



## PUBLIC PROCUREMENT CONTRACTS

Public authorities enter into contracts for works and services accounting for a trading volume of EUR 2.448 billion in the EU, making public procurement a major driver of economic growth, job creation, and innovation. The public procurement package adopted in 2014 adds EUR 2.88 billion annually to EU GDP. Furthermore, EU directives concerning public procurement have fostered an increase in total award values, which rose from under EUR 200 billion in 2009 to approximately EUR 525 billion in 2017.

### LEGAL BASIS

Articles 26, 34, 53(1), 56, 57, 62 and 114 of the [Treaty on the Functioning of the European Union](#) (TFEU).

### OBJECTIVES

Public procurement contracts are vital to Member States' economies, contributing over 16% of the EU's gross domestic product (GDP). Before European Community legislation, only 2% of such contracts were given to non-national firms. These contracts are crucial in sectors such as construction, energy, and telecommunications, where traditionally national suppliers were preferred. This preference hindered the single market, raising costs and limiting competitiveness in key industries.

Applying internal market principles ensures optimal use of economic resources and public funds. It makes it possible to purchase high-quality products and services at competitive prices. Preferring top-performing firms across Europe boosts European companies' competitiveness and upholds principles of transparency, equal treatment, and efficiency, minimising fraud and corruption risks.

### ACHIEVEMENTS

The European Community adopted legislation aimed at coordinating national rules, imposing obligations on the publication of calls for tender and the objective criteria used to examine tenders. Starting in the 1960s, several normative acts relating to public procurement were adopted, but later the Community decided to simplify and coordinate legislation in this field, and adopted four directives ([Directives 92/50/EEC](#), [93/36/EEC](#), [93/37/EEC](#) and [93/38/EEC](#)). Three of these directives merged into [Directive 2004/18/EC](#), concerning procedures for the award of public works contracts, public supply contracts and public service contracts; [Directive 2004/17/EC](#) coordinated the procurement procedures of entities operating in the water, energy, transportation



and postal services sectors. A few years later, [Directive 2009/81/EC](#) introduced specific rules for defence procurement, which aimed to facilitate access to the defence markets of other Member States.

## REFORM

In 2014, Parliament and the Council adopted a new public procurement package which includes [Directive 2014/24/EU](#) on public procurement (repealing Directive 2004/18/EC) and [Directive 2014/25/EU](#) on procurement by entities operating in the water, energy, transport and postal services sectors (repealing Directive 2004/17/EC). The public procurement package was completed by a new directive on concessions ([Directive 2014/23/EU](#)), which establishes a legal framework for the award of concessions<sup>[1]</sup>, ensuring that all EU economic actors have effective and non-discriminatory access to the EU market, and provides greater certainty on applicable legal provisions.

The external aspect of public procurement was also taken into account in the Commission's 2012 [proposal for a regulation](#) establishing rules on the access of third-country goods and services to the EU's internal market in public procurement and procedures supporting negotiations on access of EU goods and services to the public procurement markets of third countries. A deadlock in negotiations resulted in a new [proposal](#) by the Commission in 2016. The formal adoption procedure was concluded by the co-legislators in June 2022 and the [final act](#) was signed on 23 June 2022.

In April 2012, the Commission adopted a [strategy for e-procurement](#) with the aim of reaching full e-procurement by mid-2016. On 16 April 2014, Parliament and the Council adopted [Directive 2014/55/EU](#) on electronic invoicing in public procurement.

On 3 October 2017, the Commission published two communications: 'Making Public Procurement work in and for Europe' ([COM\(2017\)0572](#)) and 'Helping investment through a voluntary ex ante assessment of the procurement aspects for large infrastructure projects' ([COM\(2017\)0573](#)). With the aim of further improving European public procurement as part of the public procurement strategy package, it also published a [recommendation](#) entitled 'The professionalisation of public procurement – Building an architecture for the professionalisation of public procurement'.

## PUBLIC PROCUREMENT PROCEDURE

Procedures must adhere to EU law principles, including the free movement of goods, establishment, and service provision. Principles like equal treatment, non-discrimination, and transparency are essential, and competition, confidentiality, and efficiency must be upheld.

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[1]'Concessions' are contracts of pecuniary interest concluded by means of which one or more contracting authorities or contracting entities entrust the execution of works or the provision and management of services to one or more economic operators. Economic operators awarded a concession acquire the exclusive right to exploit the works or services that are the object of the contract, or they acquire that right together with payment.



## A. Types of procedure

Calls for tender align with various procedure types, based on a threshold system. The directives outline methods for calculating the estimated value of each public contract<sup>[2]</sup> and the associated procedures. In the 'open procedure', any interested operator can submit a tender. The 'restricted procedure' allows only invited candidates to tender. The 'competitive procedure with negotiation' allows any operator request participation, but only those invited following an assessment are able to tender. The 'competitive dialogue' is for situations where authorities<sup>[3]</sup> cannot define their needs; only invited candidates participate in the dialogue. Contracts are awarded based on the best price-to-quality ratio. The 'innovation partnership' procedure is for innovative solutions not yet on the market. The authority collaborates with one or several entities for research and development to negotiate a novel solution during tendering. In special cases, contracts can be awarded without prior publication.

## B. Criteria for the award of a contract

Contracting authorities are required to award public contracts based on the 'most economically advantageous tender' (MEAT) criterion, introduced in the public procurement rules reform. Instead of just the lowest price, MEAT emphasises best value for money by considering quality, environmental and social factors, life cycle costs, and innovation.

## C. Rules on publication and transparency

Procurement procedures must ensure the required transparency at all stages. This is achieved in particular through the publication of the essential elements of procurement procedures, and by publishing information on candidates and tenderers, as well as through the provision of sufficient documentation on all steps of the procedure.

## D. Remedies

The [Remedies Directive \(2007/66/EC\)](#) ensures an effective review system for breaches of public procurement rules. It introduces the 'standstill' period, which, after a contract decision, gives bidders at least 10 days to review the decision before the contract is signed by the authorities. This allows potential challenges to the decision.

## E. Other aspects of public procurement

The new rules emphasise green procurement, considering environmental impacts and allowing eco-label references. They also highlight social inclusion and simplify service contracts. The rules aim to reduce bureaucracy, aid SMEs with the 'European single procurement document', and encourage dividing contracts into lots. E-procurement is prioritised, with specific e-procurement techniques outlined. The directives recognise EU Court of Justice decisions on in-house contract awards and reinforce regulations against conflicts of interest and corruption.

On 11 March 2020, the Commission published a [working document](#) on EU green public procurement criteria for data centres, server rooms and cloud services with the aim of

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[2]'Public contracts' are contracts of pecuniary interest concluded between one or more economic operators and one or more contracting authorities, and having as their object the execution of works, the supply of products or the provision of services.

[3]'Contracting authorities' are the state, regional or local authorities, bodies governed by public law, or associations formed by one or more such authorities, or one or more such bodies governed by public law.



ensuring that data centre equipment and services are procured in an environmentally friendly way in line with the EU's energy, climate change and resource efficiency objectives.

In response to the COVID-19 pandemic, the European Commission proposed the EU4Health Programme ([COM\(2020\)0405](#)), aimed at significantly increasing the budget for public health procurement, including medicines, vaccines, and health data systems. This proposal led to the adoption of [Regulation \(EU\) 2021/522](#), effective from 1 January 2021 and enacted on 27 March 2021, establishing the programme. The Commission provided [new guidance for public buyers](#) for rapid procurement of essential equipment, initiated [five joint procurements](#) of protective equipment with Member States, and emphasised the digitalisation of public procurement through national e-procurement platforms, as part of its broader post-COVID-19 recovery strategy ([COM\(2020\)0456](#)).

## ROLE OF THE EUROPEAN PARLIAMENT

Before its adoption of the public procurement package on 15 January 2014, Parliament had adopted several resolutions, including those of 18 May 2010 on '[New Developments in Public Procurement](#)', of 12 May 2011 on '[Equal Access to Public Sector Markets in the EU and in Third Countries](#)', and of 25 October 2011 on '[Modernisation of Public Procurement](#)'. In these resolutions, Parliament called for simplification measures and greater legal certainty, as well as for value and sustainability to be considered when awarding contracts.

As part of efforts to further improve European public procurement, Parliament adopted a [resolution on the public procurement strategy package](#) on 4 October 2018, calling for improved uptake of digital technologies in public procurement in the EU, facilitation measures for SMEs and social economy enterprises, improved access of EU suppliers to third-country public procurement markets, and professionalisation of buyers<sup>[4]</sup>. In November 2020, a [study](#)<sup>[5]</sup> found that disparities in professionalism in public procurement among Member States were a significant cause of uneven access to public procurement.

Research has estimated that Parliament's recent legislative activity could generate up to EUR 2.88 billion annually. At the same time, EU directives on public procurement led to an increase in total award values from less than EUR 200 billion to approximately EUR 525 billion<sup>[6]</sup>.

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[4]Relevant research includes Bovis, C., [Contribution to Growth: European Public Procurement – Delivering improved rights for European citizens and businesses](#), Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019.

[5]Dahlberg, E. et al., [Legal obstacles in Member States to Single Market rules](#), Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

[6]Relevant research includes Becker, J. et al., [Contribution to Growth: European Public Procurement – Delivering Economic Benefits for Citizens and Businesses](#), Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019.



In April 2020, a briefing was published on [‘The EU’s Public Procurement Framework’](#)<sup>[7]</sup>, which examines how this framework contributes to the achievement of the objectives in the Paris Agreement and the Circular Economy Strategy. This research paper was requested by the Committee on the Internal Market and Consumer Protection (IMCO) for its own-initiative (INI) report entitled [‘Towards a more sustainable single market for business and consumers’](#), adopted by Parliament on 25 November 2020.

On 22 February 2021, a [study](#)<sup>[8]</sup> on COVID-19’s impact on the internal market was shared with the IMCO Committee. It suggests policy approaches for future crises, including reserved funds for vaccine development and EU-level rule coordination. The study highlighted that Member States swiftly saw the importance of coordinated efforts in procuring medical and personal protective equipment due to the intensity of the crisis.

On 1 December 2021, the IMCO Committee held a [public hearing](#) on sustainable public procurement with the Committee on Environment, Public Health and Food Safety (ENVI). The objective was to see how public purchasing could support the European Green Deal’s goals. At the hearing, experts from European universities, businesses, Member State ministries, and NGOs discussed optimising green procurement, promoting its use by the parties concerned, enhancing their access, and improving information dissemination on sustainable procurement.

On 9 June 2022, the Parliament approved a [resolution](#) on the Commission’s [International Procurement Instrument](#) (IPI) [proposal](#), with the final act signed on 23 June 2022. The IPI seeks to promote the global opening of procurement markets. In May 2022, a [study](#)<sup>[9]</sup> for the IMCO Committee entitled ‘The Digital Single Market and the digitalisation of the public sector’ was released, exploring the potential of an EU GovTech platform to modernise the public sector.

On defence procurement, in September 2023 Parliament adopted a text concerning [COM\(2022\)0349](#), which resolved to substantially boost defence spending, promote collaborative investments in joint projects, enhance joint defence capabilities procurement, invest in diverse mission capabilities, harness synergies, spur innovation, and fortify the European defence industry, with an emphasis on supporting SMEs.

For more information on this topic, please see the [Committee on Internal Market and Consumer Protection](#) website.

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[7]Núñez Ferrer, J., The EU’s Public Procurement Framework, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

[8]Marcus, J. S. et al., The Impact of COVID-19 on the Internal Market, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021.

[9]Hoekstra, M. et al., The Digital Single Market and the digitalisation of the public sector, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2022.

