BRIEFING
Commission initiative in preparation

European Parliament

EU public procurement legislation: Implementation and upcoming review

This European Parliamentary Research Service paper aims to inform Members on issues related to a forthcoming Commission initiative. It highlights the main choices which may shape the initiative and which Members may wish to explore ahead of formal Commission adoption. Based on documentary and other sources, it reflects the information available at the time of writing.

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ISSUES AT STAKE

- Every year around €2.5 trillion, roughly 15 % of the combined GDP of the EU's 27 Member States, is spent on public procurement. The perceived failure of current EU public procurement rules to deliver on the economic potential of this part of the economy lead to a need for review. Findings show competition in public procurement did not increase from 2011 to 2021, a period which comprises the last review of the rules, which date to 2014. Successful public procurement could be leveraged to provide investment in the EU economy, thus playing its part in the drive to improve its competitiveness as a whole and the strategic autonomy of the Union.
- The review will be expected to simplify the current rules. The notion of 'simplification' has two potential aspects, namely removal of complexity present in the procurement framework legislation itself, and simplification of the interaction between that framework and sectoral legislation.
- The previous revision of the EU's public procurement rules strengthened the power of public authorities to award contracts on non-price criteria. To increase the take-up of procurement on such strategic bases, it will be necessary to improve the legal framework to give greater clarity as to the conditions for such awards.
- One aspect of the strategic approach to procurement which has gained significant political traction recently is the encouragement of procurement of goods and services made in the EU – the 'European preference'. This is fully in line with recent efforts to develop the EU's autonomy in strategically important sectors.

Complex interrelationships exist between these drivers. Some are in inherent contradiction, while others are necessarily complementary. For example, development of non-price award criteria by means of increased legal certainty implies developing additional, more detailed legal rules. This is prima facie opposed to the simplification agenda, if simplification is to be understood just as reducing the number of rules. Similarly, any 'European preference' will need legal delineation, which, depending on how it is executed, may run counter to any notion of simplification.

Developing secure legal criteria for non-price awards will impact positively on the competitiveness gain from EU public procurement, if those rules cater for increased innovative tenders. While an EU preference could support local industries, it could also limit contracting authorities' (CAs) choice of international tenderer, with a possible negative impact on competitiveness.

Resolving these trade-offs will be at the heart of the political deal to be struck on this reform.

Developments and insights – European Commission

Ursula von der Leyen's 2024-2029 political guidelines promised to revise public procurement legislation, as an investment issue. Flagging at this stage that the revision 'will enable preference to be given to European products in public procurement for certain strategic sectors', her 2025 State of the Union address again promised to 'introduce a "made in Europe" criteria in public procurement'.

The reform was further flagged in the competitiveness compass, the Clean Industrial Deal communication and the single market strategy. Finally, in its 2026 work programme, the Commission announced it will present a public procurement act, i.e. a legislative proposal to revise the current rules, in the second quarter of 2026. The Commission's legal basis for the proposal(s) will be Article 114 TFEU, i.e. the internal market legal basis – one of the legal bases for the current *acquis*. The Commission's communication views the reform from the perspective of stimulating investment in the EU economy and from a simplification perspective.

The Commission's 2026 Annual Single Market and Competitiveness Report highlights simplification (the plethora of sector-specific rules) and resilience (simplifying which measures taken by global trading players apply to procurement in the EU – 'with focus on key strategic sectors and preferential domestic access').

Under its proposal for an industrial accelerator act (IAA), contracting authorities are obliged to exclude from tender procedures companies from third countries which do not afford reciprocal access to EU companies. Furthermore, the Commission put forward 'Union origin requirements' for certain industrial goods. The proposal introduces such requirements for the procurement of energy intensive industry products and certain types of electric vehicle. Regarding the former, limited Union origin requirements apply specifically to concrete, mortar and aluminium.

Union origin requirements do not apply to goods originating from third countries with which the Union has concluded a free trade agreement or which are parties to the World Trade Organization Agreement on Government Procurement (GPA) 'where relevant obligations of the Union exist under that agreement'. The Commission explains it is not possible to establish upfront 'a single list of third countries with fully secured access to the entire EU procurement market', as commitments made under the GPA vary according to the category of CA and the object of the procurement, e.g. goods, services or construction works. Here, CAs will need to seek guidance. The Commission has the right to exempt third countries from this exclusion. In addition, CAs may decide not to apply Union origin requirements where this would result in weak procurement.[1]

In terms of the relationship with the review of the EU procurement framework, the Commission explains that the IAA establishes the content of a European preference in procurement (the 'what', i.e. energy-intensive industrial products and automotive components). On the other hand, the procurement review will specify 'how' such procurement is to be carried out.

The IAA proposal promises that the procurement review will 'integrate' sector-specific procurement requirements contained in disparate legislative acts 'within a common procurement framework'.

Current legal framework

The EU's current legal framework for public procurement seeks to harmonise rules and procedures for awarding contracts. The horizontal framework consists of three principle directives: Directive 2014/24/EU, defining generally applicable public procurement rules (the 'classical directive'); Directive 2014/25/EU, on procurement by entities operating in the water, energy, transport and postal services sectors (the 'utilities directive'); and Directive 2014/23/EU on the award of concession contracts (the 'concessions directive'). These apply to tenders with a contract value above specific thresholds (e.g. €5 404 000 for public works and concessions for 2026 and 2027). The thresholds are aligned to those established in the WTO GPA, to which the EU is a signatory. National rules apply below these thresholds and must comply with the directives' general principles.

Where the EU has international commitments (under the GPA or other bilateral agreements), companies from non-EU countries enjoy the same rights of equal access to and equal treatment in the EU procurement procedures above the thresholds as EU-based companies. Those based in third countries that have not signed such an agreement with the EU are considered 'non-covered'.

The horizontal framework is supplemented by further structural legislation, relating for example to defence procurement, remedies or international elements of procurement.

Contracts are awarded based on 'the most economically advantageous tender', i.e. the 'MEAT' concept (Directive 2014/24/EU, Article 67(1)). However, some flexibility exists for awarding authorities to consider other factors, such as 'environmental and/or social aspects' (Article 67(2)).

This sort of procurement has been developed in certain pieces of legislation as regards specific sectors or certain products and services.[2] For example, both the Ecodesign Regulation (ESPR) and the new Construction Products Regulation apply a harmonised system for green public procurement. Where sustainability requirements are needed for products covered by the ESPR, or where public contracts require minimum sustainability performance in the case of construction products, CAs are obliged to apply mandatory harmonised sustainability requirements, which the Commission will work out. Furthermore, the Net-Zero Industry Act introduced new mandatory non-price criteria in procurement procedures for clean technologies.

Evaluation of the directives and their implementation

In October 2025, the Commission published an ex-post evaluation analysing the directives against the standard Better Regulation Guidelines and Toolbox criteria.

Effectiveness. Implementation did not improve clarity and legal certainty on the 'actors subject to procurement' and 'subject-matter of procurement'. Stakeholders consulted in the open public consultation supported this assessment. Economic operators and CAs found it difficult to interpret new provisions on contracts between public sector entities, exclusion grounds, reliance on the capacities of other entities and abnormally low tenders. Interpretation of the definitions of 'public contract', 'central government authority', and 'body governed by public law' was also difficult, as was determining the applicable EU procurement law. Differences in the legal definitions of EU and national legal orders were also problematic. The lack of clarity and legal certainty led to numerous – 107 over the 2016-2025 period – requests for preliminary rulings before the Court of Justice of the EU (CJEU). The majority concerned Directive 2014/24/EU, most frequently 'grounds for exclusion'.[3]

CJEU – case law

The status of 'non-covered' companies was a source of legal uncertainty. Interpreted by the CJEU in the *Kolin* case (C-652/22) in 2024, the Court found the 'utilities directive' does not apply. They could not thus invoke the principles of equal access and treatment as a basis to challenge an award decision. Such litigations are covered by national rather than EU law. Furthermore, it is for the CA to decide whether to allow 'non-covered' companies to bid. The landmark *Kolin* judgement was reconfirmed in the 2025 *Qingdao* ruling (C-266/22).

The directives were partially effective in providing simpler, more flexible procedures – a key precondition for cutting administrative burden generated by procurement above EU thresholds. The directives' failure to ensure flexibility in practice is evident: between 2017 and 2024, only one of the six procedures and two procurement techniques introduced by the directives – the standard open procedure – was used in 82 % of cases. Local and regional authorities identified Member State 'gold plating' as a source of complexity. Procedures became longer between tender submission and contract award, creating uncertainty for CAs. The directives were therefore not effective in supporting CAs to achieve their public investment programmes.

The directives were also partially effective in maintaining market competition. Access to procurement improved, e.g. contract notices published in Tenders Electronic Daily (TED) increased 70 % and real value of procedures above the EU thresholds doubled. Furthermore, the higher the call's value, the higher the number of tenders submitted. Small and medium-sized enterprises' (SMEs) share of contracts increased – from 64 % of TED contracts and 47 % in terms of value (pre-2014) to 71 % and 55 % respectively (2017-2024). The Commission considers this proves SME access to EU procurement markets had improved. However, the directives were not able to prevent contracts being awarded to a single bidder. Stakeholders surveyed noted a concerning 'significant' participation in EU procurement of tenderers based in non-EU countries, especially in certain strategic sectors, while EU-based tenderers have no reciprocal access to third-country markets.

The evaluation notes the voluntary basis on which Member States could adopt green, innovation and social aspects in procurement – the 'strategic objectives' criteria introduced in 2014 – led to uneven adoption across the EU. While the 'strategic objectives' were integrated in sector-specific EU legislation, stakeholders were concerned whether this was coherent.

Transparency and integrity objectives were not fully met. Although transparency increased, evidenced by the doubling of the number of tenders published on TED, data gaps and data quality issues at EU and national level persisted. A lack of information such as award criteria, contract duration, or price weighting increased in many Member States, compromising procurement governance and corruption prevention. Electronic procurement tools to increase transparency appeared underexploited. Professionalisation at both EU and national level progressed, yet capacities remained uneven.

Efficiency. Direct costs for CAs and economic operators stemmed mainly from ensuring compliance with procurement procedures. Member States' direct costs came from providing and maintaining the IT and enforcing compliance. Indirect costs related to market changes resulting from procurement, for example, a delayed launch of a procedure or award of contract might result in lost market, investment and innovation opportunities for economic operators and for society. Direct benefits included budgetary savings, improved time efficiency (via reduced administrative burden) and production and delivery of more environmentally sustainable and socially inclusive goods and services. Indirect benefits related to a larger positive spillover macro-level effect on the economy. Overall, the benefits of the directives' implementation outweighed the costs for CAs and companies.

Coherence. Although the evaluation found the directives coherent, uneven Member State enforcement led to differing application of the environmental, social and labour requirements, and hampered achievement of the 'strategic objectives'. Incoherences were found between the directives and the growing body of procurement provisions in sector-specific EU legislation (e.g. defence, environment, energy and digital), which led to uncertainty and implementation issues.

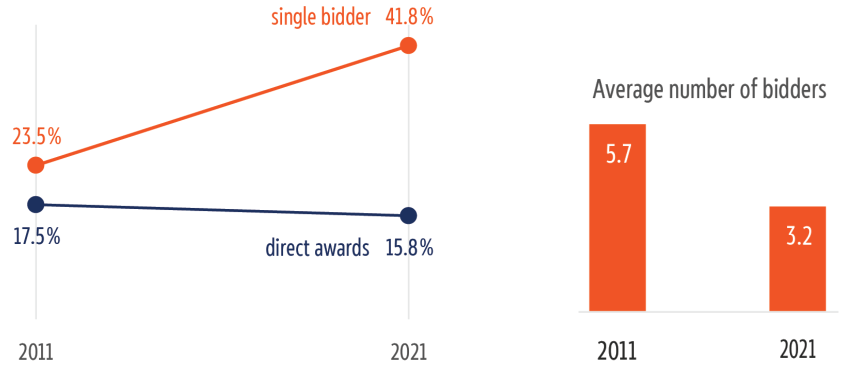
Relevance. The evaluation found the directives' objectives remain highly relevant to current needs defined by a changed geopolitical and economic environment. Therefore, enhancing the EU internal market via procurement is key to ensuring economic security and strategic autonomy. Simpler and less burdensome procurement addresses the need for increased economic competitiveness and public procurement supports climate- and environment-related needs. The social and innovation aspects of the 'strategic objectives' also remain relevant. However, the need for the EU to effectively react to the current geopolitical and economic context requires adapting the 'strategic objectives' concept to meet new realities, e.g. a 'European preference' approach.

EU added value: Despite implementation difficulties, the evaluation found harmonisation of procurement rules at EU level had tangible benefits that would be difficult for Member States to achieve if acting on their own. The directives created a more level playing field and transparency for economic operators and CAs. Furthermore, the directives provide a 'solid, common basis for creating strategic leverage for public procurement as a policy instrument'.

Why is the initiative important?

The European Court of Auditors Special report 28/2023, published in December 2023, identified declining competition for public contracts in the EU over the past 10 years. The Court looked at contracts awarded without a call for tenders (direct awards); contracts awarded to a single bidder; and the average numbers of bidders (for all calls during the studied period taken together, regardless of contract value). While the first indicator showed a modest improvement, taken on average across the EU, the other two deteriorated in 2011-2021.

Figure 1 – ECA findings on competition in public procurement in the EU, 2011-2021



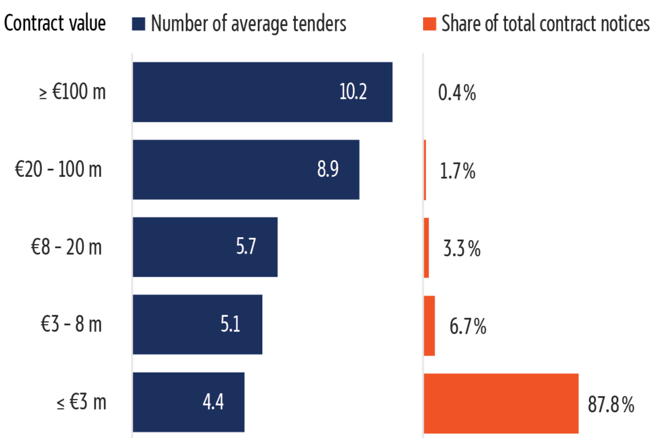
Data source: ECA, Special report 28/2023; ECA dashboard to Special report 28/2023.

According to the Court, and contrary to the Commission's evaluation, SME participation in public procurement did not increase across the EU. The Commission explains the difference between its finding and the Court's finding in terms of the difference between the data sets used by different studies. It states the Court draws only on data from TED, in which SME declarations are lower.

The Court found both bidders and CAs considered procedures were overly complex. Public tenders rarely take account of strategic factors such as environmental impact, social responsibility and innovation, and the Court found, despite the 2014 reform's introduction of the MEAT criteria, a large share of contracts was still awarded on the sole basis of the lowest-price criterion in 2021, with the level of award in favour of the lowest bid exceeding 80 % in eight Member States. Low procurement information publication rates reduce transparency, which is key to preventing fraud and corruption.

A September 2025 World Bank study takes a more nuanced view. The Bank considers the level of competition in procurement in the EU is low for low-value contracts, but increases with contract value, supporting the Commission's evaluation of high-value contracts discussed above.

Figure 2 – World Bank findings on competition in public procurement in the EU, 2018-2023



Data source: World Bank, Competition in the European Union's Public Procurement Markets (2018-2023).

The Draghi and Letta reports both stressed the need to revise public procurement. Draghi called for the introduction of low-carbon criteria and minimum environmental sustainability requirements in the EU *acquis*, yet noted greater focus on what to buy should avoid creating administrative burden. Letta sees innovative procurement, especially in green and digital technologies, as an important lever to support start-ups, scale-ups and SMEs in developing new products and services.

On 3 December 2025, the European Economic and Social Committee (EESC) adopted an opinion on the review of the European public procurement legal framework. The EESC underlines the untapped economic potential of EU public procurement and calls for simplification and reduced administrative burden. It emphasises strategic procurement, in terms of non-price criteria such as social, innovation and environmental criteria 'as equal objectives', and a European preference 'when appropriate'. Its analysis of non-price criteria includes consideration for workers' rights and collective agreements.

A March 2026 European Committee of the Regions (CoR) opinion on the evaluation of the public procurement directives recognised the burdens placed on local and regional CAs by the current rules and called on the Commission not to add to that burden in the current review. It also called for focus on cross-border procurement, which remains too low. It supports the introduction of some form of European preference, recalling that assessment of the concepts used should not fall on CAs.

Member State positions and interested parties' opinions

In both the conclusions of its special meeting of April 2024, and in its strategic agenda for 2024-2029, adopted in June 2024, the European Council noted the importance of 'leveraging' public procurement to improving EU competitiveness. The strategic agenda observes specifically that this is 'crucial' to 'build[ing] up ... capacity in sensitive sectors and key technologies of the future'.

The June 2024 Council conclusions on the ECA Special Report 28/2023 acknowledged the decrease of competition in public procurement, the lack of significant overall improvement in the achievement of the main objectives pursued by the 2014 directives and the low level of direct cross-border procurement. The insufficient use of strategic public procurement and the shortcomings in the Commission's and the Member States' monitoring of developments in the public procurement market are noted. The Council considered public procurement legislation complexity hinders certain economic operators' participation. It noted the ECA finding of a low proportion of contracts awarded to SMEs, and underlined the need to avoid unnecessary administrative burden. Finally, the Council observed the large share of contracts awarded to the lowest bidder in most Member States and warned against prioritising price as the sole award criterion.

The May 2025 Competitiveness Council debated public procurement, with all delegations emphasising the need to simplify the framework by reducing the number of legal acts and establishing clearer rules. Ministers also discussed which strategic objectives – such as environmental goals, social policies, economic sovereignty, and national security – public procurement could help to achieve, and debated whether and when an EU preference might be introduced. Many delegations advocated for national, regional, and local CAs to have the flexibility to tailor application of sectoral criteria, including any EU preference, to their specific needs. They gave a strong signal the revision should concentrate on the simplification of EU procurement procedures, or 'how to buy', while allowing CAs the choice to decide 'what to buy'.

A Polish Presidency note prepared for the May 2025 Competitiveness Council, highlights fragmentation of the legal landscape governing EU-level procurement. The paper refers to a 'proliferation' of procurement-related provisions in discrete EU legislation, which appear in more than 30 different instruments. It further alleges the rules have moved beyond 'how to buy' towards 'what to buy', i.e. beyond a procedural framework.

In a note prepared for the December 2025 Competitiveness Council, a group of smaller Member States challenged the 'European preference' concept, not only as regards public procurement but as a horizontal policy approach. According to those Member States, the EU should be wary of introducing rules that could limit Member State ability to source the widest variety of goods and services, as such restrictions could harm EU competitiveness and reduce innovation. The approach could be damaging to trade relations and risk countervailing measures. Rather, the EU should seek to extend cooperation with like-minded partners. A 'European preference' should only be used as a last resort and with reference to genuinely strategically sensitive sectors.

On the other hand, there is support for the idea of 'European preference' from certain Member States, with French President Emmanuel Macron advocating it in a recent interview.

Public authorities tend to take the view that the rules need to be more flexible. This applies to CAs at different levels within Member States. For example, in its response to the Commission's public consultation, the Ministry of Economy and Innovation of the Republic of Lithuania advocates a lighter regime for procurement to be used in emergencies, to avoid lengthy legal challenges. The Ministry notes the 'unprecedented increase of public procurement provisions contained in EU sectoral legislation' is making the EU procurement framework increasingly 'complex and difficult to implement in practice'. The Ministry equally advocates a 'streamlining of sectoral regulation' along with more flexibility in applying social criteria in public procurement, arguing current restrictions limiting social criteria evaluation to aspects 'linked to the subject-matter of the contract' prevent a more comprehensive assessment of economic operators' broader sustainability practices.

The City of Paris also advocates measures to increase flexibility and simplification. Its contribution to the evaluation consultation highlights the constraints facing public buyers, calling for freedom to use the negotiated procedure without justification It also proposes expanding the use of non-competitive procurement where no suitable tender is submitted, regardless of the initial procedure.

In its response to the Commission's evaluation consultation, BusinessEurope calls for simplification and reduced administrative burden. Any review of the current rules should be limited and evidence-based, with BusinessEurope critically clarifying that simplification 'should not be understood as entailing new regulations to solve the problem'. It equally emphasises the importance of harmonisation between sectoral legislation and the overall procurement framework.

The European Construction Industry Federation (FIEC) also supports simplification and administrative burden reduction to ensure a growth-friendly and 'favourable business environment'.

SMEunited focuses on problematic implementation of the current rules, rather than their content. It points to CAs' failure to use the existing power to divide contracts into lots. SMEunited also refers to the continued use of the lowest-price criterion as stifling demand for a wider variety of innovative tenders, which SMEs could provide.

Environmental and other NGOs call for the further development of environmental and social award criteria. Some call for those criteria to be made mandatory. Impact Europe sees the absence of mandatory legal obligations for the integration of environmental, social and innovation criteria in public procurement as limiting the uptake of such procurement. A lack of engagement with enterprises providing these solutions, and a lack of understanding of such offers, also limits uptake.

Trade unions call for increased safeguards to secure labour standards in publicly contracted firms ('buying decent work'). The European Trade Union Confederation (ETUC) highlights how use of lowest price as the sole selection and award criterion has had a 'clear negative impact on working conditions' under public contracts. ETUC calls for a revision of the procurement directives that promotes 'quality jobs and guarantees the respect of workers'. It argues that public procurement procedures should clearly indicate the selection criteria, including support for collective bargaining and promotion of direct jobs, and that those criteria, including social criteria, should be mandatory.

European Parliament views

On 9 September 2025, Parliament adopted a resolution on public procurement, based on a report tabled by the Committee on the Internal Market and Consumer Protection. It was adopted with 432 votes in favour, 95 against and 124 abstentions.

Parliament calls to revise the EU public procurement framework to strengthen competitiveness, support a more sustainable economy, enhance EU resilience and advance digitalisation. It emphasises that although the reform which led to the current framework aimed to simplify procedures, enhance transparency and promote SME participation, challenges persist on transparency, efficiency, broader use and alignment of non-price criteria, and fraud and corruption prevention. It stresses targeted reform is needed to unlock EU-level public procurement's potential.

Parliament supports introduction of a European preference in 'targeted strategic sectors', subject to compliance with EU WTO obligations. It notes EU companies, particularly SMEs, encounter difficulties in accessing international public procurement markets due to protectionist policies in non-EU countries, leading to unfair competitive disadvantage. It requests the Commission conduct an in-depth impact assessment on possible ways and implications of prioritising a 'European preference' in strategic procurement. As a basis for such a preference, Parliament suggests either the exemption currently afforded to the protection of 'essential security interests' under Article 15, Directive 2014/24/EU, or that currently applied by Article 85, Directive 2014/25/EU to procurement with third countries with which the EU does not have reciprocal market access arrangements.

Parliament recognises the importance of allowing CAs to give greater weight to social and sustainability criteria, while calling for a balance between the development of 'sustainable and social procurement objectives' and a minimisation of the regulatory and administrative burden. Indeed, the resolution notes the adverse effects of over-reliance on the lowest price criterion, which may exert downward pressure on sustainability, the quality of services and working conditions.

Parliament also calls for simplification of the legal regime, which it sees as problematic for both tenderers and CAs. It emphasises that procurement process complexity, excessive qualification criteria and increasing bureaucratic burden affect SMEs, local businesses and national contractors.

Finally, flexibility should be ensured for purchasing authorities, and the EU's system should not determine what to buy, but how to buy. The Commission's proposals for reform should be guided by the principles of value for money, fair competition and the fight against corruption.

ENDNOTES

1 The conditions for this possibility resemble those for the use of the negotiated procedure without prior publication (under Article 32 of Directive 2014/24/EU), or those for the non-application of green public procurement (under Article 83 of the Construction Products Regulation).

2 These are only some examples of the many pieces of sector-specific legislation containing provisions relating to public procurement. The Draghi report quotes a figure of 52 legislative acts for product groups, of which 43 had, at that time, been either published or adopted.

3 Annex VII to the Commission evaluation contains a non-exclusive yet detailed list of CJEU case law on the directives.

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