

Modernising European Public Procurement

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EU Public Procurement Framework



**Utilities
Directive
2014/25/EU**

**Public Sector
Directive
2014/24/EU**

**Concessions
Directive
2014/23/EU**

**Defence
Directive
2009/81/EC**

Legal Principles Applicable

<i>EU Public Procurement Directives</i>	<i>EU Treaties</i>
<ul style="list-style-type: none">• Transparency• Accountability• Objectivity	<ul style="list-style-type: none">• Free Movement of goods• Right of establishment• Right to provide services• Non-discrimination• Equal treatment

Legal Doctrines

The doctrine of *objectivity*

- the test of *equivalence*

The doctrine of *effectiveness*

- the test of *functionality*
- the test of dependency

The doctrine of *procedural equality*

- The test of *procedural autonomy*

Objectives of the 2014 EU Procurement Reforms

- **Simplicity** (codification, modernisation and exhaustive harmonisation)
- **Strategic** (EU 2020 Growth Strategy, ESFI)
- **Access for SMEs** (dimensional / sub-dimensional)
- **Flexibility** (Innovation, Green, Sustainable, Socio-economic, SGEI)
- **Governance** (probity, professionalisation of procurers)

Strategic Procurement

- Available tools
- Pre Procurement Engagement
 - Market consultation and pre-commercial procurement
 - Joint and cross-border procurement
 - Division into lots / disaggregation
- Selection and Qualification
 - Financial and economic standing
 - Technical specifications, functional and performance-based specifications

- Award procedures
 - Competitive dialogue, negotiations, frameworks, Innovation Partnership
- Award criteria
 - BPQR and MEAT for environmental and social criteria and innovative characteristics
 - LCC
- Post procurement Engagement
 - Contract Performance
 - Social and environmental considerations

Barriers and Obstacles to Strategic Public Procurement

- Specifications
 - Standards (efficacy of CPV)
- Qualification
 - Economic standing of SMEs (risk ratio)
- Award criteria
 - Cost based criteria (lowest price)
 - MEAT and now BPQR
 - LCC (methodology)

The 2017 Soft Law Package

- Communication on Making Public Procurement work in and for Europe
 - The priorities for action
- Communication on voluntary ex-ante assessment of the procurement aspects for large infrastructure projects
 - Compliance
- Resolution on Professionalisation of Public Procurement
- Previous Guidance
 - *Strategic use of public procurement in promoting green, social and innovation policies (2015)*
 - *Supporting social responsibility in the economy through public procurement (2016)*
 - *Europe 2020, A strategy for smart, sustainable and inclusive growth, (2010)*

Critical assessment of EU procurement implementation initiatives

Increase of strategic public procurement

- Voluntary *ex-ante* assessment mechanism for large infrastructure projects;
- Updated guidance on green and social procurement and innovation procurement
- Cooperative and joint cross-border public procurement, including innovation by large buyers
- Exchange good practices regarding strategic procurement, including key sectors (construction, healthcare, IT)

Procurer Professionalisation

- European competence framework for public procurement with the essential skills and competences
- Network of National Innovation Procurement Centres

SME access to procurement markets

- align third-country legal practice with EU acquis
- access to justice for SME disputes in public procurement

Digital transformation of procurement

- Extend the scope of the e-Certis
- European Single Procurement Document
- e-Invoicing

- Price vs cost – conceptual foundation of strategic procurement
- Soft Law crucial in assisting effectiveness of acquis