation that there aren’t many foreign construction companies in The Netherlands. After the module Corporate Real Estate Management for MSc2a I was familiar with the basic idea behind the European Community. The member states of the European Union have an internal market which is open to everybody from the European Union. But when looking at most of the construction projects these are done by national construction companies. But governments need to procure their works, supplies and services on European level above a certain threshold. There should be more foreign construction companies working abroad. This is the start for the research. This global question will be transformed into a research question. To conduct the rest of the research a method will be determined. This chapter explains the steps the research will follow.

When starting the research a method must be determined on how to conduct this research. There are many different kinds of methodology which can be used for research. But not all methodology can be used for each research. Like already discussed above this basic knowledge was gained through the MSc2a module and is based on observations. This has been the starting point for the subject of the research.

After this observation the literature will be studied. With the help of the literature the subject and the problems are explored better. The literature helps to understand the matter better.

2.2 Methods

According to Pennink there are 2 basic attitudes when starting a research. The first basic attitude is the idea created in advance about the reality to be researched. The researcher will look at the subject from its own ideas created from information from outside an organization. The second basic attitude consists of the idea that the researcher needs to have the knowledge which is present in the practical work field to conduct the research. Here the researcher will look at the subject from the perspective of the organization.

Translating this to the subject means the basic idea is that it would be easy for European construction companies to work abroad. The member states of the European Union all have open borders and stimulate the common market. The tool the EU uses is the European procurement law. But when looking at the reality there aren’t many foreign construction companies doing Dutch construction projects. This part is the first basic attitude. In this phase of the research the subject will be looked at from different professional perspectives. It will help the researcher to see what the causes of the problems may be.

The second basic attitude is the part needing deeper research: Why are construction companies not working abroad thanks to European procurements? This answer can only be answered by people working for construction companies. Because of the practical experience of the construction companies, this second answer must be found within these companies.

To research the subject there are 2 kinds of research which can be used: the quantitative research and the qualitative research. The quantitative research uses a structured data collecting method like surveys. The quantitative research systematically uses the same questions, same answers and method of collecting. This way a structured method of analysing the data can be used. The Qualitative research is a more flexible way of collecting the data. With open interviews data can be collected. The qualitative research gives the, to be researched object, more flexibility in answers.

31 D.B. Baarda, M.P.M. de Goede, Basisboek methode en technieken, p. 33
32 B. Pennink, J. Jonker, De kern van methodologie, p. 22
33 D.B. Baarda, M.P.M. de Goede, M. Kalmijn, Basisboek enquêteren, p. 15
2.3 Research design

This research will be looked at from the two basic attitudes: the idea from the researcher and the practical reality. In the first basic attitude the orientation of the subject will take place. This orientation takes place in the form of talking to people who have experience and knowledge about the subject. The literature study will be done after these interviews to understand the subjects better and have a more professional knowledge about the subject. In this part of the research interviews with people with experience in the area is most important. Here qualitative research will be done because a more flexible way of gathering information is good for this phase. This way the researcher will create a clear view of the causes of the problem.

In this part of the research the sub questions will be answered. The answers to these questions will help to understand the subject better and to do the second part of the research. The first basic attitude will gather data through different kinds of channels. The data will be collected with the help of internet, talking to experts, books and reports, and articles from magazines.  

The second basic attitude will be looking for the answers within the practical working field. This is done through a survey. Using surveys a wide scope of people can be reached, and doing this online can also increase the area. The survey will be the same for everybody and the method of collecting the data will also be structured in the same way. This quantitative research will be the best method of collecting data to validate the data from the first attitude. By structuring the answer possibilities for the respondents the results are better structured and more useful.

With the help of the first part this phase will be researched. In this part the main research question will be answered.

The data collected from the first basic attitude has as objective to find as much information on the subject as possible. In this stage of the process the problem, objectives and the intended results will be determined. This will help to create the research question that will be answered at the end of the research. This will also be used of widening the scope of the subject by literature. From this literature the parameters will be determined that will be used in the survey. The first basic attitude also consists of open interviews with people to obtain knowledge on the subject.

By using literature and interviews the researcher will be widening its knowledge on the subject, the problem and the intended results.

The second basic attitude will look at the subject from the inside of the organization. In this case these are the construction companies. The information gathered, the problems determined and intended results will be used in this phase. With the help of a survey different kinds of construction companies will be questioned. A survey can help if multiple organizations/people must be questioned. It can also help to question the respondents about multiple subjects and/or answers. With the help from the previous phase, the first attitude, the information gathered there will be used to set up the survey. The problem found in the previous phase will be central in this survey. With the help of the problems found and reasons for these problems the survey will try to recover the practical story behind them.

The survey will have different indicators which will be measured on its validity. By giving all the respondents the same structured questions the survey will systematically obtain the data, the routing is important in the survey. This data can be used to find the problems and therefore solutions in the practical reality.
This research will use both qualitative and quantitative research. By doing this a wider insight into the subject is developed. By using both types of research the researcher will be enriched with information from different perspectives.\footnote{B. Pennink, J. Jonker, De kern van methodologie, p. 60}

The qualitative research will be used when interviews are done in the first phase. Within these interviews an idea will be formed about the reasons construction companies do not go abroad. From these interviews indicators will be abstracted which will be used during the surveys.

The quantitative research will be used during the survey. The survey will measure the indicators from the interviews and literature for its validity. With the results from the survey a recommendation can be given on how to resolve or improve the problems were discovered.

The data collected from the survey will be analysed. Because of the size of the survey using excel this will be sufficient. This Microsoft office software can help to analyse the collected data. With the help of Excel the mean, median and mode will be determined. This gives a good overview of the results.\footnote{D.B. Baarda, M.P.M. de Goede, Basisboek methode en technieken, p. 297}

The results will not only be given in percentages, this might give the wrong ideas, but also the raw numbers will be presented. This way the results will not be presented out of balance.\footnote{D.B. Baarda, M.P.M. de Goede, Basisboek methode en technieken, p. 294}

In figure 2.1 the research method is shown. There are 3 (A-B-C) parts shown in the first column: the first basic attitude (A), the second basic attitude (B) and the conclusion and recommendations(C). In each part of the research different questions will be answered. The first 4 questions will be answered in the first part the 5\textsuperscript{th} question will be answered in the second part. Finally in the last part the main research question will be answered. With the data collected in the first 2 parts of the research the conclusions and recommendations will be made and the research question will be answered. The second column in this figure shows the tools used to do the research, from this the results were gathered. In the final column are the results and this is the data collected from first to basic attitudes.

The data helped to create the conclusion and recommendations. In appendix II a figure is shown with the link between the different research components. During the interviews the different ways of going abroad and the possible obstacles were discovered. In the literature study these ways of going abroad and obstacles were looked deeper at and different questions were answered. The survey has been set up with the help of the found information during the interviews and literature study. The figure in appendix II shows the link between the 3 research components.

![Figure 2.1: Research method](image-url)
“Governments have a preferred position towards firms from their own country.”

Poelhekke, NABU

This chapter will handle the interviews that were carried out as orientation on the subject. In those interviews which are very helpful the summaries and company profiles are discussed here. The results from the interviews were generally the same and that gave a good survey on the subject. The results from these interviews can be found in chapter 3.2.
3.1 Interviews

People from different disciplines who all have something to do with the European procurement law were interviewed. These interviews were done in an informal way and they had as an objective to find out why construction companies do not go abroad through European procurements. By taking a diverse group of people more information could be gathered from more different perspectives. The information that was gathered after the interviews has been used while doing the literature study. The interviews provided a lot of information useful for the research. All these people were not asked the same questions.

For the interviews people from the following organizations were interviewed:
- PIANOo
- NABU
- Burdock Bouw & Infra
- Fokkema & Partners Architecten

3.1.1 PIANOo

PIANOo is a centre of expertise which is a part of the ministry of economic affairs, agriculture and innovation and PIANOo brings together a network of experts on the subject European procurement. They have over 3000 contacts in their network which all are involved with European procurements. Their core business is an advisory role for European procurements. They advise all public entities that are legally obliged to procure their works, services and supplies according to the European tendering rules. With their network of experts they offer advice, information, helping instruments and practical guiding when it comes to procurement.

PIANOo was founded in 2005 after the construction fraud scandal. Its objective is to professionalize the procurements and purchases done by the government. PIANOo helps all public organizations obliged to procure. Sometimes they also help the utility organizations but because they have more freedom when it comes to procuring PIANOo only helps them occasionally. If PIANOo helps they do this free for that specific organization. They are part of the ministry of economics but try to keep a low profile. The ministry of economic affairs, agriculture and innovation decides the policy and PIANOo is more on the implementation side of the procurements.

Each year PIANOo organizes a congress which attracts about 600 visitors from all over The Netherlands. Twice a year PIANOo organizes five regional meetings which are visited by hundreds of people. They also organize group meetings with professionals where discussions are held concerning European procurements. Because PIANOo is an expertise network they can easily retrieve information from their network. If a question is raised and PIANOo doesn’t know the answer to they can probably find it from other contacts in their network.

They cooperate with provinces, water boards and municipalities and look at the best way to deal with procurements. When there are questions from a public organization about procurements they can turn to PIANOo.

They also are the secretariat of the ‘opdrachtgevers forum in de bouw’. This is a group in which the biggest public principals are united. They aim to further develop the innovative and professionalization of the construction market. This group contains persons who have a high function in the public construction sector. PIANOo is their secretariat and prepares meetings and is the official contact of the opdrachtgeversforum.

The interview has been with Henk Wijnen. As project manager his activities are mostly construction related. He has a lot of knowledge on e-procurement and sits on some advisory boards.

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41 Information obtained during interview with Henk Wijnen, project manager at PIANOo.
Summary interview
During the interview the position of the European procurement law was discussed with Henk Wijnen, project manager at PIANOo. Before the interview I explained my research subject and that the focus of this research is on the construction industry.

During the interview it became clear tenders are mostly won, and therefore carried out, by local contractors. From the 3 groups the European Union distinguishes; works, supplies and services, only supplies prefers to go abroad. The works and services are more locally/regionally focused and therefore still mostly a national matter. This works both ways, Dutch contractors do not go abroad easily and foreign contractors are not very active in The Netherlands. They do not go abroad especially because they win a European procurement, most of the time there are other reasons.

While perhaps there are a lot of contractors trying to win tenders it is hard to check this. The European website Tender Electronic Daily (TED) only shows the awarding. The candidates who didn’t win are anonymous. So in order to see whether a contractor has entered a tender process this has to be checked with the contractor itself. This can be hard to research as contractors are not eager to open their books to anybody.

The construction industry is still a regional activity, therefore the work will mostly be done by national construction companies. During construction projects a lot of material and equipment needs to be transported. When this has to be done to another country it can be too expensive to do the project. The way procurements are done can also be a bottleneck for working abroad. It can be difficult when the announcement is drawn up, if this is done in another language.

In The Netherlands there are only a few big public builders. The governments building agency (Rijksgebouwendienst) is the largest in The Netherlands. Together with the ministry of defence they are the biggest public builders. The ministry of defence is a different kind of builder as all their activities take place in areas closed to public. The ministry of defence is not interesting for the research of my subject as they operate differently than other builders.

3.1.2 NABU
42 The NABU (the Netherlands Association of International Contractors) is an organization which represents contractors working abroad. The NABU has 7 members who are the biggest construction companies The Netherlands has. The members are: Ballast Nedam, Strukton Group, Volker Wessels, Boskalis, Van Oord, TBI and the BAM. A representative from all these companies is on the board of the NABU.

The NABU tries to stimulate and promote the Dutch contractors abroad. This is done throughout the whole world. The NABU tries to be the link between governments and the contractors. Their objective is to create an environment where the political, financial, economic and legal aspects are best represented.

While their operating field is the whole world they are mostly focused outside Europe. The European market has been regulated a lot in the last decades. Therefore their operating area has been expanded outside Europe. Emerging markets like China and India are more interesting for the NABU. Because they are relatively new for Dutch contractors the NABU focuses on these markets.

The interview has been done with Robert Poelhekke. As director of the NABU he has a lot of knowledge about foreign markets.

42 Information obtained during interview with Robert Poelhekke, Director at NABU
Summary interview
During this interview it became clear there are still too many barriers for construction companies to work abroad through European procurements.
When construction companies go abroad this means they have to have permanent facilities when it comes to labour laws, pensions, social rights en their fiscal environment. This is too much activity for most companies to go abroad. That is why construction companies do not easily go abroad. When they do they would rather buy an existing company with all the knowledge already there.
Still, companies that do go abroad are mostly invited because of their knowledge of certain speciality. For example; Max Bögel is known for its speciality of tunnelling. The Netherlands Strukton specialises in sunken tunnels.
But for most of the normal construction projects a local construction company can do the job just as well as a foreign company. Foreign companies will be much more expensive as they have to transport more material and equipment.

The European Union has the European procurement law to open the internal market. But there are many barriers to be removed before the market is really open. The formal barriers need to be removed before the European market is truly open. Removing these barriers is only the start. It is impossible to formulize behaviour. If firms and people don’t want to go abroad it is difficult to stir them that way. And besides that, governments have a preferred position towards firms from their own country. This is a cultural difference which is difficult to solve.
In France the procurements are mostly won by French companies. The government makes sure that almost every time that the awarding ends up with a French firm. This starts with the language the procurement is done in. This is mostly done in French. Most of the European companies know that it would be difficult to work in French because the language is too much of a barrier.
European procurements abroad are mostly interesting when they are really big projects. And in most instances foreign companies will do these projects in corporation with local parties.

When construction companies want to go abroad they try to do this by joining with a foreign partner. In recent years the public private partnerships (PPS) are becoming more popular in The Netherlands. In Britain and France this is already a generally accepted way of working. These countries have developed a lot of knowledge about it. The Dutch construction company BAM is active in both Britain and France. They have a separate subsidiary for PPS projects. That way they can use that knowledge for working abroad.
When construction companies want to go abroad this they need to control their risks. Nowadays this is the most important thing to do otherwise it will cost a lot of money. Construction companies awarded a European procurement have the risk that their price was too low. In their own country this is easier to calculate but in foreign markets this can be difficult to calculate. In foreign countries there are more unforeseen circumstances which can lead to more difficulties and higher risks.

While The Netherlands is quite easy to enter as a foreign company this is different in other countries. It is therefore why there is no real European construction market.

3.1.3 Burdock Bouw & Infra
Burdock Bouw & Infra (BBI) is part of the Burdock group. The Burdock group contains multiple companies differing from each other. From accounting to managing companies, and from communication to construction companies. The company BBI focuses on engineering services for construction and civil technical projects. BBI offers both engineering and management services for all aspects of the construction and civil engineering activities.

Information obtained during interview with Johan Dekker, manager at Burdock Bouw & Infra
BBI does not do a lot of advertising but relies on the network of their employees. BBI is not only active in The Netherlands, they have offices throughout the world. This is why their networks are very extensive. These extensive networks help them to get involved in all the disciplines they are active in.

BBI uses its networks to obtain projects. Within these projects they supply as many technical engineers as requested. Because they have a broad view on the construction and civil engineering markets BBI can easily adapt to new market situations.

Within their extensive network professional knowledge is present. This knowledge is used on multiple projects. Johan Dekker from BBI has been interviewed. With 8 years of experience as a manager at BBI he knows a lot about the construction market. He has been active on various projects and therefore has a good view of the current situation of procurements and contractors working abroad.

Summary Interview

During the interview the focus was mainly on construction companies working abroad or construction companies from foreign countries working in The Netherlands.

There aren’t many construction companies leaving their country of origin. There are several reasons for the few cases of foreign construction companies going abroad. The first reason is the expertise they have. When a construction company has invented an innovative method that they only have, it’s likely they will be invited abroad. The Dutch dredging companies are an example of this. The second reason is if they are in some sort of partnership. This can be a public – private partnership or they can do a private – private partnership. In that case the consortium, most of the times, creates a new company in which both parties are involved.

When construction companies go abroad this can lead to difficulties. An example was given about the construction project of the new Shell headquarters in The Hague. During this project Belgian builders were involved which led to trouble. The Belgians had a different approach when it came to cooperative working and this resulted in several clashes with the principals. The cultural differences were very great and this led to problems between Dutch and Belgian workers during construction.

Another case was discussed which is about a European procurement awarded to a consortium of companies. The construction of the second Coentunnel and the Spoortunnel Delft had to be procured. The consortium that was awarded the projects consisted of Dutch, Belgium and French construction companies. This is a case where foreign construction companies go abroad but they lean on the national knowledge of the local companies. These foreign companies would possibly never get the project if they hadn’t entered into the consortium with the Dutch companies. Together with the ministry of water management a public-private partnership has been formed to build these two tunnels projects in Amsterdam and Delft.

Construction companies do not go abroad for just one project. They will do this if they are invited, for the dredging projects, or when they can use the knowledge of national construction companies in some sort of partnership.

3.1.4 Fokkema & Partners Architecten

Fokkema Architects was founded about 15 years ago by Diederik Fokkema. Nowadays the company consists of 45 employees and is run by 3 partners. Fokkema & Partners Architecten is mainly known

Information obtained during interview with Marieke van Schaaijk, partner at Fokkema & partners Architecten
for their interior designs for different public and non-public organizations. Within their projects sustainability has a high priority during design. This has been so since the beginning of the office. Fokkema & Partners Architecten is always looking for innovative ways of creating new things. Each project is approached differently so the needs of the principal are best satisfied. They are aware each project is different and need its own approach to be successful.

From 2008 Fokkema & Partners Architecten received a lot of attention when they did the interior of the newly renovated location for the faculty of Architecture of the University of Delft after the old building was burned down.

With big principals as clients Fokkema & Partners Architecten managed to keep their organization healthy throughout the credit crunch. They are actively acquiring projects through different channels.

Fokkema & Partners Architecten has an ISO 9001 certificate which is the norm for quality management of an organization. This certificate gives them extra credits when doing European procurements. Fokkema & Partners Architecten is currently actively acquiring projects through European procurements. Although they do European procurements their projects are all based in The Netherlands. The principals they have are all Dutch and their focus is on the Dutch market only. Maybe expansion abroad is something for the future but not in this rough economic climate for architectural firms.

The interview was with Marieke van Schaaijk. As partner at Fokkema & Partners Architecten she is involved in all projects the firm does. She also is actively involved in acquiring projects, especially through European procurements.

**Summary Interview**

Fokkema & Partners Architecten has only recently been ISO 9001 certificated. They have done this because when entering a European procurement this will reward them more credits, and therefore increases their possibilities to be awarded with the project. Receiving more credits is not the only reason for choosing to get the certificate. The whole quality management of the organization is structured with this certificate. It gave the management more inside in how the company is operating and how to stir their process.

They occasionally subscribe to European procurements. At this time this has only been done for Dutch projects. They use European procurements because this makes it possible to acquire projects on large scale. But before subscribing they very accurately check if this project links up with their office objectives and if they make a good chance of getting the project. European procurements take a lot of time and energy because of the phasing of the procurement. This is why Fokkema & Partners Architecten thoroughly researches their chances in each procurement.

Even though Fokkema & Partners Architecten has an ISO 9001 certificate and does European procurements they don’t do many projects abroad. In the past they have done some foreign projects but that was all occasional. These projects where mostly acquired by known clients how asked them for these foreign projects. At this moment there is no direct reason to go abroad. Another problem they face when going abroad is the lack of immediate contact with their client or building team. Working abroad also means they can’t easily visit the construction site and that makes it more difficult to control the building process. Fokkema & Partners Architecten also finds it difficult to work abroad because of the different legislation and cultures in other countries. The activities Fokkema & Partners Architecten does are easily transferable abroad. The only problems they face are the employees. Currently they only have an office in Delft. Working abroad means they have to transport employees to that specific country. Because they want to be close to the project to control the process transporting employees is not interesting for them.

**3.2 Results from the interviews**

Even though the participants in the interviews had a different background the main answers were all the same. The main answer was: construction companies do not go abroad for just 1 project through
a European procurement. During the interviews it has been discovered that there are 5 different ways of going abroad and European procurement is the last one. The five ways of going abroad are, shortly, explained next from most often ways of going abroad to least often way of going abroad. It is clarified with an example. Also different problems, construction companies might have, were discovered.

In the next chapter both, the methods of going abroad and the problems are deeper discussed with the help of literature. The following conclusions are created after the interviews where done. This is not yet founded with literature but is purely the combination of the results from the interviews.

3.2.1 Subsidiary
What a lot of the construction companies do if they want to work abroad is to set up a subsidiary. This can be done in different ways. First they can buy a small construction company and put their name on it. The organization stays the same only the name changes.

Secondly they can start from scratch and start a new company in the specific country that they want to work in. Because of the different regulations and preconditions it takes a lot of research before it is set up. Therefore people from that specific country are attracted to the company. These employees know their way around in that country or region. More about subsidiaries can be found in the next chapter.

Example:
The Dutch contractor BAM (biggest in The Netherlands) holds offices in Belgium, Great Britain, Ireland and Germany. Most of these offices are bought and now work under the BAM flag. In some countries the names are not even changed but the company is consolidated by the BAM.

3.2.2 Partnership
A partnership can be done in different ways. The most common, and very popular is the public-private partnership. This is mostly used in area development.

A public private partnership (PPP) is very common in Britain. In The Netherlands it is still upcoming, but it is used more often. The definition of a public private partnership according to Wolting is: "PPP is a partnership where public and private parties, while maintaining their own identity and responsibility, realize a project based on clear tasks and risks" This partnership can hold different interpretations. In some projects a partnership restricts itself to only one or a few phases during the development process. And in other projects a PPP is a long term commitment to each other. These collaborations between public and private parties are put in contracts. These contracts differ from each other as do the agreements differ.

This is why a partnership between a public and private party can be interesting for working abroad. When a construction company gets in a partnership with a foreign public partner they will benefit from the knowledge that is already there. The same applies to the public party who can benefit from the knowledge from a foreign private party. Things like laws and restrictions will be made much easier by their partner. More about partnerships can be found in the next chapter.

Example:
The project of the Dutch High Speed Line (HSL) covers a railway line between Amsterdam and the Belgium border. Here a high speed train should cross at 300 km/hr. For this project a consortium of Dutch, Belgium and France contractors was formed. This was a public project but the public party got involved with a consortium of private parties who took on the project. The knowledge needed for this project was already inside the consortium. The Belgium and France contractors were therefore involved in a Dutch project.

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45 This was discovered after the interviews
46 Wolting, PPS en gebiedsontwikkeling, p. 14
47 From the website ppsnetwerk.nl case HSL
3.2.3 Management knowledge
Organizations can go abroad because they have a certain knowledge that gives them the edge on other companies.
When a construction company is already familiar with certain contract forms or with certain laws they can have an advantage on other organizations. It may also be invited because they developed a specific management procedure which is needed for a project. Most of this method to go abroad is specific aimed at specific projects and therefore not very important to this research.
Example:
Because the PPP system is relatively new in The Netherlands some foreign organizations are invited to join the consortium. By adding certain companies to the consortium they obtain knowledge that is new to them. The BAM has a lot of activity in Britain where the PPP system is not very new. The BAM therefore set up a PPP division which is invited to a lot of projects because of the knowledge in this division.

3.2.4 Expertise
When a company has developed a certain expertise of method which they are best in they can be invited to do projects.
Organizations that hold expertise in areas which are not common have an edge on other companies and will therefore be invited more often than other companies.
Example:
Dutch companies like Van Oord en Boskalis have a long time experience with dredging. When the famous palm islands in Dubai were done this emirate turned to the Dutch dredgers to make this. Also German construction companies are good in drilling tunnels. They develop the drills and have the expertise.

3.2.5 European procurement
Another possibility to go abroad is a European procurement. The European procurement law is only operative among the member states of the European Union.
It is difficult to go abroad just because you win a procurement. As already discussed there are a lot of other ways to go abroad. There are also a lot of obstacles when working abroad through a European procurement. It starts with the procurement itself on TED. Some works can be given in its native language which can be difficult to translate and work with. An example of a France procurement can be found in appendix I. As this is the least favourite reason to go abroad it is interesting to find out why this is and how to deal with the problems abroad. The research will be focused on the European procurement part of going abroad.
Example:
48 The North/South line in Amsterdam has been procured with a negotiation procedure. The first round of procurement didn’t result in a financial satisfying result for the municipality. The results from the first round where declined. After negotiations in the second round of procurement the result was satisfying enough and the project was awarded to a consortium of contractors. A consortium of Dutch and German contractors won the procurement. The Germans have a lot of experience in tunnelling and have the equipment to do so.
On the next page a figure is shown with all the different ways of going abroad that were discovered during the interviews. It also shows the obstacles that were found. These ways of going abroad and the obstacles will be subjected to a literature study. With the ways of going abroad the “management knowledge” will not be looked at as this can be put together in the expertise group. With the obstacles the different language and expensive transportation costs will not be discussed with the help of literature. The different language is inevitably when going abroad. The extra costs

48 From the documentation of the North-Southline website
for transportation are something the construction company needs to keep in mind. They might have
the option to rent or hire abroad. This depends on the budget of the project.

Figure 3.1: Different ways of going abroad and obstacles. Findings after the interviews
Chapter 4: Theoretical framework

This chapter will discuss the subject with the help of literature. Firstly the different ways of going abroad will be discussed. European procurements are extensively handled as that is the subject of the research. After the interviews obstacles for working abroad where found. These obstacles will be discussed in paragraph 4.4.

The most significant for public procurement is the principle for free movement.

§ 4.1.2
There are still not many Construction companies working abroad. Although the number of construction companies working abroad tripled from 1988 till 1995 (from 4% to 12%)\(^{49}\) it is still very few. The infrastructure industry is an exception because there are more innovative methods available. Therefore the infrastructure industry knows a wide spread business throughout the world. For example: Dutch dredging companies working in Dubai.

Why do construction companies choose to go abroad? In the annual reports of the biggest construction companies in The Netherlands the ambition to work abroad is mentioned\(^{50}\). Even though the construction industry has had a hard time, and it’s still not fully recovered, this ambition is still alive.

This chapter will look at the subject from a literature point of view. After the interviews the conclusion can be made that not many construction companies go abroad. There are different reasons for a construction company to go abroad and procurements are the least favourite. The interviews also pointed out the obstacles the construction companies face while going abroad. This will also be discussed from the literature.

First procurements in general are explained, than European procurement is explained. To see where the European procurement comes from the principles will be discussed. When European procurements are obligatory will be explained next. Than a few procedures for procurements are explained. The last paragraph about European procurements discusses the publication requirements.

### 4.1 Procurements

To understand what procurement law is, it is important to know how it works. The idea behind procurements gives a good overview why the contracting agencies are obliged to procure. It is also important to understand which parties are involved. This chapter outlines the basic function of procuring where the actors, categories, principles and political reasons are explained.

The function of procurement refers to purchasing goods or services from an outside body.\(^{51}\) With the addition that multiple companies are given the opportunity to make an offer to purchase the goods or services through a procurement.

A procurement can be seen in the wide sense of the contracting process; from specification through to termination of the contract.\(^ {52}\) Looking at procurement from a more narrow sense it covers merely specification and the award of the contract.\(^ {53}\) It is in this sense the word procurement will be used.

There are different forms of procedures for procuring. The general idea behind procuring by government agencies is equal treatment, competitive behaviour and to get the value for money.\(^ {54}\) By giving the opportunity to multiple companies to offer their goods or services the procuring entity has to possibility to get value for money. Getting value for money is especially important for procurements from public agencies, as they use tax payers’ money.\(^ {55}\)

Procurement involves different parties: the procuring entity and the subscribers. On the one side there is the group that offers the goods and services. On the other side there is a purchasing group, the government agency. The group that offers the goods and services is the entity which funds the activity.\(^ {56}\) The group that supplies the goods and services are businesses operating in the market. Therefore procurements play a big role in stimulating economic activity.

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\(^{49}\) Volkskrant article 05/09/95: Bouwbedrijven meer naar buitenland

\(^{50}\) Annual Reports of the 10 biggest construction companies

\(^{51}\) S. Arrowsmith, The law of public and utilities procurement, p. 1

\(^{52}\) S. Arrowsmith, The law of public and utilities procurement, p. 1

\(^{53}\) S. Arrowsmith, The law of public and utilities procurement, p. 1

\(^{54}\) S. Arrowsmith, p. 3 & 4

\(^{55}\) S. Arrowsmith, p. 3 & 4

\(^{56}\) M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 17
Procurements are generally divided into three categories: supplies, works and services the so called classical sector. The division of these three categories is often used in legislations and international agreements. The term supplies means products. This can range from office supplies to military equipment. The term works means the construction and engineering activities like infrastructure and buildings. The term services refers to the non-construction services. These are services like street-cleaning, gardening, design activities and legal work.

Procurements stimulate a fair and competitive market. When governments procure their goods or services they have to do this in a legal and non-discriminatory and non-corruptible way. A possible downside is the proactive way governments sometimes use procurements. A government may use a procurement to stimulate their national economy by buying from national business while foreign business may be cheaper. To do this is of course not legal.

Procuring goods and services may help to get the best value for their money. Because multiple parties are given the chance to compete for the job the best price will arise from it. Governments who procure their works deal in the name of the tax payer, it is therefore important they use a fair and non-corruptible system. Because the government needs to treat all their citizens equal procurements are a part of that.

### 4.1.1 European Procurements

In the previous paragraph procurement in general has been explained. This research focuses on the European market, and therefore European procurements. Procuring is useful to get the best value for money. Member states of the European community are obliged to procure their works because they have to open their borders. Governments need to procure when it’s above a certain threshold or when it has a cross border interest. This chapter will discuss the reasons why the European Union wants member states to procure. Also the directives which hold the guidelines for procuring will be discussed. Then the entities that have to procure are explained. And finally the conversion from European guideline to the Dutch national laws will be discussed.

The European community consists of 27 member states. The European community has the objectives to create a common market. This is done by eliminating barriers for trading goods and the movement of business, labour and capital between member states. As a result, removing these barriers will improve the welfare and growth of the economy. Removing these barriers will also lead to savings up to 30% on the spending for supplies, works and services. It is important these barriers are taken away to become an open market. Governments may favour national industry in allocating contracts. They might do this to stimulate their national market. The barriers that must be taken away are customs duties, discriminatory taxation, quota systems and subsidies. Also procurement practices that do not allow fair competition, like corruption or bribes, might be seen as a barrier.

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57 S. Arrowsmith, p. 2
58 M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 17
59 S. Arrowsmith, p. 6 & 7
60 S. Arrowsmith, p. 6 & 7
61 S. Arrowsmith, The law of public and utilities procurement, p. 121
62 M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 17
63 S. Arrowsmith, The law of public and utilities procurement, p. 121
64 S. Arrowsmith, The law of public and utilities procurement, p. 121
In the previous chapter the function of procurement has been described. This function is active among the member states of the European community. In Europe there are 2 important guidelines for procuring; directive 2004/17/EC and directive 2004/18/EC. The directive 2004/17/EC guideline is about coordinating the procurement procedures of entities operating in the water, energy, transport and postal services. The directive 2004/18/EC is about the coordination of procedures for the awarding of public works, supplies and services. These guidelines, created by the European community, have to be converted into national regulation. It is up to the member state how they convert the guideline to their national laws. In the European community treaty article 249 states: “A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.” This means that a member state can choose how to convert the guideline as long as the desired result is achieved. To implement the directive, the national law must provide the right measures to effectively secure the objectives of the particular directive. Because the research is about the construction industry only the 2004/18/EC guideline will be further explained and used.

The procuring entity in the first place is the state, all their departments, agencies and ministries included. The second are the regional and local authorities, this includes provinces, municipalities and water regulatory authority. The last group bond to procure their supplies, works and services are the bodies governed by public law. The directive 2004/18/EC art. 1 sec. 9 defines a body governed by public law as following:

- Established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character
- Having legal personality
- Financed, for most part, by the state, regional or local authorities or other bodies governed but the government.

These groups have to procure their supplies, works and services if the value of the contract is above a certain threshold. More about the threshold can be found in chapter 4.

The directives for procurements for the European community are guidelines that need to be converted to national law. Each member state can choose how to do this. Because the research focuses on the Dutch market the conversion to the Dutch national law will be explained.

On December 7 2005 the BAO and BASS made their entrance in the Dutch law. The BASS is the conversion from the directive 2004/17/EC. The BASS is the conversion from the directive 2004/18/EC. The text in the BAO was taken much as possible from the directive. There is, just like in the directive, a possibility for flexibility for the above mentioned exceptions.

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65 M.J.J.M. Essers, p. 21
66 Consolidated version of the treaty on European Union, p. 153
67 S. Arrowsmith, p. 161
68 M.J.J.M. Essers, p. 43
69 Directive 2004/18/EC, Art. 1, Sec. 9 from 2nd paragraph
70 Besluit Aanbestedingsregels voor Overheidsopdrachten
71 Besluit Aanbestedingen voor Speciale Sectoren
72 M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 24
73 M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 24
The Dutch procurement law is not only formed by the legislation. There are some regulations of which some can be voluntarily used and some are required, like the ARW 2005.\footnote{M.J.J.M. Essers, p. 26} In the procurement agreement the parties agree with the regulations they will use, this can already be a demand during the procurement procedure. The regulation UAR 2001 has been revoked and the ARW 2005\footnote{Aanbestedingsregelement Werken 2005} has replaced it. Although in some places the UAR 2001 is still used the generally accepted regulation is the ARW 2005. The ARW 2005 regulation is used to regulate the procurements for the government.\footnote{M.J.J.M. Essers, p. 31 & 32} It is not a law but only a regulation which can be used with procurements. The ARW 2005 is as much as possible, just like the BAO, a direct conversion of the directive but is mandatory for the national government. In the ARW 2005 procedures for procuring are fully described.\footnote{M.J.J.M. Essers, p. 31 & 32} Besides the BAO, which is the required translation for national law, the ARW 2005 is a generally accepted regulation. There are more regulations that can be used during procurements. These will not be discussed as they are not relevant for the research.

Because the directives are guidelines the member states need to convert it to national law. In The Netherlands this is done in the BAO. This is the national legislation for procuring. When a procuring entity wants to procure they can use the ARW 2005. This regulation can be used for procuring and is broadly a translation from the directive with the difference that some procedures are fully issued. The ARW 2005 is generally accepted as a regulation for procurements. Some entities might use the UAR 2001, which is also a regulation for procurements. But the ARW 2005 is newer and is a better translation of the directive; therefore the ARW 2005 is more used and accepted as a regulation.

4.1.2 Principles of European procurement

The European procurement law is derived from the principles of the European community treaty. This treaty is the base on which the European Union is founded. All member states agreed with the treaty and it formed the base for the European Union. The principles mentioned in the treaty are translated into the directive for procurements. These principles must always be used when procuring supplies, works and services. This chapter explains the principles from the treaty and the conversion, from these principles, to the directive. It shows the importance for European procurements. The objectives of the European Union are directly visible in the principles of the directive. Finally the principles are discussed from the research point of perspective; working abroad through European procurements.

The principles of the European procurement law have a long history. From the EEC treaty\footnote{European Economic Community Treaty} signed in Rome (1957) to the EC treaty signed in Lisbon (2009). The EC treaty that is currently in place holds the principles for the European community. These principles are the base for the European procurement directives. The European community has been created with the principal of free movement of goods, persons, services and capital.\footnote{Consolidated version of the treaty on European Union, Art. 14, sect. 2} By doing this a free market is created where goods, business, services and capital can be transported easily within the member states. Although the EC treaty doesn’t express mention procurements, the context from the EC Treaty is relevant for controlling government procurements.\footnote{S. Arrowsmith, The law of public and utilities procurements, p. 181} In the EC treaty the following articles are important for the principles of public procurements:

\footnotesize

\begin{itemize}
\item \footnote{M.J.J.M. Essers, p. 26} M.J.J.M. Essers, p. 26
\item \footnote{Aanbestedingsregelement Werken 2005} Aanbestedingsregelement Werken 2005
\item \footnote{M.J.J.M. Essers, p. 31 & 32} M.J.J.M. Essers, p. 31 & 32
\item \footnote{M.J.J.M. Essers, p. 31 & 32} M.J.J.M. Essers, p. 31 & 32
\item \footnote{European Economic Community Treaty} European Economic Community Treaty
\item \footnote{Consolidated version of the treaty on European Union, Art. 14, sect. 2} Consolidated version of the treaty on European Union, Art. 14, sect. 2
\item \footnote{S. Arrowsmith, The law of public and utilities procurements, p. 181} S. Arrowsmith, The law of public and utilities procurements, p. 181
\end{itemize}
Art. 12: Within the scope of application of this Treaty any discrimination on grounds of nationality shall be prohibited.\(^{81}\)

Art. 28: Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.\(^{82}\)

Art. 43: Restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited.\(^{83}\)

Art. 49: Restrictions on freedom to provide services within the Community shall be prohibited.\(^{84}\)

Art. 81: Prohibits restrictive trade agreements between undertakings.\(^{85}\)

Art. 82: Prohibiting from abusing a dominate market position.\(^{86}\)

Art. 86: Member states are responsible for connection with undertakings in their own state and to ensure the proper functioning of the market.\(^{87}\)

Art. 87: Prohibits governments from giving aids to industry that distorts or threatens to distort competition.\(^{88}\)

The most significant for public procurement is the principles of free movement. Because this is the base for the whole European community market this is the first principal for procurements. Where the EC treaty doesn’t refer to procurements the directive 2004/18/EC refers to the principles from the EC Treaty. The principles mentioned in the directive must always be taken in when procurements are done. The principles of the directive are\(^{89}\):

- Free movement of goods
- Freedom of establishment
- Freedom to provide services
- Equal treatment
- Non-discrimination
- Mutual recognition
- Proportionality
- Transparency

These are the principles described in the directive. These principles can all be converted into 3 principles which cover them all. The 2 most important principles from the directive are the equal treatment and transparency principles.\(^{90}\) The oldest principle is the free movement of goods, this has already been mentioned in the treaty of Rome in 1957. From the free movement principle 2 principles can be derived: equal treatment and transparency. For procurements these are the most important for the European community, to create an internal market.

Looking at these 3 principles it becomes clear that these are important principles for the procurement law. Because the European community aims to have a common market throughout the member states, equal treatment of all subscribing parties is therefore important. An internal common market can only be achieved when all member states give each other the same opportunities and handle them with equal treatment. European procurements exist because the European community wants an open market where all business from each member state has the same possibilities throughout the member states.

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\(^{81}\) Consolidated version of the treaty on European Union (EC Treaty)
\(^{82}\) S. Arrowsmith, p. 182
\(^{83}\) S. Arrowsmith, p. 182
\(^{84}\) S. Arrowsmith, p. 182
\(^{85}\) S. Arrowsmith, p. 182
\(^{86}\) S. Arrowsmith, p. 182
\(^{87}\) S. Arrowsmith, p. 182
\(^{88}\) S. Arrowsmith, p. 182
\(^{89}\) Directive 2004/18/EC preamble 2
\(^{90}\) M.J.J.M. Essers, p. 36
By working transparently it makes them controllable and verifiable.\textsuperscript{91} When texts are not understandable or ambiguous this is not transparent. It aims to prevent discriminating and corruptible behaviour.\textsuperscript{92} Again, this is translatable to the common market. A common market cannot be achieved when there is discrimination or corruption. These 2 aspects are not consistent with an internal common market.

The principle of transparency also holds the obligation to announce public procurements through official channels. This gives everybody in all member states the equal opportunity and the government acts in a transparent way. To act transparently the procuring entity must obey the following rules: \textsuperscript{93}

- Advertise contracts Europe-wide through the European commission.
- Hold a competition between interested firms
- Exclude firms from the competition only for justified reasons specified in the directives.
- Respect minimum time-limits for important phases of the procedure.
- Award the contract based on the results of the competition
- Provide information on decision to interested parties.

More about the advertising the contracts can be found in § 4.1.5.

While discrimination on grounds of nationality is prohibited, not all unjustified differentiation is prohibited. \textsuperscript{94} The equal treatment principle has been recognised as a fundamental for the community law by the European court of justice.

Going back to the basic principle of the treaty, free movement, it is interesting for this research. The principle of free movement means that goods, persons, services and capital can move easily through the member states of the European Union. This also means that every business established in one of the member states has the same equal opportunity to get work abroad. Between the member states free movement is a necessity. Also equal treatment gives everybody the same opportunities as each other. So on paper there should be no problem for construction companies to get work abroad by acquiring work through European procurements.

The EC treaty forms the basis on which the European Union is founded. In this treaty the movement of goods, persons, services and capital is a principle for the European community. Creating an internal common market must be done with this principle. While the treaty doesn’t say anything about procurements the principles derived from the treaty are converted to the directives of procurement. Besides free movement, equal treatment and transparency are principles in the directives. By using these principles the internal market must be made. This also means that business can easily get work abroad. Because each member state has to procure their supplies, works and services according to these principles all business in each member state has the same opportunities.

\textbf{4.1.3 When are procurements obligatory?}

Public entities don’t always have to use procurement procedures. There are threshold values above which they have to use the European procurement law. In other words, in which they have to open up the contract to the whole European Union. Therefore the procuring entity has to know how to estimate the value of a contract they have. The directive holds guidelines for calculating the value of the assignments. The problem comes when public entities need a supply, work or service and it’s calculated below the threshold. Technically it means they don’t have to procure it on European level. But this might be seen as against the principles of free movement and non-discrimination. Depending

\textsuperscript{91} M.J.J.M. Essers, p. 36
\textsuperscript{92} S. Arrowsmith, The law of public and utilities procurement, p. 128
\textsuperscript{93} S. Arrowsmith, p. 127
\textsuperscript{94} S. Arrowsmith, p. 198
on the policy of the obliged entity below the threshold might be procured. The sort of work, supply or service contract can also be interesting enough that businesses from other member states are willing to have it. A crossing border interest means that all member states must have an equal opportunity to get the contract, even if the directive doesn’t require it to be European procured. A procurement below the threshold can also be done when this is the policy of the procuring entity. The choice of procuring under the threshold can therefore be done when there is a crossing border interest or when this is the policy of the procuring entity.

In the last couple of years the European Court of Justice had some cases’ on which the subject of procuring below the threshold was dealt with. From these cases’ jurisprudence emerged which can be used in the future for working with procurements below the threshold. For all the entities obliged to procure their supplies, works and services there are threshold values above which all supplies, works and services need to be procured. Public contracts above a certain threshold must be publicly procured. These amounts can be found in the relevant directive and are updated every 2 years. The current amounts in the directive are:

<table>
<thead>
<tr>
<th></th>
<th>Works</th>
<th>Supplies</th>
<th>Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Government</td>
<td>€ 6,242,000</td>
<td>€ 162,000</td>
<td>€ 162,000</td>
</tr>
<tr>
<td>Decentral government</td>
<td>€ 6,242,000</td>
<td>€ 249,000</td>
<td>€ 249,000</td>
</tr>
</tbody>
</table>

There are two reasons why the threshold amounts are relatively high: There are administrative costs for applying tender procedures. The application of this can only be justified when the benefits are higher than the costs. The second reason why these thresholds are relatively high is because of the competition from abroad. These amounts are set so that it is more likely there is competition from abroad. It identifies contracts which can be interesting for business operating abroad.

The procuring entity needs to estimate the value of the contract. Only then do they know if they have to use the procurement procedures. The procuring entity cannot subdivide the assignment to prevent it from coming in the scope of the directive. There are some methods, described in the directive, which are important when estimating the value of the assignment:

1. For works the estimated value must contain the costs of the works and the total value of the supplies necessary to execute the work.
2. With equal division in lots the total estimated value of all lots must be used. However, the procuring entity may waive this application when lots are under € 80,000 for services and € 1,000,000 for works.
3. With leasing, hire, rental or hire purchase of products the estimated value must be the total value for the estimated period of the contract when shorter than 1 year. If longer than 1 year the estimated value is the total value of the period of the contract plus the residual value.
4. With assignments for services without price statements the value is estimated for the total value of the period of the contract, when this is less than 4 years. When the period is longer than 4 years a monthly amount needs to be taken times 48.

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95 S. Arrowsmith, p. 363  
96 S. Arrowsmith, p. 185  
97 Directive 2004/18/EC Art. 78 Sec. 1  
98 S. Arrowsmith, The law of public and utilities procurement, p.363  
99 S. Arrowsmith, The law of public and utilities procurement, p.363  
100 M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 74  
101 Directive 2004/18/EC, Art. 7  
102 M.J.J.M. Essers, p. 75
5. For assignments of supplies or services with a regular demand and supply the value must be estimated according to value of assignment from the previous financial year. Or it can be estimated according to similar assignments from the last 12 months.

When the estimate value is calculated and the value of the contract is below the threshold this does not mean that procuring is not necessary. Some assignments still require to be procured like when there is a cross border interest. Even though this is not mentioned in the directive, procuring below the threshold can be a demand with cross border interest. The EC treaty prohibits any member state conducting discriminatory behaviour. Not only are the discrimination principles conflicting with procuring above certain thresholds, firms in all member states might be interested, even under the threshold. The free movement of goods, freedom of establishment, freedom to provide services, equal treatment, mutual recognition, proportionality and transparency principles can be used for procuring below the threshold. This can be translated that all procuring obliged entities, must procure their services, works and supplies, even below the threshold, to give everybody the same chances. When all supplies, works and services are publicly procured the principles of procurement are best executed. This also means that the procuring entity gets most value for its money.

Both the treaty and the directive don’t have any regulation when it comes to procuring below the threshold. Most of the public procurements are therefore done for assignments above the thresholds, only the most prestige projects are done under the threshold. Most of the procuring entities therefore only procure their supplies, works and services when this is above the set threshold. Some of the public contracts can have a crossing border interest by other parties. Contracts under the threshold are not published but can be interesting for parties abroad. Some projects can be prestigious, because of the size of type, and therefore interesting for parties from other member states.

The European court of justice has handled cases’ about procurements that contradict the principles of non-discrimination and transparency. The ruling from those cases’ lead to the court of justice demanding all procuring entities to find an appropriate solution for contracts under the threshold.

In the case of Bent Mousten Vestergaard, Denmark, the court of justice ruled that contracts below the threshold are not considered to be procurement-required. But these contracts must be judged with regard to the fundamental principles of the treaty.

The ruling in the case of Telaustria said that for all public contracts there should be an appropriate way of notification. Even if the directive doesn’t cover the contract there should be an appropriate way to notify possible interested parties.

There is also the case of the commission versus Italy. The Italian state doesn’t procure their contracts if they are below the threshold. The ruling of the European court of justice approved this only when the state could prove there is no crossing border interest. When a procuring entity has a contract which is below the threshold they must review if there is no crossing border interest.

The rulings from the court of justice in these cases decided that procuring entities always have to take into consideration the principles of the EC treaty. There can’t be any discrimination or a non-transparent way of working. Contracts with a possible interest should be notified in an appropriate way. Possibilities for this notification are papers, websites or the procurement website.

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103 EC Treaty, Art. 12
104 M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 74
105 S. Arrowsmith, The law of public and utilities procurement, p. 185
106 Case Vestergaard C-59/00
107 Case Telaustria C-324/98
108 Case Commission-Italy C-412/04
When there is a crossing border interest, the procuring entity has to procure their contract through official channels. If this is not done the procuring entity is contradicting the EC treaty.

A contract is cross border interested when private parties from other member states are interested in the contract. This can be when the contract contains a prestigious project or when the project is done near the border near other member states. In that case there should be no difference for parties from both sides of the border having the same chances. In some cases the discrimination principle can be argued to be unfit for a specific contract. When a contract demands certain language preferences it can be argued other member states are not suited.\textsuperscript{109} The contract might be interesting for parties from other member states but the demanded preferences are nationally oriented.

Procurements must be done by all procuring obliged entities if the contract value exceeds a certain threshold. This value is calculated by the procuring entity. When calculating the estimate value the directive helps by giving methods to do so. The directive gives the minimum requirements from needed for procurements. When public entities have contracts below these thresholds it automatically excluded the contract from the directive. The public entity could assign the contract in their own way. It is arguable that this is in contradiction with the principles from the EC treaty, non-discrimination and transparency.

The European court of justice has had some cases where procuring below the threshold was the subject. With the ruling from the court of justice jurisprudence was created. This gave procuring entities the legislation to deal with contract below the threshold. In order to respect the EC treaty they have to find an appropriate way to publish their contracts. The public entity also has to look after the crossing border interest. When a contract can be interesting for parties from other member states they have to be available for all member states. By working with contracts below the threshold this way there is no contradiction with the EC treaty.

### 4.1.4 Procedures for procuring

When a public procurement is required the procuring entity has to choose the procedure to procure their contract. This chapter describes 4 procedures of procuring: public and non-public procurements, competitive dialogue and the negotiation procedures. These 4 procedures are most interesting because they are most often used. Also the Dutch law will be used to see what it has to say about these procedures.

There are multiple procedures to procure contracts from public entities. Each procedure has its own identity how it is done. The procuring entity can choose which procedure they use, but this must be announced on beforehand.

**Open procedure**

The open procedure is the procuring procedure where each participant can request the specifications and conditions and make an offer.\textsuperscript{110} Because there is no pre-selection this saves time for the procuring entity. But, on the other hand, if there are a lot of subscriptions it takes more time to judge them all. Besides reviewing all subscriptions on the awarding criteria, the subscriptions are all reviewed for the criteria of selection. With a restricted procedure the selection is done before the procurement. In open procedures the selection on the criteria is done after the procurement.\textsuperscript{111} This may result in wasted costs as all subscriptions must be reviewed while there might be some firms that are unqualified.

\textsuperscript{109} S. Arrowsmith, p. 187
\textsuperscript{110} M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 94
\textsuperscript{111} M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 95
Announcement
Announcing the procurement is an important part of this procedure because all potential subscribers must be aware of the procurement. Therefore the procurement needs to be announced through the official channels. It has to be announced in the publication paper of the European community. By electronic announcements the procurement needs be published online. This must be done on TED, Tenders Electronic Daily. This website is accessible throughout Europe and is the official website from the European Union for tenders. With a national procedure the procurement needs to be announced on a website accessible for everybody, and in the states courant or a national newspaper. When a procurement is done according to the ARW 2005 this needs to be mentioned in the announcement.  

Subscribing
After announcing the procurement the specifications and conditions can be requested. After request the specifications and conditions need to be sent within 6 days, together with the selection criteria. The applicant needs to request these documents at least 6 days before procurement.

Selection
The applicant sending in the subscription can do this electronically or physically. On the tender form the applicant needs to fill in what assignment he/she wants to subscribe to. In case of division of lots the applicant needs to notify the lot he/she subscribes to. The tender forms are only opened during the procurement. Before the procurement the tender forms are kept in a safe place only qualified employees have access to.

Award
Once the deadline for tenders is passed the subscriptions will be evaluated. This process is closely regulated, the decision is made with objective criteria excluding discriminatory behaviour in a transparent method. First the procuring entity needs to evaluate the subscribing parties. The subscribing parties need to meet requirements for procurements. If the subscribing party does not comply with the requirements their bid can be rejected. The procuring entity may do this when the subscribing party:

- Doesn’t have adequate financial status
- Doesn’t have adequate technical capacity
- Does not comply with the required conditions

After the subscribers are evaluated, rejected or selected (based on their capability to compete in the procurement) the choice must be made. A procuring entity can either choose to award to the bid with “lowest price” or “economically most advantageous”. The choice for basing the decision on “most economic advantageous” must be announced in advance. Also the criteria for evaluation must be known in advance. Delivering the lowest bid does not immediately mean winning the procurement. The procuring entity may choose to terminate the procedure. Termination can be done for several reasons. It can be because the procuring entity doesn’t need the goods anymore. Or according to the subscriptions it’s too expensive. Or the procuring entity may choose to start the procedure all over because it thinks it might lead to better results.

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112 M.J.J.M. Essers, p. 96
113 M.J.J.M. Essers, p. 96
114 ARW 2005, Art. 2.24.1
115 ARW 2005, Art. 2.18.6
116 S. Arrowsmith, p. 489
117 S. Arrowsmith, p. 489
118 S. Arrowsmith, p. 489
119 S. Arrowsmith, p. 556
Restricted procedure
The restricted procedure looks a lot like the open procedure with the difference that there are 2 phases (a) selection is done before and (b) the procurement. When parties are interested they can request an invitation for subscription. The procuring entity selects the parties who requested an invitation for subscription which conform to the demands. When there are a lot of parties meeting the requirements a crediting system is used. Only these parties are allowed to receive the specifications and conditions. With these specifications and conditions the selected party can now make their offer. After the time, set for handing in the offer, has elapsed the procuring entity assesses all subscriptions and awards the contract, or not.

Announcing
The procuring contract must be announced through the official channels like an open procedure. This means the contract must be announced in the official state journal. It must also be announced online on TED. It is prohibited to publish the contract in the national press before this is done through the official channels. With regard to the regulation set for announcing a contract it is possible to publish the notices elsewhere. The procuring entity may inform specific forms about the contract. This is only acceptable when it is not done earlier than the official publishing and without extra information. With the restricted procedure the announcement also needs to provide information about the selection criteria. It also needs to provide information about the minimum and maximum number of parties the procuring entity wants to select. There are rules for the number of parties to be selected. With European procurement there needs to be at least 5 invited parties. With national procurement the minimum is 3 parties.

Subscribing
Where an open procedure may generate a lot of response, the restricted procedure only receives the response from the selected parties. When the contract is announced interested parties are invited to subscribe. The interested party can request an application. The selection is according to the criteria described in the announcement. When the applicant meets the criteria the procuring entity may decide to invite him to subscribe to the procurement. With European procurements there is a time limit of 37 days between sending the announcement and the deadline of application. With an electronically sent announcement this time frame can be reduced by 7 days. With national procurements the time frame is 21 days for sending in the announcement on paper and 17 days for sending it electronically.

Selection
The selection of the applicants will be done according to the criteria set in the announcement. The interested parties can determine if they meet the criteria and decide to request an invitation. The procuring entity must consider all the requests. This is essential for the equal treatment of all potential candidates. The procuring entity may decide not to invite an applicant for a number of reasons. When an applicant doesn’t meet the economic and technical capacity it can be excluded. The applicant can also be excluded when they have been convicted for participating in a criminal organization,
corruption, fraud or money laundering. Furthermore the procuring entity must judge all requests for invitation based on the principles of the directive. When all requests are assessed the procuring entity can decide who to invite. When the number of applicants is lower than the minimum required, the procurement can continue nevertheless. Only when just one applicant meets the criteria continuing wouldn’t be useful.

**Awarding**
After all requests for invitation are assessed the procuring entity may decide which applicants to invite for the procurement. The applicants receive the specifications and conditions and can prepare their bid. Just like with an open procedure there are 2 possibilities for a procuring entity to choose the winning party. The 2 awarding criteria can be “lowest price” and economic most advantageous”. The awarding criteria must be announced in advance. From the selected applicants the bid according to the chosen criteria will win the procurement.

**Negotiation procedure with or without a notice**
Where the open and restricted procedures can be rigid it sometimes asks for another approach. A procedure with more flexibility is sometimes more appropriate, this can be found in the negotiation procedure.
With the negotiation procedure the procuring entity and the participants will negotiate the contractual agreements and the programme of demands after a selection has been made. In this case 2 different variants of this procedure will be discussed; the negotiation procedure with a notice and the negotiation procedure without a notice. The difference between these 2 procedures is in the negotiation procedure with a notice there is a selection for participants. This selection happens after the applicants request an invitation for the procurement after this has been announced. The selected applicants will then start negotiating the contractual agreements and the programme of demands with the procuring entity.

**Announcing**
The difference in the procedures, whether there is notice or not, is in the beginning. With the negotiation procedure with notice the procuring entity needs to announce their contract. This is similar with the open and restricted procedure. The notice must be sent to the office for official publications. The announcement must also be made public on TED, Tenders Electronic Daily. And just like the open and restricted procedure it is prohibited to publish the announcement in the national press before it is published through the official channels.
With the negotiation procedure without a notice the procuring entity may decide which providers they will negotiate the contract with. This can be done without announcements. This can also be used when an open or restricted procedure has failed and with the competitors from the failed procedure a competition is held. The negotiated procedure without notice can depart with the obligations on open competition and transparency.

**Subscribing**
The negotiation procedure with notice works the same as the restricted procedure. After the announcement of the contract, the interested parties can request an invitation to participate in the procurement. The procuring entity then selects the applicants and invites them to subscribe. The time limit is just like the restricted procedure respectively 37 and 21 days. This can be shortened when procuring electronically.

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127 Directive 2004/18/EC Art. 45 Sec. 1
128 M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 98
129 S. Arrowsmith, p. 559
130 S. Arrowsmith, The law of public and utilities procurement, p. 573
131 S. Arrowsmith, p. 609
There are some legitimate reasons a procuring entity may choose a negotiation procedure with notice:\textsuperscript{132}

- When it is not possible to determine the estimated value of the contract
- When all subscriptions are irregular or when all subscriptions do not meet the criteria for selection and awarding.

The negotiation procedure without a notice doesn’t have the announcing and subscribing phase. Because the procuring entity selects its providers themselves they don’t have to have subscriptions. When the procuring entity chooses the provider they can go to negotiations immediately.

In the procedures of negotiation without notice there are just a few reasons a procuring entity may choose to use this procedure:\textsuperscript{133}

- After the open and restricted procedure there is no appropriate subscription
- There are technical, artistic or exclusive rights reasons only certain providers can provide.
- When there is urgency for the contract where other procedures take too long.
- When it concerns product for research or study.
- When it concerns additional work on the existing contract.

Selection

Again, this is very similar to the restricted procedure with the negotiation procedure with announcement. After the announcement interested parties can request an invitation for application. If they receive an invitation they can prepare their bid. After the procurement this can lead to an invitation to negotiations.\textsuperscript{134}

In the negotiation procedure without notice there is a selection done on forehand by the procuring entity. The procuring entity decides which parties to invite for the negotiations, without a prior notice in the official papers and websites. The choice for a provider can be made because they are known with a certain provider. Or, when the open or restricted procedures have failed, the negotiating parties are already determined as being most qualified.\textsuperscript{135} The procuring entity can excluded certain parties if they do not meet the requirements from the directive article 44. Or if one of the aspects from the directive article 45 applies to them.

Negotiation

During the negotiations both the procuring entity and the provider are present. Only valid applications will be invited for negotiations. The invalid applicants need to be informed within 15 days. This rejection must contain the reasons for not inviting them. The objective of the negotiations is to adjust the submitted offers from the invited parties to the demands of the procuring entity. These demands are already described in the procuring documents.\textsuperscript{136} The refined specifications and terms and conditions form the final offer after the negotiations.\textsuperscript{137} The negotiations can be phased, the procuring entity must guarantee the competition in the final phase when choosing to phase the negotiations.

The procuring entity negotiates with different parties, and must handle the given information with care. It is prohibited for the procuring entity to use the information against each other. From the negotiations between the 2 parties a report is made which in the end they will all sign.\textsuperscript{138}

\begin{itemize}
  \item[^{132}] Directive 2004/18/EC Art. 30
  \item[^{133}] Directive 2004/18/EC Art. 31
  \item[^{134}] M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 102
  \item[^{135}] S. Arrowsmith, The law of public and utilities procurement, p. 625
  \item[^{136}] S. Arrowsmith, The law of public and utilities procurement, p. 593
  \item[^{137}] S. Arrowsmith, p. 593
  \item[^{138}] M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 102
\end{itemize}
Awarding
All the participants will be given noticed about the awarding decision at the same time. The winning applicant receives its application-form, the specifications and terms and conditions, the letter of information and the signed report of the negotiations.\textsuperscript{139}

The Competitive dialogue
The competitive dialogue has some elements similar to the negotiation procedure with a notice. It also selects parties to negotiate solutions for the procuring entity.\textsuperscript{140} The procedure for the competitive dialogue is described in the directive in article 29. The competitive dialogue can only be used when complex assignments arise. Because the principles of transparency and equal treatment can be at risk with the competitive dialogue the procuring entity needs to motivate its choice for this procedure. When they choose a competitive dialogue, the procuring entity needs to publish a contract notice with their needs and requirements.

The procuring entity then selects the candidates and starts a dialogue with the aim to identify and define the means that are best suited for the needs of the assignment. The procuring entity may decide to let the procedure take place in stages so all solutions happen according to the awarding criteria. The dialogue continues until the procuring entity finds the right solution for their needs. After the procuring entity officially decides the solutions for their needs is found they announce this to all candidates. All candidates now have the chance to make an offer with the solutions discussed in the dialogue.

The procuring entity assesses all subscriptions according to the criteria based on the economic most advantageous given in the announcement. The applicant with the most economically advantageous subscription may be asked to clarify specific aspects of its offer. The procuring entity may pay prices to the participants in the dialogue.

The selection, subscribing and awarding are according to the same rules as the previous discussed procedures. Therefore only some aspects of the dialogue will be discussed.

Dialogue
Using a competitive dialogue can be a helpful tool for the procuring entity. Together with different parties a solution for their need is sought. The directive gives a clear structure of the process of this procedure. But what the directive doesn’t give is the way the dialogue should be conducted. It seems this can be done according to the discretion of the procuring entity.\textsuperscript{141} The procuring entity may decide to incorporate one or more proposal or bidding stages. The term dialogue refers to the exchange of information and positions.\textsuperscript{142}

When the procuring entity decides to divide the dialogue in phases this means certain providers may be eliminated during these phases. When there are different stages in which solutions must be found this can mean certain participants may be eliminated because their solution will not be economic most advantageous.\textsuperscript{143}

The procuring entity must operate within the principle of equal treatment. They may not provide information to a provider that gives them an advantage over others. The procuring entity must make sure that the principles of the treaty and the directive are used well. The competitive dialogue can only be used in certain cases there is a need for technical, financial or legal knowledge the procuring entity doesn’t have.\textsuperscript{144}

\textsuperscript{139} M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 102
\textsuperscript{140} M.J.J.M. Essers, p. 279
\textsuperscript{141} S. Arrowsmith, The law of public and utilities procurement, p. 645
\textsuperscript{142} S. Arrowsmith, p. 645
\textsuperscript{143} S. Arrowsmith, p. 646
\textsuperscript{144} M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 277
When an authority has a need for a work, supply or service which needs to be procured they need to decide what procedure to use during procurements. The most commonly used are the open and restricted procedures. The open procedure gives everybody the chance to subscribe to the contract. During the restricted procedure potential providers are selected who can make an offer. In most of the procedures the contract notice needs to be published through the official publication office and online on TED. Only the negotiation procedure without a notice differs from this. Here the participants are selected by the procuring entity to join in the negotiations. The negotiation procedure with notice looks a lot like the restricted procedure with the difference that it is more flexible. In this procedure the parties negotiate the contractual agreements.

After the announcement people get the chance to ask for an invitation to the procurement. The request for an invitation happens with the restricted procedure and the negotiation procedure with notice. After selecting the right providers they get to make an offer. With the open procedure everybody is welcome to make an offer. The announcement holds the selection criteria on which the applicants are assessed. After the selected candidates made their offer the procuring entity assesses all applicants and then awards the contract.

With the competitive dialogue and the negotiation procedure without a notice the procuring entity selects their participants with whom they will have a dialogue about the context of the specifications and conditions. After this dialogue the participants of the dialogue have a chance to make an offer. The procuring entity then decides on the basis of most economically advantageous which participant will receive the contract.

### 4.1.5 Publication requirements

In the previous chapters the European procurement law has been explained. Different procedures for procuring are explained. With almost all these procedures the procuring entity must announce their contracts through official channels. Because this is important to the principles of the EC treaty the publication requirements will be discussed. Because everybody in all member states needs to have the same opportunities they will have to have the chance of knowing about potential work.

Article 35 and 36 in the directive gives the guidelines on when and how the contracts need to be publicly announced.

With the exception of the negotiation procedure without a notice a procurement must be noticed for through the official channels. When a contract requires a European procurement it has to be announced in the publication magazine. This is done through the office of official publications of the European Union. The contract will also be announced online. The European Union has their own website called Tender Electronic Daily (TED).

There are more possibilities to announce the contract. Professional magazines can be interesting in reaching the right target group. There are also more websites like for example [www.aanbestedingskalender.nl](http://www.aanbestedingskalender.nl) for The Netherlands.

In cases where European procurements are not obligatory the provider of the contract can decide to publish it on European level. The provider has to make it clear if the regulation of the directive is in place here.

By announcing the contract to everyone the principles of transparency are being treated as the EC treaty wants it.

After sending in the contract by email this is published within 5 days. If the contract is sent other than email by there is a maximum of 12 days. There is regulation for preventing national potential candidates getting an advantage over their foreign competitors. The notice cannot made public in

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145 M.J.J.M. Essers, Aanbestedingsrecht voor overheden, p. 202
146 Directive 2004/18/EC Art. 36 Sec. 3
national media before it is published by the official office of publications of the EC. The national publication cannot hold more information than the European notice.147

Announcing the contracts on European level allows the potential interested parties in the member states the same opportunity to obtain the contract. This way the principles of equal treatment and transparency are used well. The procuring obliged authorities must send their contract notice to the office of official publications. This office publishes the contract notice so it’s available for all interested parties in the member states.

4.2 Partnerships

Another possibility for working abroad is when construction companies enter into a partnership with a public party abroad. In this system a new company can be created which the 2 (or more) companies have a share in, this is not always the case however. This way they both share the risks and profits. The method of partnerships is frequently done for area development. The definition of a PPP according to Wolting is:

“PPP is a partnership where public and private parties, while maintaining their own identity and responsibility, realize a project based on clear tasks and risks.”148

These kinds of partnerships are commonly between developers and public authorities. The public authority usually doesn’t immediately work with the construction company, this contact goes through a developer.149 It is therefore that it is not interesting for this research. The construction company is not immediately involved in the public-private partnership. However a partnership can also be done when a construction company from The Netherlands cooperates with a foreign construction company. In this case most of the times a construction company is invited because of their knowledge and experience on certain methods or process’. These partnerships can be used for example when a construction company goes abroad and doesn’t have the knowledge on the foreign national legislation. When partnering up with a company from that foreign company they get the advantage of the knowledge this foreign company has on that specific country. These partnerships can be helpful when working abroad to overcome the difficulties and unknown factors from a foreign country.

Because construction projects, besides civil engineering and infrastructure, can easily be done by national construction companies. Only when a certain experience or knowledge is expected for the project it can happen foreign construction companies are invited. Most of the knowledge on constructing a regular building can be found in the land of origin. Most of the times the main contractor is a national contractor. This company will then subcontract the foreign company to do the work it’s needed for. Because almost all the European member states have a fully grown construction industry, the regular construction projects can be done by national contractors.150

In § 4.4 2 projects of expertise are explained where construction companies go abroad because of their expertise.

4.3 Subsidiaries

Another way of going abroad is opening an office in a country abroad, this is called a subsidiary. By doing this the company is actually a company from that country but under the flag of the parent company in the country of origin. Most of the time this is done when big companies buy little companies abroad, only the company name changes.151

147 Directive 2004/18/EC Art. 36 Sec. 5
148 Wolting, PPS en gebiedsontwikkeling, p. 14
149 Wolting, PPS en gebiedsontwikkeling, p. 32
150 This has been noticed by Robert Poelhekke during interview, director of NABU
151 From interview Robert Poelhekke, NABU
A subsidiary is subject to European laws when it comes to taxing. In the European guideline 2003/123/EC the guidelines for subsidiaries are explained. Each country translated it to its own legislation with regard to the European guideline. This directive mentions the share of the parent company in the subsidiary. It can be called a subsidiary as it is has at least a 10% share. The profits the subsidiary generates must be taxed in the member state where it is established. The European Union has competitive neutral policy for regrouping of companies in other member states. This eliminates double taxes on the dividend a subsidiary pays from one member state to their parent company in another member state. More on subsidiaries and the tax system can be found in paragraph 4.5.2.

4.4 Expertise

Like already mentioned in § 4.2 another way of working abroad is getting invited because of the expertise a company has. This will be discussed with the help of 2 cases.

The first case is about the North-South line in Amsterdam. The North-South line has been in the news for the problems it’s been having during construction. This construction project consists of a tunnel from Amsterdam North to Amsterdam south. It goes under the centre of Amsterdam which makes it even more difficult. The whole route is about 10 kilometres long, 3.8 kilometres will be drilled.

In this case a German company has been invited as they have a lot of knowledge and experience in drilling tunnels. The company Herrenknecht has specialized in creating the drilling machines for the tunnels. In The Netherlands this expertise is not present and therefore this German company has been asked to work with the construction of the tunnel. Because the complexity of these tunnels Herrenknecht will oversee the construction of the parts of the tunnels that will be drilled.

The second case is a case where a Dutch construction company went abroad because of their expertise. Boskalis is a Dutch construction company which is worldwide known for its expertise on dredging and maritime infra structuring. In this project a German construction company has been asked for the tunnelling, this is what they are known for.

The Russian city St. Petersburg is located around the river Neva. This river threatens St. Petersburg with flooding. A new flood protection barrier had to be made and Boskalis was asked to do this. Boskalis was asked as sole contractor to dredge the new access channel and to reposition and deepening the cables across the channel. Later addition work was rewarded to Boskalis. In total more than 11 million m³ had to be dredged. They have a majority share of the contract implemented in a contract with the German contractor Hochtief. This German contractor will be doing the tunnels, Boskalis is responsible for the tunnel pits.

4.5 Obstacles abroad

The interviews showed different ways a construction company goes abroad to work. It also showed the obstacles they might face when working abroad. These different obstacles will be explained with the help of the literature. There are 2 obstacles that are most obvious, these will therefore not further explained. These obstacles are the different language and the extra costs for transporting their materials, equipment and employees. The different language in other countries is obvious and construction companies must always be aware of that. When working abroad for just one project it can be expensive to transport material, equipment and employees. This needs to be taken in consideration in an early stage of the project as this might be expensive.

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152 Directive 2003/13/EC Art. 1 Sec. 3
153 Directive 90/435/EC introduction
154 Most recent for dwellings subsiding after construction in the close area.
155 Website http://www.noordzuidlijn.amsterdam.nl consulted on December 12th, 2010
156 From the website of Boskalis, project data sheet
First the cultural differences will be explained. Than the regulations, taxes and social system will be discussed. This will be done with the help of the European legislation and the national agencies. After that the foreign markets will be discussed as an obstacle for working abroad.

4.5.1 Cultural differences

The objective of the European Union is to open up the borders. The EC Treaty requires their member states to work in a non-discriminatory way where everybody is treated equally. This means all firms and persons can easily go from one member state to another. In this common market different cultures meet each other.

A culture is a pattern of thinking, feeling and acting which is learnt throughout someone’s life. A culture is always a collective phenomenon, because it is shared with people from the same environment and that is where it was learnt.

A culture is an identity which a person gained in his life, mostly when this person is young. It is difficult to change these patterns of thinking, feeling and acting as they have been taught when a person is young. When people have to work together, both having a different cultural background, they might experience discomfort with each other. A person or group might also want to have recognition for their identity. When this is not given they might want to fight for it.

A culture can be found with people and groups, but there are also organizational, or corporate, cultures. Here the patterns of thinking, feeling and acting are gathered within an organization. In general the term culture relates to social and demographic groups within countries, regions, neighbourhoods or families. But when talking about an organizational culture this is a collective of people, probably with different cultural backgrounds, who during their work share the same organizational culture. This culture can only be found within that specific organization.

Hofstede discovered 5 different aspects on which cultures can be measured. This makes it easier to compare the differences between them.

**Power distance:** An aspect in which cultures, on both national and organizational level, can differ is the way they handle inequality. Some people are bigger, smarter or stronger than others or have more power. The score for this aspect shows how people handle the unequal distribution of power.

**Individualism:** The difference between collectivism and individualism. Some cultures focus more on the collective behaviour of the group where in other cultures the individualist is more central. The score for individualism shows where the focus is, individualism versus collectivism.

**Masculinity:** It is assertive against modesty. Some people/groups might be more assertive (masculine) and others might work in a more modest way (feminine). Each group/person can be measured on these aspects of the way they operate.

**Uncertainty avoidance:** This deals with the fact how people/groups are comfortable, or not, with unstructured situations. Some groups do everything they can to minimize these uncertain situations. This aspect is measured by determining how a person/group stands against uncertain situations.

**Long term orientation:** Here the long term and short term oriented persons/groups are compared. Long term focuses on future rewards and short term focuses on past and present. A culture can be long term or short term oriented and this can be measured according to their way of behaviour.

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157 Consolidated version of the treaty on European Union, Art. 3
158 G. Hofstede, Cultures and organizations, software of the mind, p. 3&4
159 G. Hofstede, p. 18
160 G. Hofstede, p. 35
161 G. Hofstede, p. 40&41
162 G. Hofstede, p. 74&75
163 G. Hofstede, p. 116&117
164 G. Hofstede, p. 164-166
165 G. Hofstede, p. 209-211
These 5 aspects determine how a culture is programmed. Within Europe these 5 categories have been measured for each country. For the subject of this research it is interesting to see where the difference may be. When construction companies want to work abroad they have to consider the cultural background of that specific country. These cultural differences might lead to problems during their work in a foreign country.

In figure 4.5 the differences of 4 countries are shown, these are the countries next to the Netherlands. The United Kingdom is separated from the continent by water between but for Dutch construction companies this is an interesting market, that’s why the United Kingdom has been used.

Working abroad means working with people from other cultures. As shown in figure 4.5 this means working with people who are different in their approach in the 5 discussed aspects. Managers must therefore always be aware of the problems different cultures bring. They should understand the culture in their organization. They can use this when working with other organizations. The identity of an organization is important to keep, but it cannot intervene in their operations.\(^\text{166}\)

\[\text{Figure 4.5: Cultural aspects for 4 European countries (source: Hofstede, cultures and organizations)}\]

### 4.5.2 Regulations, taxes and social system

Working abroad means having to deal with different fiscal, social and legal systems. The European Union is trying to straighten this for all their member states. As a result everything is recorded in different directives. When somebody wants to know the definition of, for example, a plot there is a directive for. This way everybody working with these directives uses the same definitions for each notion.

It also means that when working internationally you need to know all the right definitions. Not everything is included in the national law, yet. It can be time consuming to understand all definitions, described by the European committee. The European integration of member states should stimulate the cross border activities.\(^\text{167}\) Setting standards for everything is part of this European integration.

\(^{166}\) G. Hofstede, Cultures and organizations, software of the mind, p. 365&366

\(^{167}\) Molle, The Economics of European Integration: Theory, Practice, Policy, p. 245
When a company gets a project abroad they need to make a decision. They can do this through a subsidiary or through a permanent establishment. The difference between these two when operating through a subsidiary is that you operate as a partner of the native company. When operating through a permanent establishment you create a local legal entity. The permanent establishment has enough facilities to operate on its own, they may also be seen as an operating organization in itself. The subsidiary operates with the parent daughter principle. The parent is in the country of origin and is the main company the daughter is a foreign extension of this company. The parent is shareholder in the daughter for at least 10% from 2009. Most of the decision making is done by the parent company.

In Europe there are guidelines for these sorts of companies. The guideline for taxation between parent company and subsidiary is 90/435/EEC supplemented by 2003/123/EC. This guideline helps member states to determine when a parent company must be taxed on the profits made by the subsidiary. The directive describes that profits must be taxed by the country of the parent company.

Working abroad means a company has to know all the rights and obligations of that specific country. The member states are subjected to the regulations of the European Union. The EU has as an objective to straighten out the regulations of all member states. The social security from one country can be used while working in another country. For companies this can be interesting when going abroad as they don’t have to make changes in their system for social securities. Also the pension people build up during their work can be taken with them when they move to another member state. For border workers there are also regulations in the same 987/2009 EC directive. This is even more flexible as they can get social benefits from the country they’re living or working in. Between Belgium and The Netherlands there is a treaty for taxation. To prevent double taxation this treaty helps to determine in which country a person should be taxed.

For builders the legal restraints in other countries can be difficult. The regulation for construction varies in each member state. In The Netherlands we have the Dutch building regulations. This is for Dutch construction projects only, and is also only available in Dutch. When going abroad the legislation is different and the construction company has to know the legislation from that country. When they ignore this they might face termination of the project and lawsuits. That is why a construction company has to know the local legislation when going abroad. But not only the building regulations are different, there are more differences like the permits for construction, health and safety regulations and fire regulations.

The European Union is trying to open the market as much as possible. This means straighten all legislation when it comes to taxation and social benefits. But because this cannot be done overnight it takes some time. Taxes for companies are determined on the basis of how the legal structure of the company looks in both member states. For social security and pension employees can use the system they have in the member state they work and/or live in.

### 4.5.3 Foreign markets

Even though there are no borders between the European member states there are differences between European markets. Between the European member states there is a free movement of
goods, persons, services and capital. \(^{176}\) Therefore markets in other European countries would be easy
to enter. The European Union have removed many barriers to open the market for all its member
states. These barriers are customs duties, discriminatory taxation, quota systems and subsidies. \(^{177}\)
But there are also matters such as whether or not a certain product or service will be a success. To
know this a company has to know the market he is working in. He has to understand the needs of the
people in the market. \(^{178}\)

The construction companies may not know the market in other countries. This might be a
problem. It is therefore important that a construction company explores the market that they want
to work in. \(^{179}\) A good market exploration will help getting to know the market in terms of economic,
legal, environmental and social aspects.

A foreign market can be difficult even for the markets close to their secure own country. Other
countries mean another culture and that means different ways of working. It can therefore be
difficult to go abroad when the knowledge isn’t available. In § 4.4.2 the taxes and laws were
discussed. This is an important part of the market exploration.

Because the construction market is mainly a local affair (except with border areas) it can be hard for
construction companies to build in other countries. They miss the network they have in their own
country. Also the suppliers are different and they have to make new agreements with new suppliers.

When a construction company operates near the border it can be interesting to cross the border. In
the east of The Netherlands there is an increase in German construction companies building
dwellings. \(^{180}\) The standards German construction companies are different from Dutch contractors.

There is a saying in German that is: The Dutch build for 30 years, Germans build for ever. With thicker
walls, better insulation and more energy efficient systems Germans have a higher standard than
Dutch contractors. The costs of these high standards are comparable with costs of the standards of
the Dutch contractors. Therefore Germans near the border are more often invited to The
Netherlands. The border area is interesting as the markets there don’t vary much from each other.
Therefore border areas most of the times are a mix between 2 companies working there. As
discussed in paragraph 4.1.3 a cross border interest can be a reason for procuring under the
threshold. Not only prestige projects, but also projects near the border might be interesting for
foreign construction companies.

It is important for any company to understand the market they want to operate in. Different needs,
taxes, laws, cultures and people can be experienced as difficult. Construction companies have to be
aware of these possible obstacles before entering a foreign country.

**4.5.4 Conclusion obstacles**

When working abroad a construction company might face difficulties. Besides the language barrier,
which is the most obvious, there are many other aspects that need to be taken in consideration in
order to successfully work abroad. With the cultural differences the company needs to be aware of
the 5 aspects from § 4.5.1 which can change per country and organization. In figure 4.5 four
countries are mentioned with the 5 cultural aspects. It shows the diversity within these 4 countries
and for other countries this will be different as well. These national cultural differences translate
itself to the organizational culture.

Another aspect a construction company needs to be aware of when going abroad is the tax system.
Depending on the legal structure of their foreign expenditures taxes need to be paid in both
countries of origin and abroad. Thanks to European regulations the social system is valid throughout
the member states. The construction company need to decide in which country the set this up.

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176 Consolidated version of the treaty on European Union, Part I, Art. 3 Sec. 1
177 S. Arrowsmith, The law of public and utilities procurement, p. 121
178 Clegg, S. Managing and organizations, p. 324
179 Essers, M.J.J.M, Aanbestedingsrecht voor overheden, p. 88
180 Financieel Dagblad, 18 juli 2008, “Nederlandse markt ligt open voor de Duitse aannemerij”
Legislation is different in each member state. When working abroad the national regulations need to be used. If these are unknown it might be difficult to work abroad. Also the unknown foreign markets can be difficult. Understanding these foreign markets will help to adjust in a foreign country. Exploring the foreign market helps to understand the needs and means of the foreign country and this will help during the project. While working abroad might be interesting for a company to broadening their working area there are obstacles to overcome. The construction company needs to take these obstacles in mind in order to successfully work abroad.

4.6 Project management control

Even through this has not been derived from the interviews, 5 aspects of project management will be discussed. During my study at the Delft Technical University these aspects have been discussed on multiple occasions. Because this has been used in different courses at the Delft Technical University I have adopted this in my research. These aspects are: money, organization, time, information and quality. These management aspects can be taken in consideration when looking at project management. This research focuses on one time projects abroad through European procurements, these aspects can help to improve the project on multiple levels. If project management can be improved, working abroad for a single project might be more interesting. When these aspects are clear and taken in mind the project will rather be done better. Chances working abroad will increase by understanding these 5 management aspects.

4.6.1 Money

The first aspect that is important for project management is money. During a construction project money is an important aspect throughout all the phases. The aspect money is also related to the aspect quality. The quality of a building determines the money people are willing to pay for and that has an immediate effect on the buildings revenues.

The costs are the money needed to realize the product. During construction these costs are: material, equipment, organization, employees and capital. Also the exploitation costs of a building need to be taken in consideration. A building is not for consumption but for long term use. Not only the building costs during construction are important but the costs when operating the building need to considered to control the project. After a project is realized the building will be used. The costs for operating the building are determined by a few factors: returning costs, energy costs, maintenance costs, administrative costs and building specific costs. Whoever will be in charge of operating the building need to calculate these costs.

4.6.2 Organization

The second aspect is the organization during a project. In each project the roles of each involved actor can be different. During construction a lot of parties are involved. Each of these parties has a different role in the process. A good organization of these different actors is crucial for the end result and therefore the quality of the project.

First the organization model needs to be chosen. Choosing an organizational model determines 4 critical factors: influence of the principal, division between development and operating, dependents of the influence of market, politics and surroundings and integrating the revenues of the project during procurement. These 4 factors can be translated in the following organizational models: design and built, project development, total development and strategic cooperating. After the organizational model is chosen it needs to be put in contracts. These contracts are binding for all parties during the project. The contract commits each party to each other. Within these contracts the

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181 J.W.F. Wamelink et al, Inleiding Bouwmanagement, p. 49
182 J.W.F. Wamelink et al, Inleiding Bouwmanagement, Chapter 13 p. 323-355
relationships and the responsibilities are described. This way everybody knows what to expect from each other.

Each project needs to be looked at with a fresh perspective. This way the organizational model and the contract model is the right one for each project.\textsuperscript{183}

### 4.6.3 Time

The third aspect during project management is time. When time is not considered a project might take too long and this has consequences. These consequences may be that the project may costs more because more time is needed. It may also mean that a building can be used later and therefore it will generate money later as planned. A good time management is important to make sure that the quality of the result isn’t under pressure. The goal of time management is to achieve the project goals and to have the right capacities for each activity. During a project the planning should always be under control and if needed stirred in the right direction. This way the time and means are best used.

When creating a planning for a project it is helpful to phase the project. When a project is divided in phases the project is better controllable and better to oversee. Where each phase is still connected with each other the planning within phases is better controllable. For each activity in each phase needs to be asked when this will be finished and when can it start. By asking these questions the planning can be created.

Another aspect of time is the life cycle of the building. This time aspect is important for principal, operator and user. There are 3 different life cycles for a building: Technical life cycle, Functional lifecycle and economic life cycle. The technical life cycle is the time in which the object can supply the technical and building physical performance which is needed in order to use the object. It has to ensure the safety and health of the user. The functional life cycle is the time the object meets the demands of the users in order to function. The economic life cycle is the time where the income of the object is higher than the costs for the owner. During construction the planning needs to be controlled. During the operation the time of each life cycle needs to be kept in mind. This way the time aspects is best managed.\textsuperscript{184}

### 4.6.4 Information

Because the building process is a complex process the information is large. Information is the fourth aspect for managing the project. The goal of information management is to avoid misunderstandings. The information during a project needs to be recorded so it can be used properly. Not all information can be controlled, some things are orally discussed. It also depends on the needs of the principal, the kind of project, the contractual agreement and the trust in each other professional.

Receiving information during a project makes it possible to make decisions based on that information. This has consequences on the costs of the project. During a project the information is becoming more and more. The influence on the costs is becoming less as the project is continuing. Information is created from studies done by the parties each separately and by meetings with the parties together. The information exchange is important so all parties are aware of the activities and agreements. To avoid problems the information should be: of the right quality, processed properly and communicated well and on time. There are different tools which can help to manage the information. Using this makes the information more manageable. If information is not managed well this might lead to problems between different involved parties. Agreements about information management are therefore important during projects.\textsuperscript{185}

\textsuperscript{183} J.W.F. Wamelink et al, Inleiding Bouwmanagement, Chapter 5 p. 104-137
\textsuperscript{184} J.W.F. Wamelink et al, Inleiding Bouwmanagement, Chapter 11, p. 273 - 303
\textsuperscript{185} J.W.F. Wamelink et al, Inleiding Bouwmanagement, Chapter 7, p. 157 - 176
4.6.5 Quality

The last aspect of project management is quality. Quality is a broad concept and is related to its properties and function. When judging the quality it can be separated in the quality of the process during production and the object itself. For a project the quality of the process is just as important as the final product. During a project quality can be seen as achieving its goals on planning, budget and the original question. Where this question might have changed during the project the results may still be of a good quality for the principal. The satisfaction of the principal is also depending on the functionality for the future of an object. The functionality of a building is important while it is operating. This functionality might be a problem during construction as some measures do not fit the budget. The people involved during a project determine the quality of the end result. When ambitions are high this will end probably in high quality. The people interested in the end result also have a lot to say about the quality. Their interest in the result makes it important to listen to which will probably be good for the quality.

The quality aspects on which a building can be measured are: Technical quality, sustainable quality, functional quality, esthetical quality and economic quality. The technical quality is the way the building is built and how much maintenance it needs. The sustainable quality is about the life cycle of the building and also about the environmental tax of the building. The functional quality is the way the building can be used for its supposed activities. The esthetical quality is about the beauty of the building and the spatial visual quality. The economic quality is the investment value of a building. The brief describes the desired quality. The brief makes it also possible to control the quality during projects. The brief describes all the needs of the principal and the end user. It gives a good overview of the aimed result. It has the user demands, functional and performance demands, the expected image, the internal conditions and external demands and conditions. During the project it might happen that certain aspects of the brief might not be feasible or going another way is just better. Therefore there are different phases during a project in which the brief is adjusted. This way the process can be stirred and the quality is better managed.

It is important to stir the project so that the quality of the result will be as good for the principal, the operator and the users as possible. During projects it can be difficult as quality can be seen differently from the perspective of the client of the perspective of the user.  

These 5 management aspects must be taken into consideration in order to control the project. Because construction companies don’t go abroad for just one project (through European procurements) these aspects can help them to evaluate each project. With the help of these aspects they can get a better grip on the project and foreign projects could be more interesting. It is important to control these aspects as they determine the result of the project. This is for both national and international projects applicable.

4.7 Conclusion

With the help of the interviews the different ways of going abroad and the obstacles were discovered. The results of the interviews where just a broad view on the subject but gave a good view on the current situation. With the help of the literature these aspects were looked at closer. These aspects will be used while creating the survey.

4.7.1 Summary ways of going abroad

For a construction company there are multiple ways of expanding their operating field outside their known territory. The following ways of going abroad were discovered:
- Subscribing to a European procurement.
- Partnering a foreign party.

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186 J.W.F. Wamelink et al, Inleiding Bouwmanagement, Chapter 10, p. 234 - 272
- Expertise with certain procedures and methods.
- Expanding by starting a subsidiary.

Each of these ways of going abroad has different reasons to choose. Sometimes a construction company might be invited to a foreign country because of the expertise they developed. It might also be possible to go abroad because the organization has expanded abroad by having offices there. With the European procurements this is not an immediate reason to go abroad. A construction company can choose to subscribe to a procurement. Because of the competitive principle each construction company should get the same opportunities in each member state, this should also be accomplished with the publication requirement.

With the different procedures of procuring the procuring entity has some flexibility in procuring. As long as they notice all their requirements according to the specified regulation they have a lot of flexibility during procurements. In appendix II a table is shown which shows the questions that where answered during this chapter about ways of going abroad. These ways a construction company can go abroad were derived from the interviews.

### 4.7.2 Summary obstacles

There are many difficulties companies can find on their path when working abroad. In short the following aspects must be taken into consideration when they want to work abroad:

- Cultural differences
- National legislation/taxes/social security's/insurances
- New market to explore

Besides these obstacles there are the 2 most obvious obstacles: different language and extra costs for transportation of employees, equipment and materials. These 2 aspects are not described in this chapter but will be used in the rest of the research.

Some obstacles are more difficult to overcome than others. Taxes, insurances and social aspects are more regulated throughout the member states more and more. This removes barriers for going abroad. But language and cultural differences might always be present. These barriers must be eliminated on forehand or be just dealt with during the work activities.

The European commission tries to set a standard on legislation for all their member states. As long as this is not yet fully accomplished it is difficult to work in foreign countries for construction companies.

### 4.8 Construction Companies

The ways of going abroad and the obstacles are discussed in the previous chapters. To understand the construction companies their activities will be looked at. This paragraph describes the Dutch construction market and the national and international activities of the construction companies. Because there isn’t much literature on construction companies their activities will be looked at from their financial perspective. This way it becomes clear which, of the ten largest, construction companies has how many activities abroad. Using their total turnover and dividing this in foreign and national turnover shows the separation of activities. This shows that construction companies have foreign activities, but apparently not because of European procurements.

With the open borders in Europe it would be easier for construction companies to expand their work field abroad. In The Netherlands the residential and non-residential construction market counts for almost 50% of the construction market. Civil engineering and other sectors accounted for 17% and 37% respectively.

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187 Using their financial figures of the 2009 annual reports
188 Deloitte, European powers of construction 2009
Taking this into account it is easy to say that the Dutch market is not a very open market to enter as a foreign construction company. Residential and non-residential buildings are subjected to a lot of Dutch regulations. These regulations are set by the government. Companies going abroad need to know all the regulations which can be a difficult and time consuming job.

Another difficulty for construction companies to go abroad is that in most countries there is already a satisfied market for construction. Almost all European member states have big construction companies that are willing to do the big projects. Because these projects are in their own country they have an advantage on foreign companies.

Looking at the 2009 annual figures (table 4.7) of the 9 biggest construction companies it is shown that almost all of them operate outside The Netherlands.

The companies that are specialized in certain methods get most of their turnover from foreign activities. Companies like Van Oord and Boskalis are known worldwide for their dredging skills and that is where they get most of their turnover. Ballast Nedam only goes abroad with activities based on their specialties in civil engineering. Because they focus on getting turnover from projects that use their specialization they get most of their turnover abroad.

The other construction companies get most of their turnover from activities in The Netherlands. Some companies like Ballast Nedam and Dura Vermeer only work in The Netherlands. The only exception is the BAM group. Because they have a lot of subsidiaries in the UK they get a lot of turnover abroad. But still, with 48%, The Netherlands is the country where they get the most turnover.

Most construction companies have activities abroad. The turnover is related to the activities they do. If they developed certain methods they will rather be invited for projects abroad.

Although most construction companies have spread their activities outside The Netherlands most of the turnover is earned in The Netherlands. This is mostly to blame on the local character of building. The construction market is subjected to a lot of rules and regulations. Therefore it can be difficult to set foot in another country.

<table>
<thead>
<tr>
<th>Name</th>
<th>Net profit in € mln</th>
<th>Turnover in € mln</th>
<th>Turnover NL</th>
<th>Foreign turnover</th>
<th>Percentage NL</th>
<th>Percentage Frn</th>
</tr>
</thead>
<tbody>
<tr>
<td>Koninklijke BAM Groep</td>
<td>31.3</td>
<td>8,353</td>
<td>4,009</td>
<td>4,344</td>
<td>48%</td>
<td>52%</td>
</tr>
<tr>
<td>Volker &amp; Wessels</td>
<td>91</td>
<td>4,419</td>
<td>3,228</td>
<td>491</td>
<td>85%</td>
<td>11%</td>
</tr>
<tr>
<td>Heijmans</td>
<td>-40,4</td>
<td>3,079</td>
<td>1,955</td>
<td>1,114</td>
<td>64%</td>
<td>36%</td>
</tr>
<tr>
<td>TBI Holdings</td>
<td>15.5</td>
<td>1,982</td>
<td>1,933</td>
<td>40</td>
<td>98%</td>
<td>2%</td>
</tr>
<tr>
<td>Royal Boskalis Westminster</td>
<td>227.8</td>
<td>2,175</td>
<td>316</td>
<td>1,859</td>
<td>15%</td>
<td>85%</td>
</tr>
<tr>
<td>Van Oord</td>
<td>120</td>
<td>1,424</td>
<td>254</td>
<td>1,170</td>
<td>18%</td>
<td>82%</td>
</tr>
<tr>
<td>Ballast Nedam</td>
<td>6</td>
<td>1,384</td>
<td>1,272</td>
<td>112</td>
<td>92%</td>
<td>8%</td>
</tr>
<tr>
<td>Strukton</td>
<td>0.8</td>
<td>1,358</td>
<td>1,368</td>
<td>X</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Dura Vermeer</td>
<td>15</td>
<td>1,178</td>
<td>1,178</td>
<td>X</td>
<td>100%</td>
<td>0%</td>
</tr>
</tbody>
</table>

Table 4.7: profit & turnover for biggest Dutch construction companies (source: annual reports 2009)

189 This is regulated in the Dutch "Bouwbesluit" created by the Ministry of Housing, Spatial Planning and the Environment.
190 Looking at the figures published in Deloitte, European powers of construction 2009
191 Information collected from the 2009 Annual reports of the 10 biggest construction companies.
192 Profile Ballast Nedam presented in the annual report 2009
193 From the website of the companies, after the credit crunch they rejected all their foreign activities.
Chapter 5: Survey

This chapter contains the analysis that was done after the survey had been filled out. The survey had as a goal to determine why construction companies do not go abroad through European procurements. In addition the survey looked for answers how construction companies regard work in foreign countries. Firstly the method of obtaining respondents and the structure of the survey will be discussed. From paragraph 5.2 the results of the survey will be discussed.

With the highest average score the foreign legislation is ranked highest as a reason for not going abroad.
§ 5.3.1
5.1 Survey
The interviews showed the different ways a construction company might go abroad and the obstacles they might face. The literature helped to understand these ways of going abroad and obstacles. In appendix II a figure is shown with the link between these research components. Now the ways of going abroad and the obstacles are clear this will be verified with the construction companies. To verify these outcomes a survey has been done. In this survey working abroad through a European procurement is central. This research focus is: if the European procurement law makes it easier to work abroad. After the interviews it became clear that this is not the case. Construction companies do not go abroad just for a project acquisitioned through a European procurement, they have other ways of going abroad.
With the help of the survey the reasons why the construction companies are not going abroad through European procurements will be searched for. This survey will also help to understand which of the found obstacles are most critical for not going abroad through European procurements.

5.1.1 Obtaining respondents
The selection of the candidates can be done by 2 methods, randomly or by selection.\(^\text{194}\) When candidates are chosen randomly they are chosen by coincidence, everybody has the same chance to be chosen. If candidates are chosen with selection the selection is not done at random. Then a selection is done for potential candidates beforehand.\(^\text{5}\)
For this research the survey is made for a specific group of people. Not everybody has knowledge about European procurements. And certainly not everybody has used or been involved in European procurements. Therefore the possible candidates are randomly selected within the group of people with knowledge and/or experience with European procurements.
The selection of the candidates is done according to the list of selection criteria that I made. This list was made based on the following criteria:
- Top 10 biggest Dutch construction companies
- Construction companies from all provinces
- Special attention to construction companies near the border
- Both big (1000+ employees) and small (1-3 employees) companies from all provinces
- A selection of all different kinds of construction companies (construction, civil, infrastructure, ground, technic)

According to Baarde en de Goede the best method is first to send an introduction letter to potential candidates. Because of the time restraints of the study I will immediately go to the next step of making contact by telephone. With the help of Burdock Bouw & Infra (BBI) different construction companies were found. For finding potential candidates the network of BBI was used. With regard to the criteria list, shown above, all kinds of companies were approached. In some cases BBI did not have certain types of companies in their network. The remainder of these companies were supplemented with the help of the Dutch phonebook. By searching different criteria remaining types of companies were found. Even though not all construction companies in The Netherlands were approached it was important to have a good cross section of the types of construction companies. So when all criteria where matched this was enough for the survey.
This selection resulted in a list of 80+ companies. The first contact was made by calling all these potential candidates. When calling I introduced myself, the subject of the survey and the reason for the survey.\(^\text{196}\) From the candidates who were willing to participate in the survey their information (email address, name, company they work for) were logged. During these phone calls the candidates were promised anonymity in the survey. They were also told the estimated time of the survey (10-15

\(^{194}\) D.B. Baarda, M.P.M. de Goede, M. Kalmijn, Basisboek enquêteren, p. 88
\(^{195}\) D.B. Baarda, M.P.M. de Goede, M. Kalmijn, p. 97
minutes). And they could have the results of the survey if they wanted. These promises made it more attractive to potential candidates to participate in the survey. By calling the company the first contact was made. This also resulted in getting a contact person within the company. The choice of a potential participant seems to be selected. But it is done rather randomly within a selected group. Because of the criteria the company that was found first, meeting the criteria, was selected. After the companies were approached by telephone, a couple of types of companies weren’t willing to cooperate so other companies were searched. This was done with the help of the phonebook. This continued until all types of companies were present on the survey list. It ended with 30 people willing to cooperate.

5.1.2 Structure of the survey
The survey starts by asking whether the respondents’ organization does projects abroad through European procurements. If they do the survey continues to find out whether this makes working abroad easy or difficult and where the obstacles are. If they don’t the survey continues to find out why they don’t and where the obstacles are according to them. The survey is set up using the literature that was studied. In figure 5.1 a scheme is shown with the path of the survey. At the end of the survey some background questions are asked. This is done at the end because if the respondents decide to break up the survey the important information was already been asked. The background information is about the person itself and the organization he/she is working for. Most of these questions are not required to be filled in to continue. This because the respondent can than decide to give that information.

![](image)

Figure 5.1: Structure of the survey

5.1.3 Software
The survey is created with the help of NetQ. This web based software is available at the University for employees only. Students can buy it for a small compensation at surfspot.nl. NetQ is a company based in Utrecht for the Dutch and English speaking market and based in Zurich for their German and French speaking market. For NetQ their vision is based on the ideology that companies, institutions and individuals must be able to gather vital information rather easily. For them the online survey is the answer. Each year they reach millions of people throughout Europe.

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196 D.B. Baarda, M.P.M. de Goede, M. Kalmijn, Basisboek enquêteren, p. 76
The software NetQ provides is web based, which means that it’s all online and nothing needs to be installed on your computer. The design of the software is based on the Microsoft Office software which means “what you see is what you get”. The graphic user interface is therefore as user friendly as possible.

5.1.4 Respondents
As already explained the respondents were approached with the question if they were willing to fill in the survey, this resulted in 30 companies willing to do this. From the 30 surveys sent 33% were filled in. This is 10 people. Also 5 people mailed that they weren’t able or willing to fill in the survey. The 33% of the received answers were, fortunately, from different kinds of construction companies. The criteria for the different kinds of companies can be found in § 5.1.1.
The response from the 33% has been used for the statistical analyses. The survey questions can be found in appendix III.

After receiving answers from the correspondents the data could be analysed. This analysis can be found in the next chapter. The analyses had as a main goal to recover the reasons why companies do not work abroad through European procurements. The second goal was to see, if companies work abroad, where the obstacles are and how they deal with this. With the help of the software Excel the data has been analysed. This software is available for TU Delft students to download from Blackboard.

5.2 Survey response
In the previous paragraph the practical research has been explained. It started with the interviews and from there went to the literature study. The research was finalized with the survey which had the interviews and literature as starting point. With the help of the gathered information the survey has been created.
The survey had a scope of 30 people. From these 30 people 10 people filled in the survey. Another 5 people thought that the survey wasn’t interesting because they didn’t work abroad or didn’t do procurements. These 5 people cancelled by email. In table 5.1 the response statistics are shown.

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
<th>Amounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total scope</td>
<td>100%</td>
<td>30 people</td>
</tr>
<tr>
<td>Response</td>
<td>33%</td>
<td>10 people</td>
</tr>
<tr>
<td>Cancellations</td>
<td>17%</td>
<td>5 people</td>
</tr>
<tr>
<td>No reaction</td>
<td>50%</td>
<td>15 people</td>
</tr>
</tbody>
</table>

Table 5.1: Response survey

The first question of the survey was:

Is the organization you work at actively acquiring foreign projects by participating in European procurements?

This is immediately the most important question because from this question the answers determine the direction for the rest of the survey. It also is the question which the whole survey is built around.

From the respondents 90% answered no to the first question and only 10% answered yes if they worked abroad through a European procurement.
From the 90% that answered no 25% of the respondents answered yes to the question if they do projects abroad, not through a procurement.
In figure 5.2 and figure 5.3 the answers are shown from the first questions. This means that from the respondents only 10% worked abroad through a European procurement. From the 90% that didn’t another 25% worked abroad through other ways.

This survey had as a goal to see whether construction companies worked abroad through European procurements. The results from the interviews showed that this is not the case. The first question already confirmed this.

5.3 Working abroad

In this survey there is a division between working abroad and not working abroad. By grouping the different subjects of the research the answers are better to process. This first part will discuss construction companies working abroad.

5.3.1 Abroad by European procurement

The 10% that answered that they went abroad through European procurements quickly ended the survey. After finding out if they went abroad through European procurements the survey continued to find out if they have any problems while doing this. The answer was no, they have no problem what so ever when they go abroad. The survey also discovered that they didn’t have any problems going abroad because they have a lot of experience working abroad.

Note that the respondents, who answered this question, were big construction companies that are in the top 10 of biggest in The Netherlands.

5.3.2 Abroad otherwise

The survey showed a small percentage that is working abroad not through European procurements. To validate the information obtained in the literature and the interviews the survey went deeper into this subject.

The 25% that worked abroad, not through a European procurement, is doing this differently. The ways they are working abroad are:

- Subsidiary
- Own developments abroad
- Through relations in The Netherlands and abroad (partnerships)

197 D.B. Baarda, M.P.M. de Goede, M. Kalmijn, Basisboek enquêteren, p. 74
These answers show that the information gathered from the interviews was correct. Construction companies go abroad through subsidiaries and partnerships according to the answers. The respondent who answered that they go abroad with own developments is a construction company established throughout The Netherlands with a lot of offices near the border. It has its own real estate development department. They only have offices in The Netherlands but occasionally they go across the border for projects because they are established near the borders. With their own real estate department this makes it easier to do because they do not depend on other real estate developers.

To see whether the construction companies face any difficulties the survey continued asking about the difficulties they face while working abroad. Table 5.2 shows the answers of the respondents when asked what they find most difficult when working abroad.

<table>
<thead>
<tr>
<th>Answers</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Cost of transportation of equipment/materia/staff</td>
<td>14%</td>
</tr>
<tr>
<td>Little knowledge of foreign laws</td>
<td>43%</td>
</tr>
<tr>
<td>Other language</td>
<td>14%</td>
</tr>
<tr>
<td>Different culture</td>
<td>14%</td>
</tr>
<tr>
<td>Lack of knowledge abroad</td>
<td>14%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 5.2: Difficulties working abroad

Here you can see all the answers given as a reason which working abroad difficult. The main reason is the little knowledge of the foreign laws. With 43% this is the main reason of the difficulties construction companies face working abroad. So even if construction companies work abroad they are exposed to difficulties they have to deal with. The foreign laws are the problematic.

5.4 Not working abroad

This paragraph is about the respondents who answered no to the question if they worked abroad. From the respondents 90% of the respondents answered no. During the interviews it became clear that this is also the case. The survey tried to discover why construction companies do not go abroad through European procurements.

5.4.1 Answers on survey

The first question revealed that 90% of the respondents do not go abroad through European procurements. From that 90% another 75% doesn’t work abroad at all. The reasons why the construction companies don’t work abroad were shown with the survey. After the respondents expressed their position on working abroad they were asked to rank the reasons why they didn’t work abroad. The following aspects where used:

- Legislation, all legal rights and obligations in a country.
- Time-consuming, the extra time when going abroad
- High cost, the extra costs that come with working abroad.
- Method of procurement, the way something is procured can be different in other countries.
- Cultural difference, within a country or organization concerning the ways of working and executing the project.
- Language barrier, working abroad means working in a country with different languages

198 These aspects where gathered from the interviews and literature. The scheme in appendix II illustrates that these aspects where found during the interviews and the literature and how these aspects are linked.
Knowledge Abroad, missing of certain knowledge which is needed to successfully work abroad.

No right quality offer, not able to offer the quality a construction company is used to offer in their country of origin.

On a scale from 1 to 10, where 1 is the least important and 10 the most important reason. They were asked to rank each aspect. In table 5.3 the different aspects are shown with the highest, the lowest and the average rank.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Average</th>
<th>Highest</th>
<th>Lowest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislation</td>
<td>7.3</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>Time-consuming</td>
<td>5.8</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>High cost</td>
<td>5.5</td>
<td>10</td>
<td>1</td>
</tr>
<tr>
<td>Method of procurement</td>
<td>5.3</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Cultural Difference</td>
<td>5.1</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Language barrier</td>
<td>5</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Knowledge Abroad</td>
<td>4.6</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>No right quality offer</td>
<td>3.6</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>42.2</td>
<td>66</td>
<td>12</td>
</tr>
<tr>
<td>Average</td>
<td>5.3</td>
<td>8.3</td>
<td>1.5</td>
</tr>
</tbody>
</table>

Table 5.3: Rankings per aspect

The average overall grade is 5.3, this is also known as the mean in statistics. The mean is leading and everything above the mean is interesting in this case. Each average above the mean gives the top 3 for reasons why construction companies do not work abroad through European procurements.

The top 3 consists of the following 3 reasons:

4. The legislation in other countries is difficult.
5. European procurements are time consuming, and therefore expensive to do.
6. The high costs that are linked to working abroad.

In figure 5.4 the average ranking grades are shown in a graphic. From the answers given by the respondents the 2 aspects that are decisive when choosing a European procurement are the time and costs that come with a specific project abroad. And because more time means more costs, choosing a foreign project is all about money. Also other legislation means more time to apprehend this, which means more costs.

In the annual reports the construction companies express their opinion about foreign projects. They are willing to go abroad but it has to be as financially advantageous as possible. The survey shows that the construction companies use this for choosing why they should or why they shouldn’t choose a foreign project.

![Figure 5.4: Average rankings for reasons not going abroad](image)

199 D.B. Baarda, M.P.M. de Goede, Basisboek methode en technieken, p. 314
With the highest average score the foreign legislation is ranked highest as a reason for not going abroad. The average rank grade is even 1.5 points higher than the number 2 in the top. All the respondents answered that the laws abroad are too different that this is the number 1 reason why do not go to abroad. The survey discovered this as biggest obstacle for both companies working abroad and not working abroad. The companies that work abroad still see the foreign legislation as the biggest obstacle. The companies that do work abroad are all big companies, see § 5.5.1. These companies have more financial means and have a long history working abroad. This is why then can work abroad even though the legislation is an obstacle for them.

The second reason why construction companies are not going abroad is the time consuming job that comes with procurements. In § 4.1.4 the different procedures are discussed. This showed the time consuming process of different procurement procedures from notice to awarding. During the interviews and in the literature it became clear that procurements have a habit of being very time consuming. Depending on the sort of procurement it can take a long time before the party is chosen who may do the project. The process may take a long time because multiple parties are involved and all need the same professional attention. The time consuming process is therefore the number 2 reason for construction companies not choosing to go abroad.

The third reason is the high costs that come with working abroad through European procurements. This has strong links with the number 1 and 2 reasons. Not knowing the foreign laws has as a consequence that they have to hire people or to research it their self, which means more man-hours and therefore more costs.

The construction company then has to transport equipment, material and staff abroad which is expensive. If they hire equipment abroad this also means more costs. With other countries come other taxes, social and insurance systems. To understand these can take a lot of time and therefore more costs.

There is also a similarity between the reasons why people do not go abroad and the difficulties the construction companies face who are going abroad from paragraph 4.5. This is the lack of knowledge about the foreign laws. Both score highest in the survey. For the construction companies who are working abroad and the companies who choose not to go abroad this is the main obstacle to overcome.

The top 3 least important reasons why construction companies do not go abroad are:

1. They fail to provide the right quality standards they are used to offering clients in The Netherlands.
2. They do not have the knowledge for working abroad about the market and network and suppliers.
3. The language barrier that comes with working abroad.

When looking at these 3 bottom reasons it shows that construction companies are not afraid of going abroad. They know that, in most of the times, they can provide their clients with the quality they're used to in The Netherlands. From all the rankings this has the lowest rank. It also shows construction companies are less afraid of the unknown that comes with working abroad. Different markets, no network and other ways of working are not highly ranked in the survey. These aspects are still obstacles because all the respondents gave them low ranks but the average is lower than the others.

In the interviews the interviewee made it clear that the language barrier was a big difficulty for working abroad. The survey shows that the construction companies don't see it that way.

When the respondents were asked if they had any comments how working abroad can be made more attractive a few respondents answered. They answered that it would be more attractive when
the European laws and regulations would be standardized throughout Europe. This is happening but the process of straightening all the rules and regulations is a slow process as this cannot be done at once.

5.4.2 Answers by e-mail
There were some people who cancelled on the survey by sending an e-mail. The interesting aspect of this is the reason they gave for cancelling. Some of the cancellations came from big construction companies in The Netherlands. As a reason they gave that due to the economic circumstances they pulled back from foreign countries. A few years ago they were active on the international market but since the economic crisis it was not profitable for them. Therefore they didn’t feel the survey applies to them and they didn’t want to fill it in.

This aspect is not taken in the survey but must be taken into consideration. The economic crisis has made a deep impact throughout the world and therefore also the construction industry has suffered. About 2 years ago the economy was given healthy signs. But since the end of 2008 this has changed. Nowadays more construction companies have seen their revenues reduced and therefore they must make a choice when it comes to projects.

After the survey it was discovered that the high costs associated with European procurements is the number 3 reason for going abroad. With the economic climate being so bad choosing a European procurement abroad will certainly help with their decision. While European procurements are time consuming and money costing processes this may be the reason why more companies choose to focus on their national market.

5.5 Organizational statistics
The previous chapters were about the part of the survey that searched for the answer on the main research question: Are construction companies going abroad thanks to European procurements? This part will discuss the second part of the survey about the organizations that filled in the survey and what link there is with their given answers.

In this chapter still all the respondents will stay anonymous but the answers they gave will be used for the analyses\(^\text{200}\).

First the construction companies who filled in the survey will be discussed. After that the link will be made with the answers in the first part of the survey.

5.5.1 Respondent statistics
Different kinds of construction companies were approached, as discussed in § 5.1.1. To try to get a good overall response construction companies different from size were approached. In figure 5.5 the size of the companies who filled in the survey are shown. Here you can see that a good section was reached. The respondents differ from each other in size. Companies having 1-25 employees to companies having more than 500 employees they filled in the survey.

\(^{200}\) D.B. Baarda, M.P.M. de Goede, M. Kalmijn, Basisboek enquêteren, p. 23
The survey also showed out what the companies do as a core business in the construction industry. There are different kinds of disciplines a construction company can be in. The choices they had where:

- Construction
- Infrastructure
- Ground works
- Technics
- Other, namely

In this survey 90% of the respondents are in construction and 10% is in infrastructure.

Another question about the company itself is the countries they are in. During the survey the respondents were asked if the company they work for has any offices abroad and where. With these questions the information gathered during the interviews and the literature study could be verified. In figure 5.6 the different countries that the respondents are in are shown. Here you can see that England and Germany are the number 1 countries for Dutch construction companies to have a subsidiary in.

The respondents were free to fill in their function when asked. From these answers a division was made between a management function and a non-management function. This was done because employees with management functions are closer to the decision making when it comes to choosing projects. The answers given by someone in a management function may be different from somebody who only knows the company but isn’t close to the decision making process.
In figure 5.7 the division in management or non-management functions are shown. Because some of the respondents didn’t fill in their function there is also an unknown column. The graphic in figure 5.7 shows an almost equal division between functions. The management and non-management functions answered respectively 36% and 28%.

![Figure 5.7: Function division](image)

### 5.5.2 Answers survey with statistics respondents

The reasons why construction companies do not go abroad are discussed. Also the obstacles they may encounter when working abroad are discussed. From the respondents their background and activities are explained.

To see whether there is a connection between the answers from the respondents and their background this paragraph will discuss this issue.

The analyses will be done with the two parts of the survey. On the one hand there are the reasons why not going abroad and the difficulties companies may find when going abroad. On the other hand there is the type and size of the organization and the function of the employees who filled it in.

The following variables will be analysed.

- Size and type of company against working abroad or not.
- Size and type of company against reasons for not going abroad.
- Function of employee against the ranks given in survey.

The results from the survey are shown in table 5.4. On the horizontal rows the size and type of the companies of respondents are shown. On the vertical columns the questions are shown. The answers in this cross table are given in percentages\(^\text{201}\). This cross table has the answers as starting point and will compare this with the types of companies.

First the sizes of the organizations of the respondents are shown with the answers given on the questions: if they worked abroad through a European procurement, if they work abroad at all, and if their organization has foreign offices. The same questions are compared with the types of companies.

The table clearly shows the respondents who are working abroad through European procurements are companies larger than 500 employees and their core business is infrastructure.

From the respondents who answered that they work abroad, 50% of the companies are smaller than 26 employees.

From the respondents only the bigger companies (larger than 500 employees) have offices outside the Netherlands.

\(^{201}\) D.B. Baarda, M.P.M. de Goede, Basisboek methode en technieken, p. 306
All the infrastructure companies have offices outside the Netherlands. But only 12% of the
construction companies have offices outside The Netherlands.

<table>
<thead>
<tr>
<th>Size</th>
<th>Working with EU proc.</th>
<th>Working abroad</th>
<th>Foreign countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 till 25</td>
<td>NO</td>
<td>50%</td>
<td>NO</td>
</tr>
<tr>
<td>26 till 50</td>
<td>NO</td>
<td>0%</td>
<td>NO</td>
</tr>
<tr>
<td>51 till 100</td>
<td>NO</td>
<td>0%</td>
<td>NO</td>
</tr>
<tr>
<td>101 till 500</td>
<td>NO</td>
<td>0%</td>
<td>NO</td>
</tr>
<tr>
<td>&gt;500</td>
<td>YES</td>
<td>50%</td>
<td>YES</td>
</tr>
</tbody>
</table>

Table 5.4: Crosstable of answers against company types

In appendix IV a table is shown where the rankings for the reasons why not going abroad are shown. This table has on the left column the same variables as table 5.4, the different sizes and types of companies. On the upper horizontal row the variables are shown which represent the aspects for not going abroad. During the survey these variables were ranked for what was the most important reason not going abroad through a European procurement.

The size of companies is shown twice. These are the same results with the difference that the colour filling has a different meaning. The upper first part shows the highest and lowest answers per group of employee size. The second part shows the highest and lowest scores per question. They both also have a column (upper part) or row (lower part) that shows differences between highest and lowest scores. This is coloured in grey.

Looking at the questions from the company size perspective. It doesn’t matter what size the company has. From the smallest to the biggest they all rank the different legislation in other countries the highest. The lowest scores are generally given to the possibility that they couldn’t offer the right quality abroad.

In the group 1-25 employees the cultural differences scores the lowest. The group 26-50 employees have the highest differences between their scores. With a 10 as highest and a 1 as lowest the difference is 9 points. The group with the smallest differences between their scores are the 101-500 employees, with 2,5 point as biggest difference.

When looking at the statistics from the question perspective the answers show that the respondents in group 26-50 employees rate the highest on most of the questions. But on the other hand this group rated the lowest for the values; knowledge abroad and quality offer.

The group with the fewest of employees, the 1-25 employees, made it clear that the obvious problems like, language, culture and method are the least of their reasons why they don’t work abroad through European procurements.

In both tables the group >500 employees didn’t rate these questions. Previously it was discovered that this group works abroad through European procurements. They also have offices in other places than The Netherlands. They didn’t answer these questions because they don’t have any problems while working abroad through a European procurement. Therefore the average rank grade is only available for the construction companies. The infrastructure companies do not have any problems with the European procurement law. The average results from the construction companies is already discussed in § 5.3.1.
When looking at the rating from the perspective of the function the respondent has. The grades are rated higher from people with a non-management function.
In appendix IV a table is shown where the average grade for management and non-management functions are shown.
The people who don’t have a management function rate the reasons why their company doesn’t go abroad, with European procurements, about 2 points higher. The biggest difference between the ratings of the different functions is the score from the little knowledge abroad. Here the difference is 3.75 points.
There are some scores that are close to each other with their rating. These are: method of procurement, legislation and cultural differences.
Also the both functions gave the legislation the highest score in the overall rating.

When looking at these scores there are big differences in the scores from the 2 different functions. The management functions respondents give in general lower scores when they were asked why they didn’t go abroad through European procurements. Because the employees higher in the company might have more information about the subject this might be the reason why they rate lower.

5.6 Conclusion

The survey showed numerous reasons construction companies do not go abroad. It also showed the difficulties construction companies face when going abroad. The number one difficulty is the legislation in foreign countries. The legislation has been indicated as being the most difficult aspect for companies both working and not working abroad. It’s not only the main reason for not going abroad. Even when a construction company works abroad they experience the foreign legislation as difficult. The European commission is already setting a standard for as much legislation as possible but still foreign legislation is a problem.
The time consuming process is another reason construction companies don’t choose to go abroad. It is well known that procurements may take a long time. From subscribing to the awarding of the project might take long because the public party wants to be as thorough as possible. They have to operate as transparently as possible and therefore each step must be documented and justified. This all is very time consuming.
The survey showed that the big construction companies do not have any problems with the European procurement law. Most of them work abroad and have been doing this for a long time. The biggest construction companies who work abroad are all working abroad because their infrastructure activities. Because the experience is there these companies have a lot of knowhow on foreign markets.
Where the smaller construction companies have The Netherlands as home base the bigger companies are just as much used to working abroad. Also the smaller companies don’t have the means to go abroad. Going abroad means extra costs and most of the smaller companies don’t have this financial advantage.
Even though the majority of the construction companies do not try to go abroad by acquiring projects through European procurements, they don’t feel strong about the quality loss when doing so.
The Dutch contractor thinks that they will be able to provide good quality abroad. The reasons the construction companies don’t go abroad are mostly because of external problems like other legislation, cultural differences or a language barrier.
Chapter 6: Conclusion & Recommendations

The European procurement law is a tool to open the European market.

§ 6.1.2

This chapter contains the conclusion and recommendations. The conclusions are derived from the interviews, literature and survey. With these conclusions the recommendations were made. These recommendations can be used for future procurements or for future research.
6.1 Conclusions
The conclusions from this research will be discussed here. During this research there were 2 different aspects that were important for the subject why construction companies do not go abroad through European procurements. Firstly there are other ways of going abroad. Secondly there are many obstacles when a construction company choses to go abroad. These 2 aspects were looked at closely during this research. This information has been used during the survey. The research question will be answered in § 6.1.4.

6.1.2 Ways of going abroad
Construction companies can have different ways of going abroad. The least popular is a European procurement. During this research the following ways of going abroad where discovered.

**Subsidiary**
The most common way of going abroad is setting up a subsidiary abroad. This can be done by buying an already existing company and consolidating this with the parent company. By doing this knowledge about the foreign country is already present in the purchased company. Between the European member states the treaty makes it possible to divide the taxes and the social obligations for each country the companies are in.

**Partnerships**
Some countries already very integrated in the way of working are getting into a partnership, and in some not yet. Most commonly known is the public-private partnership where a public and private party work together. This can also be done with foreign parties. Because of the equal treatment principle of the European Union a government needs to justify their reasons why they choose a specific company to partner up with.

**Expertise**
A construction company might which has developed a certain skill or method might be asked to do projects abroad. When this skill or method is so unique other countries can be interested in using this skill or method. When a company develops these skills it has a lot of knowledge on the subject. This knowledge is unique to others and very valuable.

**Procurements**
In Europe all member states have to procure their works, services and supplies above a certain threshold. All suppliers from these member states can subscribe for such procurements. A Dutch construction company can subscribe for procurements in Spain and vice versa. The European Union is eliminating as many barriers as possible to make it easier to work abroad. The European procurement law is a tool to open the European market.

6.1.1 Obstacles abroad
There are many reasons working abroad can be difficult. During the research the following reasons where discovered.

**Different ways of working abroad**
Each country has its own culture and its own ways of working. When construction companies take on work abroad this means they have to operate outside the borders. They have to work with foreign companies. The way of working may be different from what a company is used to. While the European Union is trying to set the same rules for all their member states there still is a difference in culture and national legislation.

**Communication/language**
The most understandable problem companies might face while working abroad is the language barrier. As hard as the European Union tries to be one there are still different languages in each member state. Inevitably when working in other countries other languages will be involved. When
people don’t understand each other communication becomes difficult and working will be almost impossible.

**Cultural differences**
The cultural differences from each country can be a bottleneck to work abroad. The way people think, feel and act are learnt throughout his or her life. This cultural behaviour is also involved in the organization he/she is working in. There are 5 aspects on which culture can be measured: power distance, individualism, masculinity, uncertainty avoidance and long term orientation. Each culture has a different view on these aspects and this might lead to irritation and problems when cultures are mixed in the working area.

**National legislation/taxes/social security’s/insurances**
While the European Union is straightening out most of all differences in legislation, taxes, social securities and insurances, there are still a lot of differences. The legislation in each country is different. If a company wants to work abroad they have to know the laws and regulations in order to do a good job. Taxes, social security and insurances are currently better coordinated among each member state.

Especially for construction companies the construction laws might vary for each country. Construction companies therefore need to understand these before they can build abroad.

**New market to explore**
Other countries mean new markets to work in. A company might know the market in its own country, but working abroad means a different market. When going abroad a company will probably miss its network that its used to have in its own country. They have to build it up again and gain trust in that new country.

A construction company going abroad need to this new market. The company has to explore this market on its economic, legal, environmental and social aspects. This exploration is needed to understand the market its operating in.

6.1.3 Survey
The subject of this research has been looked at from different perspectives. After the ways of going abroad and the possible obstacles where identified the construction companies where approached. This has been done in a survey. The survey looked inside the organization of the construction company to see where the problems where why they didn’t go abroad through European procurements.

The survey has been held under 30 people. These people where contacted on forehand and where willing to take the survey. From these 30 people 10 filled in the survey. With the results from these 10 people the conclusion has been made. These 10 people where all working at construction companies. But they all work in different branches of the construction industry. Also the amount of employees varied from 1 till 25 employees to more than 500 employees. The locations they are working also varied throughout The Netherlands.

From the respondents only 10% worked abroad, the other 90% didn’t. The 10% that did go abroad saw the foreign legislation as the biggest bottleneck when they went abroad.

The 90% that didn’t work abroad gave as a top 3 answers for not going abroad the following reasons:
- Legislation
- High costs
- Time consuming

<table>
<thead>
<tr>
<th>Variable</th>
<th>Highest</th>
<th>Lowest</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislation</td>
<td>10</td>
<td>3</td>
<td>7.3</td>
</tr>
<tr>
<td>Time-consuming</td>
<td>8</td>
<td>1</td>
<td>5.8</td>
</tr>
<tr>
<td>High cost</td>
<td>10</td>
<td>1</td>
<td>5.5</td>
</tr>
<tr>
<td>Method of procurement</td>
<td>7</td>
<td>2</td>
<td>5.3</td>
</tr>
<tr>
<td>Cultural Difference</td>
<td>8</td>
<td>2</td>
<td>5.1</td>
</tr>
<tr>
<td>Language barrier</td>
<td>8</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Knowledge Abroad</td>
<td>8</td>
<td>1</td>
<td>4.6</td>
</tr>
<tr>
<td>No right quality offer</td>
<td>7</td>
<td>1</td>
<td>3.6</td>
</tr>
<tr>
<td>Total</td>
<td>66</td>
<td>12</td>
<td>42.2</td>
</tr>
<tr>
<td>Average</td>
<td>8.3</td>
<td>1.5</td>
<td>5.3</td>
</tr>
</tbody>
</table>

Table 6.1: top reasons for not going abroad
In table 6.1 it shows all the reasons why construction companies do not go abroad. The respondents were asked to rate these aspects from 1 till 10. The average grade is shown in the most right column. The survey also showed companies working abroad all had infrastructure as core business. It also showed that the companies with offices in other countries than The Netherlands were also all infrastructure companies.

6.1.4 Overall conclusion
The research question asked in the begin of this research is: Are construction companies going abroad thanks to European procurements? The answer to this question is: no, they do not. There are many different ways a construction company can go abroad, European procurements are not a direct reason to go abroad for just one project. There are many obstacles a construction company has to face when going abroad and this makes it more difficult to go abroad for just one project through European procurements.
This research showed that the legislation in Europe is still the biggest obstacle when it comes to working abroad. Even though the European Union is trying to set a standard for legislation in Europe there are still too many national differences. It takes time, and therefore money, to understand the foreign legislation. Construction companies are not eager to do this. Especially with the current credit crunch the construction industry had a hard hit when it came to their activities, and so their cash flow.
The European procurement law is not an obstacle for construction companies to go abroad. Because of the European procurement law the construction companies in Europe all have the same equal opportunities to get a project. The construction companies can choose to use the European procurement law but they don’t. They do not use the European procurement law in a positive way as they can do.
Within the European Union there is no strong European construction market. Because each country has developed a strong national market this has not (yet) expanded abroad. The construction companies have a strong presents in their own country but on European scale this is still fragmented. Building is a standard procedure for most of the construction companies. As long as there is work in own country it is not interesting to cross the borders. It is only when an expertise is wanted which is not available in its own country that it will be sought across the border.
Finally, this research mainly focused on the Dutch construction market. It would therefore be useful for future research to expand this to other European and maybe non-European markets. This research can be the base for future research on the topic.

6.2 Recommendations
The recommendations are based on the founded information in this research. It will be divided in 3 levels of interested parties: the European Commission, national and the construction companies. The first level is the group that develops the rules en sees if they are executed well. The second group has to comply with the legislation from the first group. The third level has to work with the second group during procurements.

6.2.1 Europe
At this moment there is not a strong European construction market. All the construction markets are fragmented in each member state. The European Commission is trying to stimulate a common market in Europe by removing all barriers were possible. The European procurement law is an example of removing a barrier. By requiring all their member states to procure their works, services and supplies above a certain threshold they make it available for everybody in the member states. Even though the legislation is not everywhere the same this is a currently going process. It is impossible to change all the legislation at once. Equalizing the construction legislation is not feasible. Each country has its own conditions and demands. It is not possible to set a standard for construction legislation. A construction project is different in each country and this calls for specific legislation.
There always will be some national legislation which differs in each country, but when this is available in multiple languages it would be more easily accessible, and therefore less a problem. It is the task of the European commission to make this obligatory for all their member states. It is important however that the European commission always keeps controlling the compliances of the principles. A government should never favour a national company above a foreign company. The principles of the European Union are an important aspect for Europe, and this should always be overseen.

The one thing that should be done by the European commission is to make a law for languages during procurement announcements. English is the most accepted language and by setting a standard even more people and companies can be reached. The European commission can oblige their member state to use the same languages everywhere.

6.2.2 Contracting agencies

For the national procurement obliged entities there are a lot of regulations but also a lot of flexibility when they have to procure. The European commission sets the regulations for procurements and sees over it that the national procurement obliged entities comply with these regulations. This way the principles of the European Union are kept intact.

When a work, service or supply has to be procured this has to be published through the official channels. These channels are available for everybody. This way all the companies in the European member states have the same opportunities. When choosing a procurement procedure the requirements of this procurement has to be made public in the publication. You might argue that when a procurements happens under a procedure where the applicants are invited there would be a favour for national companies. The European commission and the European court of justice are overseeing that this does not happen and that everybody has the same equal opportunities.

The thresholds amounts make sure that all the procurement obliged entities have to procure. It is prohibited to phase these projects to avoid having to procure. Also projects with cross border interests have to be procured. This way the work that is available in Europe is accessible for everybody. There is, however, something the government can do in order to make it easier for foreign construction companies. The Dutch building regulations (Bouwbesluit) is only available in Dutch. A translation to English or maybe even more languages would help foreign construction companies. This applies for all European member states but it has to be made obligatory by the European commission. The national governments can already translate their national legislation as a courtesy to foreign companies. Translating their national legislation would help foreign construction companies to work there. As long as this is not obliged by the European commission the governments can hand this to the market as a gesture to open their market.

The European procurement law isn’t the issue why construction companies don’t go abroad. The reason for this has to be found with the construction companies. Even though there are a lot of rules when it comes to procurements it also removes a lot of barriers for working abroad. There are plenty of opportunities for construction companies to go abroad. The European procurement law helps these companies to go abroad. But they choose not to use it in a positive way.

6.2.3 Construction companies

The construction companies have a lot of obstacles to overcome when they go abroad. Within the company they can change some processes so they are more aware of the obstacles they face. Where legislation, taxes, insurances and social aspects are secured by governments there are some measures the construction companies can do to overcome the obstacles. Obstacles like culture, language, organizational model and contracts can be improved within the organization.

When going abroad they should be more aware of the possible cultural differences in countries and organizations. Each country has different cultures and this translates itself to the way people work. An exchange programme between construction companies for employees can help raising more
awareness. When employees exchange they both see the differences in culture and the other employees are exposed to other cultures.

When working abroad the construction companies should agree on the main language that is spoken. When all the people involved in the project speak the same language this will stimulate a better communication. A good communication will help during the process of construction to have good project.

The organizational model during a project can help to determine the controllability of a project. Choosing the right organization model will help to structure the projects organization and eliminates certain unknown elements like who makes which decision and who is responsible for what.

Decisions should be contractual agreed. This way there will be no misunderstanding and it can be used to check if everybody keeps to their agreement. The construction company is responsible for these contractual agreements in order to avoid misunderstandings later on.

The construction companies can also choose to get help from a foreign company which has the knowledge about foreign national legislation. This partnership might help to eliminate the barrier of unknown foreign national legislation.

To be more aware of the obstacles they face this research resulted in a checklist the construction companies can use. This check list can be found in appendix V. For good project management there are 5 aspects which have to be kept in mind: Finance, Organization, Time, Information and Quality. The checklist is structured according these 5 aspects. By each aspect questions can be found a construction company has to ask itself when going abroad. When these questions are positively answered the construction company is aware of the treats abroad. These questions make the construction company aware of the obstacles they might face when going abroad. In chapter 4.6 the 5 management aspects are described. This research focused on construction companies going abroad for 1 project through a European procurement. When they would go abroad for just one project the 5 management aspects can be used to control the project. The found information has been used to create the checklist together with the results from the survey.

Questions
The questions under each aspect are created with the help of the literature and the results of the survey. Each question is an open question a construction company needs to ask itself. Because each project is different the situation is different each time. Therefore the questions are open and the construction company can use it as a tool to understand their risks and obligations during a project. The questions are divided within the 5 management aspects. This gives it more structure and it helps to manage each aspect better.

At the end of the checklist a small explanation is given why this question is important. This might help them to see who this is related to each project. When choosing for a European procurement the construction company needs to be aware of some aspects. Especially the procedures determine the procurement. In the checklist the open and restricted procedure are used in the checklist.202

Actor
With each question the involved actor is also visible. Because a construction project is a complex process with lots of actors the checklist shows the actors on which this question is applicable. During the whole project this checklist can be used to see which actor is involved and on which aspects the construction company should be aware.

With the help of the checklist construction companies might be more eager to subscribe to European procurements abroad. This checklist does not only consist of the 5 management aspects but focuses on working abroad. The European Commission is trying to remove as much barriers as possible but still their European procurement legislation is not a reason for construction companies to work abroad. Being more aware of the risks abroad the European procurement law might be better used. This will be helpful creating a European construction market.

202 The negotiation procedure has not been taken into the checklist as this has been extensively discussed.
Chapter 7: Evaluation

After the research is done an evaluation is needed. This evaluation describes the process of the research. The process discusses the problems I encountered during the research. It also gives some commentary on certain issues that were a problem during the research.

“The construction companies have another perspective when it comes to giving information.”
The process of this graduation has not been going as I wanted it at the start of the graduation. In the beginning I had an idea but it was hard for me to get it on paper. Also the mixed messages I got from companies where confusing. Because I wanted to do my research as objective as possible I made the decision not to go with a company. When talking to companies both private and public parties tried to stir my research to the side which was most favourable for them. But because this research was about European procurements (public party) for construction companies (private party) it was hard to stay objective with one of them.

After talking with numerous people the subject and the problems became more clearer. First I thought of doing case studies but Mr Lousberg suggested doing a survey as this would be more appropriate for this research. Setting up a survey was much more difficult than I thought when I started it. After using literature I came to a survey which, in my opinion, should get answers on the right questions.

The second obstacle in the survey part of the research was to obtain respondents. Fortunately with the help of the company BBI I was able to contact a lot of construction companies. The people willing to do the survey were a little disappointing. But from the group that was willing the actual response was more disappointing. This might also be disappointing because I never did a survey and had high expectations.

The first group in my research are the public parties, which according to the European Union has to work as transparent as possible. The second group in my research are the private parties, in this case the construction companies. The construction companies have another perspective when it comes to giving information. The information from inside the organization is much harder to get than with the public parties. Where there is plenty of literature on the subject of procurements there isn’t much about the construction companies. Also the information from the organisational perspective of these companies is not very extensive. The biggest construction companies publish an annual report with the financial figures. The actual activities they do aren’t much discussed in official documents. Only a little news corner on their websites tells about their activities, in short.

When I started the research the credit crunch has just happened. Because my research took a little longer than I expected the construction companies changed their strategies because of the credit crunch. A lot of Dutch construction companies decided to sell or reject some of their foreign companies. They changed their strategy from something like: “having a strong presence in Europe” to “focusing mainly on the Dutch market”. This made this research sometimes difficult. Especially when it came to finding respondents for the survey. Some people where a little annoyed or even offended when I explained the subject. The construction companies went through a hard time and apparently the employees felt this as well.
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- Aanbestedingsregelement Werk 2005
- Bouwbesluit 2003

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- NABU – Robert Poelhekke, Director
- Burdock Bouw & Infra – Johan Dekker, Manager
- Fokkema & Partners Architecten – Marieke van Schaaijk, Partner

European Court jurisprudence

- Case Vestergaard C59/00
- Case Telaustria C324/98
- Case Commission-Italy C412/04
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BBI</td>
<td>Burdock Bouw &amp; Infra</td>
</tr>
<tr>
<td>BASS</td>
<td>Besluit aanbestedingen speciale sectoren</td>
</tr>
<tr>
<td>BAO</td>
<td>Besluit aanbestedingsregels voor overheidsopdrachten</td>
</tr>
<tr>
<td>IDV</td>
<td>Individualism</td>
</tr>
<tr>
<td>LTO</td>
<td>Long-Term Orientation</td>
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<tr>
<td>MAS</td>
<td>Masculinity</td>
</tr>
<tr>
<td>NABU</td>
<td>the Netherlands Association of International Contractors</td>
</tr>
<tr>
<td>PDI</td>
<td>Power Distance Index</td>
</tr>
<tr>
<td>PPP</td>
<td>Public Private Partnership</td>
</tr>
<tr>
<td>TED</td>
<td>Tender Electronic Daily</td>
</tr>
<tr>
<td>UAI</td>
<td>Uncertainty Avoidance Index</td>
</tr>
<tr>
<td>TU</td>
<td>Technical University</td>
</tr>
</tbody>
</table>
Appendices
Appendix I – Example Foreign procurement
F-Amiens: Herstellen van wegen

2010/S 68-101860

AANKONDIGING VAN EEN OPDRACHT

Werken

AFDELING I: AANBESTEDENDE DIENST

I.1) NAAM, ADRESSEN EN CONTACTPUNT(EN)

Amiens métropole
hôtel de ville - BP 2720 Cedex 1
T.a.v.: M. le président d'Amiens métropole
80027 Amiens
FRANKRIJK

Nadere inlichtingen zijn te verkrijgen op het volgende adres: Amiens métropole
service marchés publics, hôtel de ville, BP 2720 Cedex 1
80027 Amiens
FRANKRIJK
Telefoon +33 322971171
Fax +33 322971103

Bestek en aanvullende documenten (zoals documenten voor een concurrentiegerichte
dia log en een dynamisch aankoopsysteem) zijn verkrijgbaar op: Amiens métropole
service marchés publics, hôtel de ville, BP 2720 Cedex 1
80027 Amiens
FRANKRIJK
Fax +33 322971103
Internet: http://marchespublics.amiens-metropole.com

Inschrijvingen of aanvragen tot deelneming moeten worden gericht aan: Amiens métropole
service marchés publics, hôtel de ville - 3ème étage Aile Est, BP 2720 Cedex 1
80027 Amiens
FRANKRIJK
Internet: http://marchespublics.amiens-metropole.com

I.2) TYPE AANBESTEDENDE DIENST EN HOOFDACTIVITEIT OF -
ACTIVITEITEN
Publiekrechtelijke instelling
Algemene overheidsdiensten
De aanbestedende dienst koopt aan namens andere aanbestedende diensten Ja

AFDELING II: VOORWERP VAN DE OPDRACHT

II.1) BESCHRIJVING
II.1.1) Door de aanbestedende dienst aan de opdracht gegeven benaming
II.1.2) Type opdracht en plaats van uitvoering van de werken, levering van de goederen of verlening van de diensten
Werken
Uitvoering
Belangrijkste plaats van uitvoering van de werken Amiens et Amiens métropole.

NUTS-code: FR223

II.1.3) De aankondiging betreft
De opstelling van een raamovereenkomst
II.1.4) Inlichtingen over een raamovereenkomst
Raamovereenkomst met één onderneming
Looptijd van de raamovereenkomst: Periode in maanden: 48
Geraamde totale waarde van de aankopen voor de gehele duur van de raamovereenkomst geraamde waarde zonder BTW 9 600 000 EUR
II.1.5) Korte beschrijving van de opdracht of de aankoop/aankopen
Travaux de petites interventions de voirie sur la Ville d’Amiens et Amiens métropole.
II.1.6) CPV-classificatie (Gemeenschappelijke woordenlijst overheidsopdrachten)
45233142

II.1.7) Opdracht valt onder de Overeenkomst inzake overheidsopdrachten (GPA)
Ja
II.1.8) Verdeling in percelen
Ja
moeten inschrijvingen worden ingediend voor een of meer percelen
II.1.9) Varianten worden geaccepteerd
Neen
II.2) HOEVEELHEDEN OF OMVANG VAN DE OPDRACHT
II.2.1) Totale hoeveelheid of omvang
Marché à bons de commande séparé avec maximum et un opérateur économique.les marchés sont conclus pour une période de 1 an à compter de la notification du contrat.
II.2.2) Opties
Ja
beschrijving van deze opties: Des avenants ou décisions de poursuivre et des marchés complémentaires pourront être conclus au cours de l'exécution du contrat. Les marchés sont renouvelables pour 3 périodes de un an.

II.3) LOOPTIJD OF UITVOERINGSTERMIJN VAN DE OPDRACHT

INLICHTINGEN OVER PERCELEN

PERCEEL nr. 1 TITEL Zone Nord
1) KORTE BESCHRIJVING
Travaux de petites interventions de voirie sur la Ville d’Amiens et Amiens métropole - Zone Nord.
2) CPV-CLASSIFICATIE (GEMEENSCHAPPELIJKE WOORDENLIJST OVERHEIDSOPDRACHTEN)
45233142
3) **HOEVEELHEID OF OMVANG**  
Maximum 600 000 EUR pour la période initiale. 1ère recond. Maxi 600 000, 2ème recond. Maxi 600 000, 3ème recond. Maxi 600 000.

4) **AFWIJKENDE DATUM VOOR DE DUUR VAN DE OPDRACHT OF DE AANVANG/VOLTOOING**

5) **AANVULLENDE INLICHTINGEN OVER PERCELEN**

**PERCEEL nr. 2 TITEL Zone Est**

1) **KORTE BESCHRIJVING**
Travaux de petites interventions de voirie sur la Ville d'Amiens et Amiens métropole - Zone Est.

2) **CPV-CLASSIFICATIE (GEMEENSCHAPPELIJKE VOORDELENLIJST OVERHEIDSOPDRACHTEN)**

45233142

3) **HOEVEELHEID OF OMVANG**  
Maximum 600 000 EUR pour la période initiale. 1ère recond. Maxi 600 000, 2ème recond. Maxi 600 000, 3ème recond. Maxi 600 000.

4) **AFWIJKENDE DATUM VOOR DE DUUR VAN DE OPDRACHT OF DE AANVANG/VOLTOOING**

5) **AANVULLENDE INLICHTINGEN OVER PERCELEN**

**PERCEEL nr. 3 TITEL Zone Sud**

1) **KORTE BESCHRIJVING**
Travaux de petites interventions de voirie sur la Ville d'Amiens et Amiens métropole - Zone Sud.

2) **CPV-CLASSIFICATIE (GEMEENSCHAPPELIJKE VOORDELENLIJST OVERHEIDSOPDRACHTEN)**

45233142

3) **HOEVEELHEID OF OMVANG**  
Maximum 600 000 EUR pour la période initiale. 1ère recond. Maxi 600 000, 2ème recond. Maxi 600 000, 3ème recond. Maxi 600 000.

4) **AFWIJKENDE DATUM VOOR DE DUUR VAN DE OPDRACHT OF DE AANVANG/VOLTOOING**

5) **AANVULLENDE INLICHTINGEN OVER PERCELEN**

**PERCEEL nr. 4 TITEL Zone Ouest**

1) **KORTE BESCHRIJVING**
Travaux de petites interventions de voirie sur la Ville d'Amiens et Amiens métropole - Zone Ouest.

2) **CPV-CLASSIFICATIE (GEMEENSCHAPPELIJKE VOORDELENLIJST OVERHEIDSOPDRACHTEN)**

45233142
5) AANVULLENDE INLICHTINGEN OVER PERCELEN

AFDELING III: JURIDISCHE, ECONOMISCHE, FINANCIËLE EN TECHNISCHE INLICHTINGEN

III.1) VOORWAARDEN MET BETREKKING TOT DE OPDRACHT

III.1.1) Verlangde borgsommen en waarborgen
Retenue de garantie de 5,000 %, qui peut etre remplacée par une garantie à première demande.

III.1.2) Belangrijkste financierings- en betalingsvoorwaarden en/of verwijzing naar de voorschriften dienaangaande

III.1.3) De vereiste rechtsvorm van de combinatie van ondernemers waaraan de opdracht wordt gegund
Groupement solidaire. Il est interdit aux candidats de présenter plusieurs offres en agissant à la fois :
— en qualité de candidats individuels et de membres d'un ou plusieurs groupements,
— en qualité de membres de plusieurs groupements.

III.1.4) Ander bijzondere voorwaarden voor de uitvoering van de opdracht
Ja
La durée du contrat précitée est une durée maximum. Les prestations comportent les conditions d'exécution suivantes : Amiens métropole souhaite promouvoir l'emploi et combattre l'exclusion en demandant aux entreprises qui répondent à ses appels publics à la concurrence de prendre en compte la clause d'insertion de cette consultation. En application de l'article 14 du code des marchés publics, l'entreprise choisie, quelle qu'elle soit, est incitée, pour l'exécution du marché à proposer une action d'insertion qui permette l'accès ou le retour à l'emploi des personnes rencontrant des difficultés sociales ou professionnelles particulières. Une offre qui ne satisferait pas à cette condition serait irrecevable pour non conformité au cahier des charges. Par ailleurs, la direction du développement économique - service emploi/insertion - le PLIE - 47 boulevard du Cange - 80000 Amiens, FRANCE - +33 322971381 se tient à la disposition des entreprises pour les informer des modalités de la mise en oeuvre de la clause d'insertion de cette consultation.

III.2) VOORWAARDEN VOOR DEELNEMING

III.2.1) Persoonlijke situatie van ondernemers, waaronder de vereisten in verband met de inschrijving in het beroeps- of handelsregister
Inlichtingen en formaliteiten om na te gaan of aan de vereisten is voldaan: — Les documents relatifs aux pouvoirs de la personne engageant la société, y compris si nécessaire ceux retraçant les délégations,
— Copie du ou des jugements prononcés, si le candidat est en redressement judiciaire,
— Déclaration contenant les attestations listées dans le formulaire de déclaration du candidat (formulaire DC5 disponible à l'adresse suivante: http://www.minefe.gouv.fr , rubrique : formulaires) et reprises dans le règlement de consultation.

III.2.2) Economische en financiële draagkracht
Inlichtingen en formaliteiten om na te gaan of aan de vereisten is voldaan: Aucune exigence particulière.

III.2.3) Vakbekwaamheid
Inlichtingen en formaliteiten om na te gaan of aan de vereisten is voldaan:
— Déclaration indiquant les effectifs moyens annuels du candidat et l'importance du personnel d'encadrement pour chacune des 3 dernières années,
— Liste des travaux exécutés au cours des 3 dernières années, appuyée d'attestations de bonne exécution pour les travaux les plus importants. Ces attestations indiquent le montant, l'époque et le lieu d'exécution des travaux et précisent s'ils ont été effectués selon les règles de l'art et menés régulièrement à bonne fin,
— Déclaration indiquant l'outillage, le matériel et l'équipement technique dont le candidat dispose pour la réalisation de contrats de même nature.

III.2.4) Voorbehouden opdrachten

III.3) VOORWAARDEN BETREFFENDE EEN OPDRACHT VOOR DIENSTVERLENING

III.3.1) Het verrichten van de dienst is aan een bepaalde beroepsgroep voorbehouden
III.3.2) Rechtspersonen moeten de namen en beroepskwalificaties opgeven van het personeel dat met de uitvoering van de dienstverleningsopdracht wordt belast

AFDELING IV: PROCEDURE

IV.1) TYPE PROCEDURE
IV.1.1) Type procedure
Openbaar
IV.1.2) Beperkingen op het aantal ondernemingen dat verzocht wordt in te schrijven of deel te nemen
IV.1.3) Beperking van het aantal ondernemingen tijdens de onderhandeling of de dialoog

IV.2) GUNNINGS CRITERIA
IV.2.1) Gunningscriteria
Economisch meest voordelige aanbieding, gelet op de onderstaande criteria
1. Valeur technique de l'offre. Weging 60 %
2. Montant de l'offre. Weging 40 %

IV.2.2) Er wordt gebruik gemaakt van een elektronische veiling
Neen

IV.3) ADMINISTRATIEVE INLICHTINGEN
IV.3.1) Referentienummer van het dossier bij de aanbestedende dienst
02210AO
IV.3.2) Eerdere aankondigingen betreffende dezelfde opdracht
Neen
IV.3.3) Voorwaarden voor de verkrijging van bestekken en aanvullende documenten
Tegen betaling verkrijgbare documenten Neen
IV.3.4) Termijn voor ontvangst van inschrijvingen of deelnemingsaanvragen
17.5.2010 - 17:30
IV.3.5) Datum van verzending van uitnodigingen tot inschrijving of deelneming aan geselecteerde gegadigden
IV.3.6) Taal of talen die mogen worden gebruikt bij inschrijvingen of verzoeken tot deelneming
French.
IV.3.7) *Minimumtermijn gedurende welke de inschrijver zijn inschrijving gestand moet doen*
Periode in dagen 120 (vanaf de datum van ontvangst van de inschrijvingen):

IV.3.8) *Omstandigheden waarin de inschrijvingen worden geopend*

**AFDELING VI: AANVULLENDE INLICHTINGEN**

VI.1) **PERIODIEKE OPDRACHT**
Ja
tijdstip waarop naar verwachting nieuwe aankondigingen worden bekendgemaakt: Calendrier prévisionnel de publication des prochains avis: Premier semestre 2014 si le marché est reconduit pour les 3 années.

VI.2) **OPDRACHT HOUDT VERBAND MET EEN PROJECT EN/OF EEN PROGRAMMA DAT MET MIDDELEN VAN DE GEMEENSCHAP WORDT GEFINANCIERD**
Neen

VI.3) **NADERE INLICHTINGEN**

Date d'envoi du présent avis au JOUE et au BOAMP : 6.4.2010.

VI.4) **BEROEPSPROCEDURES**
VI.4.1) **Voor beroepsprocedures bevoegde instantie**
Tribunal administratif d'Amiens
14 rue Lemerchier Cedex 1
80011 Amiens
FRANKRIJK
E-mail: greffe-taamiens@juradm.fr

VI.4.2) **Instellen van beroep**
VI.4.3) **Dienst waar inlichtingen over de beroepsprocedures kunnen worden verkregen**

VI.5) **DATUM VAN VERZENDING VAN DEZE AANKONDIGING:**
6.4.2010
Appendix II – Link research components
Appendix III – Survey questions
## Appendix IV – Score table

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Excellent</td>
</tr>
<tr>
<td>2</td>
<td>Good</td>
</tr>
<tr>
<td>3</td>
<td>Average</td>
</tr>
<tr>
<td>4</td>
<td>Below Average</td>
</tr>
<tr>
<td>5</td>
<td>Poor</td>
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</table>

Use the above table to evaluate the performance of the project.
### Average rank with highest/lowest score per company size

<table>
<thead>
<tr>
<th>Size</th>
<th>High cost</th>
<th>Legislation</th>
<th>Method of procurement</th>
<th>Cultural Difference</th>
<th>Language barrier</th>
<th>Knowledge Abroad</th>
<th>No right quality offer</th>
<th>Time-consuming</th>
<th>Differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 till 25</td>
<td>6.3</td>
<td>7.0</td>
<td>5.0</td>
<td>3.3</td>
<td>4.3</td>
<td>5.0</td>
<td>4.0</td>
<td>6.7</td>
<td>4.0</td>
</tr>
<tr>
<td>26 till 50</td>
<td>8.0</td>
<td>10.0</td>
<td>7.0</td>
<td>7.0</td>
<td>7.0</td>
<td>1.0</td>
<td>1.0</td>
<td>4.0</td>
<td>9.0</td>
</tr>
<tr>
<td>51 till 100</td>
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<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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<td>NA</td>
</tr>
<tr>
<td>101 till 500</td>
<td>4.3</td>
<td>6.5</td>
<td>5.0</td>
<td>6.0</td>
<td>5.0</td>
<td>5.3</td>
<td>4.0</td>
<td>5.5</td>
<td>2.5</td>
</tr>
<tr>
<td>&gt;500</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>N</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

### Average rank with highest/lowest score on question

<table>
<thead>
<tr>
<th>Size</th>
<th>Average rank with highest/lowest score on question</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 till 25</td>
<td>6.3</td>
</tr>
<tr>
<td>26 till 50</td>
<td>8.0</td>
</tr>
<tr>
<td>51 till 100</td>
<td>NA</td>
</tr>
<tr>
<td>101 till 500</td>
<td>4.3</td>
</tr>
<tr>
<td>&gt;500</td>
<td>NA</td>
</tr>
<tr>
<td>Differences highest-lowest</td>
<td>3.7</td>
</tr>
</tbody>
</table>

### Average overall rank

<table>
<thead>
<tr>
<th>Type</th>
<th>Average overall rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>5.5</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>NA</td>
</tr>
</tbody>
</table>

**Highest score**

**Lowest score**

**Biggest difference in scores**
Appendix V – Checklist for construction companies