

Basic information

2011/0438(COD)

COD - Ordinary legislative procedure (ex-codecision procedure)
Directive

Public procurement

Repealing Directive 2004/18/EC [2000/0115\(COD\)](#)

Subject

2.10.02 Public procurement

Procedure completed

Key players

European
Parliament

Committee responsible

IMCO Internal Market and Consumer Protection

Rapporteur

TARABELLA Marc (S&D)

Appointed

30/11/2011

Shadow rapporteur

ENGEL Frank (PPE)

CREUTZMANN Jürgen
(ALDE)

RÜHLE Heide (Verts/ALE)

HARBOUR Malcolm (ECR)

KOŽUŠNÍK Edvard (ECR)

DE JONG Dennis (GUE
/NGL)

SALVINI Matteo (EFD)

Committee for opinion

AFET Foreign Affairs

Rapporteur for opinion

The committee decided not
to give an opinion.

Appointed

INTA International Trade

SUSTA Gianluca (S&D)

25/01/2012

ECON Economic and Monetary Affairs

The committee decided not
to give an opinion.

EMPL Employment and Social Affairs

SIPPEL Birgit (S&D)

16/02/2012

ENVI Environment, Public Health and Food Safety

WESTLUND Åsa (S&D)

07/02/2012

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|--|---|---|---|
| | <p>ITRE Industry, Research and Energy</p> <p>TRAN Transport and Tourism</p> <p>REGI Regional Development</p> <p>JURI Legal Affairs</p> <p>LIBE Civil Liberties, Justice and Home Affairs</p> | <p>GYÜRK András (PPE)</p> <p>LICHTENBERGER Eva (Verts/ALE)</p> <p>MĂNESCU Ramona Nicole (ALDE)</p> <p>GARGANI Giuseppe (PPE)</p> <p>The committee decided not to give an opinion.</p> | <p>13/02/2012</p> <p>27/02/2012</p> <p>26/01/2012</p> <p>13/02/2012</p> |
| Council of the European Union | Council configuration | Meetings | Date |
| | General Affairs | 3292 | 2014-02-11 |
| | Competitiveness (Internal Market, Industry, Research and Space) | 3208 | 2012-12-10 |
| | Competitiveness (Internal Market, Industry, Research and Space) | 3147 | 2012-02-20 |
| | Competitiveness (Internal Market, Industry, Research and Space) | 3169 | 2012-05-30 |
| European Commission | Commission DG | Commissioner | |
| | Financial Stability, Financial Services and Capital Markets Union | BARNIER Michel | |
| European Economic and Social Committee | | | |

| Key events | | | |
|------------|---|--|---------|
| Date | Event | Reference | Summary |
| 20/12/2011 | Legislative proposal published | COM(2011)0896  | Summary |
| 17/01/2012 | Committee referral announced in Parliament, 1st reading | | |
| 20/02/2012 | Debate in Council | | |
| 30/05/2012 | Debate in Council | | |
| 10/12/2012 | Debate in Council | | |
| 18/12/2012 | Vote in committee, 1st reading | | |
| 11/01/2013 | Committee report tabled for plenary, 1st reading | A7-0007/2013 | Summary |
| 14/01/2014 | Debate in Parliament |  | |
| 15/01/2014 | Decision by Parliament, 1st reading | T7-0025/2014 | Summary |

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|------------|---|---|--|
| 15/01/2014 | Results of vote in Parliament |  | |
| 11/02/2014 | Act adopted by Council after Parliament's 1st reading | | |
| 26/02/2014 | Final act signed | | |
| 26/02/2014 | End of procedure in Parliament | | |
| 28/03/2014 | Final act published in Official Journal | | |

| Technical information | |
|---|--|
| Procedure reference | 2011/0438(COD) |
| Procedure type | COD - Ordinary legislative procedure (ex-codecision procedure) |
| Procedure subtype | Legislation |
| Legislative instrument | Directive |
| Amendments and repeals | Repealing Directive 2004/18/EC 2000/0115(COD) |
| Legal basis | Treaty on the Functioning of the European Union TFEU 053-p1 Treaty on the Functioning of the European Union TFEU 114-p1 Treaty on the Functioning of the European Union TFEU 062 |
| Mandatory consultation of other institutions | European Economic and Social Committee |
| Stage reached in procedure | Procedure completed |
| Committee dossier | IMCO/7/08505 |

| Documentation gateway | | | | |
|---|----------------------|---------------------------|------------|---------|
| European Parliament | | | | |
| Document type | Committee | Reference | Date | Summary |
| Committee draft report | | PE483.468 | 03/05/2012 | |
| Amendments tabled in committee | | PE492.857 | 12/07/2012 | |
| Amendments tabled in committee | | PE492.858 | 12/07/2012 | |
| Amendments tabled in committee | | PE492.859 | 12/07/2012 | |
| Amendments tabled in committee | | PE492.860 | 12/07/2012 | |
| Amendments tabled in committee | | PE492.869 | 12/07/2012 | |
| Committee opinion | ENVI | PE487.738 | 02/08/2012 | |
| Committee opinion | TRAN | PE491.265 | 21/09/2012 | |
| Committee opinion | INTA | PE492.628 | 21/09/2012 | |
| Committee opinion | EMPL | PE485.939 | 25/09/2012 | |
| Committee opinion | ITRE | PE486.034 | 01/10/2012 | |
| Committee opinion | JURI | PE489.618 | 16/10/2012 | |
| Committee opinion | REGI | PE492.617 | 16/10/2012 | |
| Committee report tabled for plenary, 1st reading/single | | | | |

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|--|--|--------------|------------|-------------------------|
| reading | | A7-0007/2013 | 11/01/2013 | Summary |
| Text adopted by Parliament, 1st reading/single reading | | T7-0025/2014 | 15/01/2014 | Summary |

Council of the EU

| Document type | Reference | Date | Summary |
|-----------------|--------------------------------|------------|---------|
| Draft final act | 00074/2013/LEX | 26/02/2014 | |

European Commission

| Document type | Reference | Date | Summary |
|--|--|------------|-------------------------|
| Legislative proposal | COM(2011)0896  | 20/12/2011 | Summary |
| Document attached to the procedure | SEC(2011)1585  | 20/12/2011 | |
| Document attached to the procedure | SEC(2011)1586  | 20/12/2011 | |
| Commission response to text adopted in plenary | SP(2014)167 | 19/02/2014 | |
| Follow-up document | COM(2021)0245  | 20/05/2021 | |

National parliaments

| Document type | Parliament /Chamber | Reference | Date | Summary |
|---------------|-------------------------------|-------------------------------|------------|---------|
| Contribution | PT_PARLIAMENT | COM(2011)0896 | 01/03/2012 | |
| Contribution | BE_CHAMBER | COM(2011)0896 | 07/03/2012 | |
| Contribution | DE_BUNDESRAT | COM(2011)0896 | 12/04/2012 | |
| Contribution | CZ_SENATE | COM(2011)0896 | 20/06/2012 | |
| Contribution | IT_CHAMBER | COM(2011)0896 | 07/12/2012 | |
| Contribution | IT_SENATE | COM(2011)0896 | 11/01/2013 | |

Other institutions and bodies

| Institution/body | Document type | Reference | Date | Summary |
|------------------|-----------------------------------|------------------------------|------------|---------|
| CofR | Committee of the Regions: opinion | CDR0099/2012 | 09/10/2012 | |

Additional information

| Source | Document | Date |
|----------------------|----------------------|------|
| National parliaments | IPEX | |

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|---------------------|-------------------------|--|
| European Commission | EUR-Lex | |
| European Commission | EUR-Lex | |

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| Final act | |
| Directive 2014/0024 OJ L 094 28.03.2014, p. 0065 Corrigendum to final act 32014L0024R(17) OJ L 000 03.11.2023, p. 0000 | Summary |

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|--------------------------------|------------------------------|
| Delegated acts | |
| Reference | Subject |
| 2015/2990(DEA) | Examination of delegated act |
| 2019/2903(DEA) | Examination of delegated act |
| 2019/2904(DEA) | Examination of delegated act |
| 2017/3029(DEA) | Examination of delegated act |
| 2021/2969(DEA) | Examination of delegated act |
| 2023/2977(DEA) | Examination of delegated act |
| 2025/2954(DEA) | Examination of delegated act |

Public procurement

2011/0438(COD) - 11/01/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on the Internal Market and Consumer Protection adopted the report by Marc TARABELLA (S&D, BE) on the proposal for a directive of the European Parliament and of the Council on public procurement.

The committee recommends that Parliament adopt its position in first reading following the ordinary legislative procedure, and amend the Commission proposal. The main amendments are as follows:

Public procurement principles: with a view to promoting socially and environmentally sustainable development in public procurement, Members want economic operators to comply with the **environmental, social and labour law provisions** which apply at the place where the works are executed, services provided or goods produced or supplied.

The amended text states that contracting authorities **shall not award a contract** to the tenderer submitting the best tender where it has been established, based on clear and sufficient evidence that the tender does not comply with environmental, social and labour law provisions.

Where contracting authorities lay down environmental, social or other requirements or criteria in the technical specifications, the award criteria or the contract performance clauses, they may require a specific **label or certificate** as means of proof that these works, services or supplies correspond to such requirements or criteria.

For all procurements, **technical specifications** shall be drawn up so as to ensure that the products, services and works subject to the contract meet the requirements of **data protection** law at the time of the design of the processing of personal data (data protection by design).

The technical specifications must be non-discriminatory and **technologically neutral**.

Grounds for exclusion: Members add to the list of grounds for exclusion **participation in exploitation of human trafficking and child labour** covered by Directive 2011/36/EU of the European Parliament and of the Council. Furthermore, they propose that a contracting authority may exclude an economic operator from participation in the market where it is aware of any **serious or repeated violations** of obligations in the field of social, environmental or labour law or where a **conflict of interests** could not have been effectively remedied.

Criteria for award: Members consider that the notion of “lowest cost” should give way to the notion of **most economically advantageous tender**. The contracting authority shall assess the most economically advantageous tender, on the basis of criteria linked to the subject matter of the public contract in question.

Those criteria shall include, in addition to the price or costs, qualitative, environmental and social considerations. They may also include cost-effectiveness of short-distance procurement where relevant, and the **costs over the life-cycle** and delivery conditions.

SME participation: Members insist that public procurement should be adapted to the needs of small and medium-sized enterprises (SMEs). Contracting authorities should make use of the [Code of Best Practices set out in the Commission Staff Working Document](#) of 25 June 2008.

In order to foster the involvement of SMEs in the public procurement market, they propose to give consideration to dividing **contracts into lots**, especially for products that require quality for welfare, such as food for passive consumers in hospitals, schools, care for children and other people.

In addition, it should be possible for groups or consortia of economic operators, particularly of SMEs, to submit tenders or to put themselves forward together as candidates.

Sub-contracting: in order to clarify the sub-contracting chain, Members propose providing for a **system of liability throughout the subcontracting chain** so that the direct contractor of a subcontractor is liable in the event that the subcontractor fails to comply with mandatory legal, regulatory and administrative provisions in force in the Member States of contract performance or is insolvent.

The contracting authority shall ask the tenderer to **indicate in its tender any share of the contract** it may intend to subcontract to third parties.

Procedures: in order to make procedures faster and more efficient, **time limits for participation in procurement procedures should be kept as short as possible** without creating undue barriers to access for economic operators from across the internal market, in particular SMEs.

The amendments made by the committee confer a certain degree of **flexibility** on the rules, allowing for negotiations in all procedures. Certain safeguards are provided to ensure that the added flexibility in the use of procedures does not result in misuse.

Furthermore, the report recommends encouraging the submission of **building information electronic modelling tools** for works contracts in order to modernise the procurement process and ensure greater efficiencies are achieved in the public procurement of works covered by the Directive, in particular in relation to taking into account life cycle costs and sustainability criteria.

Innovation partnership: an amendment explains in detail how the new innovation partnerships procedure should be used, adding to the Commission's original proposal, specifically by linking this new tool to the principles applying to the competitive procedure, where most relevant. It also clarifies that pre-commercial procurement continues to apply, irrespective of this new innovation partnerships procedure.

Social services: Members consider that the creation of a special regime for social services given their specific characteristics and in order to guarantee the strategic use of public procurement. However, they wish to make the scheme less stringent by transforming the requirement for ex-ante publication into a **prior information notice**, while stressing the need to comply with the principles of transparency and equal treatment. They also propose to establish a higher threshold of **EUR 750 000** (rather than EUR 500 000) for social services contracts.

Tenders comprising products originating in third countries: pending the adoption of a regulation on reciprocity, it is appropriate to maintain the current provisions of the public procurement legislation.

Governance: Member States should ensure that competent authorities or structures are in charge of monitoring, implementation and control of public procurement. Member States shall transmit to the Commission every two years a general overview of their national sustainable procurement policies, and indicate the success rate of SMEs in public procurement.

Lastly, Member States shall ensure that guidance on the interpretation and application of Union public procurement law is available free of charge to assist contracting authorities and economic operators, in particular SMEs, in correctly applying the Union public procurement rules.

Public procurement

2011/0438(COD) - 15/01/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 620 votes to 31 with 30 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on public procurement.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of an agreement between Parliament and Council. They amend the proposal as follows:

Public services: it is clarified that **nothing in the Directive obliges Member States to contract out or externalise the provision of services** that they wish to provide themselves or to organise by means other than public contracts. The Directive does not affect the social security legislation of the Member States. Nor does it deal with the liberalisation of services of general economic interest, reserved to public or private entities, or with the privatisation of public entities providing services.

Exclusion grounds: Parliament added to the grounds for exclusion **terrorist financing** and **child labour and other forms of trafficking in human beings** as defined in Directive 2011/36/EU. Furthermore, contracting authorities may exclude from participation in a procurement procedure any economic operator where it has sufficiently plausible indications to conclude that the economic operator has entered into **agreements** with other economic operators aimed at distorting competition or where a conflict of interest cannot be effectively remedied.

Best price-quality ratio: the criteria of 'most economically advantageous tender' is the overriding one in the awards procedure.

The most economically advantageous tender from the point of view of the contracting authority shall be identified **on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle, and may include the best price-quality ratio**, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. Such criteria may comprise, for instance trading and delivery conditions.

Social and environmental requirements: in order to ensure efficient and socially sustainable public procurement, Member States and contracting authorities may adopt the measures necessary to ensure compliance with obligations in the fields of environmental, social and labour law that apply at the place where the works are executed or the services provided.

Control of the observance of the environmental, social and labour law provisions should be performed at the relevant stages of the procurement procedure, when applying the general principles governing the choice of participants and the award of contracts, when applying the exclusion criteria and when applying the provisions concerning abnormally low tenders.

Innovative solutions and innovation partnerships: Parliament introduced a new procedure to encourage tenders proposing innovative solutions where a need for the development of an innovative product or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be met by solutions already available on the market.

The new innovation partnership should be based on the procedural rules that apply to the competitive procedure with negotiation and contracts should be awarded on the sole basis of the best price-quality ratio, which is most suitable for comparing tenders for innovative solutions.

Allow SME participation: Parliament stressed the need to give particular attention to small and medium sized enterprises.

In order to further the possibilities for SMEs to participate in a large contracts, the latter may be **divided into lots**.

Furthermore, time limits for participation in procurement procedures should be kept as short as possible.

European Single Procurement Document (ESPD): in order to avoid the administrative deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria, the amended text offers the chance of producing a European Single Procurement Document (ESPD) consisting of an **updated self-declaration** by the economic operator that the relevant ground for exclusion does not apply and/or that the relevant selection criterion is fulfilled and he shall provide the relevant information as required by the contracting authority.

The tenderer to whom the contract has been awarded may, nevertheless be required to provide relevant proof without which the award will not be made.

Subcontracting: the new Directive introduces stricter rules on subcontracting. The amended text states that the conditions relating to the enforcement of observance of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions should be applied whenever the national law of a Member State provides for a mechanism of joint liability between subcontractors and the main contractor.

Abnormally low offers: to fight social dumping and ensure that workers' rights are respected, stricter rules are introduced regarding abnormally low bids. Contracting authorities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

Electronic communications: contracting authorities should, except in certain specific situations, use electronic means of communication which are non-discriminatory, generally available and interoperable with the ICT products in general use and which do not restrict economic operators' access to the procurement procedure.

Social services: the amended text provides that contracting authorities intending to award a public contract for social services shall make known their intention either by means of a contract notice, or by means of a prior information notice, which shall be published continuously. The threshold for social services contracts is raised to EUR **750 000**.

Public procurement

2011/0438(COD) - 26/02/2014 - Final act

PURPOSE: to revise and modernise the rules on public procurement in the EU.

LEGISLATIVE ACT: Directive 2014/24/EU of the European Parliament and of the Council

on public procurement and repealing Directive 2004/18/EC

CONTENT: the Directive is part of a legislative package for modernisation of public procurement in the EU, which is also made up of:

- a [Directive on procurement](#) by entities operating in the utilities sectors: water, energy, transport and postal services (replacing directive 2004 /17/EC).
- a [Directive on the award of concession contracts](#).

The Directive applies to procurements with a value net of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:

- **EUR 5 186 000** for public works contracts;
- **EUR 134 000** for public supply and service contracts awarded by central government authorities and design contests organised by such authorities;
- **EUR 207 000** for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities;
- **EUR 750 000** for public service contracts for social services.

The Directive does not affect the freedom of Member States to define what they consider to be **services of general economic interest**, how those services should be organised and financed, in compliance with the State aid rules, and to what specific obligations they should be subject.

The review is a **major overhaul of public procurement rules** across the EU, the main points of which are as follows:

Simplification of procedures: Member State systems will provide two basic forms of procedure, open and restricted procedure. They may, in addition, provide, subject to certain conditions, the competitive procedure with negotiation, the competitive dialogue and/or the innovation partnership, a new form of procedure for innovative procurement.

Time-limits for participations and submission of offers have been shortened and the **grounds for exclusion** of candidates and tenderers have been reviewed and clarified.

The documentation required is reduced, notably through the compulsory acceptance of **self-declarations from bidders (through a standardised European Single Procurement Document)** consisting of a formal statement by the economic operator that the relevant ground for exclusion does not apply and/or that the relevant selection criterion is fulfilled and shall provide the relevant information as required by the contracting authority.

The promotion of **on line public procurement** is a more user-friendly feature and a key factor in the simplification process.

Better price-quality ratio: the criterion of '**most economically advantageous tender**' is the overriding concept in the award process.

The most economically advantageous tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach, **such as life-cycle costing**, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects,

Strategic use of public procurement: in response to new challenges, the new rules seek to ensure greater inclusion of **common societal goals** in the procurement process. These goals include environmental protection, social responsibility, innovation, combating climate change, employment, public health and other social and environmental considerations.

Innovative solutions and innovation partnerships: Parliament had introduced a new procedure to encourage tenders proposing innovative solutions where a need for the development of an innovative product or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be met by solutions already available on the market.

Innovation will be specifically encouraged, through the new innovation partnership introduced by Parliament. This procedure aims to encourage tenders proposing innovative solutions where a need for the development of an innovative product or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be met by solutions already available on the market.

The new **innovation partnership** is based on the procedural rules that apply to the competitive procedure with negotiation and contracts should be awarded on the sole basis of the best price-quality ratio.

Better access for SME participation: Parliament had stressed the need to give particular attention to small and medium sized enterprises.

The Directive provides for concrete measures to remove barriers for market access by small and medium-sized enterprises (SMEs), such as simplification of documentation obligations in procurement procedures, the creation of a standardised document for selection purposes, an incitation for contracting authorities to consider the **division of contracts into smaller lots** that are more accessible for SMEs, and a reduction on requirements for participation.

Clear procedures: contracting authorities must take appropriate measures to effectively prevent, identify and remedy **conflicts of interest** arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

The new Directive introduces **more stringent requirements regarding subcontracting**. The conditions relating to the enforcement of observance of applicable **obligations in the fields of environmental, social and labour law**, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions should be applied whenever the national law of a Member State provides for a mechanism of joint liability between subcontractors and the main contractor.

Furthermore, to fight social dumping and ensure that workers' rights are respected, stricter rules are introduced regarding **abnormally low bids**.

Governance: the Directive contains obligations for Member States to monitor and report on public procurement activity in order to improve the efficacy and uniform application of EU law in this field.

ENTRY INTO FORCE: 17/04/2014.

TRANSPOSITION: 18/04/2016.

DELEGATED ACTS: the Commission is empowered to adopt delegated acts in order to adapt to rapid technical, economic and regulatory developments. The power to adopt such acts is conferred on the Commission for an indeterminate period from 17 April 2014. The European Parliament or the Council may object to a delegated act within two months from the date of notification (which may be extended by two months.) If the European Parliament or Council express objections, the delegated act will not enter into force.

Public procurement

2011/0438(COD) - 20/12/2011 - Legislative proposal

PURPOSE: to modernise existing public procurement legislation in order to make it better suited to deal with the evolving political, social and economic context.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: public procurement plays an important role in the overall economic performance of the European Union. In Europe, public authorities spend around 18 % of GDP on supplies, works and services. Given the volume of purchases, public procurement can be used as a powerful lever for achieving a Single Market fostering smart, sustainable and inclusive growth.

A comprehensive economic evaluation has shown that the public procurement Directives have achieved their objectives to a considerable extent. They have resulted in greater transparency and higher levels of competition while achieving measurable savings through lower prices.

The Commission published on 27 January 2011 a [Green Paper](#) on the modernisation of EU public procurement policy — Towards a more efficient European Procurement Market launching a broad public consultation on options for legislative changes to make the award of contracts easier and more flexible and enable public contracts to be put to better use in support of other policies.

A very large majority of **stakeholders appreciated the initiative of the Commission to review the current public procurement policy**. They voiced demand for a review of the public procurement directives to simplify the rules, increase their efficiency and effectiveness and make them better suited to deal with the evolving political, social and economic context.

This proposal has two complementary objectives:

- 1. Increase the efficiency of public spending** to ensure the best possible procurement outcomes in terms of value for money. This implies in particular a simplification and flexibilisation of the existing public procurement rules. Streamlined, more efficient procedures will benefit all economic operators and facilitate the participation of SMEs and cross-border bidders.
- 2. Allow procurers to make better use of public procurement in support of common societal goals** such as protection of the environment, higher resource and energy efficiency, combating climate change, promoting innovation, employment and social inclusion and ensuring the best possible conditions for the provision of high quality social services.

This initiative implements the Europe 2020 strategy for smart, sustainable and inclusive growth and the Europe 2020 Flagship Initiatives on a [Digital Agenda for Europe](#), the [Innovation Union](#), an [Integrated Industrial Policy for the Globalisation Era](#), [Energy 2020](#) and a [Resource Efficient Europe](#). It also implements the [Single Market Act](#), in particular its twelfth key action 'Revised and Modernised Public Procurement Legislative Framework'.

Together with the proposed [new utilities Directive](#), the proposal will replace Directives 2004/17/EC and 2004/18/EC as the core elements of the European Union public procurement legislative framework.

IMPACT ASSESSMENT: the impact assessment and its executive summary give an overview of the different options for each of the five groups of basic problems (administrative organisation, scope, procedures, strategic procurement and access to procurement markets).

Based on an analysis of the advantages and disadvantages of the different options, a package of preferred options was identified that should optimise the synergies between the different solutions allowing savings due to one type of action to neutralise related costs caused by another (e.g. possible increased procedural requirements caused by strategic procurement actions could partially be neutralised by savings related to the improved design of procurement procedures). These preferred options form the basis of the present proposal.

LEGAL BASIS: Article 53(1), Article 62 and Article 114 of the TFEU.

CONTENT: the main axes of the proposal are as follows:

(1) Simplification and flexibilisation of procurement procedures

Clarification of scope:

- **the basic concept of 'procurement' has been newly introduced** in order to better determine the scope and purpose of procurement law and to facilitate the application of the thresholds. The **definitions of certain key notions** determining the scope of the Directive (such as body governed by public law, public works and service contracts, mixed contracts) have been revised in the light of the case-law of the Court of Justice;

- **the traditional distinction between so-called priority and non-priority services ('A' and 'B' services) will be abolished.** However, it became also clear that the regular procurement regime is not adapted to social services which need a specific set of rules.

Toolbox approach:

- Member State systems will provide **two basic forms of procedure**, open and restricted procedure. They may, in addition, foresee, subject to certain conditions, the competitive procedure with negotiation, the competitive dialogue and/or the innovation partnership, a new form of procedure for innovative procurement;
- contracting authorities will furthermore have at their disposal a set of **six specific procurement techniques and tools** intended for aggregated and electronic procurement: framework agreements, dynamic purchasing systems, electronic auctions, electronic catalogues, central purchasing bodies and joint procurement. Compared to the existing Directive, these tools have been improved and clarified with a view to facilitating e-procurement.

Lighter regime for sub-central contracting authorities:

- in line with the WTO Government Procurement Agreement, the proposal provides a simplified procurement regime that applies to all contracting authorities below the central government level, such as local and regional authorities. These purchasers may use a prior information notice as a means of calling for competition. If they make use of this faculty, they don't have to publish a separate contract notice before launching the procurement procedure.

Promotion of e-procurement:

- the proposal aims at helping Member States to achieve the switchover to e-procurement enabling suppliers to take part in online procurement procedures across the Internal Market. It provides for the mandatory transmission of notices in electronic form, the mandatory electronic availability of the procurement documents and imposes the switch to fully electronic communication, in particular e-submission, in all procurement procedures within a transition period of two years.

Modernisation of procedures:

- **time-limits for participations and submission of offers have been shortened.** The distinction between selection of tenderers and award of the contract which is often a source of errors and misunderstandings has been made more flexible, allowing it for contracting authorities to decide on the most practical sequencing by examining award criteria before selection criteria and to take into account the organisation and quality of the staff assigned to performing the contract as an award criterion;
- **the grounds for exclusion of candidates and tenderers have been reviewed and clarified.** Contracting authorities will be entitled to exclude economic operators which have shown significant or persistent deficiencies in performing prior contracts. The proposal provides also for the possibility of 'self-cleaning': contracting authorities may accept candidates or tenderers in spite of the existence of an exclusion ground if they have taken appropriate measures to remedy the consequences of any illicit behaviour and effectively prevent further occurrences of the misbehaviour;
- **the modification of contracts during their term** has become an increasingly relevant and problematic issue for practitioners. A specific provision on modification of contracts takes up the basic solutions developed by case-law and provides a pragmatic solution for dealing with unforeseen circumstances requiring an adaptation of a public contract during its term.

(2) Strategic use of public procurement in response to new challenges: the proposed Directive is based on *enabling approach* providing contracting authorities with the instruments needed to contribute to the achievement of the Europe 2020 strategic goals by using their purchasing power to procure goods and services that foster innovation, respect the environment and combat climate change while improving employment, public health and social conditions.

- **Life-cycle costing:** the proposal gives public purchasers the possibility to base their award decisions on life-cycle costs of the products, services or works to be purchased.
- **Production process:** contracting authorities may refer to all factors directly linked to the production process in the technical specifications and in the award criteria, as long as they refer to aspects of the production process which are closely related to the specific production or provision of the good or service purchased. This excludes requirements not related to the process of producing the products, works or services covered by the procurement, such as general corporate social responsibility requirements covering the whole operation of the contractor.
- **Labels:** contracting authorities may require that works, supplies or services bear specific labels certifying environmental, social or other characteristics, provided that they accept also equivalent labels.
- **Sanctioning violations of mandatory social, labour or environmental law:** under the proposed Directive, a contracting authority can exclude economic operators from the procedure, if it identifies infringements of obligations established by Union legislation in the field of social, labour or environmental law or of international labour law provisions.
- **Social services:** The evaluation on the impact and effectiveness of EU public procurement legislation has shown that social, health and education services have specific characteristics which make them inappropriate for the application of the regular procedures for the award of public service contracts. These services are typically provided within a specific context that varies widely between Member States due to different administrative, organisational and cultural circumstances. The services have, by their very nature, only a very limited cross-border dimension. Member States should therefore have large discretion to organise the choice of service providers. The proposal takes account of this by providing a specific regime for public contracts for these services, with a higher threshold of EUR 500 000 and imposing only the respect of basic principles of transparency and equal treatment.
- **Innovation:** the proposal provides for this purpose the innovation partnership, a new special procedure for the development and subsequent purchase of new, innovative products, works and services, provided they can be delivered to agreed performance levels and costs.

(3) Better access to the market for SMEs and Start-ups

Simplification of information obligations: the proposal provides for the mandatory acceptance of self-declarations as prima-facie evidence for selection purposes. The actual production of documentary evidence will be facilitated by a standardised document, the European Procurement Passport which is a means of proof for the absence of grounds for exclusion.

- **Division into lots:** contracting authorities will be invited to divide public contracts into — homogeneous or heterogeneous — lots to make them more accessible for SMEs.
- **Limitation on requirements for participation:** to avoid unjustified barriers in the way of participation by SMEs, the proposed Directive contains an exhaustive list of possible conditions for participation in procurement procedures. Turnover requirements which are frequently a formidable obstacle to access by SMEs are explicitly limited to three times the estimated contract value, except in duly justified cases. Finally, any conditions for participation by groups of economic operators — an instrument of particular relevance for SMEs — must be justified by objective reasons and proportionate.
- **Direct payment of subcontractors:** Member State can provide that subcontractors may request for direct payment by the contracting authority of supplies, works and services provided to the main contractor in the context of the contract performance.

(4) Sound procedures

- **Conflicts of interest:** the proposal contains a specific provision on conflicts of interest covering actual, potential or perceived conflict of interest situations affecting staff members of the contracting authority or of procurement service providers intervening in the procedure and members of the contracting authority's management who may influence the outcome of a procurement procedure even if they are not formally involved in it.
- **Illicit conduct:** the proposal contains a specific provision against illicit behaviour by candidates and tenderers, such as attempts to improperly influence the decision-making process or entering into agreements with other participants to manipulate the outcome of the procedure have to be excluded from the procedure.
- **Unfair advantages:** the proposal contains a specific provision on safeguards against undue preference in favour of participants who have advised the contracting authority or been involved in the preparation of the procedure.

(5) Governance

- **National oversight bodies:** the proposal provides that Member States designate a **single national authority** in charge of monitoring, implementation and control of public procurement.
- **Knowledge centres:** the proposal obliges Member States to provide support structures offering legal and economic advice, guidance, training and assistance in preparing and conducting procurement procedures. To reinforce the fight against corruption and favouritism, contracting authorities will be obliged to transmit the text of concluded contracts to the oversight body. However, the creation of disproportionate administrative burden must be avoided; the obligation to transmit the full text of concluded contracts should therefore remain limited to relatively high value contracts. The thresholds proposed would strike the right balance between increasing administrative burden and ensuring greater transparency: with a threshold of EUR 1 000 000 for supplies and services, and of EUR 10 000 000, this obligation would apply to 10 - 20 % of all procurement published in the Official Journal.
- **Administrative cooperation:** the proposal provides also for effective cooperation allowing national oversight bodies to share information and best practices and to cooperate through the Internal Market Information System (IMI).

BUDGETARY IMPLICATION: the proposal has no budgetary implications for the EU.

DELEGATED ACTS: the Commission shall be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU).