**Introduction**

This public consultation forms an integral part of the **evaluation of the EU public procurement directives**:

* Directive 2014/23/EU on the award of concession contracts
* Directive 2014/24/EU on public procurement
* Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors).

The **objectives of the directives** have been to ensure an efficient use of public funds, contribute to the high level of competition in the single market, and promote transparency and integrity of public spending. The directives were also expected to contribute to making Europe a more green, social and innovative economy, increase SMEs’ participation in procurement procedures, reduce the administrative burden related to procurement procedures, simplify them and make more flexible.

The purpose of this evaluation is to collect information that allows the Commission to assess the EU procurement markets and understand:

* the effectiveness and coherence of the EU legal framework for public procurement
* whether this legal framework is still adequate in the current context.

The directives have been **transposed into national law**. Feedback on national legislation that does not transpose the directives is outside of this consultation’s scope.

The results of this public consultation will be summarised in a factual report, which will be published on the Have Your Say website. The results will also be analysed together with other data and presented in the Commission’s report on the evaluation of the public procurement directives and an accompanying staff working document.

This consultation is composed of five themes. You will be able to provide additional **free text comments** concerning each of them. At the end of the survey you can upload a file with a more detailed contribution, including any **evidence** you may have.

*Experience with EU public procurement*

**Section 1: Simpler, more flexible rules, value for money, transparency, integrity**

Have the directives reached their objectives?

|  | Strongly agree | Agree | Neutral | Disagree | Strongly disagree | Don't know |
| --- | --- | --- | --- | --- | --- | --- |
| The directives helped contracting authorities\* get **better value for money** when procuring works, goods and services. |  |  |  |  |  |  |
| The directives made the **scope** of the applicable rules **clearer**. |  |  |  |  |  |  |
| The directives provided sufficient **flexibility** in the public procurement system (e.g. a broader choice of procedures and procurement techniques). |  | x |  |  |  |  |
| The digitalisation of public procurement (**eProcurement**) helped **lower the administrative burden** when procuring works, goods and services. |  | x |  |  |  |  |
| The digitalisation of public procurement (**eProcurement**) made it **faster to procure** works, goods and services. |  |  |  |  |  |  |
| The directives set out **simpler rules** for the EU public procurement system. |  |  |  |  |  |  |
| The directives helped **reduce corruption** and fend off political pressure in public procurement procedures. |  |  |  |  |  |  |
| The directives fostered a **culture of integrity** and fair play in public procurement. |  |  |  |  |  |  |
| The directives increased the **professionalisation** of public buyers. |  |  |  |  |  |  |
| The directives**increased transparency** by setting the proper framework for the publication of tenders at all stages of the public procurement procedure. |  | x |  |  |  |  |
| The directives gave greater **legal certainty** on the compliance with procurement procedures. |  |  |  |  |  |  |
| The directives facilitated **prompt payments** to subcontractors for the works, goods and services offered. |  |  |  |  |  |  |

\* Throughout this survey the term "contracting authorities" is understood as contracting authorities and entities.

The directives' objectives were to be achieved through rules set out in these legal acts.

In this context, do you agree with the following statements?

|  | Strongly agree | Agree | Neutral | Disagree | Strongly disagree | Don't know |
| --- | --- | --- | --- | --- | --- | --- |
| The directives’ rules aiming at **procedural simplification** (e.g. eProcurement, European single procurement document 'ESPD', the use of self-declarations) are still relevant and adequate. |  |  |  |  |  |  |
| The directives' rules aiming to increase **procedural flexibility** (e.g. the choice of available procedures, time limits for submitting offers, contract modifications) are still relevant and adequate. |  |  |  |  |  |  |
| The directives' rules on **transparency** (e.g. EU-wide publication via Tenders Electronic Daily 'TED') are still relevant and adequate. |  |  |  |  |  |  |
| The directives' rules on **monitoring** (e.g. the quality of data provided in TED) are still relevant and adequate. |  |  |  |  |  |  |
| The directives' rules on **integrity** (e.g. exclusion grounds, conflict of interest rules) are still relevant and adequate. |  |  |  |  |  |  |

If you have comments concerning any of the statements above, please provide them here.

*Access to the EU public procurement market*

**Section 2: Easier market access, SMEs and cross-border participation**

Have the directives reached their objectives?

|  | Strongly agree | Agree | Neutral | Disagree | Strongly disagree | Don't know |
| --- | --- | --- | --- | --- | --- | --- |
| The directives resulted in **more competition** in public procurement markets (e.g. rules on transparency make it easier for companies to enter markets). |  |  |  | x |  |  |
| The directives set out rules that ensure the **equal treatment** of bidders from **other EU countries** in all stages of the process and the objective evaluation of tenders. |  |  |  |  |  |  |
| The directives made it **easier for SMEs** to bid for public contracts (e.g. the possibility to divide tenders into lots). |  |  |  |  |  |  |
| The directives made it **easier to bid** on public contracts **from abroad**(e.g. through eProcurement). |  |  |  |  |  |  |

The directives' objectives were to be achieved through rules set out in these legal acts.

In this context, do you agree with the following statements?

|  | Strongly agree | Agree | Neutral | Disagree | Strongly disagree | Don't know |
| --- | --- | --- | --- | --- | --- | --- |
| The directives' rules on **SMEs'** **market access** are still relevant and adequate. |  |  |  |  |  |  |
| The directives' rules on **eProcurement** are still relevant and adequate as a tool to facilitate **market access**. |  |  |  |  |  |  |
| The directives' rules on **market access of companies from other EU countries** are still relevant and adequate. |  |  |  |  |  |  |
| The directives' rules on **market access of companies from non-EU countries** are still relevant and adequate. |  |  |  |  |  |  |
| The directives' rules on **public-public cooperation** and **in-house procurement** are still relevant and adequate. |  |  |  |  | X |  |

If you have comments concerning any of the statements above, please provide them here.

As noted by the European Court of Auditors (see [here](https://www.eca.europa.eu/en/publications/sr-2023-28)), competition for public contracts has diminished over the last decade. In particular, the municipal waste market has been steadily remunicipalised in recent years and as a result, more and more medium-sized companies are being squeezed out of the market. In Latvia, for example, the market share of the municipal waste collection market open for competition is 32%, while in the remaining 68% contracts are being allocated in-house. In Italy, direct award of public contracts without procurement reached 91,7% in 2021. In Germany, it is estimated that the market share of State-owned enterprises has increased in about 11% from 2006, reaching almost 50% in 2021 for the collection of residual municipal waste. The number of in-house procurements increases every year also in Poland, including in big cities as Warsaw. In Hungary, since 2013 only entities in which the State has at least 51% ownership can carry out household waste collection activities.

The lack of public tendering closes the market to private operators and, although the public sector’s involvement mainly refers to municipal waste collection markets, this gives control over the direction of the waste flows. This now coincides with increased public companies also in recycling. To increase the quantity and quality of recycling, innovation and investments are needed, for which market access and competition are key. Therefore, **procurement rules should be revised to ensure that waste management services are always allocated on the basis of quality and efficiency to drive the transition to a circular economy through innovation.** The protection of public health and the achievement of waste management targets by Member States can also be carried out by tendering and seeking the best services in the market.

In-house procurement as an exception to public procurement must be revised and limited to strictly necessary and duly justified cases. In addition, when using in-house procurement rules, **the consolidated turnover of a group or corporate must be taken into account, i.e. the turnover of the group or undertaking to which the controlled legal person belongs in the sense of an economic unit, which may consist of several natural or legal persons** (Art. 12 no. 1b in Directive 2014/24/EU). Taking into account only the turnover of the controlled legal person itself may lead to an unduly large number of exceptions to the applicability of Directive 2014/24/EU and, therefore, to less competition, which would be contrary to the objective of the public procurement rules. In addition, a controlled legal person could circumvent the 80/20 ratio by operating in a group context and, in that context, itself performing more than 80% of its activities for the benefit of the controlling contracting authorities and allowing one or more group companies to operate on the free market.

In the same line stated above, when it comes to public-public cooperation, Art. 11 of Directive 2014/24/EU should be revised to ensure that is it only used to award public service contracts awarded by a contracting authority to another contracting authority, where a publicly available assessment to provide evidence that an underlying exclusive right is compatible with the TFEU has been carried out, that documents market failures that provide grounds for the exclusive right.

*Strategic public procurement*

**Section 3: Addressing strategic challenges**

Have the directives reached their objectives?  
  
*Impact on contracting authorities*

|  | Strongly agree | Agree | Neutral | Disagree | Strongly disagree | Don't know |
| --- | --- | --- | --- | --- | --- | --- |
| The directives encouraged contracting authorities to **buy environmentally friendly** works, goods and services. |  |  |  | x |  |  |
| The directives encouraged contracting authorities to **buy socially responsible** works, goods and services. |  |  |  |  |  |  |
| The directives encouraged contracting authorities to **buy** **innovative**works, goods and services. |  |  |  |  |  |  |

*Impact on suppliers*

|  | Strongly agree | Agree | Neutral | Disagree | Strongly disagree | Don't know |
| --- | --- | --- | --- | --- | --- | --- |
| The directives encouraged companies to make greater efforts in meeting **environmental standards** in their economic activities. |  |  |  | x |  |  |
| The directives encouraged companies to consider **social aspects** more in their economic activities. |  |  |  |  |  |  |
| The directives encouraged companies to make wider use of **innovative solutions** in their economic activities. |  |  |  |  |  |  |

The directives' objectives were to be achieved through rules set out in these legal acts.

In this context, do you agree with the following statements?

|  | Strongly agree | Agree | Neutral | Disagree | Strongly disagree | Don't know |
| --- | --- | --- | --- | --- | --- | --- |
| The directives’ rules that aim for **environmentally friendly** procurement (e.g. quality assurance standards and environmental management standards) are still relevant and adequate. |  |  |  | x |  |  |
| The directives’ rules that aim for **socially responsible** procurement (e.g. reserved contracts, requirements on accessibility for people with disabilities and design for all users) are still relevant and adequate. |  |  |  |  |  |  |
| The directives’ rules on **supporting innovation** (e.g. innovation partnership, competitive dialogue) are still relevant and adequate. |  |  |  |  |  |  |
| The directives’ rules on supporting **all types of strategic procurement** (e.g. the use of the most economically advantageous tender) are still relevant and adequate. |  |  |  |  |  |  |
| The directives’ rules on the transfer of **intellectual property rights** to enable public procurement to drive innovation are still relevant and adequate. |  |  |  |  |  |  |

If you have comments concerning any of the statements above, please provide them here.

The EU has taken, so far, a voluntary approach to green public procurement (GPP). To this end, important changes introduced in the 2014 Directive have been accompanied by specific [voluntary GPP criteria](https://green-business.ec.europa.eu/green-public-procurement/gpp-criteria-and-requirements_en) developed for certain product groups as well as a series of sector specific Life-cycle costing [(LCC) calculation tools](https://green-business.ec.europa.eu/green-public-procurement/life-cycle-costing_en). Over 10 years after the adoption of its public procurement Directive, the EU must take a step further to ensure that environmental aspects are the norm in public procurement. Therefore, FEAD calls for a revision of the EU Directives on public procurement to enshrine mandatory GPP. Please refer to the attached position paper.

*Competition in the EU public procurement market*

**Section 4: Competition**

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

Do you agree with either of these statements about the **high frequency of single bidding**?

* It is a sign of bad procurement practices.
* It is not linked to procurement practices, but due to market structure or other factors unrelated to procurement.
* I don't agree with either of the statements above

Do you agree with either of these statements about the **high frequency of** **direct awards**?

* It is a sign of bad procurement practices.
* It is a legitimate procurement practice under certain circumstances and may facilitate the flexibility and timeliness of procedures.
* I don't agree with either of the statements above

Do you agree with either of these statements about the **high frequency** **of** **price only awards**?

* It is a sign of bad procurement practices.
* It may be more efficient in certain circumstances (e.g. a simpler and faster way to buy homogenous goods).
* High quality can be assured through technical requirements.
* I don't agree with either of the statements above

**Over the last 8 years,** the level of competition in the EU public procurement market has...

* increased
* remained the same
* decreased
* No opinion.

Feel free to comment on issues that you may have experienced with the level of competition in EU public procurement market.

We refer to the report 28/2023 from the European Court of Auditors and the comments given at the end of section 2.

*Coherence and resilience of the EU public procurement framework*

**Section 5: Coherence**

|  | Strongly agree | Agree | Neutral | Disagree | Strongly disagree | Don't know |
| --- | --- | --- | --- | --- | --- | --- |
| The **three public procurement directives\*** are coherent with each other. |  |  |  |  |  |  |
| The **objectives** of the three public procurement**directives** are coherent with each other. |  |  |  |  |  |  |
| EU public procurement legislation on **defence and security procurement** is coherent with the three public procurement directives. |  |  |  |  |  |  |
| EU public procurement legislation on **remedies** is coherent with the three public procurement directives. |  |  |  |  |  |  |
| **EU legislation** **relating to public procurement** (e.g. sectorial rules such as the Net-Zero Industry Act or Clean Vehicles Directive) is coherent with the three public procurement directives. |  |  |  |  |  |  |
| The directives led to a **more consistent** application of public procurement policy **across EU countries**. |  |  |  |  |  |  |

\* Directive 2014/23/EU on the award of concession contracts, Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors.

If you have comments concerning any of the statements above, please provide them here.

**Section 6: Resilience**

Are the directives still relevant and adequate given the changing circumstances?

|  | Strongly agree | Agree | Neutral | Disagree | Strongly disagree | Don't know |
| --- | --- | --- | --- | --- | --- | --- |
| The directives are fit for purpose to contribute to the **EU’s strategic autonomy**\* (including the security of EU supply chains). |  |  |  | x |  |  |
| The directives are fit for purpose **in urgent situations**, allowing contracting authorities to procure works, goods and services in a timely manner and even make purchases more quickly when necessary. |  |  |  |  |  |  |
| The directives are fit for purpose if there are **major supply shortages** (e.g. supply-chain disruptions during a health, energy or security crisis). |  |  |  |  |  |  |
| The directives are fit for purpose to ensure that **security considerations** are properly addressed by the contracting authorities. |  |  |  |  |  |  |

\* EU strategic autonomy refers to the capacity of the EU to act autonomously. That means not being dependent on other countries in strategically important policy areas.

If you have comments concerning any of the statements above, please provide them here.

We refer to the comment at the end of section 3 on green public procurement, which should be mandatory to increase circularity by buying recyclable products as well as products made from recycled materials, sourced and recycled in the EU.

*Comparisons*

**Section 7: Below EU thresholds procurement**

When compared with procurement **below EU thresholds\***, carrying out transactions under the directives’ rules is ...

|  | Always | Very often | Sometimes | Rarely | Never | I don't know |
| --- | --- | --- | --- | --- | --- | --- |
| simpler |  |  |  |  |  |  |
| better value for money |  |  |  |  |  |  |
| faster |  |  |  |  |  |  |
| more transparent and fair |  |  |  |  |  |  |
| more professional |  |  |  |  |  |  |
| subject to more competition |  |  |  |  |  |  |
| more environmentally friendly |  |  |  |  |  |  |
| more socially responsible |  |  |  |  |  |  |
| more supportive for innovation |  |  |  |  |  |  |
| better in preventing corruption |  |  |  |  |  |  |

\* Thresholds are as follows (approximately): (i) works or concession contracts worth more than €5.5 million; (ii) supply or service contracts with public authorities worth more than €140 000; and (iii) supply or service contracts in the water, energy or transport sectors worth more than €440 000.

**Section 8: Private procurement**

When compared with **private procurement**, selling under the directives’ rules is ...

|  | Always | Very often | Sometimes | Rarely | Never | I don't know |
| --- | --- | --- | --- | --- | --- | --- |
| simpler |  |  |  |  |  |  |
| better value for money |  |  |  |  |  |  |
| faster |  |  |  |  |  |  |
| more transparent and fair |  |  |  |  |  |  |
| more professional |  |  |  |  |  |  |
| subject to more competition |  |  |  |  |  |  |
| more environmentally friendly |  |  |  |  |  |  |
| more socially responsible |  |  |  |  |  |  |
| more supportive for innovation |  |  |  |  |  |  |
| better in preventing corruption |  |  |  |  |  |  |

Thank you for your contribution. Please feel free to provide further comments or attach a file summarising your position on the directives’ evaluation.