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Mapping high-level corruption risks in Spanish public procurement

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ABSTRACT

Spain case study: Mapping high-level corruption in Spanish Public Procurement

High-level corruption and fraud has had an increased impact on the social and political debate in Spain, especially since the beginning of the financial crisis when several cuts in social spending were made. Greater attention is being paid to where and how the government spends its public funding. This paper explores the extent and forms of political corruption in Spanish public procurement. Its main contribution is the rich analytical discussion of high-profile corruption scandals involving public procurement, such as the Gürtel case or the Palma Arena case, with particular focus on 'red flags' indicating likely corruption in public procurement procedures. It also provides a comprehensive introduction to the Spanish public procurement institutional structure, a comparison with the European public procurement directives, and a broad statistical overview of public procurement in Spain. Another relevant feature of this paper is the in-depth description on how and where to access public procurement information, indicating the main issues that may arise which can be a risk to transparency. Deeper knowledge of the structure, regulatory framework and nature of Spanish public procurement allows, not only to understand the large amount of current corruption scandals in Spain, but also explores the failures and potential improvements.

Keywords: public procurement, Spain, corruption, legislation, institutions, corruption cases.

1. Introduction

In 2011, the European Commission estimated that public procurement in Spain represented 15.5% of its GDP: 164 billion euros. This large amount of public funding and high risk of corruption make the issue worthy of further investigation, especially the analysis of the role played by politicians and top bureaucrats. High-level corruption and fraud have had an increased impact on the social and political debate, especially since the beginning of the financial crisis, when several cuts in social spending were made. Greater attention is being paid to where and how the government spends its public funding. In July 2012, “corruption and fraud” was considered one of the three main problems by 12.2% of the interviewed population. Only two years later, the percentage increased to 41.2% (Centro de Investigaciones Sociológicas, 2014).

There are already some indicators of corruption, such as the Corruption Perception Index (Transparency International, 2014) or the World Economic Forum (World Bank, 2013), which are based on the perceptions of political and business experts, elites and part of the population on their countries’ levels of corruption. Despite these measures, deeper insights are needed to provide policy recommendations that would reduce the level of corruption.

According to the Global Competitiveness Report (GCR) published by the World Economic Forum (2014), Spain was rated 3.1 out of 7 regarding favouritism in government officials’ decisions, and 2.6 in wastefulness of government spending for the 2013-2014 period. Indicators from the GCR are expressed as scores on a 1-7 scale, with 7 being the most desirable outcome. Furthermore, the GCR rated public trust in politicians 2.3 out of 7, and named corruption the 6th most problematic factor for Spanish businesses. New legislation has recently been introduced in order to further and more rigorously regulate public procurement following Directives stated by the EU. However, the number of corruption investigations in Spain is still worryingly high. In 2013, there were 1661 open cases with more than 500 people under investigation for corrupt crimes such as bribery, prevarication and embezzlement by different judiciary institutions (Consejo General del Poder Judicial, 2013).

Despite the difficulty of the task, due to the obscure nature of any corrupt activity, stronger and more modern approaches are being used to provide more accurate and objective measures of corruption (Reinikka & Svensson, 2004; Di Tella & Schargrodsky, 2003; Hsieh & Moretti, 2005). In line with this research, Fazekas, Tóth, and King (2013) are working to construct a corruption risk index (CRI) using objective data on public procurement, which aims to be consistent over time and across countries.

This paper exposes the extent and forms of political corruption in Spanish public procurement. Its main contribution is the rich analytical discussion of high-profile corruption scandals involving public procurement with particular focus on ‘red flags’ indicating likely corruption in public procurement procedures. It also provides a comprehensive introduction to the Spanish public procurement institutional structure and a broad statistical overview of public procurement in Spain. The rich analytical material assembled here provides sufficient grounds and solid basis for further, more extensive corruption assessment of Spanish public procurement.

This paper aims at covering a broad content for readers who may be interested in different aspects of Spanish corruption in public procurement procedures.

- Section 2 presents a summary of the scope and structure of corruption in Spanish public procurement. It provides an introduction to the public procurement market in Spain in terms of figures, size, institutions involved and regulations. Furthermore, this section describes 5 of the most relevant corruption cases occurring in Spain recently and a preliminary analysis of the most common techniques of corruption used in those cases.
- Section 3 offers a deeper analysis on the micro-level procurement data and its access. It highlights the main differences between the Spanish and the European legislation in procurement matters. It also describes the Spanish sources of information regarding public procurement.
- Section 4 concludes this paper and indicates potential future deeper analysis of public procurement in Spain.

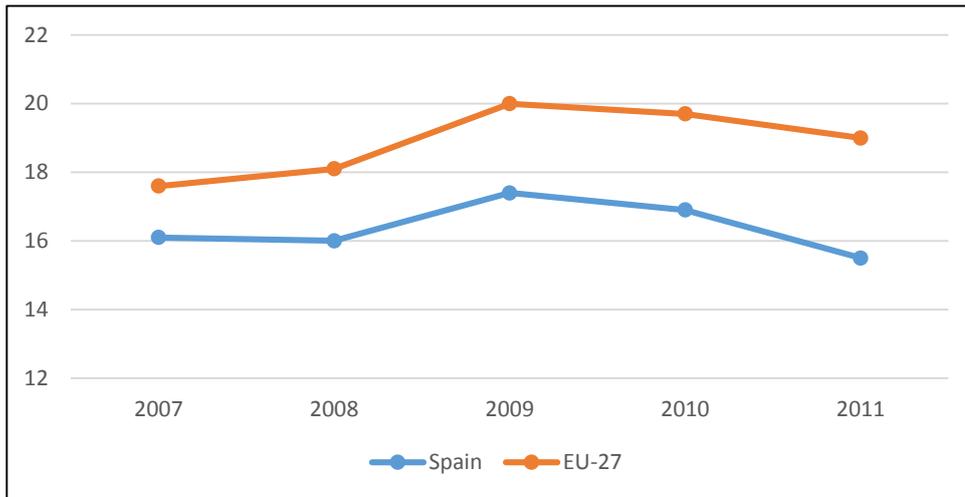
2. Scope and structure of corruption in Spanish procurement

2.1. Introducing the Spanish public procurement market

The publication “Government at a Glance” by the OECD (2013) identifies the Spanish public procurement market as 12% of Spain’s GDP, while the State-owned entities’ procurement market was 3%. The same figures for the entire OECD-34 are 12% and 5%, respectively.

In 2012, the European Commission published its own public procurement statistics by analysing the Spanish National Accounts. According to this study, public works, goods, and services procured by the Public Sector represented 15.5% of Spain’s GDP. This percentage represents the lowest value since the financial crisis began in 2007, as shown in graph 1. Public expenditure increased in 2009 due to the expansive fiscal policy implemented by the last government (PSOE), which included an increase in public spending of almost 13 thousand million euros. In 2011 the PP (Partido Popular) won the election and imposed severe austerity measures, including several cuts in public spending. Despite the significant difference increase between the relative weights of total expenditure as a percentage of GDP of Spain with the EU-27, the trends have been very similar. This is mainly explained by the economic situation rather than political or legislative decisions.

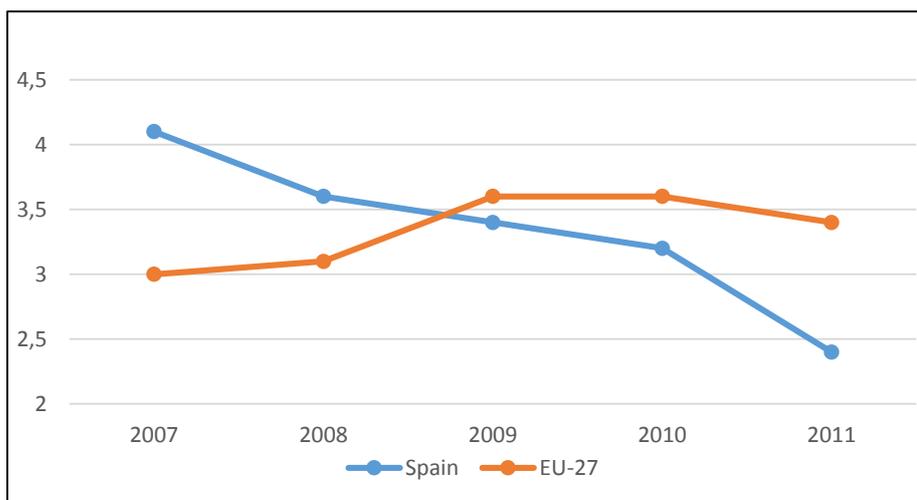
Graph 1: Total expenditure on works, goods and services as a percentage of GDP



Source: European Commission (2012)

Graph 2 demonstrates the estimated total value of tenders, published in the platform Tenders Electronic Diary (TED), and their percentage of Spain's GDP. In this case, Spain's pattern over time has diverged from the average EU-27. Since 2007, the figure for Spain decreased from 4.1% to 2.4%, while the EU-27 has remained between 3% and 3.6% over the whole period. However, understanding the decrease in the estimated value of Spain's tenders published in TED as percentage of GDP would require a deeper analysis of public procurement legislation and the requirements for publicising tenders in TED, which is beyond the scope of this section. Further insights into micro-level procurement data are needed to understand the downward trend of the estimated value of tenders published in TED while the total expenditure on works, goods and services has remained relatively flat, representing both figures as a percentage of GDP.

Graph 2: The estimated value of tenders published in TED as a percentage of GDP



Source: European Commission (2012)

Regarding the structure of the expenditure in public procurement in Spain, the Ministry of Finance and Public Administrations publishes a Public Register of Contracts according to the following four categories of contracts: *Works*, *Supplies*, *Services* and *Others*. There is information available of public contracts from 1998 until 2012 and aggregated data can be obtained, but it is also available at a State, regional or local level.

In the next table we summarize the annual number of contracts by type from 2008 to 2012. The largest percentage of contracts are concentrated in the categories of *Supplies* (46.7% in 2012) and *Services* (39.3% in 2012), although they do not show an explicit trend for the specified period.

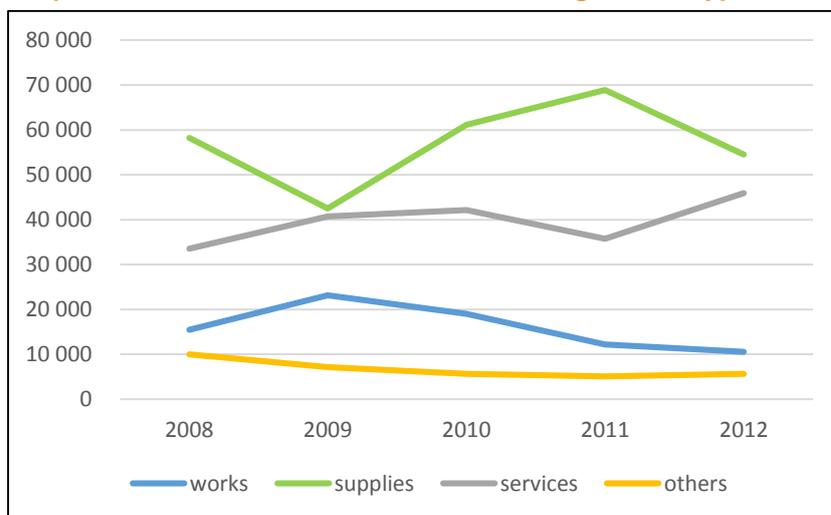
In 2009, the government launched an expansionary fiscal policy aiming at reactivate the economy and employment, with a special focus in the construction sector; this explains why there were 1.5 times more *Works* contracts in 2009 than in 2008. Since 2009, the trend has been notably decreasing, as it has also been for the category of *Others* contracts during the whole period.

Table 1: Total number of contracts according to their type 2008-2012

Type of contract	2008	2009	2010	2011	2012
Works	15.475	23.164	18.992	12.163	10.553
Supplies	58.193	42.510	61.139	68.923	54.537
Services	33.552	40.725	42.132	35.709	45.916
Others	10.005	7.148	5.625	5.096	5.639
Total	117.225	113.547	127.888	121.891	116.645

Source: Ministerio de Hacienda y Administraciones Públicas (2014)

Graph 3: Total number of contracts according to their type



Source: Ministerio de Hacienda y Administraciones Públicas (2014)

2.2. Spanish institutions and rules regulating public procurement

The public sector procurement procedures were regulated until November 2011 by the Act 30/2007 (*Ley*), including relevant amendments approved by Royal Decree 817/2009. However, since that date, the main reference in matters of public procurement and its legal framework is the Royal Legislative Decree 3/2011, which is known in Spain by the acronym TRLCSP (in English, Recast Text of the Law on Public Sector Contracts). This new legislation aims at covering both Directive 2004/18 and Directive 2004/17, which regulate the general Public Administrations procurement procedures and the procedures related specifically with the Utilities companies, respectively. The legislation did not introduce major changes, because several amendments were already included to adapt to the European common law on public procurement.

The EU Treaty dictates the principles guiding Directive 2004/18 and TRLCSP, including **equal treatment, transparency, mutual recognition, proportionality and non-discrimination**. These principles become more tangible in the text of the TRLCSP specifying how they should be applied: for example, guaranteeing freedom of access to procurement procedures and tenders, non-discrimination, and equal treatment between companies competing for a project. The use of the budget balance and control over public expenditure will try to ensure the principle of efficiency is also achieved. Theoretically, applying these principles would increase competition, hence government savings. Public Procurement has become a very important matter for EU policy given the current context of fiscal consolidation. EU public procurement Directives regulate the publication and organisation of tender procedures for higher-value contracts above the EU threshold, which will be discussed in section 3.

Another relevant legislation to be noticed is the Act 30/1992, 26 November, which determines the general rules for all the administrative procedures. This Act on administrative rules and proceedings, becomes relevant when the scope of the TRLCSP does not cover a specific issue. The Act 30/1992 is applied, for example, for reviewing those procurements below the EU thresholds. Due to the legislative autonomy given to the different Spanish regions, there is a limited freedom for the application of this legislation, although regional laws cannot impose contradictions with regards to the TRLCSP. The TRLCSP dictates the minimum legislation to be followed as transposed from the European Directives (Bianchi, T. and Guidi, V., 2010).

One of the main articles where freedom is given to the different Spanish regional and local governments, is the ability to create general administrative requirements. This article creates a spectrum of administrative formalities across the regions. The TRLCSP states that if a contract is subject to special appeals, its formalisation cannot take place before 15 days after the notification of the award of the contract to the awardee and the competitors. However, it leaves room to regional governments to increase the time limit, by up to one month. Increasing the time space between the award of a contract and its formalisation, allowing competitors to appeal to the courts, may be a fairer procurement process, and will imply regional differences. The last legislative autonomy conceded by the TRLCSP relevant to this paper, is the regional freedom to create their own Official Register of bidders.

TRLCSP also includes the proposition of the Directive 2007/66/EC by specifying the rules and procedures to be followed when bidders consider contracts to have been unfairly awarded. Depending on the kind of contract subject to procurement, the nature of the contracting entity and the value of the contract; different remedies, both judicial and administrative, are available when there has been a violation in the procurement process. In order to attend the violations of any of the stages of the procurement procedures, the **Central Administrative Court of Procurement Appeals** is an independent court body responsible for the resolution of “special appeal for procurement” and “annulment appeal” (Garayar Asociados Abogados, S.L., 2012). The rest of remedies are presented before an administrative court or a civil court, but their activity is not exclusively specialised in procurement issues.

The *Central Administrative Court of Procurement Appeals* was established in 2010 by means of the Law 34/2010 which modified the Law on Public Sector Contracts, and its regulation was specified in the articles 40 to 50 of the TRLCSP. In the case that there is a special appeal for procurement, the public procurement process will be paused until the Court has obtained a definite resolution. In order to commit to the deadlines the legislation has established, electronic resources will be used whenever it is possible. Doing so may help the Court reduce the employment of resources and time, minimize the potential damage caused to parties directly involved or, in the case the special appeal is dismissed, reduce the delay in the procurement process in the interest of the public good. Given the potential damage that can be caused if the legal process is too long, the TRLCSP establishes the time limits for the different stages of the process which are significantly shorter than other Courts specialised in different matters.

At the beginning, the *Central Administrative Court of Procurement Appeals* was designed to be responsible for State level special appeals, but from 2012 its scope also encompasses special appeals from regional and local entities. However, the different regions of Spain have the competence to create their own Administrative Court of Procurement Appeals, and this is the case for the Basque Country, Madrid, Cataluña, Castilla y León, Andalucía, Canarias and Navarra. The other option for the Spanish Regions is to transfer this competence to the Central Administrative Court of Procurement Appeals through the signing of the relevant agreements.

Table 2 and Graph 4 summarise the activity of the Arbitration Court in Spain since its creation in the last quarter of 2010. They provide information regarding the number of appeals received by the Arbitration Court in a specific year, and the number of appeals resolved by the Court for the same period (Tribunal Administrativo Central de Recursos Contractuales; 2012, 2013, 2014). Furthermore it is also included the average length in days of the resolution period for every appeal; that is the number of days needed by the Arbitration Court to offer a judgement for a specific case since the appeal was presented by the affected parties. The outstanding increase in the number of appeals presented since 2010 is notable. The increase in the efficiency of the Arbitration Court to provide a quick resolution as the average length decreased from 27 days in 2011 to 20 days in 2013, while the number of appeals received during the same period tripled. This is a relevant aspect as the procurement process is paused until the Arbitration Court publishes its resolution.

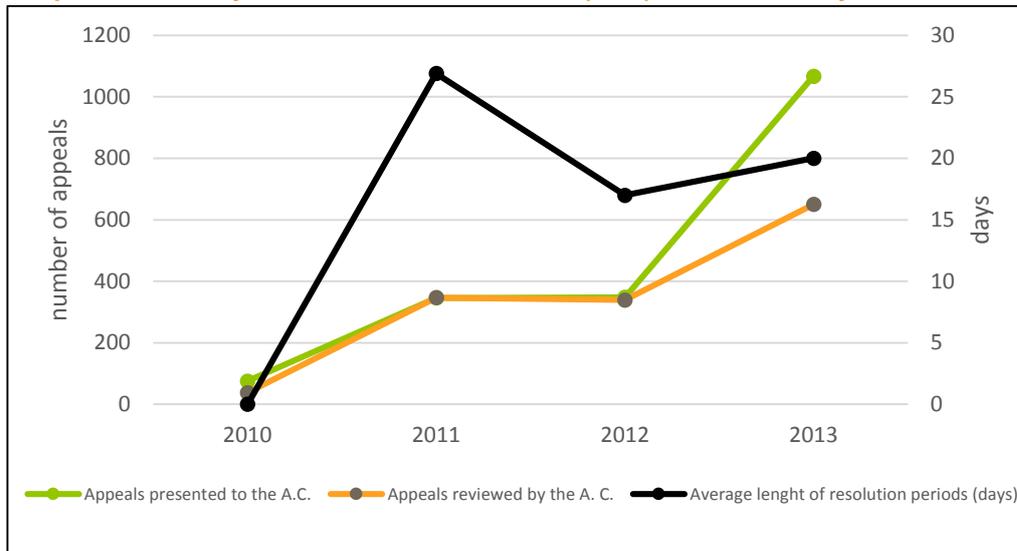
Table 2: Summary of the Arbitration Court's level of activity since its creation

	2010	2011	2012	2013
Appeals presented to the Arbitration Court	75	346	348	1067
Appeals reviewed by the Arbitration Court	38	347	339	650
Average length of resolution periods (days)	n.a.	26.9	17	20

Source: Tribunal Administrativo Central de Recursos Contractuales (2012, 2013, 2014)

Recall that the data for the year 2010 only refers for the last quarter of the year, when the Arbitration Court was created.

Graph 4: Summary of the Arbitration Court's (A.C.) level of activity since its creation



Source: Tribunal Administrativo Central de Recursos Contractuales (2012, 2013, 2014)

While Spain does not have a Procurement Authority, any entity which has been attributed such a competence by Law can perform the procurement task. There exists, then, a large number of contracting bodies at the different regional levels. The TRLCSP states which entities are permitted to carry out the contracting activity, so there is no need for the creation of such a procurement authority under the current legislation. There is generally an exclusive department within the organisation responsible for the procurement process, which is in charge of the preparation of contracts by, for example, stating the definition of needs or the publication of tenders. Furthermore, a contracting table assists the institution with the procurement process.

In Spain there are no specific institutions, neither public nor private, whose function consists of enforcing the rules regarding public procurement (Garayar Asociados Abogados S.L., 2012). However, supportive bodies—both at the central level (known as **State Consultative Board of Administrative Procurement**) and at different regional levels—assist in the interpretation of public procurement legislation, although they do not enforce it.

The institutions involved in monitoring and supervision activities are the General Intervention of the Central Public Administration and the Court of Auditors (Bianchi and Guidi, 2010). The General Intervention of the Central Public Administration is the Government's Comptroller Office, and as such, it is composed of civil servants. They are also responsible for the publication of public sector accounts and information on budget implementation and national accounting. On the other hand, the Court of Auditors is the constitutional body in charge of the external, independent, and indirect control of the contractual activity of the Public Administration. It is the supreme audit body of the economic and financial management in the public sector. The control the Court of Auditors' exerts over the Spanish government is indirect, because they monitor and publicize national accounts, so it can be stated whether the promised contract has been realised or if monetary irregularities arose during the procurement.

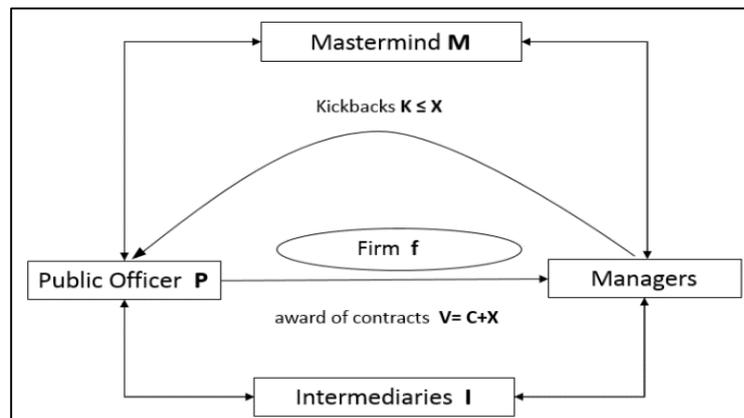
The role of the EU in Spanish public procurement is limited to the design of Directives which would later be implemented into the national legislation. A differentiation should be made with regards to this issue. The monitoring, advisory and enforcement tasks are regulated at a national, regional, or local level. Nevertheless, whenever a specific project, such as public works, services, or supply contracts meets the specific threshold criteria, its communication will be done throughout the Official Journal of the European Union. Furthermore, the EU will have a more important role whenever the procurement is subject to European Funds.

A more detailed description of the legislation will be provided in the next section, but it is interesting to highlight some issues that arise with this brief introduction. The lack of independence in the monitoring and the contracting authorities allows for irregularities in the procurement process to happen more often, such as definition of not fully justified needs projects, or post-signal modification of the contracts. Secondly, with the current legislation, economic criteria are always taken into account before awarding a project to a company, but for many years other requirements were considered more important than the project's cost. Many projects were won by companies with higher costs than competitors which better satisfied more subjective requirements. Not only was competition impaired, but several less worthy projects were awarded, despite the availability of more economically advantageous alternatives. However, recent European legislation has placed restrictions to prevent these issues in the future.

2.3. Analytical discussion of key corruption cases

Given the widespread nature of corruption in Spain it is a hard task to determine the common path the different cases follow. However, they do still have certain similarities which are interesting to point out. A framework which represents a simplified version of the repeated patterns observed in most Spanish cases of corruption in public procurement can be provided by introducing the actors involved in the corrupt schemes being analysed. It is represented in Figure 1. Alternative frameworks for representing corruption schemes under different assumptions can be found in Gambetta (2000) and Situngkir (2003).

Figure 1: Simplification of the corruption scheme in Spanish's public procurement modern corruption cases



In most of the examples analysed, there exists the figure of a mastermind (**M**) who tends to be the link in the whole corruption scheme (Audiencia Provincial de Málaga, 2013; Tribunal Supremo, 2012). The figure of a mastermind or a general organiser provides a hierarchical and centralised structure where a person has the sufficient power and contacts to coordinate, at least the first stages of the corruption scheme. He has contact with the managers of the companies (**f**) involved in the corruption ring and also with public officers (**P**), who have enough power to distort the relevant regulations or legislations. Other relevant actors observed in all the cases are the intermediaries (**I**) – accountants, figureheads or lawyers, whose role consists of manipulating the operations so they can appear as legal.

Because there are many firms involved in the different corruption cases, cooperation is required to ensure that the contracts are always kept inside the corruption ring. 71% of the surveyed firms in the 2013 Eurobarometer considered that collusive bidding was *very widespread* or *fairly widespread* in the Spanish public procurement. López Miño and Valcárcel Fernández (2012) denounce the inefficiencies of the Spanish legal system regarding collusive behaviour among companies participating in public procurement. According to their study, the Spanish legal system has advocated for a heteronomous system against manipulations of the tenders. This system relies on the non-winning competitors to be the ones who denounce anticompetitive behaviours to the competition authority. The control activity of the contracting

entity is limited to the procurement procedure, to the exclusion of any other tasks carried out outside of the procurement processes, such as agreements between bidders, which be subject to competition legislation.

In a report by the Spanish National Commission of Competence (Comisión Nacional de Competencia, 2011), defines bid rigging as the unlawful collusive behaviour between bidders in the procurement process and includes practices such as fixing prices, splitting the market or agreeing to any other commercial condition, in order to maximize gains from a public tender or auction. They also affirm that when bid rigging takes places in public procurement, prices of goods and services procured by the public sector can increase by up to 20%.

The standard procedure of corrupt public procurement is to award a contract to a company from the corrupt network with a value (**V**), which is normally higher than the competitive market price (**C**). In exchange, the manager of the company who is corruptly assigned the project, will offer a kickback (**K**) to the public officer or officers who had collaborated in the manipulation of the procurement process. Kickbacks, understood as a portion of the winning bidders' payment, designated for the official in exchange for betraying the public, is found to be the most frequent form of corruption in Spain (PwC, 2013). The most frequently detected kickbacks have been in the form of goods, such as cash, suits, cars (Audiencia Provincial de Málaga, 2013; Tribunal Supremo, 2012) but also in the form of services –subcontracting proposed companies or offering employment to the public officer or people from their personal circle (Tribunal Supremo de Justicia de las Islas Baleares, 2013).

Another common procedure used in the mentioned cases consists of companies making a relatively low offer in a specific bid when other companies are competing, so as to ensure the interested company wins the public contest. By doing so, firms make sure they will be able to overcharge for the project once the contract is awarded, with the government not imposing many objections, and both parties will end up having benefited from this strategy. Through previous conversations, public officers and managers agree to illegally manipulate one or more of the stages in the procurement process as evidenced by recordings of private conversations. Doing so, they guarantee that one or more of the companies will be awarded a publicly funded project, reducing competition and harming the welfare of citizens and other companies that would have otherwise been assigned the project.

The pattern depicted in Figure 1 has been observed in most of the examples under analysis, and will be explained with more detail later. In a report by the Court of Auditors (Tribunal de Cuentas, 2012), they include the most commonly found irregularities in the Spanish public procurement process:

- 1) the splitting of contracts into *minor contracts*,
- 2) use of non-fully justified *urgency* procedure,
- 3) irregularities in the selective criteria,
- 4) deficient motivation for the contract awards,
- 5) non-fully justification for contract modifications and
- 6) unjustified exceptions for the obligation of publicising the tenders.

This list can be extended with the survey published in 2013 by the Eurobarometer (European Commission, 2013) which provides the perceptions of specific target groups on what are the most frequent irregularities in the public procurement process. More than 70% of the surveyed firms have reported:

7) abuse of negotiated procedures without publicity;

3b) unclear selection and assessment criteria as well as adaptation of the requirements for the company which is expected to be awarded from the beginning.

All of the cited practices which imply the participation of the government (1-7) are listed as *technologies of corruption* and are included for the computation of a Corruption Risk Index (Fazekas, Tóth and King, 2013). According to their work, making use of any of the already mentioned or alternative malpractices, when not resulting from administrative errors or incompetence, involves violation of the principles of good public procurement for private gains.

Table 3: Summary of identified irregularities and their definitions

Nº	Identified Irregularity	Definition of the Identified Irregularity	Example
1	Splitting of contracts into <i>minor contracts</i>	Slicing up contracts so that they fall out from the unwanted public procurement procedural regime	Gürtel case (Audiencia Nacional, 2014)
2	Use of non-fully justified <i>urgency</i> procedure	The conditions for claiming that a process is urgent have not been satisfied or sufficiently justified by the contracting entity avoiding unwanted formalities.	Palma Arena case (Audiencia Provincial de Palma de Mallorca, 2012)
3	Irregularities in the selective criteria	Tailoring eligibility criteria to the characteristics of a specific company to ensure it will be the winner of the contest.	Gürtel case (Audiencia Nacional, 2014)
4	Deficient motivation for the contract awards	The award of the contract may be biased or influenced, because the decision is not based neither objective nor certifiable assessment criteria.	Malaya case (Audiencia Provincial de Málaga, 2013)
5	Non-fully justification for contract modifications	The conditions required for modifying a contract have not been satisfied or fully justified; could it be the cost of the project, the period of project completion, subcontracting decisions...	Recurso 1/2012, Resolución 11/2012 (TARCJA, 2012)
6	Unjustified exceptions for the obligation of publicising the tenders	By avoiding publicity, the contracting entity reduces competition and transparency, eliminating the chances of unwanted bidders to compete in the process.	Annual Report (Tribunal de Cuentas, 2012) / Court of Auditors
7	Abuse of negotiated procedures without publicity	This type of procedure allows the government only to contact the company or companies they want to, not letting other competitors to know about the tender.	Annual Report (Tribunal de Cuentas, 2012) / Court of Auditors

Corruption cases in Spain are generally very extensive and complex but a brief description of some relevant cases of corruption in Spanish public procurement will be presented now. The selection of those cases being described in this paper is done according to the importance of the people involved in them (Gürtel case, Palma Arena case, Nóos case and ITV case), the amount of money involved in the case (Millet-Palau case) or the political consequences of the dismantling corruption ring (Malaya case). The Nóos case is one of the more than 20

separated parts of the Palma Arena case. The Nóos Case will not be further discussed, as it offers no novelties besides the involvement of part of the Spanish Royal family. This paper presents a brief introduction to these cases, taking into account that given their complexity they include a wide variety of criminal activities, not limited to public procurement: trespass, bribery, influence peddling, embezzlement, fraud, money laundering, scam and misappropriation.

The following table includes the above mentioned corruption cases, indicating the period being investigated. It also shows the estimated cost of the corruption cases, in millions of euros (ABC², 2013), the number of people who have been investigated according to the different judicial sentences of the cases, and the proportion of the people investigated who belong to the political arena. It points out who the highest public official investigated is: the “ringleader”, as the single person creating the most important links in the case, and the political party involved in each corruption network.

Table 4: Summary of the main characteristics of the corruption cases being analysed.

CASE	PERIOD INVESTIGATED	ESTIMATED SOCIAL COST (million €)	PEOPLE INVOLVED	PUBLIC OFFICERS	HIGHER OFFICER INVESTIGATED	RING-LEADER	POLITICAL PARTY
Gürtel	1999 – 2009	201	187	39,6%	Treasurer of the central party in power (PP)	Y	PP
Palma Arena	1996 – 2007	110	32	37,5%	Ex-President of the Balearic Region	N	PP
Malaya	1991 – 2006	10	84	20,2%	Three consecutive mayors of the city of Marbella	Y	PSOE / GIL /PA
ITV	2007 – 2009	10	6	50,0%	Member of the Parliament of Catalonia. General Secretary of CDC	Y	CDC
Nóos	2004 – 2007	8,2	16	50,0%	Member of the Royal Family: the Sister of the King Felipe VI	N	PP
Millet - Palau	1999 – 2009	35	17	25,0%	Manager of the public institution “Fundación Orfeón Catalán - Palacio de la Música Catalana” (1990-2009)	Y	CDC

Source: Own elaboration.

² On this publication by a prestigious Spanish source, it has not been provided the methodology used to obtain the calculations of the estimated social cost of the corruption case, despite being insistently requested. The reader should take these amounts as an approximation rather than an exact figure of the cost of corruption.

A) The Gürtel Case

After years of investigations, Francisco Correa (**M**) was sentenced as the mastermind of the whole corruption ring (Audiencia Nacional, 2014). During the investigation in the Gürtel case, the company Easy Concept (**f**) was found to be the winner of more than 70 *minor contracts* that were not subject to a public contest by the Region of Madrid. In Valencia, Orange Market (**f**) was the organiser of all the Popular Party electoral and non-electoral acts. The government used negotiated procedures without publicity. One of the competing firms was always Orange Market, the other two were normally other companies from the group owned by Correa.

Radiotelevisión Madrid (**P**) awarded Service contracts with a value of €108,807 to Viajes Pasadena (**f**), which was suspected of offering bribes to politicians in exchange of contracts. Many of the investigated invoices contained rounded amounts, work or services being contracted were not detailed, nor the units or its unitary cost. These malpractices made it almost impossible to verify and properly certify if the service being offered equals in units and prices, the service being demanded. It was stated at the beginning of this section that most kickbacks were monetary payment; but, in the Gürtel case, Francisco Camps (**P2**), the president of the Region of Valencia, was taken to court for, supposedly, having accepted suits with a value of more than €13,000 in exchange of contract awards (Tribunal Superior de Justicia de la Comunidad Valenciana, 2012).

B) The Malaya Case

“This court has arrived at the firm conviction of the reality of the widespread system of corruption that was established in the city of Marbella (...) under the power exercised by Mr Roca”. This passage is from in the 5000-page verdict of the Malaya Case (Audiencia Provincial de Málaga, 2013), in which former planning advisor and mayor of Marbella Juan Antonio Roca (**M**) was found guilty of masterminding a network of real estate fraud and bribery, and sentenced to 11 years in prison and fined 240 million euros. Another 83 people were involved in the case. In the Malaya case, it was the head of the legal services of the Urbanism department of Marbella, Jorge González, who denounced irregularities in the award of the contract for a concession. The same practices as in the Gürtel case were used, company managers (**B**) were involved (Óscar Alberto Benavente, Carlos Sánchez, Manuel Lores...), as well as public officers (**P**) (Julian Muñoz and Marisol Yagüe, mayors of Marbella from 2003 until 2006; José Luis Fernández Garroso and Pedro Tomás Reñones, Councillor of the government of Marbella) and intermediaries (**I**) (Rafael del Pozo, former head of the local Police).

This case is of particular relevance because the political consequences of corruption forced, for the very first time in the democratic era, the dissolution of a local government of a city (Audiencia Provincial de Málaga, 2013).

C) ITV Case

Oriol Pujol (**P**), president of the parliamentary group CiU (*Convergència I Unió*) and general secretary of the political party CDC (*Convergència Democràtica de Catalunya*) has been, since 2013, under investigation for being a “necessary co-operator” in a corruption network. Oriol Pujol is the son of Jordi Pujol, who has been the president of the Catalanian Region for more than 20 years, and has recently admitted to having committed fiscal fraud against the Spanish Treasury over a period of more than 30 years (Pujol I Soley, J., 2014). The decision of the High Court of Justice of Catalonia of investigating Oriol Pujol relies on the suspect of having manipulated the award of contract of ITV stations, whose activity is the technical inspection of vehicles and is currently regulated by the government. According to the Court of the case (Tribunal Superior de Justicia de Catalunya, 2013), there is evidence that he was coordinating, managing and supporting the rest of the people involved in the corruption ring - Sergi Alsina (**B**), Sergio Pastor (**B**), Ricard Puignou (**B**), Josep Tous (**P**) and Isidre Masalles (**P**) - from a political perspective. They are suspected to have been involved in this corruption network whose objective was to benefit the company called Upprime (**f**), managed by Sergio Pastor and partially owned (30%) by Pastor and Alsina, by the awarding of contracts. In the opinion of the Court there is evidence that a legal tender was denied to a rival company to favour Upprime and that an alternative territorial plan was designed to increase the number of ITV stations built. Furthermore, Alsina is thought to be sharing a percentage of the earnings related with the irregular award of contracts (**K**) with Oriol Pujol, closing the circle of this corruption scheme (Tribunal Supremo, 2014).

D) The Palma Arena Case

Iñaki Urdangarin (**B**), the brother-in-law of the Spanish King Felipe VI, has been investigated by the judge José Castro and the Anti-Corruption Prosecution in the Palma Arena case, under the accusation of irregular agreements between the Nóos Institute and the Balearic Institute of Tourism, dependent of the Balearic Government. The corruption scandal has also implicated the King’s sister Cristina Federica de Borbón y de Grecia for crimes unrelated to public procurement: money laundering and fiscal crimes. The Nóos Institute was managed by Urdangarin and Matas (**P**).

The Palma Arena case started when the new Balearic government took office in 2007 and found an expense of €90.6 million for the construction of a velodrome, when the original amount budgeted was €48 million (Audiencia Provincial de Palma de Mallorca, 2012). Some service contracts of a Law Studies’ firm are also being investigated under the suspicion that they were awarded with the condition that Jaume Matas (**P**) would be hired when he quit the political arena. Another clear example was provided when Jorge Moisés (**B**) was awarded a minor contract with a value of €12,000 for a report on architectonic barriers which was never presented whose real objective was, according to the accused himself, to compensate him for the excess of workload he had in a different project. Given the complexity of the case, the judiciary sentence cites some of the kickbacks involved in the corruption network. Among them, they were found different contracts (**K**) to the wife of Jaume Matas with an estimated value of €40,000 for which she carried out no work in exchange.

E) Millet-Palau Case

Ferrovial (**f**) is the main company implicated in this case for paying commissions of 5.1 million euros to the political party CDC. Doing so, Ferrovial ensured it will be awarded two of the most important current contracts in Barcelona: the infrastructure for the Department of Justice of the Catalan Region and the construction of line 9 of the underground. Official reports inform that Ferrovial, generally paid a commission of 4% of a specific project (**K**), from which 2.5% was for the political party and 1,5% for the Félix Millet (**I**) and Jordi Montull (**I**) for their work as intermediaries, obtaining 80% and 20% respectively (Juzgado de Instrucción nº 30 de Barcelona, 2013). According to the same source, the kickbacks (**K**) Ferrovial offered were channelled through three main pathways: i) cash payments (2.3 million euros between 2000 and 2007) to the Treasurer of the party; ii) false invoices (2.1 million euros) from five firms (**f**: New Letter, Letter Graphic, Altraforma, Hispart and Publiciutat) for non-existing works or services that were in fact for the political party CDC; iii) the remaining money (0.63 million euros) was channelled through “apparent collaboration agreements”.

The presentation of the different cases helps us to provide a wide, although simplified picture of how corruption takes place during public procurement processes in Spain. In most of the cases, there is a central figure who coordinates and serves as an initial link in the corruption ring (Correa, Millet, García Sánchez). The figure of the ringleader sits typically in politics or public institutions (Matas, Pujol, García Sánchez, Roca, Millet), but in other cases a close friendship of a business person with a powerful public officer gives them the chance to take advantage of their beneficial situation (Correa). Their cooperation was fundamental in order for the scheme to work, although it is not certain whether they would be necessary once the first contacts have been created. Another common trait is that corruption is not focused to a certain region of Spain (Andalucía, Madrid, Barcelona, Valencia) or a particular political party (PP, PSOE, CDC) – this reinforces the hypothesis that corruption is perceived to be widespread in Spain (European Commission, 2013).

Another interesting aspect to point out is that cross-party corruption was only present in the Malaya case; this is why the government of Marbella had to be dissolved. A first conclusion from this observation is that political competition affects the structure of corruption. However, as further explained in the Appendix 1, with a bigger sample of corruption cases, the two biggest political parties (PP and PSOE) appear to be involved, along with other smaller parties (CDC, ERC, PSC). One cannot conclude from this evidence that corruption is limited to certain political parties.

The general procedure shown in the description of the corruption cases was to irregularly assign contracts by using the set of *techniques* 1 to 7 described at the beginning of section 2.3. Doing so, people involved in the corruption ring ensured the *chosen* companies were the winners of the public contests. However, certain corrupt agents can be considered more cautious – in the Gürtel case, corruption was sometimes hidden through minor contracts where no publicity was required. In the Millet-Palau case the suspected irregularly awarded contracts with individual values of more than 2 million euros. In the Palma Arena case, it was notable how the final cost of the project almost doubled the initial value of the contract. The kickbacks appear to take a wide variety of forms: suits, luxury cars, fake contracts, cash, and fixed percentage commission over the contract value, among others.

Recalling the definition of *corruption techniques* by Fazekas, Toth and King (2013), it involves the “*violation of principles of good public procurement in order to achieve corrupt benefits even if narrowly defined laws and regulations are not infringed upon*”. Regarding the non-fully justification for contract modification, especially the final price of the project (over-cost), it is worthy to refer to the article 234.3 from the TRLCSP. The legislation allows the modification of the contract conditions without the need to be notified or approved by any contracting authority as long as it does not exceed 10% of the initial agreed cost. This is another example of how these techniques are sometimes used by corrupt actors to hide and legalize their actions.

Even with the large amounts of both money and people involved, the 1661 open cases and more than 500 people under investigation for corrupt crimes by different judiciary institutions (Consejo General del Poder Judicial, 2013), only 23 people were in jail for their crimes against the public interest by abusing their power (Europapress, 2014). According to Rosa Díez³ this lack of legislative strength sets the stage for politicians to misbehave as long as political corruption is supported, protected and sustained by the public institutions.

An experiment by Abbink, Irlenbusch and Renner (2002) demonstrated that imposing a fine equal to the amount captured illegally and losing the opportunity to continue playing in the next rounds, reduced significantly the corrupt activities carried out, both by the briber and the bribee. They called this treatment “sudden death”, implying that the player is forced to leave the game, refusing any potential future income. Despite all the debate that can arise from the external validity of this experiment, some obvious issues still arise. The fact that less than 5% of the people investigated in Spanish corruption cases ended up in prison and some public officials found guilty of corruption-related crimes are not fired from their jobs, proves that there is still room for the Spanish legal system to improve the corruption situation by applying non-literal “sudden-death” treatments.

2.4. A deeper insight on the most common *techniques of corruption cases A-E*

Despite the existence of a long list of *corruption techniques* (Fazekas, Tóth and King; 2013), during the description of the corruption cases it has been noted that a limited group of 7 irregularities are more recurrent when it comes to rigged procurement processes in Spain. This is why it is relevant to have a deeper look into those *techniques*, and the way to proceed is through the use of a database – which we will refer to as EU-TED, released by the European Commission, containing 96,385 Spanish contracts publicised in Tenders Electronic Daily (TED, from now on) from 2009 until the end of 2013. As discussed in **Appendix 1**, the difficulty of tracking corruptly awarded contracts involved in cases A-E in TED led us to change the approach considered.

The alternative chosen has been to select a random sample of 48 contracts which had a judgement from the different regional or central Arbitration Courts. For the sake of simplicity, we will refer to this sample as Arbitration Court sample. The reason for choosing this alternative strategy, is that all of those contracts contained in A.C. sample were denounced by one or more affected bidders for containing irregularities during its procurement process. Of

³ Rosa Díez is the leader of the UPyD political party, which was the fourth largest party by votes in the 2011 national elections.

course, not all the denounced processes are found to have an irregularity. That is why the selected contracts for this analysis are only those with a *positive* response from the Arbitration Court, implying that an irregularity was found in the procurement process and the whole procedure or some parts of it needed to be amended. In the Arbitration judgements it is identified what part of the procurement process are under suspicion of having been manipulated, so it can be directly related with the described *corruption techniques* 1-7. Once the Arbitration judgements are randomly selected, the next step is to track the contract subject to judgement in the database.

The sample of 48 contracts yielded 270 observations, **Appendix 2** details the procedure followed to match the Arbitration Court judgements with the observations in the database. Although it will be further discussed in this section, it is pretty obvious that the sample is relatively small compared with the large amount of observations contained in the original database. By creating a dummy variable signalling whether a contract is included in the A.C. sample or not, we could analyse big differences between the two groups, in doing so, there are two main issues to take into account. Firstly, the fact that a contract is not included in the A.C. sample, does not imply that it has not been analysed and judged by an Arbitration Court. In 2013, more than 1000 appeals were filed (Tribunal Administrativo Central de Recursos Contractuales, 2013). Secondly, the fact that a specific procurement process is not denounced, does not imply that it is not corrupt. It may be the case, as explained at the beginning of section 2.3, that there exists collusive behaviour among competing firms which may result in no denunciations of a corrupt process (López Miño and Valcárcel Fernández, 2012). It may also be the case that a competitor does not denounce an irregularity, because denouncing the contracting entity may threaten the denouncers' chances at winning future contracts. Bearing in mind those aspects, we proceed with a more detailed analysis. Because the Arbitration Court in Spain was created in 2010, there are no contracts awarded before 2010 in this sample. For the sake of comparison, contracts awarded in 2009 and 2010 were dropped from EU-TED.

Recalling the *corruption techniques*, the CRCB is working to develop a variable which will be linked to technique number 6, i.e: non-full justification for contract modification. This implies we are not able to control for post-award contract modifications. Furthermore, given that the current database of TED announcements only include those contracts above the EU thresholds, it is not possible to study *technique* number 1, on the splitting of contracts into *minor contracts*. As a result, we still have 5 irregularities identified in the corruption cases which can be linked to different variables in our database. Table 5 presents a summary of the techniques, its relevant variable in the database and a brief description of the variable.

Table 5: Linking corruption techniques to the variables in the database.

Corruption technique identified in cases A-E	Corresponding variable in TED	Variable definition
2.- Use of non-fully justified <i>urgency</i> procedure 7.- Abuse of negotiated procedures without publicity	2.proc2, 3.proc2, 4.proc2	Type of procurement procedure followed: more detailed definition in Table 6.
3.- Irregularities in the selection criteria 4.- Deficient motivation for the contract awards	ca_criterion ⁴	Criteria used for awarding contracts: EMAT or Lowest price.
6.- Unjustified exceptions for the obligation of publicising the tenders	nocft	Contract awards which had no call for tender prior to its award.

⁴ The CRCB is now working in developing a new variable which will measure the weight of those criteria which are non-objective and then could lead to more irregularities. It will support and complement the variable *ca_criterion* when it comes to EMAT.

In Table 6, contracts are categorised according to the procurement procedure (corruption techniques 2 and 7). It is easy to note that within the sample randomly chosen for the analysis we cannot find a single contract which was awarded through any of the possible “accelerated” processes. As the A.C. sample is a representative subgroup of the overall database, it implies that these types of corruption technique are not frequently used for contracts over the EU threshold. Furthermore, it can be observed how concentrated the contracts are in the first category (open procedure), implying this is the most widely used procedure in contracts in TED in both samples. Only 1 out of the 270 observations in the A.C. sample was awarded using the *negotiated procedure* without competition. It may still be the case that the *corruption technique* denounced at the beginning of section 2.3 are recurrent in contracts below EU thresholds in which formalities are more easily avoided and cannot be observed in EU-TED.

Table 7: Categories of relevant procurement procedures

Procedures observed in corruption cases A-E		sample		
		TED	A.C.	Total
1. Open procedure	N	45,234	236	45,470
	%	90.63	88.06	90.62
2. Negotiated without competition	N	3,788	1	3,789
	%	7.59	0.37	7.55
3. Award without publication	N	870	31	901
	%	1.74	11.57	1.80
4. Accelerated negotiated procedure	N	16	0	16
	%	0.03	0.00	0.03
Total	N	49,908	268 *	50,176
	%	100.00	100.00	100.00

* The two observations missing in the A.C. sample followed the *Negotiated procedure with Competition*

Although a more complex analysis was intended to be implemented with the objective of determining whether certain aspects of the procurement process can be good indicators of the probability of a contract to be reviewed and sentenced by an Arbitration Court, two issues complicated this task. Firstly, as introduced before, the A.C. sample turned out to be too small compared with the complete EU-TED database. However, although some alternatives were taken into account for the sake of comparability between samples, there was a more limiting aspect. Some variables were importantly restricting the analysis which turned out to be meaningless, the A.C. sample observations that could be used for the analysis was too small due to the large amount of missing values. It is especially notable the case of *the number of bids received*, which in turn, affected the *corruption risk index*. These two variables, reduced the observations available for the analysis to less than 25% of the A.C. sample.

Table 8 includes six different components of the *corruption risk index*, on the fourth (TED sample) and fifth (column) it is reported the percentage of missing values for that component on each of the samples. They refer to:

- the fact that a single company bid for a specific contract,
- the fact that a contract was awarded with no prior call for tender,
- the type of procurement procedure use to award the contract,
- the weight of non-price evaluation criterion,
- the length of the submission period, and
- the length of the decision period.

Table 8: Components of the corruption risk index and their percentage of missing values in each of the samples.

	Relevant variable	TED sample	A.C. sample
cri_eu1	Single bidder competing for the contract	41.94%	75.56%
cri_eu2	No call for tender prior to contract award	0%	0%
cri_eu3	Procurement procedure used for the award	0%	0%
cri_eu4	Weight of non-price evaluation criterion	49.07%	69.26%
cri_eu5	Length of the submission period	22,72%	14.07%
cri_eu6	Length of the decision period	27.64%	15.56%
Total	Number of total observations 2011, 2012, 2013	52,942	270

It can be easily noted that the variable reporting the number of contracts in which competition was limited to a single bidder (cri_eu1) is the most problematic one in the A.C. sample. This raises some interesting issues, because according to Fazekas, Tóth and King (2013) contracts with a single bidder is one of the clearest indicators of corruption outcome. The fact that 3 out of every 4 contracts reviewed by an Arbitration Court in Spain do not provide this information is something that is worthy of further investigation. In the TED sample, this figure is smaller but still significant with 41.94% of contracts not reporting the number of bidders. On the other hand, both the variables regarding the contracts with no call for tender publicised before its award and procurement procedure followed for such award, provide information for all its

observations, 52,942 for the TED sample and 270 for the A.C. sample. The weight of the non-price evaluation criterion also presents a high proportion of missing values for both samples, this variable being the one with the largest percentage of missing values for the TED sample. However, the CRCB is still working on the design of this variable, so it is expected that the percentage of missing values for this variable will be reduced once the design and the implementation of the definitive algorithm is completed.

Finally, the variables reporting the length of the submission and decision periods, provide relatively more data in the A.C. sample than in the TED sample. The sample of contracts reviewed by the Spanish Arbitration Court are missing this values less than one-sixth of the time. In the TED sample, these figures are 22.72% for the submission period and 27.64% for the decision period.

A simple binary logistic regression was used to determine the probability that a specific contract would be reviewed and positively sentenced by an arbitration court in Spain. However, because one of the variables presented missing values for more than 75% of their observations, from a sample of 270, the analysis turned out to be meaningless. On the other hand, the fact that such the proportion of missing values in the A.C. sample for the variable “single bidders” is so large, is interesting by itself, especially when this figure is 1.8 times larger in the A.C. sample compared to the rest of the EU-TED database.

3. Scoping of micro-level public procurement data

EU Directives set the rules to be followed for contracts above specific thresholds. Nonetheless, Member States have the legislative competence for public procurement below the mentioned thresholds. After admitting the difficulty of publishing reliable statistics in Spanish public procurement given the way in which official data is provided, Sánchez Graells (2011) estimated that 90% of the total number of contracts awarded were below the EU threshold, accounting for 20% of the total expenditure in public procurement. According to our own estimation using public information on Spanish procurement and EU-TED, the percentage of contracts which were below the EU threshold, and thus not publicised in TED was a bit lower: 83.8% on average for the years 2010, 2011 and 2012 (Ministerio de Hacienda y Administraciones Públicas, 2013). Spanish legislation has adapted the EU rules for contracts as the general rule for all public contracts, independently of whether they are above or below the EU thresholds, with the exception of the so called *minor contracts*. In Spain, public contracts may be classified into three different groups. Each follows different rules according to the value of the contracts tendered, the type of contracting authority and the object of the contract.

1. **Minor contracts:** They include those work contracts up to 50.000€ and any other contracts up to 18.000€, not lasting more than one year – whenever the purchasing entity is not a centralized procurement entity. In this latter case, the legislation to be followed is the TRLCSP even when the value of the contracts are below these thresholds.

These types of contracts do not need as many procurement requirements and formalities such as publicity, and its award can be done through a direct and non-competitive procedure. The

only requirement for a minor contract is the approval of its expenditure and the incorporation of its invoice into the administrative file.

2. Contracts with a larger value than *minor contracts* but below the EU thresholds:

Those contracts not being considered minor contracts will be generally managed under the rules of the EU Directives. However, they are not obliged to be published in the Official Journal of the EU. Although some efforts have been taken in 2010 to adapt the Spanish legislation to the EU Remedies Directive, procurement below EU thresholds still lacks any effective review mechanism and remedies. Procurement procedures of this type are covered by the general Administrative Law provisions (Law 30/1992) and Common Administrative Procedure and Law (29/1998). This deficiency normally implies a very long lasting review procedure with no automatic freezing effect. Other provisional measures are only implemented by an order from the competent court, which take too long to obtain a definite resolution.

These contracts do not include Annex II B Services, nor other contracts independently of their estimated value: media contracts, R&D contracts fully-funded by the contracting authority, defence procurement contracts, secret and reserved contracts and telecommunication contracts. Despite the exclusion of the Annex II B Services, several explicit rules have been set in order to satisfy the minimum requirement dictated by the article 21 of Directive 2004/18. On the other hand, all types of public-private partnerships and any other public-private collaborations are subject to harmonised regulation because they are considered to be especially complex.

3. **Contracts subject to harmonised regulation:** It includes all contracts above the EU thresholds and those that cannot be classified into any of the other two groups.

The next table summarises the specific threshold for the classification of the different contracts according to their type and estimated value. The column of the contracts subject to harmonised regulation follows the EU threshold. The second column states the minimum thresholds for which contracts are not considered *minor contracts*, and have to follow tighter regulation with regards to publicity and mechanism of review.

Table 9: Specific thresholds according to the value and type of contract

Type of contract	Contracts subject to “below thresholds” procurement rules	Contracts subject to Harmonised Regulation
Public works and public works concessions	Between 50.000,01 and 4.845.000	4.845.000
Supply Services (excluding Annex II B services)	Between 18.000,01 and 125.000 or 193.000 depending on their object and type of contracting entity.	125.000 or 193.000 depending on their object and type of contracting entity.
Publicly-funded or subsidised contracts	Between 50.000,01 and 4.845.000 (works), and between 18.0000,01 and 193.000 (services related to public works contracts)	4.845.000 (works) and 193.000 (services related to public works contracts).
PPP and other public-private collaboration arrangements	In all instances, regardless of their estimated value.	In all instances, regardless of their estimated value.

Source: Sánchez Graells, 2011. “Public procurement below thresholds in Spain”.

For the submission of tenders, the time restrictions are normally shorter for contracts below the EU thresholds than for contracts above them. Although different regulations for *below threshold contracts* have not been established, more flexible conditions are implemented regarding the mandatory certifications needed for qualitative selections.

Publication of contracts by public administrations, excluding *minor contracts*, is usually done in official journals and periodicals, either at a national (Boletín Oficial del Estado) or regional level (Diario Oficial de las Comunidades Autónomas), in the contracting entity's buyer profile. Publication in the European Official Journal remains voluntary for the contracting entity whenever the estimated value of the contract is below the EU threshold.

Those organisations, which cannot be classified as a “contracting authority” according to the TRLCSP, are allowed to determine their own procurement processes. They have to ensure that these rules guarantee efficiency of the process, publicity, competition, transparency, confidentiality, equality and non-discrimination. However, these particular regulations will only be valid, as long as they are approved by the State Legal Service or the legal counsel of the pertinent entity. Until these particular procurement rules are approved, all institutions included in the TRLCSP must satisfy the conditions for tendering and awarding contracts dictated by the EU in all public procurement initiatives they incur. Those entities not falling into the classification of “public administrations” will also benefit from additional flexibility regarding publicity.

The **State Procurement Platform** is the main source of information regarding public procurement in Spain (Junta Consultativa de Contratación Administrativa, 2014). It is available for interested parties, although most of the information is in Spanish, through its webpage: <https://contrataciondelestado.es>. The objective of this electronic resource is to publish the calls for tenders, their resolutions and other relevant information regarding the successful contracts. The body responsible for this task is the Consulting Board on State Administrative Contracts. Contracting entities will compulsorily have their own profile (*buyer profile*) on the State Procurement Platform and will be responsible to maintain and publicise this profile on the Internet. Among other relevant information, the buyer profile will include data on its contractual activity such as open bids, documentation required for submissions, contact details of the contracting entity, contracts being awarded or procedures being cancelled. The State Procurement Platform also provides a connection to the procurement information from the different Spanish regions; however, contracting entities, whose nature is regional or local, are not obliged to publish their notices on this webpage. The State Procurement Platform provides information on public procurement, independently of whether the tenders are electronic or not. Individual tenders are available in different formats (html, XML or PDF) for users to download. But it is not possible to download data in bulk, complicating the statistical study of Spanish public procurement. In order to provide a deep analysis of the Spanish State's procurement activity, one would have to create a micro-level dataset of individual tenders and contracts.

A preliminary overview of the variables contained in the State Procurement Platform allows us to observe four different types of files: the call for tenders, the economic and administrative requirements and the award of the contract and the formalisation of the contract. Although every file of each type follows a similar structure, it is not the case that the same information is always present. The different variables found in a sample of contracts are included in Table

11 in the **Appendix 3**. Most of the contracts analysed include contact details of the announcing entity, the type and object of the contract, the estimated value, assessment criteria and deadlines. Once a contract has been awarded, the notice includes the name of the winner and the motivation for the award. In some cases the number of bids received, the maximum and minimum offers and the final price and duration of the project are included. Some files also include the number of times a call for tender was edited and in what way, and notes about the decisions taken by the Arbitration Court relevant to the procurement. A more exhaustive list of the variables contained in the analysed sample is included in the next page. It is important to note that, to the best knowledge of the authors, information on contracts is not provided after they are formalised in the State Platform. Examples include contract modifications, final value of the contract and announcement of contract fulfilment. Neither is there data available on whether the funds came from the EU, whether subcontracting activity takes place or economic/financial information about the winning company such as number of employees, annual turnover or its main sector of activity.

4. Summary and potential future research

This paper provides an introductory map to understand how high-level corruption takes place in the Spanish public procurement. It serves as a guide for any interested reader in the main characteristics of the structure, size, institutions and legislations of the public procurement sector. It also identifies the main sources of information and the most relevant corruption cases regarding the procurement processes. By presenting the percentage of expenditure of procurement as a percentage of GDP, the estimated value of the contracts and the main types of contracts used, we emphasize the relevance and the structure of the public procurement sector in Spain. We have also briefly reviewed relevant legislation at the Spanish and EU-levels, highlights differences. It has been shown that, while legislation for contracts that are not *minor contracts* but do not meet the EU thresholds is very similar to the EU Directives, the legislation for *minor contracts* is much more relaxed. The weak legislation for *minor contracts* leaves plenty of room for corrupt market players to act against the public interest. In fact, examples like the Gürtel case show that these contracts are commonly used in corrupt activities.

This paper also introduces the main institutions governing public procurement in Spain. Additionally, it provides an initial assessment of the micro-level data available. No issues arise with those contracts above the EU thresholds, as they have to be superfluous publicised in TED. Keep in mind that the estimated value of tenders published in TED as a percentage of GDP was 2.4% in 2011 while the total expenditure on works, goods and services as a percentage of GDP was 15.5% (European Commission, 2012). Most of the contracting activity in Spain is done below the EU thresholds.

Regarding the qualitative analysis of corruption cases, information is in many cases low-quality. Given the complexity of the cases which may take more than 5 years of investigations and more than two years of trials, offering a reliable picture of what is really happening nowadays in Spain becomes a challenging initiative. For example, the final sentence of the Malaya case, which is the only relevant case for this paper that has been closed so far, was more than 5.000 pages in length. A study on the media coverage of Spanish corruption scandals in the two most-read newspaper discovered a *highly partisan media coverage* (Palau and Devesa, 2013); depending on which of the political parties is involved in the corruption ring, the media offers relevant differences in the way they cover these cases.

A preliminary overview of the database of Spanish contracts publicised in TED has been provided. Furthermore, a simple logit regression was intended to be applied to a smaller sample of contract which have been reviewed and sentenced by a Spanish Arbitration Court. However, the analysis turned out to be meaningless due to the size of the sample and the large percentage of variables with missing values, achieving a maximum of 75% for the variable reporting the number of bids received in the Arbitration Court sample.

It has been noted that the nature of the Arbitration Court in Spain is reactive, which implies that the activity of the institution depends mainly on the willingness of affected competitors to denounce irregularities in a specific procedure. The more competition allowed in a procedure, the more probability of a contract being sentenced. Alternative control mechanisms for the Arbitration Courts would necessarily improve the transparency over other types of procedures used. For example, if an Arbitration Court sets a number of random contracts to be examined during a period without the need of a third party to denounce, it is more probable that irregularities are found in procedures that are not always open to competition.

For the sake of transparency, the Ministry of Finance and Public Administrations created and maintained the State Procurement Platform which eases the access to public contracts. However, given that this webpage does not provide an aggregate dataset with individual contracts, it becomes very complicated to provide a statistical overview to complement the work of Fazekas, Tóth and King (2013). In other words, the State Procurement Platform creates difficulties for the study and analysis of irregularities in procurement with the goal of developing a Corruption Risk Index (CRI) for Spain.

One next step in this line of research is to provide a more detailed statistical analysis of corruption techniques. Work on the creation of variables, measuring the non-objective criteria or those contracts that have been modified after their award will widely improve the potential value of this research. Having the opportunity in the future to download bulk data from the State's Procurement Platform will have a major impact in the case study of Spain. It will open the doors to access the large majority of contracts which are not publicised in TED and will provide a more reliable and generalizable picture of high-level Spanish public procurement.

A more specific pathway, closely related to this paper, and which is a current research line undertaken by the CRCB, is to study the trends of corruption techniques related to the sentences from different Arbitration Courts, and measuring and assessing the impact of the Arbitration Court judgements on the use of different corruption techniques and their respective effects on the corruption risk index.

Appendix 1: Exploring the potential for statistical analysis of contracts under investigation for corruption

The development of statistical analysis that compares contracts which have been or are being investigated due to irregularities in their awarding with those that have not would provide an innovative approach to studying high-level corruption in public procurement. Despite the fact that a contract which is not investigated does not necessarily imply that there have not been irregularities in the procurement process, this type of analysis would be considered an interesting advance in quantitative corruption research in Spain.

The first step required for this was to build up a database of contracts that are considered “suspicious” by a judiciary source, so they can be later compared to a “non-suspicious” list of contracts. To qualify as suspicious by our definition, and be included in our dataset, the contracts must fulfil four requirements:

- i) the contract should deal with public procurement,
- ii) the contract should be awarded in the period 2009-2014,
- iii) there should be a judiciary source justifying why it is being investigated and
- iv) the contract should belong to a corruption case of high relevance – whether it is relevant because of the media attention it captured, the importance of the people involved in the case, or the amount of social damaged in monetary terms caused by this case.

It turned out that none of the cases which satisfied condition (iv), with the clearest example being the Gürtel case⁵, had taken less than 5 years to be closed. According to the Judges Deans of Spain during their XXIII meeting (Fraile, 2013), the scarcity of physical and human resources in the Spanish Justice is especially worrying in corruption cases what makes their length to be longer than desired. It should be noticed that crimes such as bribery, money laundering or trespass prescribe in 5 years, and the relative difficulty to detect such crimes provokes *time to play a major role in the recurrency and relevance of the corruption problem*. Taking into account the limitation that condition (iv) was imposing over conditions (ii) and (iii), we considered it could be dropped for the sake of increasing the probability of finding contracts which simultaneously satisfy conditions (i), (ii) and (iii).

We started working with an initial list of 111 cases. The priority was then to obtain a list with cases related to public procurement from a recent period which they already have a judiciary source indicating what are the contracts being investigated. After removing from the sample those cases which were not related with public procurement but with other crimes such as urban corruption, money laundering or financial frauds, the sample was reduced to 47 cases.

An initial look at the cases considering their investigation period allowed us to start working with a sample of 14 cases satisfying the three conditions. The potential cases for the statistical analysis are provided in the table below.

⁵ The Gürtel Case has investigated in depth several politicians of the current incumbent central government (Partido Popular). The ex-treasurer of the party was condemned to jail in 2013, and the Prime Minister Mr. Rajoy had to make a public appearance justifying his involvement in the investigations.

Table 10: List of potential cases for the statistical analysis satisfying conditions i), ii) and iii).

Case	Political Party ⁶	Relevance for contract search
Caso Baltar	PP	Not publicised in the Official Diary of the Region.
Caso Clotilde	CDC	Insufficient information on the judiciary writ.
Caso Feval	PSOE	Insufficient information on the judiciary sentence.
Caso ITV	CDC	Insufficient information on the judiciary sentence.
Caso Lifeblood*	PP	Contract notice on the Official Diary of the Region.
Caso Manga (<i>related with Pokemon</i>)	CiU, ERC	Investigation under secrecy.
Caso Marea*	PSOE	Identified 26 <i>minor contracts</i> and 2 below EU thresholds but not considered <i>minor contracts</i> .
Caso Mercurio*	PSC	One potential contract found.
Caso Orquesta	PP, PSOE	Investigation under secrecy.
Caso Palau	CDC	Insufficient information on the judiciary sentence.
Caso Plaold	PSOE	No awarded contracts after 2008.
Caso Pokemon	PP, PSOE	Investigation under secrecy.
Caso Poniente	PA, PSOE	No awarded contracts after 2008.
Caso Riopedre (<i>related with Marea</i>)	PSOE	Insufficient information on the judiciary sentence.

*Given the relevant findings on these cases, they will be further developed in the Appendix.

After working with the sentences in depth it was found that:

- 2 of the cases: *Plaold* and *Poniente* had no contracts being awarded after 2008. The investigation covers more years, but it is not possible to find contracts related to these cases signed from 2009 onwards.
- The investigation of the *Orquesta* case has been re-opened (re-started) in September 2014, after the work carried out previously was declared null by the Provincial Audience of the Region A Coruña.
- The case *Pokemon* (and consequently, the case *Manga*, which is a part of the larger *Pokemon* case) are still under secrecy because the investigation stage has not finished yet. The Judges do not consider convenient to reveal information on the case because it may affect the investigation in the future.
- Regarding the *Clotilde* case it has not been possible to access any firm sentence. Nonetheless, we have had access to a 6 page writ (High Court of Catalonia, TSJC: Sala Civil y Penal; 26/02/2013) in which it described the general framework of the corruption ring, kickbacks and principal actors, although the information provided is so scarce that it not very useful.

After this second study of the potential cases, the final list consisted of 8 cases. However, most cases did not include the relevant or sufficient information to find the contracts (Feval case, ITV case, Palau Case and Riopedre case); in the Baltar case it was denounce that the contracts were not published in the Official Diary of the Region. These unsuccessful

⁶ PP (Partido Popular), PSOE (Partido Socialista Obrero Español), CDC (Convergència Democràtica de Catalunya), PA (Partido Andalucista), ERC (Esquerra Republicana de Catalunya), PSC (Partido de los Socialistas Catalanes), CiU (Convergència i Unió)

sentences, reduced the final list to a limited number of 3, from which we extracted as useful information for the statistical analysis:

- Lifeblood case: a contract awarded in October 2010, which was later cancelled with a value of €124.75m euros.
- Marea case: 26 minor contracts whose value range covers from 11,484.00€ and 49,914.00€, and two contracts whose values exceed the threshold to not be considered minor contracts (50,000.01€).
- Mercurio case: one potential contract has been obtained, given the ambiguity of the judiciary sentence it cannot be exactly determined whether this contracts has been investigated or not. The sentence says it will investigate “*everything related with the works at the Fira of Sabadell (...)*”.

In TED one can access the contract notice 2010/S 70-105026 whose contract of the contracting entity is *Fira de Sabadell*. The contract involves the supply of “musical instruments, sport goods, games, toys, handicraft, art materials and accessories” with a value of 935,818.43€. In summary, the objective to find relevant contracts related to public procurement from 2009-2014 with a judiciary source justifying their consideration for being irregularly awarded, started with an initial list of 111 corruption cases and ended up with only 3 cases providing such information (with the Mercurio case, not being clear). A final number of 30 relevant contracts were found:

- 1 above the EU-threshold which was cancelled after being investigated for corruption so it never took place,
- 26 minor contracts not exceeding 50,000.01€,
- 2 contracts below the EU threshold but not considered minor contracts,
- 1 doubtful contract above the EU threshold.

If all the contracts listed above were to be included in a dataset of “irregular contracts”, despite the doubts that the first and last contract may imply, we will end up with a list of 30 contracts. In such a dataset, in which 86.7% of the contracts are minor contracts and 93.4% of the cases belong to the same judicial case, implying that they were awarded by the same region, similar contracting entities and set of companies and politicians being involved. The limitations of such a dataset of contracts are obvious, being extremely biased to the behaviour observed in the Marea case, being not representative of the country of Spain. For this reason we decided to change the approach in order to offer a more useful statistical analysis.

This paper may serve as a critique for the lack of transparency in Spanish public procurement in practical terms, despite all the regulation and legislation. It must be noted the existence of several obstacles when trying to find information on those contracts being investigated for being awarded irregularly: lack of sentences uploaded to the Official Searcher for Judicial Resolutions (CENDOJ), and other specialised law databases (El Derecho, Westlaw, Tirant); official public websites not replying when requesting for information or judiciary sentences only informing on selective data when it comes to public money.

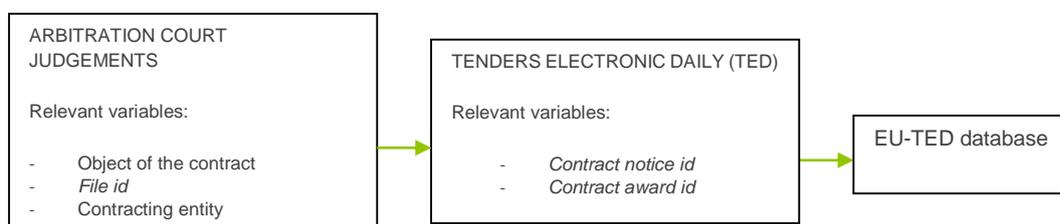
Appendix 2: Linking Arbitration Court judgements with the contract in the EU-TED database

Matching the random set of Arbitration Court judgements with their corresponding observations in the EU-TED database could not be done directly. The Arbitration Court judgements summarise the process followed; the actors involved; the complaint made by the affected party, or parties; and the resolution of the Court indicating what should be done to adjust the procurement process to the legality required in such a procedure. In the Arbitration Court sentences, it can be identified the contracting entity; the denouncing company; the object and value of the contract; the part of the process which is considered unfair by some of the bidders; and, in some cases, the name of the winning company. In some other cases the *file id*, which is the reference number or name attributed to the procedure by the contracting entity, was also included.

The initial idea was to match the observations in the EU-TED database by filtering some of the key variables appearing in the Arbitration Court sentences. Due to the fact that all the judgements analysed resulted in a *positive sentence* from the Arbitration Court, it implied the process should be repeated or amended. This is why variables such as *winner company*, *date of publication of the call for tender*, and *date of award* or *value of the contract*, could not be used for the match.

It turned out that the easiest way to proceed was to search for the contract notice in the TED webpage (ted.europa.eu), and match its *contract id* with the EU-TED's observations. The most useful variable to find contract notices in TED, if available, was the "file reference number attributed by the contracting entity" - IV.3.1). If this information was not mentioned in the Arbitration Court, typing keywords of the object of the contract and then filtering observations by approximated dates or cities was the procedure followed. The *contract id* assigned by TED was then the relevant variable to close the link between TED contract notices and EU-TED's observations.

Figure 2: Road map to match contracts judged by an A.C. with their observations in EU-TED database



Appendix 3:

Table 11: List of variables contained in the State's Procurement Platform announcements.

variable group	variable source	variable definition
announcing body	ca	name of the announcing body
announcing body	ca	settlement, street address, postcode
announcing body	ca	settlement name
announcing body	ca	post code
announcing body	ca	Country
announcing body	ca	main category of announcing body
procedure descrpt	ca	date of publishing the contract award announcement
procedure descrpt	ca	short name of the procured objects
procedure descrpt	ca	type of the procedure according to national law
procedure descrpt	ca	type of contract
procedure descrpt	ca	primary cpv code of objects procured
procedure descrpt	ca	location of contract performance (multiple possible)
procedure descrpt	ca	identification of eu funds used
procedure descrpt	ca	total number of offers received
procedure descrpt	ca	assessment criteria used
procedure descrpt	ca	criteria_count
procedure descrpt	ca	weight of non-price criteria
procedure descrpt	ca / cc	has the contract award been corrected
procedure descrpt	ca / cc	date of last contract award correction
procedure descrpt	ca	url of public contract award page
procedure descrpt	ca	reason why contract part has been cancelled
procedure descrpt	ca / cf	date when the part of contract has been cancelled
procedure descrpt	ca	expected contract duration (from award to completion)
procedure descrpt	cft / ca / cc	number of times announcements have been corrected in a procedure
procedure descrpt	ca	unique identifier of procedure / tender
Winner	ca	name of winner
Winner	ca	Country
Winner	cr	court registry ID of winner
Sums	ca	estimated price sum of all tender parts
Sums	ca	estimated contract value (corresponding to given part = row)
Sums	ca	minimum offer price
Sums	ca	maximum offer price
Sums	ca	number of months of contract
Sums	ca	number of years of contract
call for tenders	cft	date of announcing the call for tenders
call for tenders	cft	deadline for submitting bids
call for tenders	cft	deadline for obtaining tender documents
call for tenders	cft	location from where tender documents can be obtained
call for tenders	cft	expected contract duration (from award to completion)
call for tenders	cft	errors in call for tenders
call for tenders	cft	provision of est price
call for tenders	cft	url of public contract call for tenders page
call for tenders	cc	how many times a call for tenders has been corrected
call for tenders	cc	date of last call for tender correction
court decisions	ci	court decision

ca: contract award
ci: court interventions

cft: call for tenders
cr: court registry

cc: contract corrections
cf: cancellation form

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