



*Employers entrusted to deliver
Sustainability Growth Innovation*

Position Paper

Public Procurement: evaluation of the directives and the way forward

7 March 2025

Introduction

In light of the impending revision of EU public procurement directives, as announced in the European Commission's Political Guidelines and Competitiveness Compass, **SGI Europe has conducted a survey amongst its members on the topic of public procurement**. It aims to establish what SGIs' experiences with the current public procurement legislation are, as well as what they deem most important in the impending revision.

This paper displays the positions put forward by the SGI Europe membership. After sections on SGI Europe's membership's roles in the public procurement process and our main position on public procurement, it **follows the structure of the Commission's public consultation** on the three 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). As such, it **provides explanations and arguments for the answers provided by SGI Europe to the questions of the public consultation**. SGI Europe's full response to the consultation can be found as an annex to this position paper.

SGI Europe and public procurement: representing both buyers and bidders

SGI Europe represents actors from all parts of the public procurement process. On the one hand, the SGI Europe membership includes many **local authorities that are contracting authorities**. On the other hand, it includes **companies that deliver services of general interest and which bid for public contracts**. Finally, many SGI Europe members are **public undertakings**, which both **participate as competitors in public tender procedures and apply competitive procedures themselves for downstream supplies**.

These different actors face very different challenges within the process of public procurement. As a result, they also judge the Directives in diverging ways and their opinions on how they should be revised are in many cases not the same. This paper is the result of extensive conversations and comparisons between these respective positions. Therefore, it already represents **a balance of different perspectives on public procurement**.

Simpler, more flexible rules, value for money, transparency, integrity

In general, the **Directives have made public procurement processes more complicated**, rather than simpler. This means that **contracting authorities and public undertakings get less value for money** for two reasons:

- Firstly, bidders are scared off by the lengthy procedures and the costs connected to them, which means that the Directives have caused there to be **fewer bidders for tenders** and that contracting authorities potentially miss out on the best bids. If we want to get value for money and use public procurement to contribute to strategic objectives, we need to tempt companies to work for the public sector.
- Secondly, in some cases contracting authorities (local authorities in particular) need to hire private law firms to deal with the administrative issues, meaning that they **spend more public money on public procurement procedures, which could otherwise have been used to pay for the goods and services** that need to be procured.

Therefore, the most important objective of a revision of the Directives should be simplification. This will allow the public procurement process to be what it should be primarily: **an economic activity rather than a judicial exercise**. As it is, too much time is spent on the administrative part of the process, whereas there should be more of a focus on analysing what market options are available and making the best choice for the public.

Both contracting authorities and bidders would also benefit from greater flexibility within procurement procedures. For example, it should be easier to amend contracts. A suggestion would be to **allow for the possibility of modifying the contractual requirements both in the award procedure and during the performance of the contract**, for example by using a progressive definition of the requirements or adding cases for modification.

Finally, the **low usability of eForms has slowed public procurement procedures down**. Using the original website for tenders, the creation of an announcement could be completed within 20 to 30 minutes. **The introduction of eForms for the publication of public procurement has created further bureaucratic hurdles, which means that it now takes around one and a half hours to enter notices.**

Differentiated approach to public procurement rules

In terms of exceptions, it is **currently possible for utilities to apply to the European Commission for an exemption** (Article 34 of Directive 2014/25), **but requests take time to formulate and process**. One option would be to simplify these application and authorization procedures. Another option could be to **enshrine in legislation the fact that as soon as a contracting entity operates in a highly competitive environment, it is de facto exempted**.

Additionally, **public-public and inter-municipal cooperation should remain exempt from public procurement rules**. One of the most effective ways in which the public sector can be strengthened in delivering its goals and duties is through inter-municipal cooperation.

Moreover, it is important that Article 10(b) of the Directive on Public Procurement 2014/24/EU continues to ensure that **contracts awarded by broadcasters are excluded from the scope of the Directive**. This to ensure editorial independence and cultural and linguistic diversity.

On downstream purchases, **public undertakings that are awarded a contract/concession by participating as competitors in public tender procedures provided for by the directives, should be released from the**

obligation to apply a competitive procedure on public contracts for downstream supplies. The awarding of the initial contract/concession is in fact in itself a sufficient guarantee of a demonstrated advantage in terms of quality/price for the public purchaser and of the application of a competitive procedure. In such cases, therefore, the need to protect competition which led to the application of the directives on public undertaking also for their own downstream purchases, is not relevant.

Transparency and integrity

Regarding transparency, there should be **no obligation to publish the results of the tender**. Additionally, it should be possible to **avoid publicly publishing the tender itself in areas of high national security**. Moreover, **it should be avoided that sensitive information of listed companies** (e.g. relating to competitive activities) **is made public unnecessarily**.

Easier market access, SMEs and cross-border participation

The Directives have not resulted in more competition or cross-border procurement. However, **the lack of greater (cross-border) competition is not a result of the Directives themselves**. Rather it down to the fact that **cross-border public procurement only makes financial sense from a certain price for bidders**, which is why it is difficult to increase the number of cross-border awards as a whole. Moreover, the fact that different countries do things in different ways and use different languages also limits cross-border procurement.

The access of SME's (including public ones that would fall within this definition, if the provision in Article 3, paragraph 4, of the Annex to Recommendation 2003/361/EC were eliminated) to the public procurement market **has not improved** as a result of the Directives. This is primarily down to the **complexity of EU procurement processes**, the costs of which **disproportionately affect SMEs and local public enterprises**. Moreover, in order to involve local SMEs and use local materials, **the importance of allowing for 'buying local' should be reflected in the Directives**.

Strategic procurement

Various sectoral pieces of legislation, such as the Net-Zero Industries Act, have added green or social criteria that need to be used in procurement processes. Beyond these specific cases, many **contracting authorities already take into account criteria related to competitiveness, strategic autonomy, sustainability and social standards**.

However, **the balancing of different conditions leaves contracting authorities vulnerable to potential lawsuits from bidders**. Currently, **the weighting when awarding the contract can easily be challenged by competitors**, which regularly leads to legal proceedings.

Therefore, balancing the need to use public procurement strategically with the need for a simple and effective legislative framework, **a one-size-fits-all approach to compulsory criteria at the EU level is not the right instrument**. Public authorities and Member States should have the freedom to select bids based either on price and/or the use of strategic criteria.

The need to simplify tender procedures, felt by almost all economic operators, would not go well with the possible introduction of mandatory criteria. Also, **focusing attention only on public procurement**, which represents only a part of the expenditure made in the EU, **would not be sufficient to scale up the EU economy and create lead markets**. Although public procurement can be part of the solution to strategic

challenges, **it will only be effective if sufficient attention is paid to other parts of the solution, such as private procurement.**

Another crucial element in driving social change through procurement, is that **contracting authorities need to be able to form partnerships with enterprises which offer innovative and high-quality services to drive social change.** Therefore, the legislation should **allow contracting authorities to engage in long-term collaborations with bidders** that offer innovative solutions. Additionally, **officially recognizing companies which fulfil certain requirements can help to create these relationships of trust and continuity.**

Finally, **some rules set out in sectoral pieces of legislation mean that local authorities are excluded from long-term agreements,** such as in the electricity market. Most notably, Power Purchase Agreements (PPAs) are long-term electricity delivery contracts between two parties, usually a generator and a buyer of electricity (consumer or trader). The price is fixed and determined for a period of time regardless of the evolution of market prices. The draft law on the acceleration of renewable energies did not provide for the articulation of PPAs with the rules of public procurement, effectively excluding local authorities from PPAs. This situation should be addressed in the revision of the Directives.

Competition

As was highlighted by the European Court of Auditor's report on public procurement, competition for tenders has not increased in the past decade. If anything, it has declined. This is down to various different factors, the complexity of public procurement legislation being only one of them.

On the one hand, **the Directives have likely contributed to the presence of limited competition for tenders.** The **time and costs** involved in procurement procedures since transposition of the Directives has caused fewer parties to be interested in bidding, meaning that competition has decreased. Therefore, **the decrease in competition is likely partially the result of the complexity of European public procurement rules.**

On the other hand, however, **some contracts are simply so technical that there are not many possible bidders** that can carry out the work in question. In some cases, only few companies can carry out the work, especially when it is highly technical work. Therefore, not all lack of competition is likely be the result of public procurement processes and the Directives.

Coherence

One of the main problems with the current legislation is the sectoral approach to public procurement beyond the Directives themselves, which creates a vast number of different procedures and at times inconsistencies in the legislation. The revision should ensure **that a framework is included in the procurement directives that potential future procurement obligations in sectoral legislation must comply with.**

Resilience

Public procurement can be used to promote buying European. In order to use public procurement to strengthen the European economy and reduce import dependencies, contracting authorities should be able to

prioritise bidders that are located in the EU. This way, public procurement can contribute to increasing value-creating investments within the European Union.

However, **this should not compromise the timeliness of supplies** and the opportunity for contracting authorities to purchase, even outside the European market, products and services that the European market is not – even temporarily – able to provide.

Additionally, public procurement rules should **allow for the protection of strategic data and industrial sovereignty**. In the cloud and artificial intelligence markets, it is essential to protect personal data and trade secrets. Therefore, **it must be possible to stipulate in public procurement tenders that the bidders cannot be subject to the US' Cloud Act and that their data centres must be located in the EU**.

Finally, public procurement rules should allow for **sufficient flexibility in cases of high national interest**. At present, the Directives provide a number of exemptions which allow contracting authorities not to carry out procurement procedures when higher national interest require it. It is very important to **maintain these possibilities for exceptions** in cases of high national interest.

Closely connected to this, and in line with the objective of promoting innovation already embodied in the 2014 directives, **it should be possible to purchase innovative materials and processes, in particular those required for the energy transition, using the negotiated procedure without a prior call for competition**.

Comparisons

Public procurement under the rules of the Directives is more complicated and slower than procurement that falls outside of the scope of the Directives. **In terms of procurement contributing to societal objectives, such as sustainability, social standards and innovation, the determining factor is not whether EU procurement is used, but the approach taken to procurement by individual contracting authorities.**

In line with the principle of subsidiarity, European Public procurement legislation should focus on the tenders that are part of a genuinely European market. In other words, **thresholds need to be raised to a level where they only cover tenders with realistic potential for cross-border bidding**.

Especially in the light of the inflation that has occurred since the current Directive was adopted in 2014, **the majority of public contracts awarded by local authorities currently reach the threshold values** and are therefore subject to European public procurement law. These are local contracts that attract a local, rather than a European pool of bidders.

In order to ensure that this does not need to happen for contracts with no cross-border potential, a revision of the Directives should **increase the threshold values to EUR 750,000 in the area of supplies and services and to EUR 10,000,000 for construction services**. These amounts would also develop in future on the basis of corresponding European price indices.

Private procurement

As was stipulated in the section on strategic procurement, public procurement alone is not sufficient to scale up the EU economy and create lead markets. Private procurement is not subjected to the standards and criteria

that public procurement is. This means that **private procurement is faster and simpler to carry out, but also that private buyers do not have the same impact on driving societal change.**

Crucially, there is currently no functioning market for recycled products, as their primary equivalents are still available at a lower price. Therefore, the use of secondary materials by producers must be incentivised in order to create a market. The **best way to incentivise the use of secondary materials is to introduce recycled content criteria for the producers of key products**, both public and private.

Annex: consultation response

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.	☐	☐	☒	☐	☐	☐
The directives made the scope of the applicable rules clearer .	☐	☒	☐	☐	☐	☐
The directives provided sufficient flexibility in the public procurement system (e.g. a broader choice of procedures and procurement techniques).	☐	☐	☐	☒	☐	☐
The digitalisation of public procurement (eProcurement) helped lower the administrative burden when procuring works, goods and services.	☐	☐	☐	☐	☒	☐
The digitalisation of public procurement (eProcurement) made it faster to procure works, goods and services.	☐	☐	☐	☐	☒	☐
The directives set out simpler rules for the EU public procurement system.	☐	☐	☐	☒	☐	☐
The directives helped reduce corruption and fend off political pressure in public procurement procedures.	☐	☐	☒	☐	☐	☐
The directives fostered a culture of integrity and fair play in public procurement.	☐	☐	☒	☐	☐	☐
The directives increased the professionalisation of public buyers.	☐	☐	☒	☐	☐	☐
The directives increased transparency by setting the proper framework for the publication of tenders at all stages of the public procurement procedure.	☐	☒	☐	☐	☐	☐
The directives gave greater legal certainty on the compliance with procurement procedures.	☐	☐	☐	☒	☐	☐
The directives facilitated prompt payments to subcontractors for the works, goods and services offered.	☐	☒	☐	☐	☐	☐

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.	☐	☐	☐	☒	☐	☐
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.	☐	☐	☐	☒	☐	☐
The directives' rules on transparency (e.g. EU-wide publication via Tenders Electronic Daily 'TED') are still relevant and adequate.	☐	☒	☐	☐	☐	☐
The directives' rules on monitoring (e.g. the quality of data provided in TED) are still relevant and adequate.	☐	☐	☒	☐	☐	☐
The directives' rules on integrity (e.g. exclusion grounds, conflict of interest rules) are still relevant and adequate.	☐	☒	☐	☐	☐	☐

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).	☐	☐	☐	☒	☐	☐
The directives set out rules that ensure the equal treatment of bidders from other EU countries in all stages of the process and 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).	☐	☐	☐	☒	☐	☐
The directives made it easier to bid on public contracts from abroad (e.g. through eProcurement).	☐	☒	☐	☐	☐	☐

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

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

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.	☐	☒	☐	☐	☐	☐
The directives encouraged companies to consider social aspects more in their economic activities.	☐	☒	☐	☐	☐	☐
The directives encouraged companies to make wider use of innovative solutions in their economic activities.	☐	☒	☐	☐	☐	☐

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.	☐	☐	☒	☐	☐	☐
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.	☐	☐	☒	☐	☐	☐
The directives' rules on supporting innovation (e.g. innovation partnership, competitive dialogue) are still relevant and adequate.	☐	☐	☒	☐	☐	☐
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.	☐	☐	☒	☐	☐	☐
The directives' rules on the transfer of intellectual property rights to enable public procurement to drive innovation are still relevant and adequate.	☐	☐	☒	☐	☐	☐

Section 4: Competition

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

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.

Section 5: Coherence

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know
The three public procurement directives* are coherent with each other.	☐	☒	☐	☐	☐	☐
The objectives of the three public procurement directives are coherent with each other.	☐	☒	☐	☐	☐	☐
EU public procurement legislation on defence and security procurement is coherent with the three public procurement directives.	☐	☐	☐	☐	☐	☒
EU public procurement legislation on remedies is coherent with the three public 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.	☐	☐	☐	☒	☐	☐
The directives led to a more consistent application of public procurement policy across EU countries .	☐	☒	☐	☐	☐	☐

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).	☐	☐	☒	☐	☐	☐
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.	☐	☒	☐	☐	☐	☐
The directives are fit for purpose if there are major supply shortages (e.g. supply-chain disruptions during a health, energy or security crisis).	☐	☒	☐	☐	☐	☐
The directives are fit for purpose to ensure that security considerations are properly addressed by the contracting authorities.	☐	☐	☒	☐	☐	☐

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	☐	☐	☐	☒	☐	☐
better value for money	☐	☐	☒	☐	☐	☐
faster	☐	☐	☐	☒	☐	☐
more transparent and fair	☐	☐	☒	☐	☐	☐
more professional	☐	☐	☒	☐	☐	☐
subject to more competition	☐	☐	☒	☐	☐	☐
more environmentally friendly	☐	☐	☒	☐	☐	☐
more socially responsible	☐	☐	☒	☐	☐	☐
more supportive for innovation	☐	☐	☒	☐	☐	☐
better in preventing corruption	☐	☐	☒	☐	☐	☐

* 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	☐	☐	☐	☐	☒	☐
better value for money	☐	☐	☒	☐	☐	☐
faster	☐	☐	☐	☐	☒	☐
more transparent and fair	☐	☐	☒	☐	☐	☐
more professional	☐	☐	☒	☐	☐	☐
subject to more competition	☐	☐	☒	☐	☐	☐
more environmentally friendly	☐	☐	☒	☐	☐	☐
more socially responsible	☐	☐	☒	☐	☐	☐
more supportive for innovation	☐	☐	☒	☐	☐	☐
better in preventing corruption	☐	☐	☒	☐	☐	☐