

# Evaluation of public procurement directives

Fields marked with \* are mandatory.

## Introduction

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This public consultation forms an integral part of the **evaluation of the EU public procurement directives**:

- Directive 2014/23/EU on the award of concession contracts
- Directive 2014/24/EU on public procurement
- Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors).

The **objectives of the directives** have been to ensure an efficient use of public funds, contribute to the high level of competition in the single market, and promote transparency and integrity of public spending. The directives were also expected to contribute to making Europe a more green, social and innovative economy, increase SMEs' participation in procurement procedures, reduce the administrative burden related to procurement procedures, simplify them and make more flexible.

The purpose of this evaluation is to collect information that allows the Commission to assess the EU procurement markets and understand:

- the effectiveness and coherence of the EU legal framework for public procurement
- whether this legal framework is still adequate in the current context.

The directives have been **transposed into national law**. Feedback on national legislation that does not transpose the directives is outside of this consultation's scope.

The results of this public consultation will be summarised in a factual report, which will be published on the Have Your Say website. The results will also be analysed together with other data and presented in the Commission's report on the evaluation of the public procurement directives and an accompanying staff working document.

This consultation is composed of five themes. You will be able to provide additional **free text comments** concerning each of them. At the end of the survey you can upload a file with a more detailed contribution, including any **evidence** you may have.

## About You

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\* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

\* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority

- Trade union
- Other

**\* First name**

Jan

**\* Surname**

REMPALA

**\* Email (this won't be published)**

j.rempala@businessseurope.eu

**\* Organisation name**

*255 character(s) maximum*

BusinessEurope

**\* Organisation size**

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

**Transparency register number**

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

**\* Country of origin**

Please add your country of origin, or that of your organisation.

*This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.*

- Afghanistan
- Djibouti
- Libya
- Saint Martin
- Åland Islands
- Dominica
- Liechtenstein
- Saint Pierre and Miquelon

- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden

- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Türkiye
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States

- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena  
Ascension and  
Tristan da Cunha
- Saint Kitts and  
Nevis
- Saint Lucia
- United States  
Minor Outlying  
Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and  
Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

### \* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

● **Anonymous**

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

● **Public**

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

## *Experience with EU public procurement*

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### **Section 1: Simpler, more flexible rules, value for money, transparency, integrity**

Have the directives reached their objectives?

|  | Strongly agree                   | Agree                            | Neutral               | Disagree              | Strongly disagree     | Don't know            |
|--|----------------------------------|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| The directives helped contracting authorities* get <b>better value for money</b> when procuring works, goods and services.                               | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives made the <b>scope</b> of the applicable rules <b>clearer</b> .  | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives provided sufficient <b>flexibility</b> in the public procurement system (e.g. a broader choice of procedures and procurement techniques). | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

|  |                       |                                  |                                  |                       |                       |                       |
|--|-----------------------|----------------------------------|----------------------------------|-----------------------|-----------------------|-----------------------|
| The digitalisation of public procurement ( <b>eProcurement</b> ) helped <b>lower the administrative burden</b> when procuring works, goods and services.       | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The digitalisation of public procurement ( <b>eProcurement</b> ) made it <b>faster to procure</b> works, goods and services.                                   | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives set out <b>simpler rules</b> for the EU public procurement system.  | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives helped <b>reduce corruption</b> and fend off political pressure in public procurement procedures.   | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives fostered a <b>culture of integrity</b> and fair play in public procurement.   | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives increased the <b>professionalisation</b> of public buyers.  | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives <b>increased transparency</b> by setting the proper framework for the publication of tenders at all stages of the public procurement procedure. | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives gave greater <b>legal certainty</b> on the compliance with procurement procedures.  | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives facilitated <b>prompt payments</b> to subcontractors for the works, goods and services offered.   | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

\* Throughout this survey the term "contracting authorities" is understood as contracting authorities and entities.

The directives' objectives were to be achieved through rules set out in these legal acts.

In this context, do you agree with the following statements?

|  |                |       |         |          |                   |            |
|--|----------------|-------|---------|----------|-------------------|------------|
|  | Strongly agree | Agree | Neutral | Disagree | Strongly disagree | Don't know |
|--|----------------|-------|---------|----------|-------------------|------------|

|   |                       |                                  |                                  |                       |                                  |                       |
|---|-----------------------|----------------------------------|----------------------------------|-----------------------|----------------------------------|-----------------------|
| <p>The directives' rules aiming at <b>procedural simplification</b> (e.g. eProcurement, European single procurement document 'ESPD', the use of self-declarations) are still relevant and adequate.</p>             | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| <p>The directives' rules aiming to increase <b>procedural flexibility</b> (e.g. the choice of available procedures, time limits for submitting offers, contract modifications) are still relevant and adequate.</p> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |
| <p>The directives' rules on <b>transparency</b> (e.g. EU-wide publication via Tenders Electronic Daily 'TED') are still relevant and adequate.</p>  | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |
| <p>The directives' rules on <b>monitoring</b> (e.g. the quality of data provided in TED) are still relevant and adequate.</p>   | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |
| <p>The directives' rules on <b>integrity</b> (e.g. exclusion grounds, conflict of interest rules) are still relevant and adequate.</p>  | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |

If you have comments concerning any of the statements above, please provide them here.

We believe that overall value for money has been achieved in EU procurement. European-wide rules are essential, and historically, businesses have benefited from the directives. However, a decline in bids indicates that contracting authorities are receiving fewer offers. Although the directives improve upon the 2004 framework, the Court of Auditors has noted a lack of awareness regarding the role of competition in achieving value for money. Both the Commission and member states have not fully leveraged available data to identify the root causes of limited competition, taking only scattered steps to reduce obstacles. (ECA report, p47)

Flexibility and simplification are other areas where the directives are meant to help, yet their benefits are offset by rising administrative times. In 2011, around 60% of firms noted that participation in EU-regulated procurement was becoming more costly and time-consuming—an issue particularly felt by SMEs. The ECA report shows that the decision-making period increased from 62.5 days in 2011 to 96.4 days in 2021. Data from the Single Market Scoreboard (2019–2022) confirms similar trends, with average decision speeds of approximately 100 days each year. The 2011 Impact Assessment had recorded an overall contract time of 58 days, illustrating a significant deterioration in efficiency.

Regarding corruption, integrity, and transparency, the directives have theoretically aided progress, though more data is needed. The 2014 EU Anti-Corruption report indicates that corrupt practices can add 20–50% to the total cost of a contract. In 2010, the direct cost of corruption in five sectors across eight member states ranged from 1.4 to 2.2 billion EUR. Efforts by the Commission through initiatives such as SEGPP, the 2017 /572 Communication, and the 2021 guidelines on fighting collusion have been important steps toward addressing these issues.

In terms of transparency, initial improvements were observed; for example, publication numbers doubled between 1995 and 2002. However, during that period only 16% of estimated public procurement was published, with significant variation across Member States and regions. More recently, over half of the EU-27 experienced unsatisfactory publication rates below 5% between 2011 and 2021, and 43% did not monitor this key indicator. Additionally, the Single Market Scoreboard reveals an alarming increase in missing supplier and buyer registration numbers.

We are also concerned that while single bidding has risen, there is no monitoring of in-house procurement practices.

Concerning legal certainty, the directives have provided theoretical clarity, yet their implementation remains problematic. Many contracting authorities still fear litigation from procedural errors, limiting their willingness to move beyond price as the primary criterion and impeding the application of MEAT. The question of legal certainty for public buyers on how to buy quality should therefore be addressed.

The lack of robust data further complicates the evaluation process, with the ECA report suggesting that the Single Market Scoreboard could benefit from improved methodologies and new indicators.

Finally, on the issue of integrity and exclusion grounds, interpretations vary, sometimes resulting in disproportionate exclusions based on minor infringements. The vague, general formulation of the directives allows for divergent interpretations by national authorities, leading to exclusions not strictly based on procurement procedures. With around 40 sectoral rules affecting public procurement, many are broadly incompatible with the exclusion provisions of Article 57 under Directive 2014/24.

Regarding procedural simplification through the ESPD, while the idea is sound, its implementation has faltered due to technical shortcomings in digitalisation. The industry had insufficient time to comment on the national standards for e-procurement, undermining the intended benefits of the ESPD.

## Section 2: Easier market access, SMEs and cross-border participation

Have the directives reached their objectives?

|   | Strongly agree        | Agree                            | Neutral               | Disagree                         | Strongly disagree     | Don't know                       |
|---|-----------------------|----------------------------------|-----------------------|----------------------------------|-----------------------|----------------------------------|
| The directives resulted in <b>more competition</b> in public procurement markets (e.g. rules on transparency make it easier for companies to enter markets).                        | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |
| The directives set out rules that ensure the <b>equal treatment</b> of bidders from <b>other EU countries</b> in all stages of the process and the objective evaluation of tenders. | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| The directives made it <b>easier for SMEs</b> to bid for public contracts (e.g. the possibility to divide tenders into lots).   | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            |
| The directives made it <b>easier to bid</b> on public contracts <b>from abroad</b> (e.g. through eProcurement).   | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |

The directives' objectives were to be achieved through rules set out in these legal acts.

In this context, do you agree with the following statements?

|   | Strongly agree        | Agree                            | Neutral               | Disagree              | Strongly disagree     | Don't know            |
|---|-----------------------|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| The directives' rules on <b>SMEs' market access</b> are still relevant and adequate.  | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives' rules on <b>eProcurement</b> are still relevant and adequate as a tool to facilitate <b>market access</b> . | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

|   |                       |                       |                                  |                                  |                       |                                  |
|---|-----------------------|-----------------------|----------------------------------|----------------------------------|-----------------------|----------------------------------|
| <p>The directives' rules on <b>market access of companies from other EU countries</b> are still relevant and adequate.</p>        | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            |
| <p>The directives' rules on <b>market access of companies from non-EU countries</b> are still relevant and adequate.</p>          | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |
| <p>The directives' rules on <b>public-public cooperation</b> and <b>in-house procurement</b> are still relevant and adequate.</p> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |

If you have comments concerning any of the statements above, please provide them here.

Low direct cross-border bidding implies that there is discrimination present and market access is difficult. However it is the Directives themselves that force open the market without them the situation would be worse. Indirect procurement is higher and reflects the economic logic and preference of companies, such as forming consortia etc, to conduct cross border procurement. Market access for non-EU is more complicated now due to the ECJ's Kolin and Qinddao rulings, the consequence of which still needs to be understood.

We have concerns regarding the phrasing of some questions. Terms like “relevant” and “adequate” might lead to different conclusions; while all issues may be relevant, their adequacy is debatable.

Regarding whether the Directives have led to more competition, our response must be nuanced. Although the Directives have generally helped open up markets, more data and studies are needed to link the 2014 reforms to the observed decline in competition. Numerous worrying indicators—such as prolonged administrative procedures, increased instances of single bidding, and more frequent lot divisions—suggest that competition in public procurement is diminishing. We believe these issues largely stem from poor implementation coordination, as the ECA report noted that member states have focused more on compliance than performance.

On the matter of equal treatment for EEA/EU bidders, while the Directives are intended to support this, cross-border procurement remains very low. The ECA report indicates that direct cross-border procurement is around 5%, whereas indirect cross-border procurement is considerably higher. Factors affecting this include the type of procurement procedure (open vs. negotiated), the specific legislative framework (with sectors like utilities and defence showing higher cross-border participation), and geographical nuances. Economic and cultural linkages, language, and proximity further influence cross-border trends, with large firms dominating such procurement—accounting for roughly 69.5% of the value in direct cross-border deals and up to 79.5% in indirect ones.

SME participation can be argued as acceptable on paper. While data from 2011 to 2017 shows that approximately 61% of above-threshold contracts were awarded to SMEs, these only represent 33% of the total contract value. The larger the contract value, the lower the likelihood that an SME will win the bid. Although recent figures, such as those from the 2022 Single Market Scoreboard, indicate that many Member States exceed the 60% threshold for SME bids, these metrics can be misleading. SMEs tend to concentrate in lower-value contracts and are therefore more susceptible to changes in threshold amounts. For instance, the 2011 Impact Assessment warns that doubling the threshold could eliminate 20,000 contracts—a significant loss for SMEs. Moreover, the cost of tendering is relatively higher for SMEs, and although the possibility of forming consortia exists under the Directives, competition rules may discourage such collaboration due to fears of breaching competition law.

For market access from non-EU bidders, the Directives face challenges, particularly in light of evolving case law like Case C-652/22 “Kolin,” which overrides the 2019 guidelines. The introduction of new tools concerning FSR, FSI, IPI, and the existing provisions on abnormally low tenders must be used coherently to assess their effectiveness.

Finally, on the issue of in-house/public-public cooperation, the Commission should take a closer look at in-house procurement practices, which pose a serious threat to competition. For example, in Spain, the number of in-house contracts has increased by 77% annually, with a 350% rise in the volume of investment; additionally, in nearly 75% of cases, the economic justification for these contracts has not been published. Similar concerns arise in Finland, where in-house procurement is estimated at around 7 billion EUR, often involving municipal companies with highly fragmented ownership. These practices continue to face legal challenges from our Members.

# Strategic public procurement

## Section 3: Addressing strategic challenges

Have the directives reached their objectives?

### *Impact on contracting authorities*

|   | Strongly agree        | Agree                            | Neutral               | Disagree              | Strongly disagree     | Don't know            |
|---|-----------------------|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| The directives encouraged contracting authorities to <b>buy environmentally friendly</b> works, goods and services. | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives encouraged contracting authorities to <b>buy socially responsible</b> works, goods and services.     | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives encouraged contracting authorities to <b>buy innovative</b> works, goods and services.               | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

### *Impact on suppliers*

|   | Strongly agree        | Agree                            | Neutral               | Disagree              | Strongly disagree     | Don't know            |
|---|-----------------------|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| The directives encouraged companies to make greater efforts in meeting <b>environmental standards</b> in their economic activities. | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives encouraged companies to consider <b>social aspects</b> more in their economic activities.                            | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives encouraged companies to make wider use of <b>innovative solutions</b> in their economic activities.                  | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

The directives' objectives were to be achieved through rules set out in these legal acts.

In this context, do you agree with the following statements?

|  | Strongly agree        | Agree                            | Neutral               | Disagree                         | Strongly disagree     | Don't know                       |
|--|-----------------------|----------------------------------|-----------------------|----------------------------------|-----------------------|----------------------------------|
| The directives' rules that aim for <b>environmentally friendly</b> procurement (e.g. quality assurance standards and environmental management standards) are still relevant and adequate.                                  | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            |
| The directives' rules that aim for <b>socially responsible</b> procurement (e.g. reserved contracts, requirements on accessibility for people with disabilities and design for all users) are still relevant and adequate. | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            |
| The directives' rules on <b>supporting innovation</b> (e.g. innovation partnership, competitive dialogue) are still relevant and adequate.   | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| The directives' rules on supporting <b>all types of strategic procurement</b> (e.g. the use of the most economically advantageous tender) are still relevant and adequate.   | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            |
| The directives' rules on the transfer of <b>intellectual property rights</b> to enable public procurement to drive innovation are still relevant and adequate.   | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |

If you have comments concerning any of the statements above, please provide them here.

In short the link between CAEs, suppliers, and criteria is that despite the Directive outlining these criteria as permissible and encouraging, the uptake has failed. This leads us to conclude their implementation falls short.

However the EU must be cautious against moving to a framework that dictates Contracting Authorities ‘what to buy.’ The implementation of any strategic criteria must always be linked to the subject matter. A blanket imposition of quotas/criteria without the regard to the circumstances and resources of buyers can lead to sub-optimal procurement practices such as limited competition or corruption.

In the survey data collected for the 2011 IA, it found that 37.9% of the participating contracting authorities experienced an increase in cost when stipulating for environmental requirements, while 33.2% reported costs stayed constant and only 1.7% saw no increase in cost. This can suggest strategic procurement entails a higher cost, which as addressed under the SME access portion, can particularly disadvantage SMEs from participating. What can assist in shouldering the burden of costs related to strategic procurement is the usage of a price adjustment mechanism to cover changes in energy, material or labour costs for example.

This hesitation by authorities to utilise strategic procurement and deviate from the traditional price only method can be explained as well by the fact the poor implementation of the directives translates into a fear of authorities making errors in the process and triggering legal action. In the 2011 IA survey data showed that 25% of responding contracting authorities incurred a form of litigation cost above threshold. On average this 25% reported 8 person-days of cost dedicated to handling litigation complaints. Implying an average for all gov. authorities in EU of 2.6 in-person days per transaction or about 350.000 person days annually across Europe for managing litigation/complaints. One way to solve this is to continue focusing on the need to increase professionalisation of buyers and the tenders. Earmarking procurement damages imposed on a contracting authority for special education/skills fund could be an example of how to fund and sustain these programs.

Regarding the low amount of innovation procurement we believe a possible correlation between the low uptake of innovation procurement and the relationship of IP transfer and ownership is present. From internal survey data collected by our Swedish federation, it was found that 93% of the contracting authorities asked for ownership of IP. If this is indeed a wider habit of purchasers then it can help explain why companies are not eager to hand over IP rights in innovative procurement. However the Commission would need to conduct a thorough study on the matter.

For more on the specifics of strategic criteria we refer to our supplementary paper chapter on the subject.

## Competition in the EU public procurement market

### Section 4: Competition

|  |          |          |         |            |
|--|----------|----------|---------|------------|
|  | Too high | Adequate | Too low | No opinion |
|--|----------|----------|---------|------------|

|   |                                  |                       |                                  |                       |
|---|----------------------------------|-----------------------|----------------------------------|-----------------------|
| The level of <b>competition</b> in the EU public procurement market is ...  | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| The frequency of <b>single bidding</b> (awarding a contract after only receiving one offer) is ...                      | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |
| The frequency of <b>direct awards</b> (negotiated procedure without publication of a contract notice) is ....           | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |
| The frequency of <b>awards based on price only</b> (as different from the most economically advantageous awards) is ... | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> |

Do you agree with either of these statements about the **high frequency of single bidding**?

- It is a sign of bad procurement practices.
- It is not linked to procurement practices, but due to market structure or other factors unrelated to procurement.
- I don't agree with either of the statements above

Do you agree with either of these statements about the **high frequency of direct awards**?

- It is a sign of bad procurement practices.
- It is a legitimate procurement practice under certain circumstances and may facilitate the flexibility and timeliness of procedures.
- I don't agree with either of the statements above.

Do you agree with either of these statements about the **high frequency of price only awards**?

- It is a sign of bad procurement practices.
- It may be more efficient in certain circumstances (e.g. a simpler and faster way to buy homogenous goods).
- High quality can be assured through technical requirements.
- I don't agree with either of the statements above.

**Over the last 8 years**, the level of competition in the EU public procurement market has...

- increased
- remained the same
- decreased
- No opinion.

## Feel free to comment on issues that you may have experienced with the level of competition in EU public procurement market.

We believe the phrasing of these questions is poorly done and is too simplistic.

It is startling to see the change in competition, the support study from 2011 found that competition was considerable at the time, with an average of 5.4 offers per tender, and local government markets being more competitive than at central level. Unfortunately as we explain below this optimistic outlook has changed.

A high frequency of Single Bidding can be seen as a bad procurement practices but may be a mix of market factors and bad practices. It is too simplistic to declare the practice as A. or B. The fact is, as the ECA report shows from 2011-2021 single bidding increased from 23.5% to 41.8%. While the number of bidders has dropped from an average of 5.7 to 3.2 bidders per procedure.

Yet single bidding is legally permitted so long as the principles of transparency and non-discrimination are respected. Rather the contracting authority could face potential exposure to liability if they decide to cancel the tendering procedure on the basis of only a single bid as established by the ECJ under C-92/00 'Hospital Ingenuire' (para 55) There are numerous 'single bidding' practices that exist in the procurement framework such as the usage of the Innovation Partnership or the granting of special and exclusive rights in the utilities directive which further complicate the matter. In the course of the evaluation it must be investigated to what extent a revision of the 2014 Directives should specifically state actions regarding single bidding, or if this is a matter for implementation. Such ideas could be to replace the lowest-price criterion with a lowest cost of total ownership or second lowest price auction.

As the ECA report shows, the frequency of direct awards varies greatly across Member States from as low as 3.1% to 42.3%. In theory the practice can be legitimate but it should not be a norm or usual practice for contracting authorities to seek this option. It is therefore a mix of bad and legitimate procurement practice depending on the circumstance and market conditions of the sector in question. The ECA report illustrates that from 2011-2021 direct awards in Financial Services dropped from 18% to 8% whereas in energy they rose from 16% to 29%, we agree with the ECA conclusion that contracting authorities seem to react to the competition conditions of the sector. Overall the rate of direct awards is too high.

Regarding the High Frequency of price only awards, It is problematic to see high price-only awards but in many instances it remains the most legally sound criteria that can be used without other bidders wanting to challenge the award in court. It is undeniable that price-only has risen, the indicator flagged by the ECA is that the EU average number of bidders has dropped from 5.7 in 2011, to 3.2 in 2021 while Single Bidding increased from 23.5 in 2011 to 41.8 in 2021.

The ECA's findings can be reinforced from the data collected by the support study in 2011. The support study team found in that 1 in 5 tenders received one bid (so 25%- in line with ECA) While in 2011 most tenders received 4-6 offers. Procedure-wise this also made a difference as Open and Restricted were around 6 offers per tender, indicating these may be more conducive to competition than negotiated procedures.

However, while Open procedure may be more conducive to competition, it would appear it could also lead to a preference for price-only. The 201 support study showcased that 70% of tenders at the time used a combined EMAT criteria, while 30% were lowest price only. Price was mainly used in less complex procedures like negotiated without publication or accelerated. The more complex procedures such as restricted and negotiated used price less. While the competitive dialogue hardly used price. However in open procedure, 65% utilised price.

All this indicates is that the correlation and relationships between procedures needs to be closely evaluated

and more comparative data is needed before any assertions on the solution to the problems in competition can be made. For example a way to avoid price only could be to encourage CAEs to factor lowest TCO instead of price. We also note the verdict from the ECJ in Case C-424/23, which outlines the functional requirements for competition and the 'equivalence clause.'

On competition in general, from the data collected by our Swedish Federation SN, in Sweden, it emerged that in 65.2 percent of cases the winners were recurring or partially recurring winners. We strongly suggest the European Commission conduct a similar survey to complement and deepen the results of this finding.

## Coherence and resilience of the EU public procurement framework

### Section 5: Coherence

|   | Strongly agree        | Agree                            | Neutral                          | Disagree              | Strongly disagree                | Don't know                       |
|---|-----------------------|----------------------------------|----------------------------------|-----------------------|----------------------------------|----------------------------------|
| The <b>three public procurement directives*</b> are coherent with each other.   | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |
| The <b>objectives</b> of the three public procurement <b>directives</b> are coherent with each other.   | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |
| EU public procurement legislation on <b>defence and security procurement</b> is coherent with the three public procurement directives.  | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |
| EU public procurement legislation on <b>remedies</b> is coherent with the three public procurement directives.  | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> |
| <b>EU legislation relating to public procurement</b> (e.g. sectorial rules such as the Net-Zero Industry Act or Clean Vehicles Directive) is coherent with the three public procurement directives. | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            |
| The directives led to a <b>more consistent</b> application of public procurement policy <b>across EU countries</b> .  | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |

\* Directive 2014/23/EU on the award of concession contracts, Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors.

If you have comments concerning any of the statements above, please provide them here.

The wide range of sectoral legislation we believe are not aligned with the main directives in many instances. Incompatibilities between the 40+ sectoral rules and the main directives on the basis of exclusion or self-cleaning seem to be abundant.

The deforestation regulation and environmental claims directives, for example, provide for maximum exclusion from public procurement for up to 12 months. This contradicts the main 'classical' directive which allows for up to 3 or 5 years depending.

We recommend the Commission conduct a mapping of the sectoral rules to determine the level and severity of fragmentation.

## Section 6: Resilience

Are the directives still relevant and adequate given the changing circumstances?

|  | Strongly agree        | Agree                            | Neutral                          | Disagree              | Strongly disagree     | Don't know            |
|--|-----------------------|----------------------------------|----------------------------------|-----------------------|-----------------------|-----------------------|
| The directives are fit for purpose to contribute to the <b>EU's strategic autonomy</b> * (including the security of EU supply chains).   | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives are fit for purpose <b>in urgent situations</b> , allowing contracting authorities to procure works, goods and services in a timely manner and even make purchases more quickly when necessary. | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives are fit for purpose if there are <b>major supply shortages</b> (e.g. supply-chain disruptions during a health, energy or security crisis).  | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The directives are fit for purpose to ensure that <b>security considerations</b> are properly addressed by the contracting authorities.  | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

\* EU strategic autonomy refers to the capacity of the EU to act autonomously. That means not being dependent on other countries in strategically important policy areas.

If you have comments concerning any of the statements above, please provide them here.

The directives set the groundwork for achieving strategic autonomy. The directives also allow for urgent action in case of crisis or extraordinary circumstances to be taken by the contracting authorities.

The idea of introducing 'Buy European' criteria must be carefully weighed and certainly any blanket justification for 'buy local' must be avoided. Resiliency must not become an excuse to justify protectionist policies, it is important to keep in mind that the EU also has obligations towards the WTO GPA as well as EU bilateral trade agreements that contain provisions on procurement with other nations. These international obligations must always be respected.

## Comparisons

### Section 7: Below EU thresholds procurement

When compared with procurement **below EU thresholds\***, carrying out transactions under the directives' rules is ...

|                                 | Always                | Very often            | Sometimes             | Rarely                | Never                 | I don't know                     |
|---------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|----------------------------------|
| simpler                         | <input type="radio"/> | <input checked="" type="radio"/> |
| better value for money          | <input type="radio"/> | <input checked="" type="radio"/> |
| faster                          | <input type="radio"/> | <input checked="" type="radio"/> |
| more transparent and fair       | <input type="radio"/> | <input checked="" type="radio"/> |
| more professional               | <input type="radio"/> | <input checked="" type="radio"/> |
| subject to more competition     | <input type="radio"/> | <input checked="" type="radio"/> |
| more environmentally friendly   | <input type="radio"/> | <input checked="" type="radio"/> |
| more socially responsible       | <input type="radio"/> | <input checked="" type="radio"/> |
| more supportive for innovation  | <input type="radio"/> | <input checked="" type="radio"/> |
| better in preventing corruption | <input type="radio"/> | <input checked="" type="radio"/> |

\* Thresholds are as follows (approximately): (i) works or concession contracts worth more than €5.5 million; (ii) supply or service contracts with public authorities worth more than €140 000; and (iii) supply or service contracts in the water, energy or transport sectors worth more than €440 000.

### Section 8: Private procurement

When compared with **private procurement**, selling under the directives' rules is

...

|                                 | Always                | Very often            | Sometimes             | Rarely                | Never                 | I don't know                     |
|---------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|----------------------------------|
| simpler                         | <input type="radio"/> | <input checked="" type="radio"/> |
| better value for money          | <input type="radio"/> | <input checked="" type="radio"/> |
| faster                          | <input type="radio"/> | <input checked="" type="radio"/> |
| more transparent and fair       | <input type="radio"/> | <input checked="" type="radio"/> |
| more professional               | <input type="radio"/> | <input checked="" type="radio"/> |
| subject to more competition     | <input type="radio"/> | <input checked="" type="radio"/> |
| more environmentally friendly   | <input type="radio"/> | <input checked="" type="radio"/> |
| more socially responsible       | <input type="radio"/> | <input checked="" type="radio"/> |
| more supportive for innovation  | <input type="radio"/> | <input checked="" type="radio"/> |
| better in preventing corruption | <input type="radio"/> | <input checked="" type="radio"/> |

Thank you for your contribution. Please feel free to provide further comments or attach a file summarising your position on the directives' evaluation.

Regrettably due to the short time period of this consultation relative to the issue at hand we are unable to answer section 7 and 8.

Attached is our supplementary document which elaborates on our general position further.

**Please upload your file(s)**

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

## Contact

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