



Revision of the EU public procurement directives – consultation

Executive Summary

The EU Commission is planning to revise the EU public procurement directives. The evaluation concerns [Directive 2014/24/EU](#) on public procurement, [Directive 2014/23/EU](#) on the award of concession contracts and [Directive 2014/25/EU](#) on procurement by entities operating in the water, energy, transport and postal services sectors. The EU Commission carried out a public [consultation](#) on from 13 December 2024 to 7 March 2025. AK participated in the consultation, taking this as an opportunity to make some suggestions regarding the reform of the three directives.

The EU Commission consultation

The exploratory talks and consultation initiated by the EU Commission applied to the following assessment criteria:

- **Effectiveness:** assessing whether the Directives have been effective in achieving their objectives (their contribution to a high level of competition in the internal market, to greater involvement of SMEs in procurement procedures, to the simplification and flexibility of procurement procedures, to the transparency and integrity of public spending, to the efficient use of public funds and to a greener, more social and innovative EU economy).
- **Efficiency:** assessing the costs and benefits that these Directives entail for contracting authorities as well as economic operators and SMEs.
- **Relevance:** assessing whether the Directives continue to address the evolving context and requirements of contracting authorities, suppliers and users.
- **Coherence:** assessing whether the Directives are internally and externally coherent with other EU policies.
- **European added value:** assessing as to how the Directives have contributed to harmonising national legislation and public procurement practices and to reducing legal fragmentation, and whether they have delivered the expected benefits (e.g. in terms of fair competition across the internal market, implementation of EU policies, transparency).

AK requirements for reform

From the perspective of sustainability and European added value, when revising the EU procurement directives, three key considerations include:

- **Best-bidder instead of cheapest-bidder principle:** The contracting authority is obliged to take socio-economic criteria into account and thus to strengthen the quality of public procurement with regard to social, labour and environmental law, as well as to strengthen European and regional added value.
- **Simplifying the complex procurement regime:** facilitating the direct award of low-value contracts with automatic threshold adjustment; with a view to start-ups and innovators as well as small local authorities (towns/cities, municipalities) in particular in disadvantaged regions. Efficient procurement procedures as a lever for the EU to develop innovative goods and services to create lead markets for clean and strategic technologies.
- **Combating wage and social dumping:** introducing general contractor liability coupled with a shorter permitted subcontracting chain.

AK's Position

Economic impact

The importance of public procurement for an active economic policy, especially in times of prolonged recession, is already evident from the following figures: every year, the EU's public authorities spend around 14% of GDP (over €2.4 trillion) on the procurement of construction and services, as well as supplies. In many sectors, such as energy, transport, waste management, social protection, health and education services, public authorities are the main customers. Around 48% of European Structural and Investment Funds resources are channelled into public procurement.

In order to create a level playing field for businesses across Europe, EU law establishes minimum rules for public procurement. These rules govern the way in which authorities and certain public utilities in the European Union purchase goods, works and services that exceed a certain value threshold set by EU law. The EU public procurement directives include procedural rules on how to procure something, including generally applicable rules, specific rules for organisations operating in the water, energy, transport and postal services sectors, and rules on concessions.

In their reports, Enrico Letta ('Much more than a Market - Speed, Security, Solidarity - Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens') and Mario Draghi (report on EU), cite public procurement as an important instrument for achieving the EU's goals and identify several challenges and important issues that need to be addressed. The European Commission's Competitiveness Compass echoes the same sentiment.

The main points of the consultation in detail

1. EU added value and relevance

- Strategic procurement

Member states have the option of not focussing exclusively on the price or cost criterion (cheapest bidder principle), but also to take strategic aspects into

account and to increasingly focus on qualitative execution and award criteria (best bidder principle). However, there is no obligation to accept the best overall bidder instead of the cheapest bidder.

The European legislator has already addressed the aspect of regionality from the perspective of economic resilience in the Net Zero Industry Act (NZIA). No more than 50% of the net-zero technology or of the necessary components should originate from a single third country. The Sectoral Directive on Public Procurement also provides the option of excluding a supplier from EU-wide tenders for supply contracts – i.e. for water, energy, transport and postal services – if more than half of the value of the goods originates from third countries. Where prices are equal and the tenders are equivalent in terms of the award criteria, exclusion is mandatory. A similar provision should be included in the other two EU public procurement directives.

Such a reform would make it possible to take account of a specific European added value in the selection and award criteria, and to develop European lead markets.

- Increasing the group of bidders, SME participation

In future, European procurement law must promote the participation of small and medium-sized enterprises in public procurement. At present, the high complexity of the procedures is leading to a strong market concentration on the side of the bidder.

To counteract this market narrowing on the bidder side, the threshold values for direct awards should be increased and an expansion of the simplified procurement procedures is required. The basic principle of 'think global, act local' can thus increasingly find its way into public procurement. After all, a local authority renovating a kindergarten does not affect trade between Member States and does not distort trade to an extent that would require an EU-wide call for tenders.

When procurement is designed to be 'glocal', the carbon footprint is also improved: for example, by focusing on short distances and the need for rapid availability of services.

The unbureaucratic direct award of small contracts also helps to maintain regional jobs, thereby strengthening the economy, especially in economically disadvantaged areas. This will enable economic measures to be implemented by the public sector, in particular by local and municipal authorities and social partners, without lengthy and complex EU-wide procurement procedures, and to make an impact.

For all these reasons, AK therefore calls for the introduction of a *de minimis* regulation for procurement law, as it exists in EU state aid law, as for contracts with a low total value (services, for example, up to €500,000, construction contracts, for example, €2 million), no noticeable effect on trade between Member States exists. This regulation could be linked to the obligation to obtain at least three offers in order to comply with the principles of transparency and non-discrimination.

2. Effectiveness - strengthening procurement quality and compatibility

- Strengthening conditionalities - strategic contract awarding

Currently, the EU procurement directive 2014/24/EU is contradictory in itself: according to Art. 18 (2) (the so-called social clause), bidders are to be excluded if they fail to comply with social and labour laws, while Art. 57 (4) only includes an 'optional' provision if the same offence or misconduct is committed. Excluding a bidder is a possibility, but not a guaranteed outcome. This contradiction must be resolved as a matter of urgency by amending Articles 18 and 57 to provide for a mandatory exclusion of bidders.

Furthermore, the obligation of strategic contract awarding should be strengthened by the European legislator: eligibility, performance and award criteria should, in addition to the price criterion, provide for mandatory minimum environmental, social or innovation-promoting requirements in the specification.

In summary: the bid price is a crucial aspect of a tender. However, in future, selecting a bidder on price alone should not be permitted.

- Sub-contracting chains: A permanent problem

Combating undeclared work, social fraud and wage dumping is an important prerequisite to ensure that the European internal market also benefits employees. It is indisputable that wage payments, taxes and social security contributions, as well as compliance with labour law provisions, are undermined by subcontracting and that the latter is thus an important source of undeclared work, social fraud and wage dumping (see also Houwerzijl/Peters, Liability in subcontracting processes

in the European construction sector, 2008, study commissioned by the European Foundation for the Improvement of Living and Working Conditions;

Communication from the European Commission of 24 October 2007: Stepping up the fight against undeclared work, point 3.A. Drivers of undeclared work).

The ECJ, on the other hand, considers restricting subcontracting to certain shares of the order amount to be inadmissible because it sees this as a hurdle for small and medium-sized enterprises. However, this approach appears outdated in view of global economic developments. Limiting the subcontracting chain is one element in generating the majority of the added value within the EU and thus enabling positive impulses for ecological and working conditions. At the same time, contracting authorities are able to better control and combat social dumping. This is the reason why the restriction of subcontracting chains has been a continuing request of employee representatives, as has the introduction of general contractor liability.

The European legislator is therefore called upon to take appropriate precautions when the EU public procurement directives are reformed:

- 1.) The obligation or at least the possibility that a certain percentage of the core tasks is to be carried out by the general contractor or the successful tenderer.
- 2.) The transfer of parts of the performance to sub-contractors should be prohibited, i.e. only a single-tier subcontractor chain should be permitted. Only in objectively compelling cases should it be possible to pass on minor jobs to a sub-subcontractor (two-tier chain), with the burden of proof for the existence of this (narrow) exception falling on the bidder.
- 3.) Introduction of a general contractor liability in form of a deficiency liability (guarantor and payer), according to which the contractor, bidder consortium and joint venture (their members) are jointly liable. At the same time, the possibility of circumvention by employing temporary staff should be excluded.

- Exclusion of economic operators

An important instrument to enforce social and labour law claims is the exclusion of economic operators from public procurement procedures if they fail to meet their obligations to pay social security contributions or taxes. However, according to the case law of the ECJ, bidders must be given the opportunity to clear their name by subsequently paying the social security contributions or taxes or replacing the managing director. However, this makes the provision of Art. 57 (2) of the EU Procurement Directive toothless, and the violation of the

exclusion criteria contained therein a trivial offence. In the event of repeated violations, the mandatory exclusion of the bidder or a ban on participation in public tenders in the public interest for a certain period of time should therefore be provided for.

- Minimum credit rating for companies when submitting an offer

Article 58 (3) of Directive 2014/24/EU or Article 80 (2) in conjunction with Article 58 (3) provide that contracting authorities may require a certain minimum annual turnover and a certain ratio of assets to liabilities as a condition for eligibility. In order to achieve a harmonised approach, a specific minimum turnover of the tenderer in the area covered by the contract should be specified by law:

- For the above-threshold: in the ratio of 2:1 between the minimum annual turnover in the area covered by the contract and the estimated (annual) contract value, or
- For the below-threshold: in the ratio of 3:1 between minimum annual turnover in the area covered by the contract and the estimated (annual) contract value.

3. Efficiency

- Public services exemption

The exemptions for water and wastewater in Directive 2014/23/EU on the award of concession contracts, which were achieved as part of the European Citizens' Initiative "Right2Water", must be maintained in the future. In order to ensure the regional supply of water at affordable prices, the possibilities for inter-municipal cooperation should be further developed and facilitated. Finally, the direct award for public transport services should be strengthened and expanded.

- Retention and strengthening of in-house rewarding of contracts

It is of crucial importance not to put any pressure on services provided directly by or shared between public institutions. National and local authorities must always be able to make their own decisions as to how they can provide public services within the scope of their own capacities and how they can best ensure their accessibility, quality and sustainability. Public procurement is only one way of providing services, and public-public partnerships and the internal provision of services should always remain an option and not be put under pressure.

To ensure that EU procurement and concession rules promote social progress and quality jobs, the following elements are essential when revising the directives:

- 1.) Strengthening of the social clause in Article 18 (Directive 2014/24/EU).
- 2.) Adding of ILO Convention 94 to Annex X.
- 3.) Abolishing the option of awarding contracts on price alone (lowest price).
- 4.) Stricter regulation of subcontracting (including the introduction of joint and several liability and restrictions on the length of the chain).
- 5.) Increasing the scope for excluding companies that have failed to comply with trade union and labour rights as well as labour law obligations, including collective agreements.
- 6.) Ensuring that public provision of services, public-public partnerships and internal provision of services remain an alternative and are not put under pressure.



Contact us!

In Vienna:

Susanne Wixforth

T +43 15016512122

susanne.wixforth@akwien.at

In Brussels:

Sarah Bruckner

T: +32 22345 178

sarah.bruckner@akeuropa.eu

Austrian Federal Chamber of Labour

Prinz-Eugen-Straße 20-22

1040 Vienna, Austria

T +43 (0) 1 501 65-0

www.arbeiterkammer.at

AK EUROPA

Permanent Representation of Austria to the EU

Avenue de Cortenbergh 30

1040 Brussels, Belgium

T +32 (0) 2 230 62 54

www.akeuropa.eu

About us

The Austrian Federal Chamber of Labour (AK) is the legal body which represents the interests of approximately 4 million employees and consumers in Austria. It represents its members on all social, educational, economic and consumer policy-related issues at national level and at EU level in Brussels. Furthermore, the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.