

Evaluation of public procurement directives

Fields marked with * are mandatory.

Introduction

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

* Language of my contribution

☒ English

* 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

Elisa

*Surname

Schenner

*Email (this won't be published)

Elisa.Schenner@eudsoentity.eu

*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.

☒ Belgium

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.

☒ I agree with the personal data protection provisions.

Experience with EU public procurement

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 better value for money when procuring works, goods and services.			X			
The directives made the scope of the applicable rules clearer .		X				
The directives provided sufficient flexibility in the public procurement system (e.g. a broader choice of procedures and procurement techniques).				X		
The digitalisation of public procurement (eProcurement) helped lower the administrative burden when procuring works, goods and services.			X			
The digitalisation of public procurement (eProcurement) made it faster to procure works, goods and services.			X			
The directives set out simpler rules for the EU public procurement system.				X		

The directives helped reduce corruption and fend off political pressure in public procurement procedures.		X				
The directives fostered a culture of integrity and fair play in public procurement.		X				
The directives increased the professionalisation of public buyers.		X				
The directives increased transparency by setting the proper framework for the publication of tenders at all stages of the public procurement procedure.		X				
The directives gave greater legal certainty on the compliance with procurement procedures.			X			
The directives facilitated prompt payments to subcontractors for the works, goods and services offered.			X			

* 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
The directives' rules aiming at procedural simplification (e.g. eProcurement, European single procurement document 'ESPD', the use of self-declarations) are still relevant and adequate.			X			

The directives' rules aiming to increase procedural flexibility (e.g. the choice of available procedures, time limits for submitting offers, contract modifications) are still relevant and adequate.				X		
The directives' rules on transparency (e.g. EU-wide publication via Tenders Electronic Daily 'TED') are still relevant and adequate.		X				
The directives' rules on monitoring (e.g. the quality of data provided in TED) are still relevant and adequate.			X			
The directives' rules on integrity (e.g. exclusion grounds, conflict of interest rules) are still relevant and adequate.			X			

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

Most concerns raised by our members revolve around the inflexibility of the procurement process, particularly regarding the selection of sellers and procurement facilitation options such as recurring programs and pre-qualification systems. While these systems are designed to reduce the burden on DSOs, they often fall short in addressing the complexities of modern procurement needs.

Members also acknowledge the importance of procurement in ensuring security of supply, particularly when it comes to third-country technology providers. In some instances, DSOs should have the ability to limit deliveries from such suppliers, especially from countries like China. However, current directives do not allow for the exclusion of certain suppliers.

Additionally, there are concerns about the lack of flexibility in a market that demands increasing innovation. Existing procurement processes exhibit insufficient structure for managing significant modifications, limited adaptability when supply is low but relevant alternatives are available, and a lack of differentiation between low-value and high-value tenders.

For instance, pre-qualification stages are an important part of the tender process. However, they are used only for a single procurement process. It should be possible to reuse pre-qualification stages for multiple tenders and to reopen the pre-qualification stage for each tender process.

Additionally, DSOs can establish framework agreements for up to eight years or more, but the rules for modifications for the agreements are not flexible enough to cover all the possible changes that can occur in the operation of a framework over this long time period.

Similarly, when contracts are awarded to suppliers who can no longer meet required volumes, the exemption from tendering provisions does not adequately address the need for contracting entities to source alternative supplies. In such cases, DSOs should be able to negotiate directly with alternative suppliers without having to restart the entire tender process.

Another area in need of reform is the thresholds for EU tenders, which should be substantially increased. For the newly created sub-threshold tier of tenders, a quick competitive process can still be required based on seeking a number of tenders for each procurement competition.

In addition, EU court decisions regarding the procurement directives have in general increased the burden on contracting entities and resulted in less flexibility and increased risk avoidance in tender processes, adding to the time taken for tenders and the administrative cost for suppliers.

Competitive dialogue, widely used in the development of smart-grid components, is another promising approach. This approach involves engaging multiple vendors by providing a functional specification of the issue at hand and inviting them to propose ideas or innovative solutions to address the identified problem.

Access to the EU public procurement market

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 more competition in public procurement markets (e.g. rules on transparency make it easier for companies to enter markets).		X				
The directives set out rules that ensure the equal treatment of bidders from other EU countries in all stages of the process and		X				

the objective evaluation of tenders.						
The directives made it easier for SMEs to bid for public contracts (e.g. the possibility to divide tenders into lots).			X			
The directives made it easier to bid on public contracts from abroad (e.g. through eProcurement).						X

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 SMEs' market access are still relevant and adequate.			X			
The directives' rules on eProcurement are still relevant and adequate as a tool to facilitate market access .			X			
The directives' rules on market access of companies from other EU countries are still relevant and adequate.			X			
The directives' rules on market access of companies from non-EU countries are still relevant and adequate.				X		
The directives' rules on public-public cooperation and in-house procurement			X			

are still relevant and adequate.						
----------------------------------	--	--	--	--	--	--

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

Concerns about market access for companies from non-EU countries highlight the need to carefully analyse the types of restrictions that should be imposed on such suppliers, particularly regarding security of supply, cybersecurity, and other sensitive sectors, especially given current geopolitical tensions. In practical terms, procurement units should have greater capabilities to exclude technology from non-EU countries.

At the same time, there is significant potential for simplifying procedures for low-value tenders, which could facilitate greater participation from SMEs in relevant procurement opportunities.

However, despite this potential, it is worth mentioning that there is limited participation among SMEs in cross-border bidding. Due to a lack of sufficient data or insights, it is difficult to fully understand the underlying factors contributing to this trend.

In addition to these challenges, the rules on public-public cooperation and in-house procurement outlined in the directives vary widely across Member States. The directives themselves do not provide enough clarity, leaving some aspects open to interpretation and making it difficult for contracting entities to navigate the rules effectively.

Greater market access could likely be achieved if the rules around awarding contracts from multi-party frameworks were less rigid and allowed contracting entities to allocate the framework volume across all or most of the framework members, giving greater opportunity to new or smaller suppliers while retaining more experienced suppliers.

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 buy environmentally friendly works, goods and services.			X			

The directives encouraged contracting authorities to buy socially responsible works, goods and services.			X			
The directives encouraged contracting authorities to buy innovative works, goods and services.				X		

Impact on suppliers

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know
The directives encouraged companies to make greater efforts in meeting environmental standards in their economic activities.			X			
The directives encouraged companies to consider social aspects more in their economic activities.			X			
The directives encouraged companies to make wider use of innovative solutions in their economic activities.				X		

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 environmentally friendly procurement (e.g. quality assurance standards and environmental management standards) are still relevant and adequate.		X				

The directives' rules that aim for socially responsible procurement (e.g. reserved contracts, requirements on accessibility for people with disabilities and design for all users) are still relevant and adequate.		X				
The directives' rules on supporting innovation (e.g. innovation partnership, competitive dialogue) are still relevant and adequate.				X		
The directives' rules on supporting all types of strategic procurement (e.g. the use of the most economically advantageous tender) are still relevant and adequate.			X			
The directives' rules on the transfer of intellectual property rights to enable public procurement to drive innovation are still relevant and adequate.		X				

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

Increased electrification efforts necessitate the expansion, renewal and smartening of the grids core components such as cables, transformers and IT-equipment, which are high in demand and often difficult to procure due to long lead times. While DSOs are committed to supporting EU's sustainability objectives and play a crucial role in the energy transition, the current regulatory framework often pressures DSOs to prioritise cost-efficiency in their procurement decisions.

Additionally, certain environmental rules, such as the ban on SF6 gases in switchgear, contribute to procurement challenges due to limited supply of SF6 free switchgear, as DSOs must balance environmental concerns with the practical need to secure the necessary equipment.

In this context, it is important to strike a balance between safeguarding environmental goals, ensuring efficiency, and maintaining flexibility in procurement processes. Excessive regulations can hinder competition, stifle innovation, and restrict access to necessary and critical resources.

The current regulatory framework primarily focuses on short-term cost-efficient solutions for individual contracts. However, to deliver Europe's Net Zero targets, a long-term lens should be introduced to allow sustainable and resilient supply chains to be prioritized.

The current innovation partnership process is severely limited in its usefulness due to the fact that it can only be used where there are no existing products already available on the market. A more flexible innovation process would be more helpful, for example allowing DSOs to try a number of innovative existing products in pilot schemes to inform future procurement processes.

The public sector should become a better customer for innovation by not only de-risking deployment investments but also actively supporting the market penetration and replication of innovative technologies. Including an 'innovation' dimension in the public procurement process would alleviate current pressures and provide further confidence in Europe's ability to lead technological advancements.

This de-risking approach would not only generate more innovation but also stimulate additional investment in new R&D projects by improving the business case for innovation and enabling faster scaling. The latter is key considering intense global competition for technological leadership.

Competition in the EU public procurement market

Section 4: Competition

	Too high	Adequate	Too low	No opinion
The level of competition in the EU public procurement market is...			X	
The frequency of single bidding (awarding a contract after only receiving one offer) is...	X			
The frequency of direct awards (negotiated procedure without publication of a contract notice) is...	X			
The frequency of awards based on price only (as different from the most economically advantageous awards) is...		X		

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.

From the perspective of the grid industry as buyers, a significant challenge is, to some extent, the lack of competition among suppliers, resulting in fewer sellers willing to respond to the bids proposed by DSOs. There is a growing need for more precise, regulated and technically complex core materials, yet the pool of suppliers is shrinking, creating a supply-demand imbalance.

This is exacerbated by several new trends, including the scarcity of individual components in high demand, such as chips or raw materials to produce them, like copper, steel and aluminium. Additionally, the introduction of new sustainability requirements is restraining even more the availability of these materials during the adaptation time needed at the production level. This adaptation period creates additional challenges, particularly for SMEs that may find it more difficult to enter or compete in the market. As a result, fewer suppliers are available to respond to DSOs'

procurement bids, and some potential bidders may be deterred from applying for tenders given the risk of not fulfilling the contracts.

For many materials needed by DSOs, the market is very constrained, with suppliers having substantial market power. The current EU procurement directives are, however, not designed for this type of market dynamic which assumes the contracting entity has market power which needs to be controlled. To address these issues and be able to purchase in the current environment, DSOs and the supply chain as a whole need considerably more flexibility in how tenders are run, and how procurement frameworks are established and operated to achieve greater competition in the long-term.

Coherence and resilience of the EU public procurement framework

Section 5: Coherence

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know
The three public procurement directives* are coherent with each other.			X			
The objectives of the three public procurement directives are coherent with each other.			X			
EU public procurement legislation on defence and security procurement is coherent with the three public procurement directives.						X
EU public procurement legislation on remedies is coherent with the three public			X			

procurement directives.						
EU legislation relating to public procurement (e.g. sectorial rules such as the Net-Zero Industry Act or Clean Vehicles Directive) is coherent with the three public procurement directives.				X		
The directives led to a more consistent application of public procurement policy across EU countries.				X		

* 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 objectives of sustainability and other sourcing requirements outlined in procurement-related legislations may conflict with the cost-efficiency goals posed in the Utility directives. Green technologies, for instance, usually come at a higher price, as do European-made products.

Furthermore, the procurement landscape over the EU member states remains fragmented. Members of DSO Entity reported rigid procurement processes, requiring extensive documentation and competitive tendering for all contracts, which can slow down procurement for urgent or innovative solutions. These inefficiencies lead to inconsistent procurement timelines, administrative burdens and added competition between DSOs of different countries in procurement.

In addition to these challenges, it is pivotal to have a clearer understanding of the link between EU public procurement legislation on defense and security procurement and the three public procurement directives under evaluation. For example, if certain goods can be procured under the defense directive, which could simplify and speed up the procurement procedures for critical infrastructure.

This fragmentation is further compounded by a number of recent EU directives (Net-Zero Industry Act, Foreign Subsidies Regulation), which have included provisions that broaden the scope and complexity of procurement processes, making them less appealing.

A more coherent approach is required to ensure alignment with the core procurement directives and the current political reality and policy agenda. The directives need to be updated with references to the new strategic aims at the macro level (supply chain visibility, sustainability, security of supply).

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 EU's strategic autonomy * (including the security of EU supply chains).				X		
The directives are fit for purpose in urgent situations , allowing contracting authorities to procure works, goods and services in a timely manner and even make purchases more quickly when necessary.				X		
The directives are fit for purpose if there are major supply shortages (e.g. supply-chain disruptions during a health, energy or security crisis).				X		
The directives are fit for purpose to ensure that security considerations are properly addressed by the contracting authorities.				X		

* 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.

With over 40,000 different components, the technical complexity and variability in equipment requirements for DSOs are significant. This often entails complex, tailor-made equipment needs for DSOs and prolonged procurement processes. However, in some countries, DSOs are collaborating to align technical specifications, allowing them to procure components together to optimise costs and shorten waiting times. Such joint procurement initiatives can be beneficial, especially for smaller DSOs that may otherwise struggle to secure their components in a timely manner. However, not all countries allow or incentivise such joint procurement initiatives.

To enhance the resilience and availability of strategic materials across countries, European legislation should focus on strengthening the supply chain for these essential supplies.

Moreover, the challenges faced by small buyers extend beyond suppliers' issues, as small buyers also encounter difficulties navigating a complex set of procurement rules and procedures, which can further hinder their procurement capabilities.

Another critical concern is the insufficient attention given to the security of supply and cybersecurity needs, especially for fast-tracking tenders that involve serious security considerations for critical infrastructure.

Furthermore, the existing utility directive is no longer adequate to deliver in the current market environment and is not sufficiently flexible to deal with rapidly changing market conditions. A shift in focus is necessary in this regard, one that places greater on long-term strategic goals rather than short-term cost savings.

To deliver greater long-term competition and resilience, contracting entities should be empowered to award contracts to multiple suppliers through frameworks that prioritize sustainability, support for SME's, risk management and overall supply chain resilience.

EU Procurement processes should also facilitate some longer-term flexible agreements between DSOs and suppliers, particularly for key grid infrastructure projects. While these agreements should still ensure competition to protect consumers, they must offer the necessary flexibility to meet the evolving demands of the energy sector.

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				X		
Better value for money			X			

Faster				X		
More transparent and fair			X			
More professional			X			
Subject to more competition			X			
More environmentally friendly						X
More socially responsible						X
More supportive for innovation				X		
Better in preventing corruption			X			

* 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				X		
Better value for money				X		
Faster				X		
More transparent and fair			X			

More professional			X			
Subject to more competition				X		
More environmentally friendly						X
More socially responsible						X
More supportive for innovation				X		
Better in preventing corruption			X			

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

Efforts to increase decarbonisation and electrification have significantly heightened the demand for equipment across the entire electricity value chain. DSOs, which connect over 70% of the renewable capacity, are at the forefront of this transition and are currently facing significant challenges in procuring the necessary assets in a timely manner. They are increasingly struggling to source essential equipment and key-components due to strained supply chains, manufacturing shortages, and cross-sector competition for certain components like chips or (affordable) raw materials. Moreover, complex and protracted public procurement processes further impede the acceleration of the build-out of grids. Simplifying and streamlining these public procurement procedures would be a vital step towards improving the current situation of long waiting times for core grids supplies.

However, the utility directive is no longer fit for purpose, as it lacks the flexibility needed to adapt to the rapidly changing market conditions we have seen since 2020 and thus fails to accommodate the dynamics of the modern market, where suppliers hold substantial market power due to the constrained availability of key materials. Some Member States have provided flexibility tools on national level, but these are not harmonised and similar all across the EU.

To address these issues, the procurement framework must evolve. Indeed, there is a pressing need for more differentiated tendering processes, moving beyond just above or below threshold distinctions, and greater flexibility in how tenders are established and operated, to achieve greater competition in the long-term.

In this regard, greater emphasis needs to be placed on long-term strategic aims and less on short-term individual tender cost savings. To deliver greater competition long term, contracting entities should be able to award contracts based on considerations that will improve long-term supply chain resilience, sustainability and competition.