

Evaluation of public procurement directives

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.	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives made the scope of the applicable rules clearer .	<input type="radio"/>	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>
The directives provided sufficient flexibility in the public procurement system (e.g. a broader choice of procedures and procurement techniques).	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The digitalisation of public procurement (eProcurement) helped lower the administrative burden when procuring works, goods and services.		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The digitalisation of public procurement (eProcurement) made it faster to procure works, goods and services.	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives set out simpler rules for the EU public procurement system.	<input type="radio"/>	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>
The directives helped reduce corruption and fend off political pressure in public procurement procedures.	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives fostered a culture of integrity and fair play in public procurement.	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives increased the professionalisation of public buyers.	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The directives increased transparency by setting the proper framework for the publication of tenders at all stages of the public procurement procedure.	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives gave greater legal certainty on the compliance with procurement procedures.	<input type="radio"/>	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>
The directives facilitated prompt payments to subcontractors for the works, goods and services offered.	<input type="radio"/>	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 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.	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives' rules on transparency (e.g. EU-wide publication via Tenders Electronic Daily 'TED') are still relevant and adequate.		<input type="radio"/>	X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives' rules on monitoring (e.g. the quality of data provided in TED) are still relevant and adequate.	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The directives' rules on integrity (e.g. exclusion grounds, conflict of interest rules) are still relevant and adequate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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If you have comments concerning any of the statements above, please provide them here:

Accelerated procurement

As part of Directive 2014/24/EU, the deadlines in the open procedure were generally shortened from the previous 52 days to 35 days. The aim was to speed up the procurement process. The **reduced deadlines are not sufficient** for many bidders to prepare high-quality tenders, especially in complex procurement procedures with conceptualisation.

On the one hand, this leads to a significantly lower number of bidders, as many companies have defined **'too short deadlines' as a disqualification criterion in their internal qualification processes** for public tenders. On the other hand, it leads to **many unplanned queries** among the remaining bidders regarding short-term deadline extensions, as it is often only during the bid preparation process that it is realized that the deadlines are too tight.

The entire procurement process is therefore delayed instead of accelerated.

A **return to the previously applicable deadlines** would have a positive impact on both the number of providers, the quality of the tenders and the acceleration of the procurement process (fewer short-term deadline extensions).

Transparency

The basic idea of Directive 2014/24/EU with regard to increasing transparency in procurement procedures is a good one. In practice, however, many tenders show a clear lack of transparency in the following points:

- Lack of transparency in the **announcement of the award criteria**
- Lack of transparency in the **underlying evaluation criteria** for the evaluation of tenders
- Lack of transparency in the **content and quality of rejection letters**

Many companies define 'unclear evaluation' as a disqualification criterion in their internal qualification processes for public tenders.

A more far-reaching EU regulation with regard to transparency requirements would be desirable.

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).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>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.</p>	○	○		X	○	○
<p>The directives made it easier for SMEs to bid for public contracts (e.g. the possibility to divide tenders into lots).</p>	○	○	○	X	○	○
<p>The directives made it easier to bid on public contracts from abroad (e.g. through eProcurement).</p>	○	○	○	X	○	○

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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives' rules on eProcurement are still relevant and adequate as a tool to facilitate market access .	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
The directives' rules on market access of companies from other EU countries are still relevant and adequate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
The directives' rules on market access of companies from non-EU countries are still relevant and adequate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	
The directives' rules on public-public cooperation and in-house procurement are still relevant and adequate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

- The possibility of the 'negotiation procedure' type of procedure in Directive 2014/24/EU is to be viewed positively. In many procurement procedures, this results in an **intensive exchange between the contracting authority and the bidder, which leads to a higher quality of tenders** and a better price-performance ratio for the products and services offered. In recent years, both the number of negotiation procedures and the effort required by bidders to prepare high-quality bids as part of negotiation procedures have risen sharply. In particular, an **imprecise number of negotiation rounds also leads to delays in negotiation procedures**. Many companies define 'reasonable effort to prepare bids' as a disqualification criterion in their internal qualification processes for public tenders. A **reduction or transparency in the planned number of negotiation rounds** would be a positive development.
- The willingness of companies to apply and participate in complex negotiation procedures also increases if the effort involved in preparing complex bids and concepts is **adequately compensated**.

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.	<input type="radio"/>	<input type="radio"/>		<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives encouraged contracting authorities to buy socially responsible works, goods and services.	<input type="radio"/>	<input type="radio"/>		<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives encouraged contracting authorities to buy innovative works, goods and services.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.		<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives encouraged companies to consider social aspects more in their economic activities.		<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives encouraged companies to make wider use of innovative solutions in their economic activities.	<input type="radio"/>	<input type="radio"/>		<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.	<input type="radio"/>		<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.		<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives' rules on supporting innovation (e.g. innovation partnership, competitive dialogue) are still relevant and adequate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>		<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives' rules on the transfer of intellectual property rights to enable public procurement to drive innovation are still relevant and adequate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	

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

Competition in the EU public procurement market

Section 4: Competition

	Too high	Adequate	Too low	No opinion
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The level of competition in the EU public procurement market is ...	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The frequency of single bidding (awarding a contract after only receiving one offer) is ...	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The frequency of direct awards (negotiated procedure without publication of a contract notice) is	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	
The frequency of awards based on price only (as different from the most economically advantageous awards) is ...	<input checked="" type="radio"/>		<input type="radio"/>	<input type="radio"/>

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:

The number of individual awards has risen significantly in recent years. There are several reasons for this

- Deadlines for complex tendering projects defined too tightly in Directive 2014/24/EU
- Excessive effort required to prepare tenders and no compensation for expenses incurred by bidders in preparing complex concepts
- Insufficient transparency in award criteria and evaluation standards
- Lack of neutrally formulated specifications

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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The objectives of the three public procurement directives are coherent with each other.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
EU public procurement legislation on defence and security procurement is coherent with the three public procurement directives.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
EU public procurement legislation on remedies is coherent with the three public procurement directives.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The directives led to a more consistent application of public procurement policy across EU countries .	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

* 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).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>		<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives are fit for purpose if there are major supply shortages (e.g. supply-chain disruptions during a health, energy or security crisis).	<input type="radio"/>		<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The directives are fit for purpose to ensure that security considerations are properly addressed by the contracting authorities.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

* 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:

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>
better value for money	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
faster	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>
more transparent and fair		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
more professional		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
subject to more competition		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
more environmentally friendly	<input type="radio"/>	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>
more socially responsible	<input type="radio"/>	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>
more supportive for innovation	<input type="radio"/>	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>
better in preventing corruption	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* 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	<input type="radio"/>		<input type="radio"/>	X	<input type="radio"/>	<input type="radio"/>
better value for money	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
faster	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>
more transparent and fair		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

more professional	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>	
subject to more competition	<input type="radio"/>		X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
more environmentally friendly	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>	<input type="radio"/>	
more socially responsible	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>	<input type="radio"/>	
more supportive for innovation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>	
better in preventing corruption	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>	

The questionnaire is difficult to answer. The questionnaire conflates into one question two distinct evaluative criteria. Specifically, asking respondents to judge whether aspects of the current directives are both "adequate" and "relevant" in the same question conflates two separate dimensions—relevance and adequacy—making it impossible to answer unless the respondent assesses both relevance and adequacy the same. This is by no means a given. Thus respondents cannot answer - and the receiver of the results will have no way of knowing what the response means. In many of the questions given in this section - we would have answered that the issue is highly relevant but not addressed adequately in the current directives. This is not an answer that it is possible to give.