



**Joint Public Procurement to tackle societal challenges:
“from the identification of the problem
to the signature of the contract” (Part 1)**

Gianluigi Di Bello¹, Pier Francesco Moretti³

¹Agenzia per la Promozione della Ricerca Europea - FP7 National Contact Point/Regional

²Consiglio Nazionale delle Ricerche

Ufficio Attività e Relazioni con Istituzioni Europee

Dipartimento Scienze del Sistema Terra e Tecnologie per l’Ambiente

The context

Tackling societal challenges implies a global perspective and international cooperation. There is therefore an urgent request for aligning regional, national and European programming to reach common visions and goals. The economic crisis urgently requires boosting productivity and job creation: this implies that synergies and common resources have to be strategically provided to increase the efficiency and effectiveness of actions. Nevertheless, the step from words to facts implies the design, selection and adoption of appropriate instruments to support and facilitate the implementation of the strategies.

The aim

Design, management and implementation of JPP “Joint Public Procurement” is addressed as well as mapping and analysis of pros and cons of JPP across different framework conditions. The ultimate aim is to provide an operational toolkit to facilitate and guide the public authorities and policy-makers in the use of Joint Public Procurement (JPP) as an opportunity to tackle societal challenges.

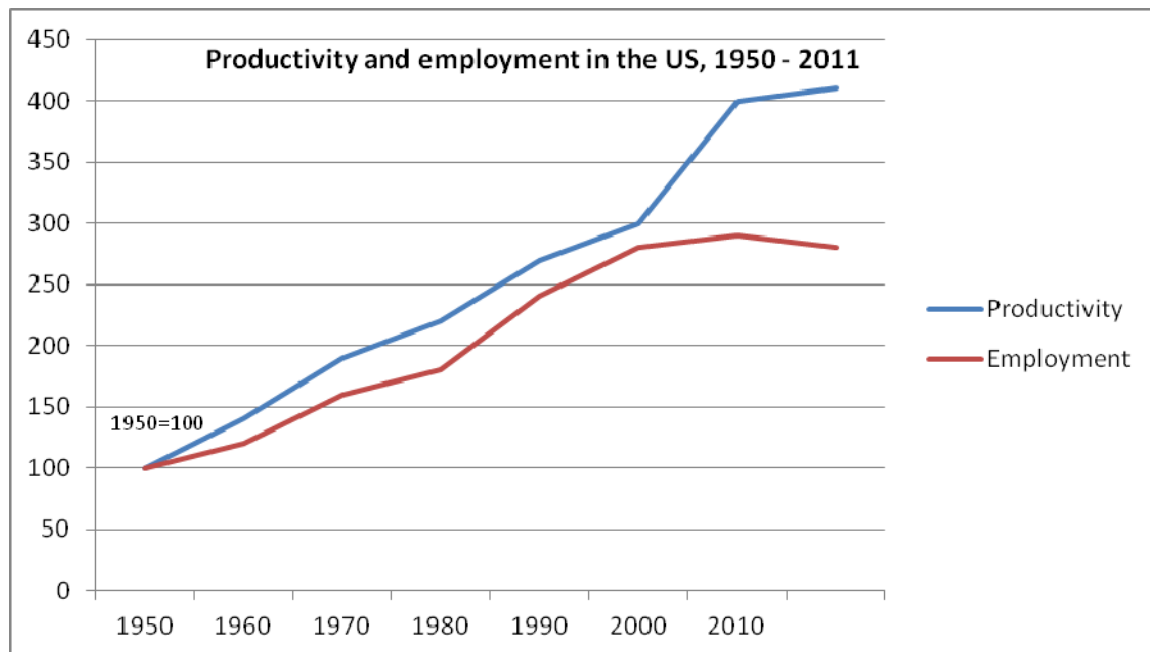
1. Why a Joint Public-Procurement

1.1 Introduction

Over of the next decade EU actions will most likely be focused on delivering **social progress, tackling societal challenges and boosting growth.**

In last century U.S. **GDP and productivity**, that is the ability to get more output from each worker, substantially grew but at the beginning of this century the **employment started to be decoupled from productivity** (Brynjolfsson & McAfee 2012, see figure 1). There could be several explanations to this behavior, from tax and policy changes to the effects of globalization and off-shoring. If off-shoring is considered just a step towards automation, the decoupling will worsen and the challenge should then be transferred towards addressing sustainable shared

values between profits and common benefits in terms of tackling societal challenges (Porter & Kramer 2011).



Source: US Department of Labour, December 2012

Figure 1: Productivity (blue curve) and employment (red curve) in US normalized to the respective values in 1950.

A **global perspective and cooperation** is necessary to address effectively societal challenges, which are global in nature. Due to the scarcity of resources, a clustered cooperation will and should mainly be limited to those actions considered to achieve greater impact. The reasonable strategic approach is that anyone cannot cooperate with everyone on all topics.

Despite the global scenario, a **regional context and cooperation** on issues of common interest should be an appropriate approach, having in mind that the specificities/cultures of the territories are interlinked in the evolution of the ensemble. The **Smart Specialization Strategy** aims, through targeted use of Structural Fund investments in R&I, to support the economic development of the territories, developing a vision, identifying competitive advantage, setting strategic priorities and making use of smart policies to maximize the knowledge-based development potential of any region. A European Common Strategic Framework promotes the

synergies between research funds allocated in **Horizon 2020** and those allocated in the Structural Funds in order to reach the critical mass, also in terms of financial resources, to address the challenges properly.

There is therefore a definitive need for aligning regional, national and European programming to reach common visions and goals: synergies between Structural Funds (SF), Horizon 2020 and investments at National and Regional levels are crucial to have a positive impact on socio-economic activities. Nevertheless, the step from words to facts implies the design, selection, adoption of appropriate instruments to facilitate the implementation of the strategies.

Joint Public Procurement (JPP) is a financial instrument which can be considered an opportunity to be evaluated when addressing solutions for societal challenges, and not only.

We will describe the standard use and procedures of adopting JPP and analyze pros and cons in different framework conditions. The aim is to provide **an operational toolkit to facilitate and guide the public authorities and policy-makers in the use of JPP.**

1.2 The JPP added value

Many aspects of JPP will be described in this paper.

We here briefly summarize the added values of JPP:

- JPP's approach is problem oriented and solution focused.
- JPP can be a key tool to support the "Internal Market" and the free movement of services.
- JPP can be a powerful tool to achieve Europe 2020 Strategy.
- JPP can deliver tangible results so as to foster wider public-private acceptance.
- JPP can address products/services identified as impacting on tackling societal challenges.
- JPP can be an alternative approach to Public Private Partnerships.
- JPP can boost job creation.
- JPP avoids duplication and reduce fragmentation.
- JPP increases the efficiency and effectiveness of the use of resources.

- JPP increases the connectivity and facilitate the definition of common strategies.
- JPP facilitates the quick response to urgent/emergent issues.
- JPP relates to an innovative cohesion approach: it assures the impact on territory through the usability of the product/service, not excluding the involvement of other territories for the provision of the product/service.

2. The European Legal framework for joint procurements

Fostering joint procurements is part of the Europe 2020 key initiatives¹.

Europe 2020 objectives can be better attained if the public procurers join their efforts. By aggregating their resources, public procurers increase their buyer power and may hence obtain better contractual conditions, reach more easily important market threshold values and have at their disposal a stronger instrument for orienting the market. Therefore, joint public procurement can increase the **effectiveness of the public procurement procedure** and at the same time share the risk linked to the procurement notably of innovative solutions.

Moreover, as stated in **Innovation Union – Commitment 17²**: *The Commission will offer guidance on implementing **joint procurements between contracting entities** under the current public procurement directives and use the ongoing general evaluation of the current **directives to examine the opportunity to introduce additional rules to make cross border joint procurements easier.***

The current European public procurement legal framework is open to joint public procurement either at national or cross-border level. However, very little detail is given concerning the application of joint public procurement in practice. Therefore the EC launched **a review of the current public procurement legal framework (in particular Directives 2004/17/EC and 2004/18/EC) to provide additional rules facilitating cross-border procurements.** The European

¹ http://ec.europa.eu/research/innovation-union/index_en.cfm?pg=action-points

² *Europe 2020 Flagship Initiative - Innovation Union, COM(2010)546 final*

Commission proposal for the revision of the Public Procurement Directives³ was published in December 2011.

The proposed Directive on public procurement emphasizes the importance of public procurements as an instrument to contribute to the achievement of the Europe 2020 strategic goals by using the purchasing power of contracting authorities to procure goods and services that foster innovation. EC proposal includes **specific provisions to facilitate cross-border joint procurement** which is described as an important instrument for innovative purchasing.

Stakeholders responding to the EC consultation on the *Green Paper on the modernization of EU public procurement policy* highlighted the issue of the lack of rules concerning the application of joint public procurement in practice, and in particular, on the applicable procurement law and the court that will have jurisdiction for the performance of the contract.⁴

The EC acknowledges that *“joint awarding of public contracts by contracting authorities from different Member States currently encounters specific legal difficulties, with special reference to conflicts of national laws. **Contracting authorities from different Member States may be interested in cooperating and in jointly awarding public contracts** in order to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting authority. Therefore **new rules** on cross-border joint procurement designating the applicable law should be established in order to facilitate cooperation between contracting authorities across the Single Market.”*

³ *Proposal for a Directive of the European Parliament and of the Council on Public Procurement, Brussels, COM(2011) 896 final*

⁴ *Green Paper on the modernization of EU public procurement policy, COM(2011) 15 final*

The Article 38⁵ of the directive proposal represents a first attempt to provide concrete means for contracting authorities from different Member States to develop joint procurements:

- Several contracting authorities may purchase works, supplies and/or services from or through a central purchasing body⁶ located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

- Several contracting authorities from different Member States may jointly award a public contract. In that case, the participating contracting authorities shall conclude an agreement that determines:
 - which national provisions shall apply to the procurement procedure;
 - the internal organization of the procurement procedure.

- Where several contracting authorities from different Member States have set up a joint legal entity (e.g. *European Groupings of territorial cooperation*) the applicable national procurement rules may be of one of the following Member States:
 - the national provisions of the Member State where the joint legal entity has its registered office;
 - the national provisions of the Member State where the joint legal entity is carrying out its activities.

The possible changes to the legal framework for procurement are still quite distant as the first transposition of the directive in Member States legal framework is foreseen at the earliest for

⁵ *Proposal for a Directive of the European Parliament and of the Council on public procurement, COM(2011) 896 final*

⁶ A Central Purchasing Body (CPB) is defined in the EC Public Sector Directive as a contracting authority that: acquires supplies or services intended for one or more contracting authorities; or awards public contracts for works, supplies or services intended for one or more contracting authorities; or concludes framework agreements for works, supplies or services intended for one or more contracting authorities. CPB have already been developed under the Directive 2004/18 on Public Procurements.

2015-2016. Therefore, the EC and Member States should begin to act now to promote cross-border joint public procurements as a key tool for tackling societal challenges.

3. Joint Public Procurement Strategy

The majority of EU countries are still far to elaborate clear guidance, strategy, methodology and criteria to promote the shift from traditional procurement schemes to Joint Public Procurement strategies.

The attempt to standardize the EU procurement framework “Innovation Union Commitment” would certainly provide a legal basis for joint procurement. However, joint procurement strategies in practice require a high level of coordination, effectiveness and capacity of prioritizing as well as an appropriate level of transparency and accountability.

The chart in Figure 2 addresses the aspects of the development of JPP strategies which should proceed via a blended mix of hard and soft measures:

- *Structure*: this requires setting EU guide-lines, governance, ad hoc formularies, single access point (centralization vs decentralization)
- *System*: JPP implies identifying best practices of procurement across members states to be potentially applied as jointly developed.
- *Style*: JPP can work effectively if shared values are commonly accepted. Transnationality and cross-border cooperation should represent the basic value proposition of JPP
- *Staff*: JPP requires experts/managers to work together across thematic sectors
- *Shared Vision*: JPP requires common and clear objectives and a balanced share of vision
- *Strategy*: JPP aims to achieve economy of scale and economy of scope by defying a common approach to solving common challenges
- *Strategic Toolkit*: JPP requires a comprehensive toolkit to be designed in order to enable multiple frameworks to work strategically in a transparent and friendly user way.

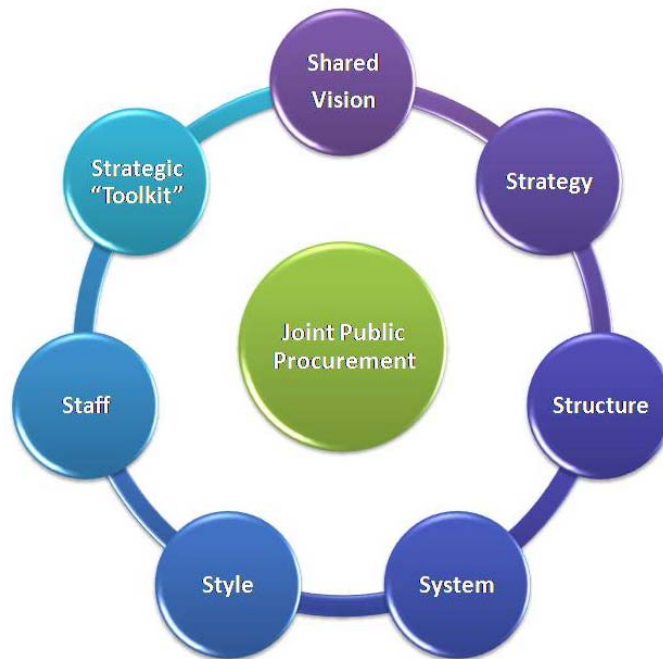


Figure 2 : Different aspects to be addressed in the development of JPP strategies

4. Implementing a Joint Public Procurement Framework

The process towards the implementation of Joint Public Procurement implies different phases /scenarios. For sake of simplicity, we describe the process as a matrix representing a sort of operational “gateway” to Joint Public Procurement (see figure 3).

In this matrix a set of optional *strategies* (Invest, divest, connection) is linked to a number of possible *scenario* (Joint strategic intelligence, road maps, exploiting commonalities) and actions (agreements, peer reviewing, implementation). The strategy varies on the basis of the identified scenario. The strategies and scenario should be eventually aligned to specific operational tools whose identification is a pre condition to the implementation of Joint Public Procurement.

Joint Public Procurement “JPP” Matrix

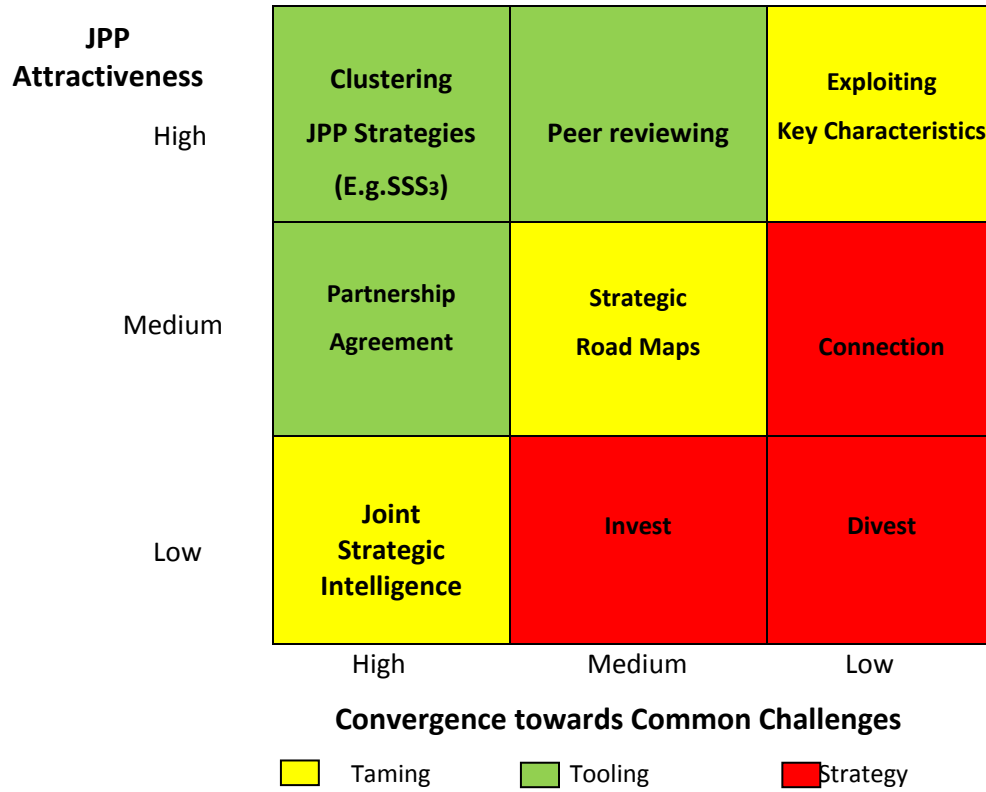


Figure 3 : a matrix scheme illustrating the different phases of the process towards the implementation of Joint Public Procurement. The horizontal axis describes the convergence towards common challenges, which implies the availability of funds and the willness of sharing goals and resources. The vertical axis represents the level of awareness for JPP to be adopted. The phases (boxes) are in different colours in order to describe different typologies of actions : from analysing, increasing knowledge and connectivity, to operational initiatives.

4. Coupling scenario, strategy, tooling

We describe an example of **Joint Strategic Intelligence** between two regions (named X and Y) in developing a Joint Public Procurement. Refer to figure 4 to follow graphically the different phases:

Phase 1 : As a starting point we assume two entities (research centres, regions, etc.,) working to elaborate their respective strategies of innovation (e.g., SSS3)⁷. The exercise should lead to the development of Strategic Programmes identifying priorities, actions and common objectives.

Phase 2: The process of Smart Specialization Strategy could help providing clear Road-Maps of challenges, objectives and priorities in Research & Innovation being faced by entities involved in the exercise.

Phase 3: Road Maps will serve to clustering common challenges, objectives and priorities onto **Joint Public Procurement Strategies**. This implies the rationale for “Joint Procurement Strategies” to lie within the degree of **relatedness** between priorities of regions. We specify the term “relatedness” to be applied in relation to reinforcing priorities and not in relation to stages of development (e.g., modest innovators, moderate innovators, followers, leading innovators).

Phase 4: Entities will choose among a number of optional tools/strategies (clustering JPP, partnership agreement, peer reviewing) based on a SWOT analysis.

⁷<http://s3platform.jrc.ec.europa.eu/home;jsessionid=k6rKRH4Qj7HMsnFBIJJDk1LZkYWK0r1RjpQGspnHDsQLnvpq wLvG!1058177620!1363622096966>

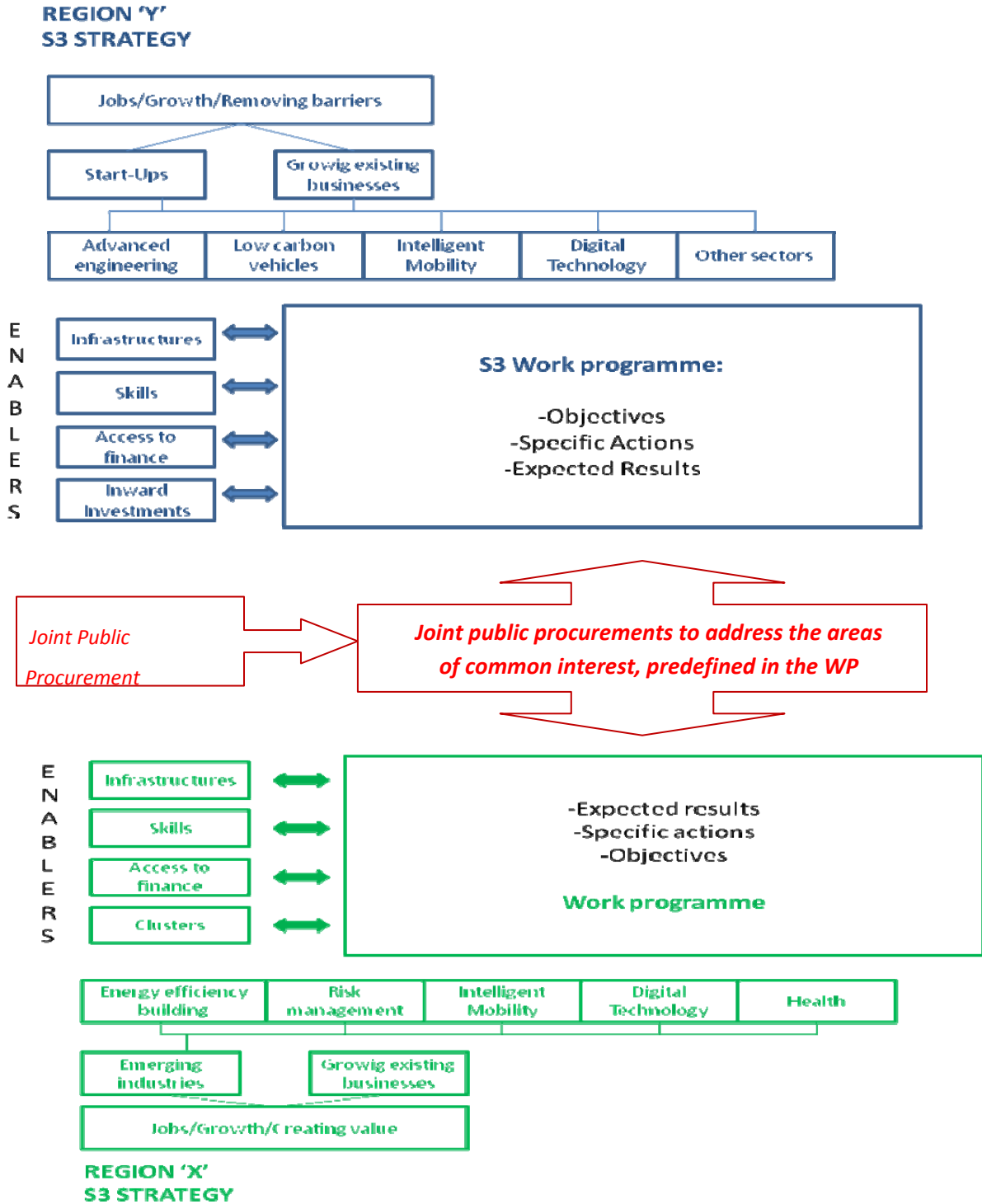


Figure 4: example of Joint Strategic Intelligence between two regions with similar priorities.

5. Conclusion and practical guidance on JPP

Identifying and standardizing a “EU common practice” for Joint Public Procurement might represent an overarching element in view of the new programming period 2014-2020. Synergies among programmes and funds is definitely the main novelty and approach to follow over the period ahead. This aspect raises notably when debating the concept of smart specialization strategies⁸ and the way it should ensure coordination and allow concentration of resources.

Beyond this, the new challenge based approach put forward by the Commission offers new opportunities to craft more effective cooperation mechanisms able to provide alternatives tools to more traditional approaches, such as public private partnerships⁹.

In this context, Joint public Procurement might offer, via standardized schemes, a potential path to build integrated strategies and coordinated projects across regions. Those mechanisms already exist and are in use by certain regional authorities. Nonetheless a common framework and practical kit for joint procurement has not yet been developed comprehensively at EU level. This could limit the potential of using joint procurement schemes on a wider scale in the EU and outside Europe.

Some practical guidance as a “tool kit for Joint Public Procurement” will be provided in part 2 of this document.

6. References

Brynjolfsson, E. & McAfee, A., 2012, Jobs, Productivity and the Great Decoupling, The International Herald Tribune. 12December 2012

Porter, M.E. & Kramer, M.R., 2011, The big idea: creating shared value, Harvard Business Review

⁸<http://s3platform.jrc.ec.europa.eu/home;jsessionid=dVt3RVnMw8nJFQ2v4N273mGpNSh2vPS51LjxKpF4vPXQDGDxzp6x!-2095593081!1368780364595>

⁹http://ec.europa.eu/research/industrial_technologies/ppp-in-research_en.html