



CENTRALIZATION AND INNOVATION

INNOVATION WITHIN PUBLIC PROCUREMENT

Legal concept (article 2(22) Directive
2014/24/EU)

Ontological element;

Teleological element;



EU STRATEGY

”Making Public Procurement work in and for Europe”, C(2017) 572 final;

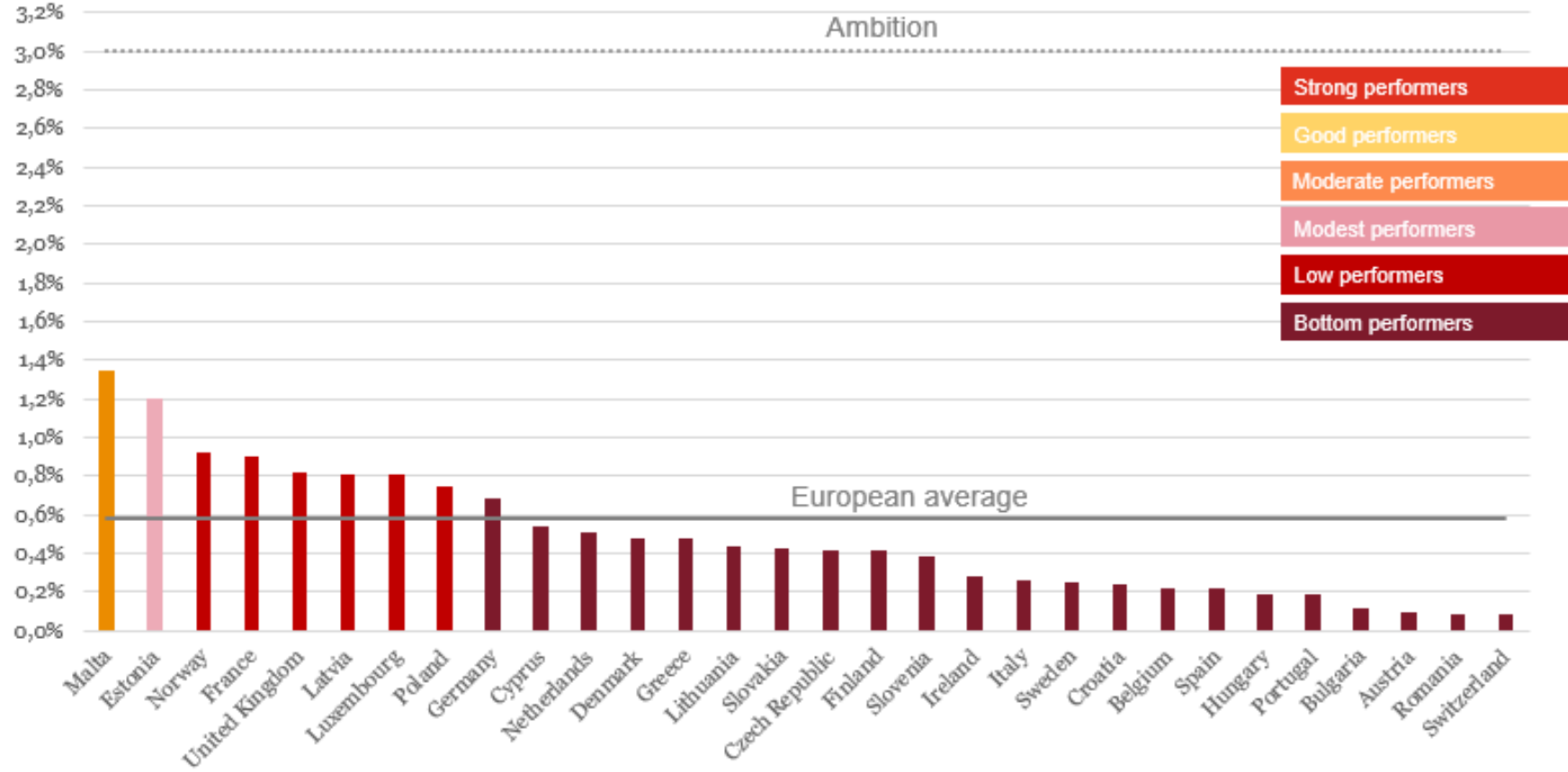
“Guidance on Innovation Procurement”, C(2021) 4320 final;

”A New European Innovation Agenda” C(2022) 332 final

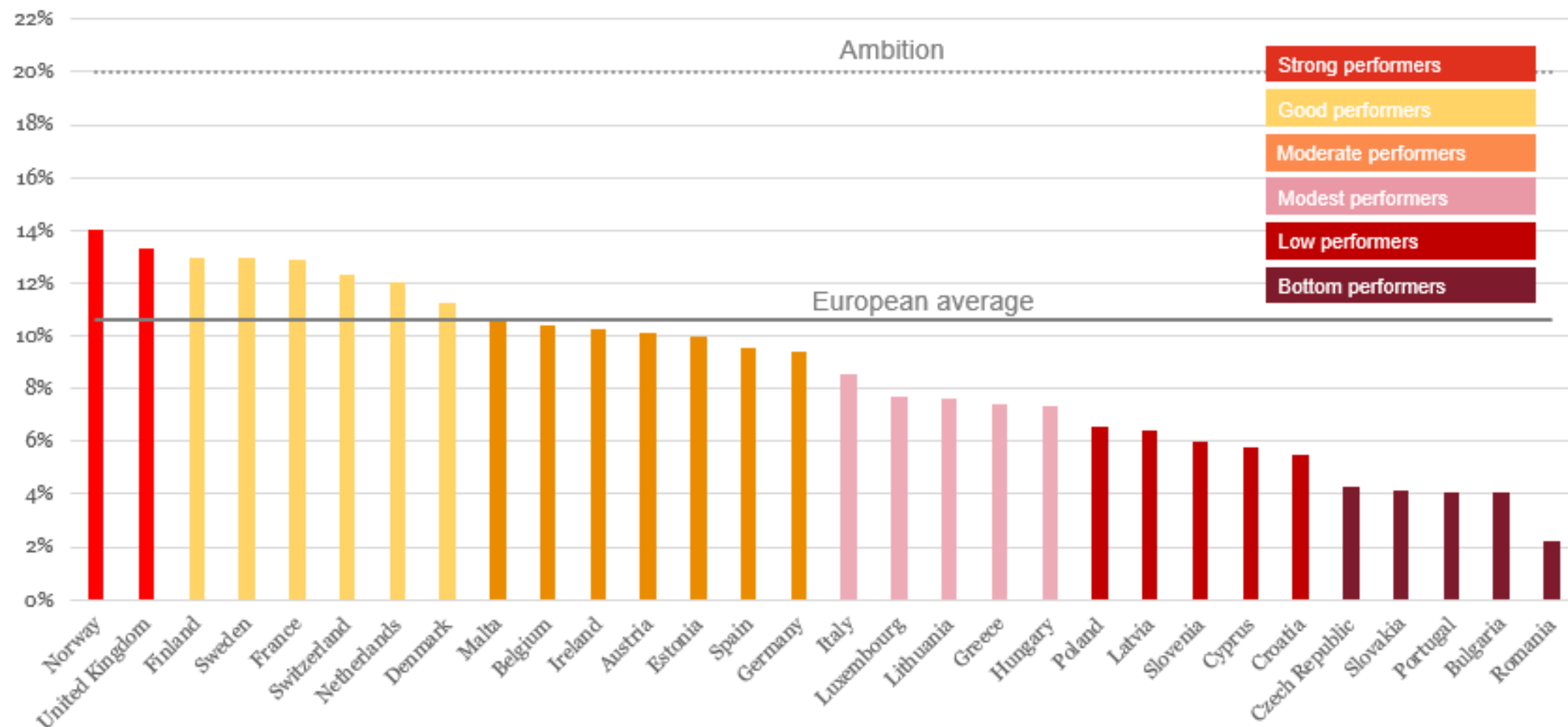
Outside the procedures – R& D; acquisition of partial results (e.g. | Prototype) = pre-commercial procurement (exclude);

Inside the Procedures – Redesign old procedures (technical specifications; award criteria); New procedure innovation partnership;

Share of R&D procurement out of total procurement



Share of innovation procurement out of total procurement



“...THE EUROPEAN
GOOGLES WERE YET
TO BE SEEN...”

BY,

MARIANA
MAZZUCATO



REASONS FOR LOW LEVELS OF INNOVATION PROCUREMENT

Legal and Cultural



The capital sin of the harmonization process – inability of integration through law only at the procedural level:

Administrative law traditions – connected with discretion of the public servant and procedural flexibility – key ingredients to innovation;

Special Procedures 2009-2018:

Portugal (0,78%); Spain and France(4,5% e 4,8%); Denmark (6%); Germany (9%) -Cfr. P Cerqueira Gomes, *Public procurement and innovation (EE, 2021)*

REASONS FOR LOW LEVELS OF INNOVATION PROCUREMENT

Legal and Cultural



Legal uncertainty on how to deal principles of legality; competition; and equal treatment in a award procedure for innovation;

Is the award phase the best environment to favour innovation?

Legal uncertainty on how to deal principles of legality; competition; and equal treatment;

Inability to attract start-ups;

Confidentiality;

Innovation and Contract Execution:

Intellectual Property Rights;

State aid;

Contractual modifications (contractual theory of "imprévision" and favorable innovation scenarios);



INNOVATIVE MARKETS

AGENCY THEORY

AN HOLISTIC APPROACH OR A SECTORIAL APPROACH

CAN
CENTRALIZATION
BE A LEGAL REMEDY

TO ACHIEVE THE
INNOVATION
“OBSESSION” AND
AVOID THEIR
PATHOGENETIC
AGENTS



CENTRALIZATION

Strategic instrument to achieve innovation - "Making Public Procurement work in and for Europe", C(2017) 572 final;
"Guidance on Innovation Procurement", C(2021) 4320 final;

Specialized working force for innovation – a CPBs body for innovation –
Procure2innovation (network of competences centres, funded by the Commission);

COMPETENCE CENTER FOR INNOVATION PROCUREMENT

Other examples is the Big Buyers initiative

CENTRALIZATION OF THE PROCUREMENT FUNCTION TOWARDS INNOVATION

Competence centre for innovation procurement is an organization or organization structure that is assigned the task by its government and has a mandate, according to national law, to encourage wider use of pre-commercial procurement and innovation procurement, by working as **CPB** or simply providing practical and financial assistance in specific sectors;

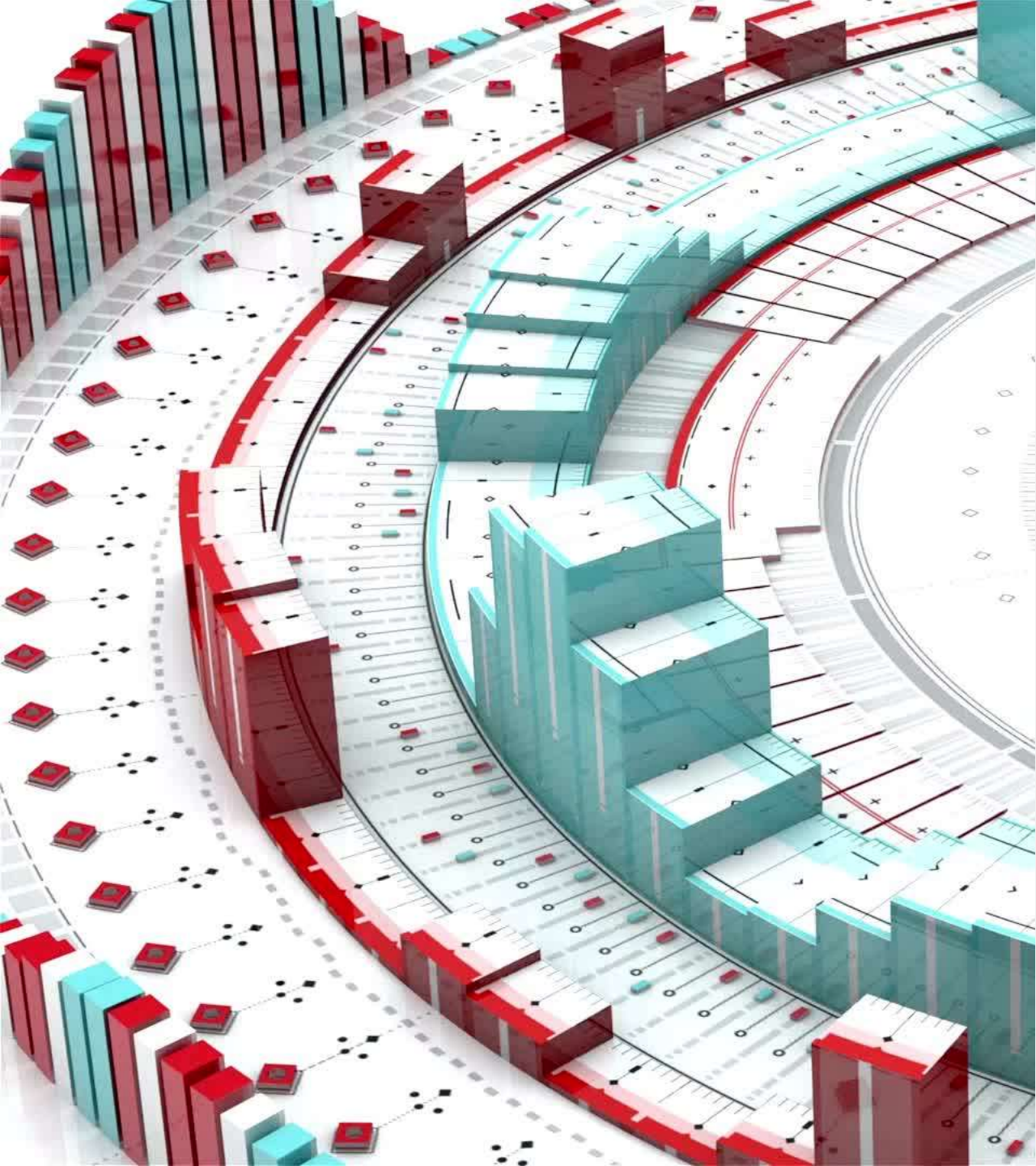
ADVANTAGES

OVERCOME ADMINISTRATIVE TRADITIONS DISCRETION AND FLEXIBILITY

- Specialized civil servants;
- Strategic planning in sensitive areas;

OVERCOME INNOVATIVE MARKET AND SENSITIVE LEGAL ISSUES

- Better knowledge on how to consult the market and how to deal with IP law and State aid;
- Regulatory sandboxes – cooperation with a government; when innovation demands a change in the law;



OTHER PATHS FOR CENTRALIZATION AND INNOVATION... A QUESTION OF EUROPEAN SOVEREIGNTY

- Semiconductors (global public good);
- New strategy – Proposal "A Chips Act for Europe" C(2022) Final;
- Commission co-responsibility in favour of centralization and **joint procurement** – article 22 of the Proposal;



OBRIGADO

pedrocerqueiragomes@gmail.com

pcg@cerqueiragomes.pt