Cross border joint procurement: risks, advantages and previous experiences (pharmaceutical market)

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The present report had the objective of analysis the benefits and challenges of cross-border joint procurement as innovative contracting scheme in pharmaceutical markets, summarizing the existing experiences.

This work tried to assess as well the critical aspects related both to the legal/normative and to the economic perspective.

Overall, it has to be stressed that a comprehensive framework for cross-border joint procurement in Europe has still to be developed.
Health systems are facing the need to control drug expenditure to decrease pressure on health care financial resources.

When striving for cost-efficiency, health care purchasers may experiment new ways of organizing health services.

Joint Procurement (JP) is likely to respond to this need.
Background (1)

- Joint public procurement (JP) in healthcare means that one purchasing tender is published on behalf of two or more participating authorities, to create a single procurement.

- The intention of JP is to obtain lower prices, save on administrative costs and pool expertise. This is a tool that is being considered as healthcare systems are under budgetary pressure.
The EU legislation on public procurement is intended to facilitate cooperation between contracting authorities, including between member states. This legislation could potentially be applied to cross-border JP of medicines.

However, this would entail a complex procedure, requiring agreement on all aspects of the cooperation. In the short term, it is unlikely that member states will explore cross-border JP opportunities under Directive 2014/24 for the procurement of medicines.

It is also uncertain whether cross-border JP could deliver the expected benefits.
Why Joint Public Procurement is in the spotlight?

• The recent launch of a number of high-priced medicines has attracted a great amount of public attention and created a catalyst for a debate around cross-border JP.

• The European Commission has confirmed its commitment to help member states address the challenge of access to medicines – earlier this year Commissioner Andriukaitis referred to the opportunity offered by the ‘Joint procurement agreement to procure medical countermeasures’ (JPA) drafted in April 2014 by the European Commission, when it comes to dealing with high prices of medicinal products.
Advantages from JP

- to exploit economies of scale;

- to reduce administrative costs;

- to share knowledge and expertise;

- to develop new products and technologies.
Risks from JP

Creation of a monopoly-monopsony at EU level, if JP would not ensure the presence of multiple providers in the market.
Previous experiences of JP

Foreign experiences of JP have regarded drugs for HIV-AIDS, TB and malaria and have revealed successful in lowering prices.

Other applications of JP schemes occurred in developing and transition countries as the Caribbean, Jordan, Serbia.

(The Organization of East Caribbean States achieved overall savings of ~44% when it started to apply JP for purchasing drugs).
Economic issues (1)

- **PRICE**: it has been stressed how currently, for the same drug, prices may vary between different EU countries. Price differentiation may be retained under cross-border joint procurement agreements: this would imply that the country with the lower price index level might enjoy higher benefits.

- How many countries and/or public authorities should aggregate to perform a cross-border joint procurement?

  There is no predetermined solution, as the price might be the result of a negotiation between the procurers and the suppliers. Therefore, this question on how many subjects might be involved in this procedure remains open, depending on various factors including even the countries wellbeing and the choices related to health policy.
Economic issues (2)

• How many suppliers should be included within each agreement? Exist the possibility of having multiple lots for the same drug, with lots being awarded to different suppliers. This has the potential to increase competition among interested suppliers.

• Which market structure and innovation?

.....scenarios might be different according to characteristics as market contestability, the presence of barriers to entry, the number of procurers and the pressure that potential new entrants may exert on the contractor, together with the willingness to invest in innovation.
Cross-border joint procurement may enable countries to afford better quality treatments, although there may have to be a trade-off with the risk of concentrating all procurement into the hands of one subject over time.
Bidding Strategies:

The implementation of cross-border joint procurement schemes for medicines and vaccines in the EU has mostly been motivated by the need to coordinate actions against pandemic diseases: it may not be easy to foresee specific needs and how, even with European rules to deal with these emergencies, countries will act.
Cross-border joint procurement should not create a situation of European monopoly-monopsony, in which one bidder could win the whole call for tender: on the contrary, this purchasing mechanism should ensure the presence of multiple providers in the market, minimizing the risks of collusion.

| Potential Risks and advantages of cross-border joint procurement schemes |
|---------------------------------|---------------------------------|
| **POTENTIAL ADVANTAGES** | **POTENTIAL RISKS** |
| Economies of scale in production for the supplier and lower prices for the buyer | Technical misspecifications in public call for tender |
| Development of innovative products | No implementation of other health measures to stress the usefulness of this scheme |
| Transparency and strengthening of the EU Internal Market | Monopoly-monopsony |
In general, EU level / cross-border JP of medicines seems unlikely in the near future. However, this will not prevent member states from engaging in small-scale JP. Even then, JP is not straightforward and may require adaptations of national legal frameworks related to price negotiations to be implemented.

More certainty is needed on all aspects before cross-border joint procurement is implemented on large scale (either within very large markets or in large disease areas).

The European Commission should continue stakeholder dialogue to address the outstanding issues and to demonstrate the realisation of benefits and the possibility to mitigate risks through small-scale pilot projects.
• In the light of these considerations, efforts need to be made to detail the modalities of intervention and the potential advantages for those subjects (countries, investors, firms) that decide to implement or join cross-border joint procurement schemes.

• The existing legislation needs to be refined, to include appropriate incentives and the development of scenarios within which cross-border joint procurement could be an appropriate solution to specific challenges.
• It remains unclear what body of law should regulate the agreements:

  either the rule in place in Member State or foreign/European legislation (the supplier’s national law)?
THANKS

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