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CIVIL LAW CONTRACTS IN PUBLIC PROCUREMENT: THE DOMINO EFFECT

ABSTRACT: The objective of this research was to evaluate legal response models applicable to cases involving the annulment of administrative acts in the field of public procurement from the perspective of balancing the principles of legality, legal certainty, good faith, and the protection of public interests. In accordance with this objective, a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis method was implemented, which involved assessing the internal and external factors exerting direct influence through the analysis of four categories: strengths, weaknesses, opportunities, and threats. The automatic invalidity approach is centred on strict adherence to the law: if an act is unlawful, the corresponding contract is also deemed invalid. The contract autonomy approach emphasises the stability of agreements and the good faith of the parties, protecting the legitimate expectations of the participants in the legal relationship. The compromise approach combines legality with flexibility, taking into account the good faith of the parties and the consequences of annulment. The functional approach prioritises social expediency, preserving the contract if its termination would lead to disproportionate harm. An analysis of case law revealed that contemporary European Union legal practice adheres to the principle of legality while not precluding the consideration of consequences and public benefit; thus, among the models examined, the compromise (flexible) model provides the most balanced approach. Under the compromise model, preservation of a contract despite serious procurement violations is exceptional and depends on legally recognised public-interest grounds, with alternative sanctions remaining applicable. In Latvia, the functional (pragmatic) approach prevails, aimed at efficiency and achieving procurement objectives while considering practical aspects, where priority is given to the effectiveness of procedures, process simplification, and risk minimisation during their implementation. This work can be utilised for researching the interrelation between legal aspects of contracts and the risks of ripple effects in public procurement, as well as for implementing safeguard mechanisms in the field of public procurement.

KEYWORDS: *automatic invalidity*, *contract autonomy*, *compromise (flexible) model*, *functional (pragmatic) approach*, *legal response models*.

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1. INTRODUCTION

The relevance of the topic is determined by several factors. Firstly, it reflects the unique legal nature of public procurement, situated at the intersection of administrative and civil law. Secondly, there are significant legal and financial consequences: declaring a contract invalid affects not only the contracting authority and the supplier but also third parties whose interests are indirectly linked to the contract's performance. Thirdly, in the context of growing case law and the integration of EU norms into national legal systems, the question of the admissibility and limits of such a domino effect acquires practical significance for ensuring legal certainty and contractual stability. Consequently, research into the issue of public procurement is necessary both from the standpoint of doctrinal systematisation and for the formation of consistent law enforcement practice capable of reconciling the requirements of legality with the principles of legal security and the protection of public interests.

The legal regulation of contracts concluded within public procurement procedures, both at the EU level and in the national legal systems of Member States, demonstrates a complex integration of public and private law principles. Unlike traditional civil law contracts concluded between private law subjects based on party autonomy, a public procurement contract is the result of a formalised administrative procedure aimed not only at achieving an economic effect – the acquisition of goods, works, or services – but also at realising fundamental principles of EU law: transparency, equal treatment of participants, and the efficient use of public funds. This necessitates special regulation that goes beyond traditional private law, forming a legal institution located at the intersection of public and private regulation.

Contemporary research is focused on risks and corruption threats in the public sector. Derkevica-Pilskunga (2021) investigates the "domino effect" in crisis communication, demonstrating how untimely or uncoordinated information interaction between institutions can trigger a chain reaction of management failures. Krivins (2021), in turn, analyses changes in the level of corruption in Latvian public procurement, identifying the positive impact of electronic procedures on transparency, while also noting the persistence of risks within subcontracting structures. Both works emphasise the importance of openness, information control, and ethical standards in preventing systemic failures. At the same time, a drawback is

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their focus on formal control procedures, without a deep analysis of behavioural and organisational factors that also influence effectiveness.

Research analysing the effectiveness of internal control systems and financial management is important. Ziemelis et al. (2024) argue that the lack of integrated internal control in public institutions heightens the risks of conflict of interest and corruption. However, a limitation of this article is its primary focus on formal control procedures, without a detailed analysis of organisational culture and behavioural factors which also affect system effectiveness. Ketners and Petersone (2024) focus on assessing municipal financial management, proposing a model for sustainable resource management that enhances community resilience. Both articles emphasise the necessity of a professional approach to risk assessment and financial transparency as a safeguard against the domino effect in the financial system. A shortcoming of this article is the limited number of practical examples of the model's implementation and insufficient consideration of inter-municipal differences, which may affect the applicability of the conclusions in different regions.

Another important research direction is risk management and sustainable development in the social and environmental spheres. Lanka et al. (2023) analyse risk management in social services, showing that ineffective social procurement can lead to a decline in population welfare levels. At the same time, a limitation is the scarce empirical data and the lack of comparison across different municipalities, which may restrict the applicability of the recommendations at the national level. Dzalbs (2024) in his doctoral thesis examines the sustainability of bioresource management, stressing the need for environmentally responsible procurement. These works are united by the idea of long-term sustainability – economic, social, and environmental – as a key factor in preventing cascading management risks. Among the shortcomings are the limited number of practical examples of implementing the recommendations in specific projects and insufficient attention to the financial constraints of local communities.

The article by Gaile (2021) is dedicated to the application of the proportionality principle in evaluating tender proposals in public procurement. It demonstrated how this principle ensures fairness and effectiveness in procurement procedures within the Latvian context. The drawbacks include a limited focus on Latvia, the absence of comparison with other countries and international standards, as well as an insufficient empirical base and

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examples of practical application. The publication by Tamužs et al. (2022) analyses the principle of legal equality according to Article 91 of the Constitution of the Republic of Latvia (1992), revealing its role in ensuring equality before the law. The main limitations are the theoretical nature of the work, insufficient attention to practical application, and the lack of comparisons with international law, which narrows the scope of the research.

The aim of the research was to evaluate legal response models applicable to cases involving the annulment of administrative acts in the field of procurement from the perspective of balancing the principles of legality, legal certainty, good faith, and the protection of public interests. In accordance with this aim, the following tasks were set: to study contemporary EU case law regarding the implementation of civil law contracts related to public procurement, and to conduct a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis to identify the strengths and weaknesses, opportunities and risks associated with different legal approaches to assessing the validity of contracts.

To guide the analysis, the study addressed the following research questions: (1) How do contemporary EU case law and the selected national approaches address the consequences for civil law contracts following the annulment of administrative acts in public procurement? (2) What strengths, weaknesses, opportunities, and threats characterise the automatic invalidity, contract autonomy, compromise, and functional approaches when balancing legality, legal certainty, good faith, and public interests?

2. LITERATURE REVIEW

The issues of public procurement and the risk of contract invalidity are examined in the academic literature from various perspectives: legal, economic, managerial, and social. Analysis of sources reveals that a key challenge is the domino effect – a situation where the invalidity of a single contract can trigger financial losses, erosion of trust, and even systemic crises. Of particular significance is the comparison of private law and public law approaches, as it is precisely within this balance that the interplay of business and societal interests manifests itself. On the one hand, the state seeks control and transparency; on the other, companies require stability and legal certainty for planning their activities.

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In the work of Aboelazm and Dganni (2025), the prospects for implementing artificial intelligence and smart contracts in the sphere of public procurement were analysed. The authors emphasise that such tools are capable of automating the conclusion and execution of contracts, reducing transaction costs, and minimising the human factor. At the same time, serious challenges are highlighted – the legal recognition of smart contracts, their integration into civil law, and the protection of personal data. Thus, digital innovations open up prospects for reducing corruption risks but necessitate an update of the regulatory framework.

The economic consequences of public procurement for companies are demonstrated by other research. Ferris et al. (2024) showed that securing a government contract often increases the market capitalisation of companies, whereas its loss causes a drop in share value. Pyun (2025) draws similar conclusions, arguing that investors view government deals as a signal for investment, but simultaneously note their vulnerability due to the risk of termination. Kinyua et al. (2025) add that external audit and certification positively influence the financing of small and medium-sized enterprises; however, even under such conditions, the risk of contract loss negates the advantages, creating a domino effect in financing.

A separate strand of literature concerns management and supply chain issues. Xiong et al. (2025) analyse contract models with temporal flexibility and options. They argue that properly organised supply mechanisms can minimise the risk of contract non-performance. This is particularly relevant in the sphere of public procurement, where the invalidity of one contract can paralyse the operation of an entire network of contractors. In the global economy, this signifies a risk not only for a single company but also for related sectors, making the domino effect even more extensive.

The social dimension also receives significant attention. Roy et al. (2024) investigate the inclusion of small businesses in US public procurement and conclude that this fosters innovation and flexibility, as small companies respond more swiftly to market changes, offer non-standard solutions, and enhance competitiveness. At the same time, it is noted that such an approach leads to increased administrative costs and requires additional control over contract performance quality. In the European context, Esteban (2025) examines so-called “reserved contracts” for companies that ensure the integration of socially vulnerable groups into the labour market. The author notes that such mechanisms not only enhance social responsibility and promote inclusion but also stimulate the development of more resilient

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local communities. However, it is emphasised that they simultaneously create risks for contract performance stability and may reduce efficiency in the case of insufficient preparedness of such enterprises.

An important problem is corrupt practices, which directly reinforce the domino effect. Waxenecker and Prell (2024), using Guatemala as an example, demonstrate that collusion in the sphere of construction contracts forms resilient corrupt networks capable of persisting even after a change in political regime. A similar trend is traced by Brugues et al. (2024) in Ecuador: political connections significantly increase companies' chances of obtaining contracts but simultaneously lead to inefficient resource allocation. This creates a dangerous environment where bona fide participants may lose contracts, even if they themselves did not violate the rules.

The regulatory aspect is particularly evident in the work of Kania and Andhov (2024), which examines the consequences of the Foreign Subsidies Regulation, which restricts freedom of contract in public procurement. On the one hand, it levels the competitive playing field; on the other, it complicates market access and prolongs procedures. Such administrative barriers increase business dependence on decisions by public authorities and heighten the risks of unforeseen contract invalidity. Significant attention is also paid to dispute resolution procedures. Detotto et al. (2024) analyse arbitration in the field of public procurement. The authors conclude that the quality of arbitral decisions can either amplify or diminish the domino effect: biased or unprofessional arbitral awards undermine business confidence in the entire system.

Therefore, the literature review has shown that participation in public procurement for business is always associated with elevated risks. The domino effect manifests at various levels – from financial markets and access to credit to the stability of supply chains and social programmes. Private law approaches focus on protecting bona fide participants and contract stability, whereas public law approaches emphasise control, transparency, and the achievement of socially significant objectives. The task of law is to find a balance between these approaches, so as to preserve business trust in the procurement system while simultaneously safeguarding the public interest.

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3. MATERIALS AND METHODS

The methodological foundation of this research is based on a comprehensive approach combining theoretical and empirical analysis. The primary methods employed in the course of the work were systematic analysis of contemporary case law and SWOT analysis of such cases as Commission v Germany (2007), Simonsen and Weel (2021), Competition and Market Authority (Municipality of Ginosa) (2023), and Commission v Germany (2010). SWOT analysis was used as a strategic planning tool for assessing the current state of an organisation, project, or situation, determining development directions, and comparing the legal response models examined in the study.

Specifically, the name of this method comprises the first letters of the English words: S (Strengths) – internal advantages, resources, and factors that provide a competitive edge; W (Weaknesses) – internal limitations or problems that hinder the achievement of objectives; O (Opportunities) – external factors that can be utilised for development or gaining an advantage; T (Threats) – external factors that may negatively impact the achievement of objectives. The use of SWOT analysis allowed for an objective evaluation of each approach from the perspective of not only legal correctness but also functional suitability in contemporary conditions, taking into account the complexity of legal relations in the field of public procurement.

For studying the situation related to public procurement in the European Union, and in the context of a comparative analysis (France, Poland, Germany, Latvia), the following documents were used: Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (2007) and the EU Charter of Fundamental Rights (2007); Regulation on the award of public contracts (2016), Public Procurement Code (2025), Legal framework (2019).

Consequently, for the purpose of examining the Latvian context in the sphere of public procurement, the following materials were analysed: Problems and opportunities for the development of public procurement (2024), Implementation plan for the recommendations provided to the Ministry of Finance in the performance audit “Efficiency of the public procurement system in the internal affairs sector and the state public procurement policy

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affecting it" (2023), Public Procurement Law (2026). Specifically, based on these materials, it was ascertained which of the four primary models are applied for regulating public procurement in the European Union (automatic invalidation of the public procurement contract, contract autonomy, the flexible (compromise) model, or the functional (pragmatic) model).

4. RESULTS

Analysis of case law in the field of public procurement has enabled the identification of four principal approaches to resolving the problem of the so-called "domino effect". This refers to a specific legal situation where the annulment or invalidation of an administrative decision on the award of a tender automatically generates consequences for the subsequent stage of the legal relationship – the civil law contract concluded on its basis (Mitchell & Agapiou, 2023). In such instances, courts are faced with the necessity of reconciling the principles of public law, aimed at ensuring transparency and fair competition, with the principles of private law, which traditionally guarantee the stability of contractual obligations. It is for this reason that judicial practice has developed several distinct models for responding to the "domino effect", ranging from the complete automatic invalidation of the contract to limited or compensatory mechanisms that preserve certain rights and interests of the parties (Foss & Bonacelli, 2023; Katamuna et al., 2025).

The first approach, provisionally termed the model of automatic invalidity, is a strict public law concept. According to this position, a public procurement contract is derivative of the administrative act that grants it legitimacy. If this act is annulled as being contrary to law, the contract loses its legal foundation and must be deemed void. There are several compelling arguments in favour of this approach: firstly, it is grounded in the fundamental principle of legality in the activities of public bodies; secondly, it enhances the preventive effect of legal regulation by demonstrating that breaches of established procedures entail serious legal consequences. At the same time, this approach is criticised as overly formalistic: it ignores the factor of the parties' good faith and can undermine legal certainty, creating excessive risks for procurement participants who are not at fault for the infringements.

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Automatic invalidation of the contract is a strict public law approach, whereby the annulment of the administrative act entails the invalidity of the contract. This approach has been examined in terms of its conformity with the principle of legality, as well as considering the risk of destabilising legal relations and undermining legal certainty. As an illustration, Commission v Germany (2007) concerned Germany's failure to take the measures necessary to comply with an earlier judgment concerning an unlawfully awarded public contract; the Court treated effective compliance as requiring appropriate remedial measures, including rescission of the contract. Simonsen and Weel (2021) – a case concerning a framework agreement where the contract notice failed to specify mandatory information (volume estimate/maximum value). The Court clarified the approaches to publications/transparency and the possibility of deeming a contract 'ineffective' in cases of serious breaches. This reinforced the position that serious breaches of publication/transparency obligations can lead to the ineffectiveness of the contract, although this must typically be established by a review body/court. Table 1 presents a SWOT analysis related to the automatic invalidation of public procurement contracts.

Consequently, according to Table 1, the practical application of this approach should be based on a combination of stringency and predictability, incorporating mechanisms for protecting bona fide participants and balancing public interests. This would ensure effective compliance with the law, stimulate fair competition, and enhance the quality of administrative procedures, while simultaneously minimising the economic and social risks associated with a rigid automatic invalidation of contracts.

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Table 1: SWOT analysis: Automatic invalidation of public procurement contract

Strengths	Weaknesses	Opportunities	Threats
Guarantee of the rule of law – a contract based on an unlawful act cannot subsist	Legal instability: any challenge to an act can lead to the disruption of a contract, even one already performed	Creating an atmosphere of strict discipline in procurement, reducing corrupt practices	Risk of abuse by unsuccessful bidders: an act may be challenged solely to disrupt the contract
Enhanced preventive effect: contracting authorities and participants will strictly adhere to rules to avoid risks	Undermining the legitimate expectations of the successful bidder acting in good faith – they bear the risk even if not at fault for the infringement	Simplification of doctrine: easy to explain and implement in national legislation (‘zero tolerance’ for infringements)	Loss of business confidence in the procurement system: companies may fear expending resources on participation
Clear and simple logic (‘no act – no contract’) – facilitates law enforcement	Can lead to inefficiency and losses: restitution for work already performed is often impossible (e.g., medicines, construction)	May strengthen the role of the Court of Justice of the EU as a guarantor of the principles of transparency and competition	Potential for enormous budgetary losses: compensation for disrupted contracts, project failures
Upholds the principle of equal treatment of participants: no one may derive benefit from a flawed procedure	May conflict with public interest considerations (halting transport services, closure of hospitals, etc.)	In the long term – improvement in the quality of administrative procedures	Imbalance between public interest and legality: society suffers from a formalistic approach

Source: *compiled by the authors based on cases Commission v Germany (2007), Simonsen and Weel (2021).*

The opposing position is represented by the civil law approach, based on the concept of the autonomy of contract. Within this model, a public procurement contract is considered an independent agreement subject to the norms of private law. Even if the administrative act is annulled, its impact on the fate of the contract is not automatic: the contract may remain valid unless there are grounds for its invalidity from the perspective of civil law (for instance, due to defects in consent, non-compliance with formal requirements, etc.). This approach is grounded in the principle of the stability of contractual relations and the necessity of protecting bona fide counterparties, which aligns with the provisions of Article 17 of the Charter of Fundamental Rights of the European Union (2000).

Competition and Market Authority (Municipality of Ginosa) (2023) concerned the issue of the automatic renewal of a permit for a certain activity, granted by a local authority. The European Court examined whether the automatic renewal of the permit constituted an

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infringement of public procurement principles. The Court noted that the automatic renewal of a permit without a proper competitive procedure could violate the principles of transparency and equal treatment, as new participants are not given an opportunity to take part in the procedure. Automatic renewal could lead to a restriction of competition and a breach of public procurement principles, which could have legal implications for local authorities. Commission v Germany (2010) illustrates a rigid, inflexible approach to public procurement in the EU. The essence of the case was that Germany provided emergency medical services without conducting open tenders in several federal states. The European Court found that this infringed the principles of transparency and competition regardless of the circumstances. That is, even if the state acts with bona fide intentions, the Court applies an automatic check of compliance with the procedure, which is an example of a strict, inflexible public law approach. This enhances transparency and control but does not take into account the specifics of individual circumstances and can be excessively harsh for bona fide participants. Table 2 presents a SWOT analysis related to contract autonomy in public procurement.

Therefore, the practical application of the contract autonomy approach, as per Table 2, allows for a balance between the stability of public procurement, the protection of bona fide participants, and the minimisation of economic and social risks. For its effective implementation, this approach must be combined with compensatory mechanisms, sanctions, and controls over misconduct to maintain legal certainty, stimulate fair competition, and uphold trust in the procurement system.

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Table 2: SWOT analysis of contract autonomy in public procurement

Strengths	Weaknesses	Opportunities	Threats
Ensures contract stability – the contract is not automatically terminated due to administrative errors	Weakens the deterrent effect: contracting authorities may believe that procedural breaches will not lead to the invalidity of the contract	Increased attractiveness of tender participation: businesses are assured of contract stability	Risk of reduced discipline among contracting authorities if unlawful procedures still result in valid contracts
Protects the bona fide awardee who is not responsible for the procedural breach	May lead to the preservation of contracts awarded based on unfair procedures	Creates a basis for harmonisation with classic private law: fewer conflicts	Potential for abuse by contracting authorities: they may deliberately breach procedures, knowing the contract will remain valid
Upholds the principle of legitimate expectations and legal certainty (important for business and investment)	May undermine the trust of unsuccessful tenderers and reduce competition: if the procedure is flawed, but the contract remains valid	Enhances investment protection and confidence in the procurement system	Risk of the Court of Justice of the EU rejecting this approach as incompatible with directives and competition principles
Reduces economic losses and risks to public interests (e.g., maintaining supplies of vital goods)	Potential conflict with EU principles of equal treatment and transparency: de facto ‘legitimisation’ of an unlawful outcome	Can be combined with compensatory mechanisms (fines, sanctions without contract annulment)	The European Commission and national oversight bodies may view it as a failure to properly transpose directives

Source: *compiled by the authors based on cases Competition and Market Authority (Municipality of Ginosa) (2023) and Commission v Germany (2010).*

Contract autonomy is a civil law approach which posits that a contract remains valid irrespective of the fate of the administrative act. The benefits of this approach from the perspective of protecting the rights of the parties and legal stability have been examined, as well as its potential weaknesses from the standpoint of neglecting the principles of public oversight and transparency. The ‘Contractual Autonomy’ approach emphasises the stability of private law and the protection of bona fide parties, which is particularly important for the business environment. However, it is weaker in protecting competition and the principles of equal treatment, which contradicts EU public procurement law. In its pure form, this approach is not applied in the EU, but its elements are evident in practice when courts consider legitimate expectations and proportionality in deciding the fate of contracts.

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The third, intermediate, approach is the compromise (or flexible) approach, which involves an assessment of the specific circumstances of the case. According to this model, declaring a contract ineffective is not automatic, but nor is it excluded. The court considers many factors: the nature and severity of the breaches committed, the good faith of the parties, the consequences of annulling the contract for public interests and economic stability. Depending on the situation, various outcomes are possible: declaring the contract fully ineffective, annulling only future obligations, or upholding the validity of the contract while simultaneously imposing sanctions on the breaching party. This approach helps to strike a balance between the principle of legality and the need to maintain stability in legal relations, and also aligns with the requirements of proportionality. It found normative expression in the provisions of Directive 2007/66/EC of the European Parliament and of the Council amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (2007), which permits alternative sanctions. More specifically, Article 2d(3) of Directive 2007/66/EC permits Member States to provide that a review body may refrain from declaring a contract ineffective where, after examining all relevant aspects, compelling reasons of public interest require the effects of the contract to be maintained. In such circumstances, alternative sanctions under Article 2e(2) apply instead, including the shortening of the duration of the contract or the imposition of financial penalties on the contracting authority. Purely economic interests directly connected with the contract, including costs associated with delays, a new procurement procedure, or a change of supplier, do not in themselves constitute compelling reasons of public interest. The preservation of an unlawfully concluded contract therefore represents an exceptional mechanism linked to overriding public interests, including the protection of health, safety, or continuity of critical services, rather than a general preference for economic or procedural pragmatism.

Wall (2010) provides a relevant example of the relationship between contractual continuity and the obligation of transparency. The case concerned a service concession for the operation and maintenance of public lavatories and the subsequent replacement of a subcontractor. The Court held that materially different amendments to a concession may require measures to restore transparency, potentially including a new award procedure, and that a change of subcontractor may, in exceptional circumstances, constitute a substantial amendment. At the same time, the Court clarified that the principles of equal treatment and

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transparency do not require the termination of a contract in every case of an alleged breach, with the applicable remedies remaining subject to national procedural law and EU requirements. Parking Brixen (2005) concerned the direct award by the municipality of Brixen/Bressanone of a service concession for the management of public pay car parks to Stadtwerke Brixen AG. Parking Brixen GmbH challenged that award. The Court held that the fundamental rules of the Treaty, including the principles of equal treatment and transparency, applied to the concession and required a sufficient degree of advertising to open the award to competition. Table 3 presents a SWOT analysis of the flexible (compromise) model.

Therefore, considering the content of Table 3, the practical application of the flexible (compromise) model allows for a balance between strict adherence to procedures and the protection of participants, takes public interests into account, and applies proportionate sanctions. For its effective implementation, it is necessary to combine flexibility with clear application criteria and robust control mechanisms, which allows for minimising the risks of abuse, enhancing trust in the procurement system, and ensuring the stability and fairness of contracts.

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Table 3: SWOT analysis of the flexible (compromise) model

Strengths	Weaknesses	Opportunities	Threats
Strikes a balance between the rule of law and the protection of bona fide parties	Legal uncertainty: the outcome depends on judicial discretion, making it difficult to predict	Establishment of robust European Court of Justice case law on proportionality in procurement, which would strengthen the doctrine	Risk of fragmentation: different EU Member States will have varying standards until the European Court develops clear criteria
Allows for the consideration of public interests (e.g., continuation of vital supplies)	Weakens the deterrent effect: contracting authorities may risk breaching rules hoping for a lenient court decision	Potential for combination with innovative sanctions (fines, debarment of non-compliant contracting authorities)	Potential for political abuse: courts may 'uphold' dubious contracts under the pretext of public interest
Complies with the principle of proportionality enshrined in EU law	Difficulty in uniform application: different courts may reach conflicting decisions	Enhances business confidence: the honest awardee receives protection	May be perceived as a compromise at the expense of transparency, undermining the trust of unsuccessful tenderers
Flexibility: various sanctions are possible (partial ineffectiveness, reduction of the contract term, fines)	Increases the judicial burden and time required for dispute resolution	Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (2007), which allows for alternative sanctions	Risk of infringing the strict principles of competition and equal treatment set out in the directives

Source: *compiled by the authors based on cases Wall (2010), Parking Brixen (2005), and Directive 2007/66/EC.*

The functional or pragmatic approach, which focuses on assessing the societal consequences of declaring a contract invalid, is becoming increasingly prevalent in judicial practice. According to this model, the central criterion is not so much the legal purity of the procedure, but rather the proportionality of the legal consequences. If the annulment of a contract would cause substantial harm in areas critical to society (e.g., healthcare, public safety, transport), the court may decide to uphold the contract while simultaneously imposing

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sanctions on the contracting authority that violated the procedures. This approach underscores that public procurement is not an end in itself but a mechanism for fulfilling public needs. However, there is a danger of excessively expanding the discretionary powers of the courts, as well as the risk that public institutions might intentionally breach rules, counting on subsequent 'forgiveness' due to the primacy of public interests. Nevertheless, the EU remedial framework recognises that the effects of a contract may be maintained in exceptional circumstances where compelling reasons of public interest justify such preservation, subject to the conditions and alternative sanctions established by Directive 2007/66/EC.

The functional (pragmatic) approach is based on an assessment of the consequences of contract termination for the public interest. The research involved an analysis of practical examples where courts refused to declare contracts void, guided by the criteria of proportionality and reasonableness. A SWOT analysis of the functional (pragmatic) approach to preserving contracts upon the annulment of an unlawful administrative act in the sphere of public procurement was conducted.

Therefore, based on the results presented in Table 4, the practical application of the functional (pragmatic) model allows for effective protection of public interests and bona fide participants, minimises harm from procedural violations, and enables the application of proportionate measures. For its effective implementation, it is necessary to combine flexibility with clear criteria and control mechanisms to prevent abuses, ensure decision-making stability, and uphold the standards of legality and competition.

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Table 4: SWOT analysis of the functional (pragmatic) model

Strengths	Weaknesses	Opportunities	Threats
Protection of public interests: ensures the uninterrupted provision of vital services (medicine, transport, security, etc.)	Legal uncertainty: the lack of clear criteria for applying the approach leads to unpredictability of decisions	Development of a more balanced legal doctrine could provide a basis for flexible and fair regulation of public procurement	Abuse by public authorities: knowledge that a court may "forgive" violations for the sake of public interests encourages intentional breaches
Flexibility in judicial practice: specific circumstances are taken into account, helping to avoid formalistic law enforcement	Weakening of the principle of legality: upholding a contract based on an unlawful act may undermine respect for the law and procedures	Creation of a systematic approach to proportionality of sanctions: introducing criteria (as in the Court of Justice of the EU) would allow for an objective assessment of the consequences of contract termination	Erosion of accountability: violations may be perceived as less significant if there is no 'actual harm'
Minimising harm from procedural violations: instead of full annulment – and consequent chaos – alternative sanctions are possible (fines, disciplinary measures)	Potential reduction in competition: companies suffering from procurement violations may lose their chances of fair participation	Incentive for improved risk management in public authorities: authorities will be compelled to assess the consequences of procedural violations in advance	Undermining judicial objectivity: increased role of judicial discretion may lead to inconsistent and subjective practice
Proportionality of decisions: the court assesses whether contract annulment is proportionate to the breach, avoiding excessive intervention			Conflicts with EU standards and international obligations: if the approach contravenes strict anti-corruption standards, it could lead to legal disputes.

Source: *compiled by the authors based on Directive 2007/66/EC and the analysis presented in this study.*

Analysis of the Public Procurement Law (2026) showed that the Latvian legal framework combines procurement efficiency with mandatory control requirements. Section 2^1 of the Public Procurement Law concerns the contracting authority's responsibility for procurement efficiency and the establishment and operation of an internal procurement control system throughout the procurement cycle; it does not provide a basis for treating a conflict of interest as permissible for reasons of practical efficiency.

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This interpretation is consistent with the judgment of the Court of Justice of the European Union in eVigilo Ltd v Priešgaisrinės apsaugos ir gelbėjimo departamentas prie Vidaus reikalų ministerijos (Case C-538/13, 2015). The Court emphasised that the contracting authority is responsible for determining the existence of possible conflicts of interest and for taking appropriate measures to prevent, detect, and remedy them. It further recognised that a connection between a successful tenderer and experts acting on behalf of the contracting authority may raise concerns under the principles of equal treatment and transparency, since a conflict of interest creates a risk that considerations unrelated to the contract may influence the procurement decision.

The Latvian Public Procurement Law regulates these procedural matters through specific provisions. Section 35(1) requires the contracting authority, when determining the time limits for the submission of applications or tenders, to take into account the complexity of the procurement contract, the time necessary for preparing tenders, and the applicable minimum time limits. Section 50(4) provides that an economic operator may submit tender security or a performance bond in the form of a bank guarantee, an insurance policy or, where permitted by the procurement documents, a monetary payment. Sections 51(5) and 51(6) require tender evaluation criteria to be objectively comparable and evaluable, not to restrict competition, and to be specified in the procurement documents together with their values and method of application. Furthermore, Section 8 identifies the available procurement procedures and specifies the circumstances in which a competitive procedure with negotiation, competitive dialogue, or negotiated procedure may be applied. These provisions demonstrate that procedural flexibility under Latvian law operates within expressly defined statutory conditions rather than through unrestricted pragmatic discretion.

The Latvian audit document “Implementation plan for the recommendations provided to the Ministry of Finance in the performance audit “Efficiency of the public procurement system in the internal affairs sector and the state public procurement policy affecting it” (2023) does not contain direct references to the automatic invalidity of a contract as a separate model. Instead, it focuses on delineating procurement procedures. For example, the findings note that a key problem is the low contract value thresholds, which complicate procurement conduct. This indicates that the audit emphasises the regulation of thresholds and procedures rather than introducing the automatic nullity of breached contracts. The

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document also does not show clear support for contract autonomy. On the contrary, it proposes stricter oversight of procurement rule compliance. The audit conclusion rather leans towards directive control and restrictions in the application of norms, rather than free autonomy for already concluded contracts.

The report named: Problems and opportunities for the development of public procurement (2024) proposes simplifying rules and making them more flexible for contracting authorities. It also states that regulation concerning contract terms could be more flexible, which directly reflects the idea of a flexible approach. Overall, the audit emphasises the need to reduce formalities and narrow rigid frameworks – a key feature of the flexible procurement model. The report embodies a functional approach, focused on results and efficiency. The audit stresses the need to justify every procurement requirement: "Unjustified requirements can increase the cost of procurement. Each requirement must be justified, meaningful and appropriate to the purpose of a procurement". It is also noted that competent specialists reduce costs and ensure better results in the public interest. This confirms that the emphasis is on the optimal use of resources, cost reduction, and quality improvement of outcomes – precisely on the functionality of the procurement system.

In Latvia, a functional (pragmatic) approach to public procurement prevails, oriented towards efficiency and the practical achievement of objectives. Other approaches – automatic nullity, contractual autonomy, and the compromise approach – are applied locally and partially. The functional approach ensures the justification of requirements, optimal resource utilisation, and cost reduction. The flexible model manifests itself through the simplification of rules, the reduction of formalities, and the adaptation of contract terms for the convenience of contracting authorities. Consequently, Latvian procurement practice is result-oriented and focused on practical problem-solving, with other models being supported only selectively.

According to an analysis of the principal regulatory acts in the sphere of public procurement in Poland, France, and Germany, the application of various public procurement models can be identified. In Poland, in accordance with the document – Legal framework (2019), models such as the functional model were applied; specifically, the law emphasised efficiency and the achievement of procurement objectives, notably through the possibility of conducting prior market consultations before announcing a procurement procedure. The

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possibility of adapting procurement procedures to specific circumstances was also provided for, particularly through the use of negotiated procedures or repeated procurements, i.e., there are elements of the flexible model.

In France, according to the Public Procurement Code (2025), the use of contractual autonomy was envisaged; specifically, the code grants parties the freedom to independently regulate the terms of the contract within the limits of the law, notably regarding the language of documentation and the form of performance guarantees, as well as the compromise approach; specifically, the code allows for the adjustment of terms to achieve an optimal outcome, notably through the adjustment of criteria to adhere to the principles of fair competition. Based on a study of the Regulation on the award of public contracts (2016), it can be stated that in Germany, models such as the automatic nullity of contracts are applied (a contract is considered void automatically if it violates the law or procurement rules, notably due to the necessity of conducting a new procurement after the termination of the contract); the functional model (emphasises outcomes and efficiency, notably through the requirement for justification of each procurement requirement and optimal resource utilisation).

Thus, in Poland, the functional model predominates, with an emphasis on efficiency and the adaptation of procedures to specific circumstances. In France, the models of contractual autonomy and the compromise approach are applied, with an emphasis on flexibility and achieving optimal results. In Germany, the models of automatic contract nullity and the functional model prevail, with an emphasis on compliance with rules and efficiency. This analysis demonstrates the diversity of approaches to public procurement in different European countries, reflecting their national specificities and legal traditions.

The case law of the Court of Justice of the European Union demonstrates that the legal consequences of procurement infringements depend on the nature of the breach and the applicable remedial framework. Commission v Germany (2007) emphasised the requirement to take effective measures to remedy infringements of EU procurement law, including termination of a contract where necessary to comply with a previous judgment. In Wall (2010), the Court held that substantial amendments to a service concession may require measures to restore transparency, potentially including a new award procedure, while also clarifying that EU law does not require termination of the contract in every case of an alleged

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breach of the transparency obligation. Within the current EU remedial framework, any preservation of a contract following serious procurement violations must therefore be assessed under the conditions established by Directive 2007/66/EC, including the rules on compelling reasons of public interest and alternative sanctions.

The practical question of what is more important – adherence to formal procedure or achieving a just outcome – remains relevant in contemporary EU law, as confirmed by rulings and directives, such as Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (2007). Within the framework of these norms and judicial practice, the compromise approach can be evaluated as the most balanced among the approaches examined, as it combines strict public law control and functional pragmatism. Courts recognise the necessity of sanctions for violations but allow for the preservation of contracts if their annulment would cause excessive harm to society.

An analysis of the four approaches to the problem of the “domino effect” in public procurement reveals not only technical differences in legal frameworks but also touches upon an archetypal legal opposition: legality as a formal structure versus expediency as an expression of substantive justice. Public procurement is an area where this opposition is evident, as the law directly affects the vitally important interests of society. As EU practice shows, the absolute priority of formal legality may, in some cases, give way to a more flexible, humane, and pragmatic model, without destroying the very idea of the rule of law. Consequently, procurement law becomes not only a regulatory tool but also an arena where legal theory, philosophy, and the moral choice of the state converge in their essence.

5. DISCUSSION

The analysis of judicial practice in the field of public procurement demonstrates the existence of several approaches to resolving the problem of the so-called “domino effect”, which arises in the event of the cancellation or invalidation of an administrative decision on the award of a tender. These approaches range from the strict automatic nullity of the contract to the more flexible application of the principle of proportionality, which allows the court to assess the

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consequences of infringements depending on the specifics of the case, the seriousness of the breaches, and the potential impact on society, including critically important sectors such as healthcare, transport, or security. The judicial practice analysed in this work aligns with the principles of Härginen (2022), whose work emphasises that the effectiveness and stability of public procurement procedures depend significantly on the duty of good faith of tender participants, which is a legal, and not merely an ethical, obligation. Adherence to this duty ensures the honesty, diligence, and transparency of participants' conduct, which indirectly affects the stability of contracts and the protection of bona fide parties, i.e., those aspects that the court assesses in the event of the annulment of administrative decisions.

According to the results of this research, based on the evolution of judicial practice and the regulatory framework in the EU, a compromise model of legal response to violations in the field of public procurement is taking shape. This model integrates the public law aspects of procurement with the need for proper control over the actions of the contracting authority and takes into account the private law consequences for bona fide counterparties and society at large. Within this model, the main emphasis is not on the automatic application of sanctions, but on the assessment of the proportionality of legal consequences, which ensures simultaneous respect for the law, protection of the legitimate expectations of participants, and the satisfaction of public interests. The model of value creation in public procurement, proposed by Malacina et al. (2022), is a multidimensional conceptual framework that integrates various components of public procurement value for the public buyer, supplier, and user, as well as the practices necessary for their achievement. Both models are comprehensive and multidimensional, oriented towards balancing various interests and the effectiveness of the public procurement system. The model proposed by Malacina et al. (2022) focuses on value creation through practices and processes, considering economic, social, and innovative aspects for the buyer, supplier, and user. The compromise model of EU judicial practice emphasises the legal response to violations, ensuring the proportionality of sanctions, the rule of law, and the protection of bona fide counterparties. The similarity between them lies in the endeavour to integrate different interests and ensure system effectiveness. The difference lies in the focus: one on the practical and economic aspects of value, the other on legal mechanisms and the proportionality of response.

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Flynn (2025) demonstrates that the participation of small and medium-sized enterprises (SME) in procurement cannot be explained by formal rules alone: it is necessary to consider barriers, policy instruments, the capacity of enterprises, and the long-term consequences for the market and society. Similarly, the findings of research on the "domino effect" emphasise that rigid adherence to legality in the form of automatic contract invalidity often does not align with actual societal interests, whereas a functional approach prioritises expediency. Both approaches converge on the notion that a balanced solution is a compromise: in this work, this is an integrative framework combining different dimensions of SME participation; in the legal sphere, it is the principle of proportionality, which allows for the consideration of both the requirements of the law and the actual consequences for bona fide parties and society. Consequently, a common logic is gradually emerging in both procurement economics research and legal theory – a shift from formalism towards a multidimensional, flexible analysis that combines legal, social, and economic interests.

Jurisprudence and theoretical approaches to contracts following the annulment of an administrative decision (the "domino effect") represent a more conceptual-legal level, concerning how courts decide what to do with an already concluded contract if a tender is declared invalid. The work of Situmeang (2025) provides an analysis of the regulatory framework: whether the Presidential Regulation conforms to the general principles of contract law, the Civil Code, and whether the regulation complies with the hierarchy of laws. Specific cases of court rulings following the annulment of a tender were examined. The present study complements this framework by demonstrating that the problems described as the "domino effect" (automatic invalidity, contractual autonomy, compromise, functional) originate not only in judicial practice but also in legislative/regulatory discourse, where normative acts may contradict general contract rules.

According to the research findings, the legal and philosophical aspects of procurement were considered, particularly the conflict between formal legality and substantive expediency. It does not address specific management practices or process efficiency in quantitative terms, but rather the theoretical conceptualisation of how law and the state's moral choices interact in a sphere that directly affects vital societal interests. It was emphasised that the rule of law can be combined with flexibility and pragmatism, ensuring justice without undermining the very idea of law. The work of Jaffu and Changalima (2023)

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focuses on the practical aspect of public procurement, namely the impact of Human Resource Development (HRD) practices on procurement effectiveness in Tanzania. The authors explore how career development, training, and staff performance appraisal enhance the performance of procurement processes, drawing on empirical data obtained from a survey of 168 procurement specialists. This research is applied and aimed at the practical improvement of organisational activities through human capital development. Thus, both studies address public procurement, but from entirely different perspectives: the authors concentrate on organisational effectiveness through human capital, whereas the analysis of EU public procurement focuses on legal, moral, and philosophical expediency in the application of law.

One of the key challenges of contemporary law is balancing legality as form and expediency as substance. This is particularly crucial in the sphere of public procurement, as the provision of societal needs depends on procedures and contracts. Four approaches to the fate of a contract following the annulment of an administrative act have been established: from strict invalidity, based on a formal understanding of legality, to functionalism, which prioritises social purpose over legal form. Comparing the article by Falcón-Cortés et al. (2022) with the presented legal-conceptual analysis immediately reveals two main differences: the level of analysis and the focus. The work of the Mexican researchers primarily emphasises empirical practices of public procurement and corruption risks, especially in the context of political transition of power. They use data on procurement contracts before and after a government change, applying network analysis and statistical methods to show how certain procurement practices – concentration of contracts, lack of competition – create opportunities for corruption. Conversely, the legal-conceptual text on the “domino effect” operates at the level of legal theory, norms, and the philosophy of justice. It does not analyse specific cases or data; instead, it examines questions of how the state should resolve conflicts between formal legality and expediency, and which principles to apply when formal procedures have been violated, but the social consequences are significant.

The concept of the four main approaches to the “domino effect” reflects all key models described in the literature, including formal automatic invalidity, the civil law approach, the functional-flexible approach, and the priority of public interest. The works of the researchers provide additional detail, including critical assessments of each approach, examples of specific judicial practice, and arguments regarding the advantages and risks.

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Therefore, the work has demonstrated a correct understanding of the essence of the problem, which is consistent with contemporary trends in judicial practice and is supplemented by empirical examples from European and international sources.

6. CONCLUSIONS

The current legal practice of the European Union and a number of Member States demonstrates a departure from the formal approach, according to which the annulment of an unlawful administrative act automatically entails the invalidity of the civil law contract concluded on its basis. Instead, a flexible and functionally oriented doctrine is taking shape, which seeks a balance between legality, legal certainty, and the protection of public interests.

Public procurement often secures the state's vital functions (medicine, infrastructure, security); automatically declaring contracts invalid can cause significant negative consequences. In light of this, a compromise approach is emerging both in the practice of the Court of Justice of the European Union and in national jurisdictions, which determines the necessity of adhering to procurement procedures and the legal consequences of administrative violations, and the inadmissibility of an automatic and formal approach that ignores the consequences for public interests.

One of the key challenges of contemporary law is balancing formal legality and substantive expediency, especially in public procurement, on which the supply of medicines, infrastructure construction, and the performance of critical functions depend. The automatic invalidity approach is oriented towards strict compliance with the law: if the act is unlawful, the contract based on it is also invalid. The contractual autonomy approach emphasises the stability of transactions and the good faith of the parties, protecting legal expectations. The compromise approach combines legality with flexibility, assessing good faith and the consequences of annulment. The functional approach takes into account the public-interest consequences of contract termination, but preservation of the contract remains subject to the legal conditions and alternative sanctions established within the EU review framework.

Consequently, among the models examined in this study, the compromise model provides the most balanced legal response to violations in the sphere of public procurement. This model takes into account both the public-law nature of procurement and the necessity

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of ensuring proper control over the actions of the contracting authority, as well as the private-law consequences for bona fide counterparties and society as a whole. The primary focus within this model shifts from the mechanical application of sanctions to an assessment of the proportionality of legal consequences, which allows for ensuring both respect for the law and the protection of legitimate expectations and public interests.

The analysis of the Latvian context showed that Latvia prefers a functional (pragmatic) approach, focused on the efficiency, flexibility, and practicality of procurement procedures. This approach ensures that objectives are achieved with minimal costs, simplifies processes, and enhances the system's performance. Other models (automatic invalidity, contractual autonomy, and compromise) are applied selectively and have an auxiliary character. Within the context of European practice, the Latvian system leans towards modernisation, reducing formalism, and enhancing the functionality of public procurement as an instrument for sustainable development.

The EU public procurement framework is currently undergoing revision. The European Commission (2026) indicates that a revision of the EU public procurement framework is to be presented in 2026, with aims including modernisation and simplification of the current rules. As the final legislative text was not yet available at the time of revision of this study, specific mechanisms attributed to the forthcoming reform are not treated here as established law. Future assessment of the domino effect should therefore consider the final reform, particularly its implications for transparency, conflicts of interest, and remedies concerning unlawfully concluded contracts.

The limitations of the study are related to the fact that the analysis was based on the reviewed cases, which demonstrated the general practice of the EU; however, these cases by no means cover all the problems and challenges in public procurement. Prospective directions for further research include the development of models for assessing the domino effect, a comparative analysis of international experience, the study of judicial practice, the formulation of legislative recommendations, and the evaluation of the economic and social consequences for public procurement.

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