



EU Public Procurement reform: Less bureaucracy, higher efficiency

An overview of the new EU procurement and concession
rules introduced on 18 April 2016





New EU public procurement rules: Less bureaucracy, higher efficiency

New rules on public procurement contracts profoundly change the way EU countries and public authorities spend a large part of the €1.9 trillion used on European public procurement every year.

The revised European legislation for over 250 000 public contracting authorities is designed to open up the EU's public procurement market to competition, prevent 'buy national' policies and promote the free movement of goods and services.

The reform has changed things in four main areas: reducing administrative burden, creating a culture of integrity, addressing societal challenges, and modernising public administrations.



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1. ePROCUREMENT, INCREASING EFFICIENCY AND HELPING SMES

The new rules simplify public procurement procedures through smarter rules and the wider use of eProcurement. They also make public procurement in Europe more efficient, leading to billions in savings and making it easier for SMEs to participate in public tenders.

1.1. Public Procurement reform paves the way for eProcurement

E-procurement can significantly simplify the way procurement is conducted, reduce waste and deliver better procurement outcomes (lower price, better quality) by stimulating greater competition across the EU Single Market. Authorities that have already made the transition to e-procurement report savings between 5% and 20%. Given the size of the total procurement market in the EU, each 5% saved could return around €100 billion to the public purse.

Some examples of the European Commission's initiatives for boosting the uptake and interoperability of e-procurement solutions include:

1. **The European Single Procurement Document (ESPD)** is a self-declaration form replacing the various different forms used in the past by EU countries for proving that a bidder fulfils the exclusion and selection criteria (e.g. they have paid taxes and have sufficient financial standing).
2. **E-Certis provides information on certification requirements** helping to identify and compare different certificates requested in procurement procedures across the EU.
3. **eProcurement** will be generalised and become mandatory by 2018.
4. **The long term vision: The 'once-only' principle** aims at creating an e-procurement ecosystem, which facilitates the seamless interaction of businesses with public buyers.

Beyond reducing administrative burden, this simplification will also result in higher **traceability and transparency of procurement procedures** (see below: Prevent corruption).

[Electronic public procurement](#)

1.2. New opportunities for SMEs to access public procurement

The reform of public procurement legislation makes it easier for small and medium-sized enterprises (SMEs) to participate in public tenders, because:

- contracting authorities will be encouraged to **divide contracts into lots**, making tenders more accessible to SMEs.
- the **turnover** required to participate in a tender procedure **will be limited**, allowing more SMEs and start-ups to participate.
- the **documentation requirements** for procurement procedures will be considerably **decreased**.
- The **mandatory use of eProcurement** will allow SMEs to exploit the full benefits of the Digital Single Market and will bring efficiency gains.

[New opportunities for SMEs under the reform of public procurement legislation](#)



2. MODERNISING PUBLIC SERVICES AND SLASHING ADMINISTRATIVE BURDEN

2.1. Simplifying the rules for contracting authorities to modernise public administrations

Simpler procedures for contracting authorities will open up the EU's public procurement market, prevent 'buy national' policies and promote the free movement of goods and services. As a result, contracting authorities will obtain better value for money.

In addition to new types of selection procedures which enable more choice, easier access and better results (see above), contracting authorities will also have more freedom to organise **contract award procedures in a more flexible and efficient way**. They can:

- **speed up procedures** due to shorter minimum time-limits for participation and submission of tenders.
- choose the **best quality-price ratio** ('value for money'), because EU countries are free to eliminate price as the sole award criterion.
- save **cost and bureaucracy** with the help of the new standard electronic European Single Procurement Document (see above).
- can **exclude bidders** from the procedure if they have previously shown significant or persistent deficiencies during the execution of a public contract.

The new Directive also broadens the possibilities for negotiation which is often used for complex contracts such as large infrastructure projects where the technical specifications cannot be defined at the outset. For such cases, contracting authorities can use the **competitive procedure with negotiation** (inviting at least three candidates) when justified by the complexity or the legal and financial make-up of a project, or if the sought-after product or service cannot be purchased ready-made off the shelf.



Local and regional authorities can advertise their contracts via less burdensome and short prior-information notices (instead of the more complex contract notices). They can also agree with the pre-selected bidders on the deadlines in their procedures and benefit from the higher threshold above which tenders need to be published at EU level for social, health, cultural and educational services (€750 000 instead of €209 000).

Cross-border check of procurement information by public administrations: With the help of the Internal Market Information System (IMI) public administrations can verify the information and documentation they receive from companies in other EU countries, removing doubts surrounding the authenticity of a document or certificate provided by a tenderer.

[More on simplified procurement rules for public authorities](#)

2.2. Innovation partnerships keep public services up-to-date

We all want public services such as healthcare, education, firefighting or waste management to be modern and well adapted to the changing needs of society. To encourage innovation in public administration, the new rules will improve the extent to which modernisation can flourish in public contracts. If purchasers remain conservative, businesses will not be encouraged, or even allowed, to innovate.

The new innovation partnership allows for the combination of development and purchase elements tailored to public requirements, with specific rules in place to ensure equal treatment and transparency. This process should only be used in limited circumstances where the goods, works and services that are sought are innovative and there is an intention to include both the development and purchase elements in the procedure, provided they correspond to agreed performance levels and maximum costs.

[Innovation partnerships keep public services up to date](#)

2.3. More competition with new rules on concessions

New rules on concessions will increase competition, allowing EU countries to achieve better value for money when mobilising private capital and know-how to complement public resources and enable new investment in public infrastructure.

[More on new rules on concessions](#)

2.4. Facilitating procurement cooperation among public authorities

For the first time, public authorities are provided with explicit legislative rules on the basis of the principles set out in the relevant case law of the Court of Justice that determine which contracts can be awarded between public sector entities without a call for tender.

Cooperation between public entities is an important means for public authorities to perform public services but should not result in distortion of competition in relation to private economic operators due to exemptions from the rules. In this context, the conditions laid down strike a good balance between the freedom of public authorities to organise public services and fair market access for economic operators.

In particular, it was agreed to limit activities that may be performed in the open market (outside public-public cooperation) to 20 %, and to exclude direct private capital participation in controlled entities (with the exception of non-controlling and non-blocking forms of private capital required by national law)

[Facilitating procurement cooperation among public authorities](#)

2.5. Lighter rules for the utilities sector: water, energy, transport and postal services

Companies engaged in commercial or industrial activity in the utilities sector (water, energy, transport and postal services) do not need to respect the full set of EU procurement rules, but can apply a more flexible public procurement regime better suited to commercial activities than rules designed for public administrations.

Specific utilities markets in certain countries can then **award contracts directly** and without a call for tender when a competitive environment is ensured. The rules provide also a "lighter" public procurement regime for contracts concerning specific types of services (e.g. legal services, catering services, health and social services).

Except for works contracts, the **thresholds for publishing supplies or services contracts** are higher in the utilities sectors than the thresholds for public authorities (for example, the threshold for the lighter regime is with € 1 000 000 higher compared to the € 750 000 threshold for public authorities.)

[Lighter rules for the utilities sector](#)

3. CREATING A CULTURE OF INTEGRITY AND FAIR PLAY

The new directives set the proper framework for prior publication of tenders, clear and unbiased technical specifications, equal treatment of bidders in all stages of the process, and objective evaluation of tenders.

For instance:

1. The notion of '**conflicts of interest**' is defined at EU level for the first time and will make it easier to identify and manage fraud and conflict of interest cases. This will making it easier for EU countries and contracting authorities to effectively prevent, identify and remedy cases.
2. Public purchasers must ensure that the participation of a **previously consulted company** does not affect competition within the tender procedure and that any information shared with a company as a result of its prior involvement must be sent to the other participating companies as well.
3. A **company can be excluded** from public procurement procedures if it unduly influenced the decision-making process or made false statements and when convicted for fraud and corruption (as already stipulated by the old EU rules).
4. Since the **post-award period** is particularly vulnerable to corruption, the rules for **modifying contracts** during this term have been clarified and simplified to remove doubts. In particular, a new call for tenders will not be required for any modifications where the modifications have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses and the changes are not substantive, i.e. do not change the nature or the economic balance of the contract.
5. With **transparency** being one of the most effective ways of fighting corruption, EU countries are required to report violations of rules to national authorities, make the results of their monitoring activities public and submit a **report to the Commission every three years** on the most common sources of misapplication or legal uncertainty.
 - Public purchasers must also **keep copies of contracts** of higher value for their entire duration and make them available to the public.

- Moreover, any public procurement award procedure must be covered by a **specific report by the public purchaser** explaining the main decisions relating to the procedure concerned, reporting any conflict of interests detected and steps taken in this regard, and be forwarded to the Commission/national authorities upon request.

6. The **simplification of procedures** and the **greater use of electronic tools** in public procurement are also important instruments in the fight against fraud and corruption. In particular:

- the setting down of a dedicated legal framework for **concession contracts** enhances **transparency** (see below).
- the standard form for the **self-declaration for bidders**, the 'European Single Procurement Document' makes it more difficult to exclude tenders in the selection phase.

[Study on public procurement corruption costs](#) (€5 billion per year in EU)

[Preventing corruption](#)



4. ADDRESSING SOCIETAL CHALLENGES

4.1. Supporting social responsibility

By using their purchasing power to choose socially responsible goods, services and works, public authorities can set a positive example and encourage enterprises to make wider use of social standards in the management, production and provision of services by using the new opportunities to promote social inclusion:

1. The awarding of a contract will no longer be dependent on price alone if a company commits to helping integrate disadvantaged persons

Contracting authorities can better take social aspects into account when awarding procurement contracts on the basis of the 'best price-quality ratio (BPQR)', i.e. they can choose the tenders that provide more social advantages. This could be, for example, a company employing the greatest number of long-term unemployed or disadvantaged persons to perform the contract or increase participation of women in the labour market.

2. Ending social dumping by respecting social and labour laws

Under a new 'social clause', public authorities will need to ensure the respect of obligations in all public procurement procedures. These include national or EU social and labour rules, applicable collective agreements and/or international law. Tenders may be excluded if they do not comply with social or labour law obligations.

3. Reserved tendering procedures for companies that promote the integration of disadvantaged persons

Since under normal conditions of competition, 'sheltered workshops' or social enterprises whose main aim is to integrate disadvantaged people in the workplace might not be able to obtain contracts, contracting



authorities can now restrict some tendering procedures for all types of social enterprises if 30% of companies' employees are disadvantaged.

[Supporting social responsibility](#)

4.2. Enhancing eco-innovation

Fresh opportunities will be opened up for public authorities to spur eco-innovation by using new award criteria in contract notices that place more emphasis on environmental considerations.

Public authorities will be able to require that bidders not only comply with environmental obligations, but also deliver goods fulfilling the **requirements of environmental labels**. In addition, they can ask bidders to enhance environmental factors when producing goods or to integrate environmental costs in an offer based on a **life-cycle cost approach**.

By using their purchasing power to choose environmentally friendly goods, services and works, Europe's public authorities can make an important contribution to sustainable consumption and production.

[Enhancing eco-innovation](#)

4.3. For social services, European public procurement rules apply only to contracts above €750 000

The procurement of social, cultural and health services, as well as some others such as legal, hospitality, catering and canteen services will be simplified. The new European public procurement rules will only apply to contracts above €750 000 (compared with €209 000 for other services). Apart from the obligation to treat all companies equally and provide adequate publicity for the call for tenders and award of contracts (in a simplified form), national rules will apply to the relevant procedures.

To take account of the specific characteristics of social, health and education services in EU countries, the new public procurement rules provide a 'light touch regime' with the following simplifications:

- only tenders **with a value of above 750 000 €** must be published at EU level.
- rules implementing the corresponding procurement procedures in EU countries no longer have to incorporate EU rules on **technical specifications**

- only the obligations related to **transparency and publicity** have to be respected, namely: ex ante (through prior information notice) and (existing) ex post (contract award notice) publicity.

In addition, EU countries will have to make sure that contracting authorities may take into account all quality and continuity criteria they consider necessary for the services in question. EU countries may also eliminate price as the sole award criterion for such services.

[More flexibility for service contracts on health and social issues](#)

5. THE NEW RULES PROMOTE SINGLE MARKET AND BOOST JOBS, GROWTH AND INVESTMENT

The new directives contribute to the Juncker Commission's priorities of 'A deeper and fairer single market' and 'A new boost for jobs, growth and investment'. Specifically:

- The new rules will facilitate cross-border procurement and foster the free movement of goods and services. More transparency and simplified procedures will slash administrative burden and favour fair play and legal certainty. This will help promote a business and consumer-friendly environment and a **deeper and fairer single market**.
- More transparent, fair and competitive rules will lead to increased business opportunities, greater competition, make it easier for SMEs to access public procurement markets, and **boost jobs, growth and investment**.

Moreover, the public procurement package also contributes to the European Commission's **#REFIT Better Regulation agenda**. No new legislation was added but existing rules were made simpler for administrations and businesses to increase the efficiency of the Europe public procurement system and save billions in public money.

The **success of the new legislation also depends on its effective enforcement in EU countries** and the readiness of the 250 000 public buyers in the EU to capitalise on the benefits of the digital revolution, cut red tape and make procurement processes more efficient and more business-friendly to the benefit of all citizens.