

EEB recommendations in response to the call for evidence for an impact assessment on the revision of public procurement directives

Key recommendations:

1. Public procurement must become fully climate neutral by 2045. For that, Member States must establish roadmaps for sustainable public procurement with the goal to create lead markets for decarbonised products, driving the circular economy and a transition to sustainable food systems in line with the EU Green Deal and Sustainable Development Goals objectives.
2. Environmental and socially responsible procurement criteria must be mandatory in all procurement contracts to prevent the practice of lowest price-based procurement.
3. Procurement contracts must only include products with the highest-rated sustainability and performance requirements, as defined in relevant sectoral legislations.
4. Monitoring and reporting frameworks (including e-forms) for procurement contracts must be made mandatory below the EU directive thresholds to track progress on green public procurement.
5. Public procurement must include food as a strategic sector, with a focus on healthy, sustainably produced food that ensures environmental and social criteria are considered and prioritized.
6. Additional capacity building and training should be provided to contracting authorities on green public procurement, including life cycle assessments of projects, use of GPP criteria, monitoring, and reducing legal risks in procuring environmentally and socially responsible products.

Public procurement directive should include social and environmental goals

Public procurement directives have always presented an opportunity to redirect the market by creating incentives primarily because of the size of the total spending on public procurement.

Public procurement plays a crucial role in decarbonising key industries. In the EU, over **25% of the construction sector emissions** are covered by public procurement¹. With **36% of steel and 50% of cement/concrete emissions** coming from the construction sector, it's clear that procurement has vast potential to finance and drive the decarbonisation in steel and cement industries.

As a result, many sectoral legislations covering industrial decarbonisation, energy efficiency in vehicles and buildings and horizontal framework legislations for sustainable products (ESPR) have aimed at using public procurement offering incentives with the hope to accelerate EU industry towards achieving EU's social and environmental goals. This is also because of the existing directives (2014/24, 2014/23

European Environmental Bureau

• Rue des Deux Églises 14-16, 1000 Brussels, Belgium • +32 228 91090 • eeb@eeb.org • www.eeb.org

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ID number: 06798511314-27 • BCE ID number: 0415.814.848 • RPM Tribunal de l'entreprise francophone de Bruxelles

and 2014/25) limit their objectives to the integration and growth of the single market leaving the responsibility of public spending without any ambition for environmental, health and social goals.

If environmental sustainability targets and socially responsible buying were part of the core objectives of the public procurement directive along with the free movement of goods and services, equal treatment, non-discrimination, mutual recognition, proportionality and transparency, it would be far easier to

- a. Convince contracting authorities to consider environmental and social goals.
- b. Reduce administrative burden by providing legal clarity to ambitious and willing contracting authorities to pursue green public procurement (GPP)- especially for the clarity on the 'linked to the subject matter' and the use of ecolabels.
- c. Simplify decision making by bringing better coherence between sectoral legislations which use public procurement as an incentive or to disincentivise/exclude economic operators (for infringements of EU law)
- d. Encourage setting targets and roadmaps for national GPP plans in the long-term planning of procurement policies
- e. Prioritise industrial sectors for incentives based on the best outcomes per Euro spent and
- f. Accelerate the development of procurement tools helping in assessing the best price to quality ratio to determine the most economically advantageous tender.

Therefore its necessary to include the objective to buy socially- and environmentally-responsible products, works and services to the existing objectives on the single market by including these in its recitals, Article 18 and supporting it with the inclusion of the rights, prohibitions and obligations of economic operators under international human rights and environmental legislations, participating in public procurement in Annex X of the public procurement directives.

Recommendations:

Public procurement must become fully climate neutral by 2045. For that, Member States must establish roadmaps for sustainable public procurement with the goal to create lead markets for decarbonised products, driving the circular economy and a transition to sustainable food systems in line with the EU Green Deal and Sustainable Development Goals objectives.

We propose that these targets could be on three indicators:

1. GHG emissions from procurement
2. Circular Material Use (CMU) rate and
3. Growth in the share of environmentally or socially responsible criteria in tenders

Environmental and socially responsible procurement criteria must be mandatory in all procurement contracts to prevent the practice of lowest price-based procurement.

The EU procurement directive (2014/24/EU) requires contracting authorities to award the most economically advantageous tender using a price or a cost effectiveness approach, such as life cycle costs (LCC) or a best price -quality ratio (BPQR) which should include environmental and social criteria. This is part of the Article 67(2) covering award criteria.

The procurement directives do not define the “most economically advantageous tender” (MEAT), and a clear definition is necessary for legal clarity and to reduce multiple interpretations. We propose a definition which ensures that both social and environmental criteria should be used for the approach, removing the possibility of using price or cost only approaches in awarding tenders.

From the Commission’s staff working document, as well as many other reports like the European court of auditors², it’s clear that there is not enough uptake of GPP since 2014. One of the main reasons for this is because **it’s optional** to follow the awarding of most economically advantageous tender using BPQR or LCC to award a contract. As a result, there are varying rules on adopting GPP at the Member state level leading to fragmented efforts in lead market creation and poor intra EU cross border participation.

Simplification here is achieved by making it mandatory to procure either by an LCC/ BPQR approach or to do lowest-price-based procurements for specific procurement categories identified by CPV³ codes, since a fully mandatory non-price approach may not be feasible for all type of procurements.

Article 67(2) in the procurement directive (2014/24) should then be modified to remove the option of price and restricting the most economically advantageous tender to be based only on a cost effectiveness approach (LCC) or a best price-quality ratio, including environmental and/ or social criteria and using tools such as life cycle costing or any other equivalent national methodologies.

Recommendations:

- Remove lowest price as an option for choosing a tender based on the “most economically advantageous tender”
- Define CPV categories where price-only approaches remain permissible.
- Introduce a “comply or explain” ⁴requirement, similar to Denmark’s “Følg eller Forklar” principle, ensuring that most economically advantageous tender should be identified using a cost effectiveness approach or a best price- quality approach and any deviation should be explained by the contracting authority.
- Procurement contracts must be awarded to products, works or services with the lowest environmental impact, including negative externalities identified through full scope of life cycle assessments or life cycle costing tools, customised and simplified for contracting authorities. The monetisation of environmental impacts should use the highest valuation estimates based

on statistical life for environmental impacts or carbon avoidance costs aligned with 1.5°C climate pathways.

- The grounds for exclusion (article 57) should also include economic operators who have received derogations or exemptions from EU environmental legislations- like those benefitting from relaxed Best Available Techniques – Associated Emission Levels (BAT-AEL) under the Industrial and livestock rearing emissions ⁵ (2024/1785/EU).

Public Procurement should be based on the obligations, exclusions, product requirements, standards and labels coming from all other EU legislations.

The staff working document⁶ shared by the Commission summarising the evaluation of the stakeholders' responses and evaluation of the directives indicate the presence of numerous sectoral directives (44 legislations) with many obligations regarding public procurement.

While the discussion on coherence and inconsistency is viewed from the point of administrative burden, we also feel there is a risk of weak coherence being inadvertently linked to inconsistency, muddling the grounds for the assessment of administrative burden.

Inconsistency is when a sectoral or general legislation obligates the dispensing of the core principles of the procurement directive without explicit derogations, which are: free movement of goods and services, equal treatment, non-discrimination, mutual recognition, proportionality, transparency along with environmentally- and socially responsible buying. In that sense, we don't find any sectoral directives inconsistent with the core principle of procurement directives.

Considering the horizontal nature of procurement directives, the size of the fund they govern and the shared interests to achieve EU environmental and social goals, by creating lead markets for industry, socially and environmentally responsible buying and encouraging innovation, **it is natural and logical for sectoral directives to provide policy directions, minimum product requirements, standards, thresholds and targets to procurement directives.**

While we clearly see the need for the procurement directive to clarify "**how to buy**" and '**who not to buy from**', the sectoral directives to clarify "**what should be bought or achieved**", the existing obligations and conditions from the sectoral and other horizontal directives are not made easier to access and implement for contracting authorities.

The existence of numerous sectoral obligations is not just in the case of procurement, but in many areas of law enforcement: for example, customs require obligations from many legislations to be enforced while the system absorbs the complexity of handling thousands of pages of law by creating digital architectures, ensuring ex- ante compliance.

The study by Prof. Janssen ⁷ also identifies fragmentation of obligations, lack of legal clarity, complexity in the interaction of the sectoral directives and the need to streamline the horizontal directives before

they produce GPP obligations. It also stresses the need for quality professional and legal skills in procurement as vitally important to ensure compliance.

A holistic systems approach is required here, to clarify the contracting authorities to help with mandatory exclusions, minimum requirements, optional but relevant contract criteria and procedural thresholds, by upgrading existing digital resources like CPV codes, contract categories and other procurement taxonomies into a digital architecture that consolidates legal obligations into procurement ready guidance at the point of use.

Broadly, the sectoral directives⁸ which have a bearing on public procurement can be taken into three parts. Procedural parts which require amendments like digitisation, remedies, exclusions and thresholds (procedural requirements), product requirements from sectoral directives which recommend “what to buy” and governance requirements covering security/strategic preferences and penalties. The procedural and governance requirements from the sectoral legislations could be amended/incorporated into the public procurement directive during its review, while the product requirements from other legislations should be linked with cross-references and translations into procurement terminologies to the legal text of the public procurement directive.

The three public procurement directives could be brought together as a single regulation reducing the complexity of procedures for general works, utilities and concessions. The Commission acknowledges⁹ that higher value contracts were more likely to have non-price criteria and most of the higher value contracts are naturally in the concessions directive. But the concessions directive needs to have the same requirements (as the general directive) to award a tender based on the MEAT criteria to enable the creation of lead markets for the construction and steel industry and to become an ideal instrument to implement innovation and circular procurement.

This should be in addition to other digital tools needed in assessing the most economically advantageous tender using a ‘best price to quality ratio’ or ‘life cycle costing’, to ensure all environmental impacts (not just GHG emissions) are included before a contract is awarded.

The revision of the procurement directives should not become a deregulation exercise. Rather, it should focus on ensuring that the existing and forthcoming body of EU law forms a coherent, predictable and workable framework for both contracting authorities and economic operators.

Recommendations:

- Procurement contracts must only include products with the highest-rated sustainability and performance requirements, as defined in relevant sectoral legislations.
- Lead markets could be prioritised for sectors with high GHG emission products (using CPV codes), works and services till horizontal product legislations (ESPR, CPR) come with product requirements for other products.
- Concessions directive, which has big potential for lead markets should have the same obligations to identify contracts that satisfy the “most economically advantageous tender. Merging the three directives into a regulation may help simplification.

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- Simplification can be implemented by a systems approach to digitisation using a digital architecture that consolidates legal obligations into procurement ready guidance at the point of use.

Strengthening monitoring and reporting mechanisms:

The Public procurement directive does not have a reporting and monitoring obligation, but the data is gathered during the contract notifications processes involving standardised forms which will have to be published in the Official Journal of the European Union as required under articles 48- 50, 75 and 79 of the directive and the Annex VIII.

While it's difficult to develop accurate policy recommendations without a realistic monitoring of the past, it becomes more complicated when we expect public procurement to achieve climate neutrality or create lead markets and support strategic innovation projects.

All contract notifications above the thresholds of the directive are now published in the Tenders Electronic Daily (TED), designated as a supplement to the OJEU. Any contract data below the thresholds may also be published in the TED but Member States have no obligation towards it. Contracts below the thresholds are published in national systems for procurement with national thresholds.

The linking of the EU directive thresholds with the thresholds in the Government Procurement Agreement (GPA) is arbitrary¹⁰ and did not follow a logical structure while arriving at the thresholds for supplies and services as compared to works contracts in the EU directive. Based on inflation adjusted values for these thresholds, the supplies and services thresholds have reduced in value by 28% from 1979 to 2014 while the works contract threshold is still 169% higher than its inflation adjusted values.

Since almost 70% of the procurement contracts are below the thresholds of the EU public procurement directives and do not have to comply with the EU directive or report the procurement data to TED, the simpler way out is to reduce the thresholds in the EU directive or to ensure reporting of all contracts in national portals or to the TED portal via Public procurement data space (PPDS)¹¹.

This existing monitoring based on 30% of all EU procurement cannot be used for a realistic measurement the potential of GPP, barriers in its uptake, apart from transparency and integrity of the system while making it difficult to prevent corruption, as shared by the Commission's staff working document.

One example is the perception of poor participation by SME's post 2014 in public procurement. The staff working document, confirms that SME participation has risen by 10% since 2014 which is only known through a separate study conducted by Ecorys. The debate on SME's could have been more factual, and efforts to support SME's would have been more successful had there been a monitoring of SME participation since 2014 above and below the EU thresholds.

Introducing a requirement to publish all procurement contracts above and below EU thresholds would be more beneficial relative to the cost of implementation. Taken together with other digitisation efforts, this can improve broader competition in the sub-threshold markets for SME's while improving accountability and transparency.

Despite the efforts from the Commission, without a mandatory obligation from the Member States to use of e-forms below the EU thresholds, standardise the data collection processes and to integrate the national procurement portals to TED, it may be difficult to improve monitoring and impossible to measure the outcomes of the new foci on public procurement.

Recommendations:

- Monitoring and reporting frameworks (including e-forms) for procurement contracts must be made mandatory below the EU directive thresholds to track progress on green public procurement.
- Access to national procurement data should be enforced to track progress of GPP, for assessing innovation, to gather market intelligence and increase participation of SME's and cross-border participation.

Food should be explicitly included as a strategic sector for public procurement

It has been well established that the EU's food and agricultural systems are fundamental pillars of continental security and economic vitality. The importance of food in public procurement has been cited across many documents, from the Vision for Agriculture and Food to the INI Report 2024/2103¹² (§61) to President Ursula von der Leyen's State of the Union speech¹³, among others.

With impacts on public health, environmental systems, animal welfare, and economic prosperity, public procurement focused on nutritious, ecologically sound, and locally produced food has the potential to be a strong lever for change. Europe's public institutions collectively allocate roughly €50 billion¹⁴ yearly toward food procurement, creating substantial capacity to reshape production and consumption paradigms toward a sustainable food system. Current procurement practice reveals troubling patterns: price remains the sole determining factor in approximately 60% of contracts, barely one-fifth of major agreements incorporate ecological standards, and social dimensions receive even less attention.

This legislative revision offers a pivotal moment to reconfigure the procurement landscape, shifting sustainable sourcing from the exception to a straightforward, institutionally supported norm that harnesses the sector's transformative potential and yielding several benefits, including but not limited to lower public health expenditures, enhanced ecosystem functioning and climate preparedness, and robust employment opportunities that have the potential to invigorate local economies.

Recommendations

- Recognise food as a strategic sector within public procurement

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- Redefine criteria for awarding contracts to prioritize quality and sustainability alongside price

Efforts to improve professionalisation, including capacity building and training to procurement authorities:

The revision of the public procurement directives has the stated objectives to increase efficiency, strengthen economic security and sovereignty while also aligning the policy to EU strategic policies and objectives. A lot of these objectives can be achieved with the help of a digital transformation of the public procurement processes while introduction of new criteria, standards, labels and better monitoring systems all add to the components of the digital transformation. Overall, a systemic digitisation effort is much needed and is inevitable in 2026.

This also means that public procurement authorities need support in re-skilling, training, capacity development apart from learning newer tools and technologies to handle the awarding of contracts to the most economically advantageous tender.

This is vital to ensure that public procurement drives EU's strategic objectives.

Recommendations:

Additional capacity building and training should be provided to contracting authorities on green public procurement, including life cycle assessments of projects, use of GPP criteria, monitoring, and reducing legal risks in procuring environmentally and socially responsible products.

For more information please contact: jaikrishna.r@eeb.org

References:

¹ <https://www.ecologic.eu/sites/default/files/publication/2023/33007-Report-Public-Procurement-for-Climate-Neutrality.pdf>

² In 2021, there were eight member states in which the level of award in favour of the lowest price even exceeded 80 % of the total number of contracts- European court of auditors. https://www.eca.europa.eu/ECAPublications/SR-2023-28/SR-2023-28_EN.pdf

³ Common procurement vocabulary codes, Regulation 213/2008/EC <https://eur-lex.europa.eu/eli/reg/2008/213/oj/eng>

⁴ https://www.idos-research.de/uploads/media/Sustainability_through_public_procurement_the_way_forward_Reform_Proposals.pdf

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32024L1785>

⁶ [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2025\)332&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2025)332&lang=en)

⁷ European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs and Janssen, W. A., *The coherence of public procurement legislation in the European Union – A study into the external coherence between the*

public procurement directives and other legislative instruments regulating public procurement, Publications Office of the European Union, 2025, <https://data.europa.eu/doi/10.2873/7419429>

⁸ A list of 44 of these legislations is available in the staff working documents, Table 101, page 252.

⁹ Page. 33, Staff working document.

¹⁰ <https://epppl.lexxon.eu/article/EPPPL/2016/3/9>

¹¹ The PPDS aims to cover national databases. The phase 3 of the PPDS hopes to increase data capture from Member States (4 as of now) to cover the entire procurement cycle from pre- award to post award phase (contract performance and modifications).

¹² https://www.europarl.europa.eu/doceo/document/A-10-2025-0147_EN.html

¹³ https://ec.europa.eu/commission/presscorner/detail/ov/SPEECH_25_2053

¹⁴ https://publications.jrc.ec.europa.eu/repository/bitstream/JRC139598/JRC139598_01.pdf