

Basic information

2011/0439(COD)

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

Procurement in the water, energy, transport and postal services sectors

Repealing Directive 2004/17/EC [2000/0117\(COD\)](#)

Subject

2.10.02 Public procurement
3.20 Transport policy in general
3.30.09 Postal services, parcel delivery services
3.60 Energy policy
3.70.04 Water control and management, pollution of waterways, water pollution

Procedure completed

Key players

European
Parliament

Committee responsible

IMCO Internal Market and Consumer Protection

Rapporteur

[TARABELLA Marc \(S&D\)](#)

Appointed

29/11/2011

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

INTA International Trade

Rapporteur for opinion

[SUSTA Gianluca \(S&D\)](#)

Appointed

25/01/2012

ECON Economic and Monetary Affairs

The committee decided not to give an opinion.

EMPL Employment and Social Affairs

[MĂNESCU Ramona Nicole \(ALDE\)](#)

16/02/2012

	ENVI Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
	ITRE Industry, Research and Energy	BALČYTIS Zigmantas (S&D)	14/02/2012
	TRAN Transport and Tourism	LICHTENBERGER Eva (Verts/ALE)	27/02/2012
	REGI Regional Development	MĂNESCU Ramona Nicole (ALDE)	26/01/2012
	JURI Legal Affairs	GARGANI Giuseppe (PPE)	01/03/2012
	LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meetings	Date
	General Affairs	3292	2014-02-11
	Competitiveness (Internal Market, Industry, Research and Space)	3169	2012-05-30
	Competitiveness (Internal Market, Industry, Research and Space)	3208	2012-12-10
	Competitiveness (Internal Market, Industry, Research and Space)	3147	2012-02-20
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)0895 	Summary
19/01/2012	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		
24/01/2013	Vote in committee, 1st reading		
07/02/2013	Committee report tabled for plenary, 1st reading	A7-0034/2013	Summary

14/01/2014	Debate in Parliament		
15/01/2014	Decision by Parliament, 1st reading	T7-0026/2014	Summary
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	2011/0439(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealing Directive 2004/17/EC 2000/0117(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/7/08494

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE483.470	14/05/2012	
Amendments tabled in committee		PE492.861	03/09/2012	
Amendments tabled in committee		PE492.862	03/09/2012	
Amendments tabled in committee		PE492.870	03/09/2012	
Committee opinion	TRAN	PE491.261	20/09/2012	
Committee opinion	INTA	PE492.622	21/09/2012	
Committee opinion	ITRE	PE486.035	01/10/2012	
Committee opinion	EMPL	PE491.136	04/10/2012	
Committee opinion	JURI	PE489.642	15/10/2012	
Committee opinion	REGI	PE492.648	18/10/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0034/2013	07/02/2013	Summary

Text adopted by Parliament, 1st reading/single reading	T7-0026/2014	15/01/2014	Summary
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Council of the EU

Document type	Reference	Date	Summary
Draft final act	00075/2013/LEX	26/02/2014	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0895 	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)0100 	02/03/2021	
Follow-up document	COM(2021)0245 	20/05/2021	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2011)0895	01/03/2012	
Contribution	DE_BUNDESRAT	COM(2011)0895	12/04/2012	
Contribution	CZ_SENATE	COM(2011)0895	20/06/2012	
Contribution	IT_CHAMBER	COM(2011)0895	07/12/2012	
Contribution	IT_SENATE	COM(2011)0895	11/01/2013	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1039/2012	26/04/2012	
CofR	Committee of the Regions: opinion	CDR0099/2012	09/10/2012	

Additional information

Source	Document	Date

National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act	
<p>Directive 2014/0025 OJ L 094 28.03.2014, p. 0243</p> <p>Corrigendum to final act 32014L0025R(08) OJ L 000 03.11.2023, p. 0000</p>	Summary

Delegated acts	
Reference	Subject
2015/2991(DEA)	Examination of delegated act
2019/2905(DEA)	Examination of delegated act
2017/3030(DEA)	Examination of delegated act
2021/2970(DEA)	Examination of delegated act
2023/2978(DEA)	Examination of delegated act
2025/2953(DEA)	Examination of delegated act

Procurement in the water, energy, transport and postal services sectors

2011/0439(COD) - 07/02/2013 - 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 procurement by entities operating in the water, energy, transport and postal services sectors.

The committee recommends that Parliament's position adopted at first reading, according to the ordinary legislative procedure, should be to amend the Commission's proposal as follows:

Public service: the application of public procurement rules should not interfere with the freedom of public authorities to decide how they carry out their public service tasks. This Directive should neither affect the social security legislation of the Member States nor should 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.

Public procurement: the revision and the modernisation of the current public procurement rules aim to increase the efficiency of public spending, **ensure value for money**, facilitate equal access and fair participation of small and medium-sized enterprises and craftsmen in public procurement, both at local and Union- wide level, and enable procurers to make better use of public procurement in support of **sustainable production and consumption**.

Scope: service contracts in the fields of civil defence, civil protection, and hazard prevention should be excluded from the scope of this Directive. Those fields include, in particular, emergency rescue work, which should be defined as separate from ambulance services.

Procurement and innovation: this Directive should contribute to facilitating the public procurement of innovation more generally. The procedure should be based on the rules applying to the competitive procedure with negotiations and contracts should be awarded on the sole basis of the **most economically advantageous tender**.

When setting the terms and conditions for procurement, contracting entities should be allowed to establish innovative characteristics, including best available techniques, as a criterion relating to the subject of the contract concerned.

SME participation: public procurement should be adapted to the needs of small and medium-sized enterprises (SMEs). In order to encourage the involvement of SMEs in the procurement market, and to enhance competition, contracting entities should be encouraged in particular 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 older people.

Award criteria: contracting entities awarding a contract on the basis of the most economically advantageous tender criterion, should determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of those criteria should include **economic, environmental and social characteristics**. Furthermore, contracting entities should be given the possibility to exclude candidates or tenderers for violations of environmental or social obligations, also in compliance with general principles of the Directive.

Social aspects: in order to better integrate social considerations in public procurement, procurers should include, in the award criteria and in contract performance clauses, characteristics related to the **working, employment and environmental conditions** and require the production of **certificates or labels** to be drawn up by independent bodies attesting compliance by the economic operator with rules and standards set in those fields.

Member States should ensure that **economic operators 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, as set out in international conventions listed in Annex XIV and in Union and national law as well as in collective agreements concluded in accordance with national law and practices which respect Union law.

Contracting entities should be permitted to choose an award criterion which refers to the fact that the product concerned is of **fair trade origin**.

Subcontractors: Member States should ensure that subcontractors also respect all mandatory legal, regulatory and administrative provisions in force in the Member State of contract performance. To this end, Member States may provide for a **system of liability** throughout the subcontracting chain.

Modernisation of procedures: Members proposed that the submission of building information electronic modelling tools for works contracts should be encouraged in order to modernise the procurement process and ensure greater efficiencies are achieved in the public procurement of works covered by this Directive, in particular in relation to taking into account lifecycle costs and sustainability criteria.

Transparency: Members considered that traceability and transparency of decision-making in procurement procedures is essential for ensuring sound procedures, including effectively fighting corruption and fraud. Contracting authorities should **keep copies of concluded high-value contracts** to be able to provide access to those documents to interested parties in accordance with applicable rules on access to documentation.

Data protection: 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).

Uniform interpretation: the Commission and the Member States should therefore ensure that this Directive is transposed taking into account the major impact of the public procurement national legislation on the process of accessing Union funds. Therefore it is of utmost importance for the Member States to avoid as far as possible any fragmentation in interpretation and application, while also contributing to the simplification at national level.

Promoting Union values: given that the internal market and international markets are increasingly interlinked, Members considered that Union values, such as transparency, a principled stance against corruption, the principle of reciprocity and the advancement of social and human rights should be appropriately promoted in procurement policies.

Procurement in the water, energy, transport and postal services sectors

2011/0439(COD) - 15/01/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 618 votes to 26 with 36 abstentions, a legislative resolution the proposal for a directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors.

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: **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 procurement. The provision of services based on laws, regulations or employment contracts, should not be covered. In some Member States, this might for example be the case for the provision of certain services to the community, such as the supply of drinking water.

The directive should not 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.

Principles of procurement: contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner. The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of artificially narrowing competition.

Grounds for exclusion: public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests, terrorist offences, money laundering or terrorist financing. Also, the non-payment of taxes or social security contributions should also lead to mandatory exclusion at the level of the Union.

Contracting entities will be able to exclude economic operators which have proven unreliable, for instance because of violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.

Social and environmental requirements: contracting entities shall take relevant measures to ensure compliance with obligations in the fields of environmental, social and labour law that result from laws, regulations, decrees and decisions, at both national and Union level, as well as from collective agreements, and obligations stemming from international agreements listed in Annex XIV.

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.

Groupings of economic operators: such groupings, including any temporary association of undertakings, may participate in the market irrespective of the legal form under which they have chosen to operate.

Confidentiality: contracting entities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting entities make available throughout the procurement procedure.

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.

Certain service contracts and certain works contracts having as their subject-matter **intellectual performances**, such as the design of works, which cannot be ranked using automatic evaluation methods, shall not be the object of electronic auctions.

Conflicts of interests: contracting authorities should make use of all possible means at their disposal in order to prevent distortions in procurement procedures stemming from conflicts of interest. This could include procedures in order to identify, prevent and remedy conflicts of interests.

Mixed contracts: the applicable rules should be determined with respect to the main subject of the contract where the different parts which constitute the contract are objectively not separable. In the case of mixed contracts, which can be separated, contracting entities are always free to award separate contracts for the separate parts of the mixed contract, in which case the provisions applicable to each separate part should be determined exclusively with respect to the characteristics of that specific contract. There are separate provisions on mixed contracts dealing with defence.

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.

Best price-quality ratio: awards must be made on the basis of '**most economically advantageous tender**'.

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.

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.

Relations with third countries: Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of service contracts in third countries. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds a third country does not grant Union undertakings effective access comparable to that granted by the Union to undertakings from that country.

Procurement in the water, energy, transport and postal services sectors

2011/0439(COD) - 26/02/2014 - Final act

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

LEGISLATIVE ACT: Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/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 public procurement](#) (replacing Directive 2004/18/EC) ; and
- [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 414 000** for supply and service contracts as well as for design contests;
- **EUR 5 186 000** for works contracts;
- **EUR 1 000 000** for service contracts for social and other specific 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.

Member States are free to organise the provision of compulsory social services or of other services such as postal services either as services of general economic interest or as non-economic services of general interest or as a mixture of these.

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. Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests, terrorist offences, money laundering or terrorist financing. Similarly, the non-payment of taxes or social security contributions should also lead to mandatory exclusion at the level of the Union.

Furthermore, contracting entities may exclude economic operators which have proven unreliable, for instance **because of violations of environmental or social obligations**, including rules on accessibility for disabled persons

Simplification includes the fact that 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.

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.

In the performance of public contracts economic operators **comply with 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 listed in Annex XIV.

Encourage innovation: 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.

Groups of economic operators, including temporary associations, may participate in procurement procedures. They shall not be required by contracting entities to have a specific legal form in order to submit a tender or a request to participate.

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.

Procurement in the water, energy, transport and postal services sectors

2011/0439(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"** which appears also in the title of the proposed Directive 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 notion of special or exclusive rights** is central to the definition of the scope of this Directive, since entities which are neither contracting authorities nor public undertakings within the meaning of this Directive are subject to this Directive only to the extent that they exercise one of the activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a

procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria, notably pursuant to Union legislation, do not constitute special or exclusive rights for the purposes of this Directive;

- **the traditional distinction between so-called priority and non-priority services** (“A” and “B” services) **will be abolished**. The results of the evaluation have shown that it is no longer justified to restrict the full application of procurement law to a limited group of services. However, it became also clear that the regular procurement regime is not adapted to social services which need a specific set of rules;
- the scope in terms of sectors covered remains largely unchanged. However, **procurement made for the purpose of exploring oil and gas has been withdrawn from the scope** as that sector has been found to be subject to such competitive pressure that the procurement discipline brought about by the Directive is no longer needed.

Toolbox approach:

- Member State systems will provide the **three basic forms of procedure which already exist** under current Directives: open and restricted procedures as well as negotiated procedures with prior call for competition. They may, in addition, foresee either as standard procedure or subject to certain conditions the innovation partnership, a new form of procedure for innovative procurement;
- contracting entities 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, those tools have been improved and clarified with a view to facilitating e-procurement.

Promotion of e-procurement:

- the proposal 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 contracting entities 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 procedure for exemption** of contracts awarded in sufficiently competitive markets (the current “Article 30 decisions”) has been simplified and streamlined. A number of exemptions, in particular the intra-group and joint venture exemptions which are important in practice have also been reviewed and clarified;
- **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 purchasers the possibility to base their award decisions on life-cycle costs of the products, services or works to be purchased.
- **Production process:** contracting entities 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 that are not related to the process of producing the products, works or services covered by the procurement, such as a general corporate social responsibility requirement covering the whole operation of the contractor.
- **Labels:** contracting entities 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 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 1 000 000 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:** it is foreseen that contracting entities may apply the selection criteria provided for in the proposed Directive on public procurement and that, where they do, they are then obliged to apply the provisions concerning notably the ceiling to requirements on minimum turnover as well as the provisions on in particular self-certification.
- **Better access to framework agreements:** under the current Directives, there is no limitation to the duration of framework agreements concluded in the utilities sectors. This can lead to market foreclosure. The proposal limits the duration to four years (except in duly justified circumstances).

- **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 therefore 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, which will thus be able to scrutinize these contracts for suspicious patterns, and give access to these documents to interested persons to the extent that legitimate public or private interests are not jeopardized.
- **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).