



Ministry of Finance

EUROPEAN COMMISSION  
Directorate-General for Internal  
Market, Industry, Entrepreneurship,  
and SMEs  
Competitiveness Coordination  
D.2 - Public Procurement

## Positions by the Government of Sweden on the upcoming revision of the Public Procurement Directives

Sweden has advocated for a bold reform that would mark a turning point for European public procurement. The review should have as one of its primary goals to ensure that the framework continues to **improve the functioning of the Single Market** and businesses' opportunities to participate in cross-border procurements. We urge the Commission to focus on procedural rules, where the potential for **simplification** is substantial. In our view, less detailed and less comprehensive procedural legislation could help shift the mindset around public procurement, encouraging competition and thereby increase value for money, including contributing to other policy objectives where relevant.

The alarming reports of weak competition in public procurement must not be overlooked. The complexity of the procurement acquis – which moreover continues to increase as a result of the development of sector specific legislation – further strengthens the case for reducing both the number of rules and the level of detail in the public procurement directives. The way forward is to **reduce unnecessarily detailed provisions**, move towards a more principle-based legislation, and to remove constraints that create administrative burden and hinder effective competition, while ensuring the functioning of the Single Market. Such simplification should acknowledge that procurement provisions introduced in the sectoral legislation have been adopted or proposed in the light of objectives other than cost-effectiveness and efficiency in procurement procedures.

In many cases, the WTO Agreement on Government Procurement should serve as a guide. Examples include:

- Removing current restrictions on the scope for using dynamic purchasing systems and clarifying that framework agreements may be procured through such systems, thereby improving the accessibility of this tool.
- Removing the obligation to set a maximum volume and introducing flexibility regarding the duration of framework agreements.
- Granting contracting authorities and entities the discretion to determine which means of proof of selection criteria that are acceptable, without other limitations than the general principles for public procurement.
- Clarifying that contracting authorities and entities may always allow economic operators to supplement their requests to participate or their tenders with not only historical facts and the necessary adjustments to meet administrative requirements, but also regarding other issues as long as the principles of transparency, proportionality and equal treatment are upheld.
- Allowing a review procedure and early termination of a contract due to irregularities on the part of the economic operators as a ground for direct award, provided the contract duration is limited to what is strictly necessary.
- Ensuring that the rules on contract modification are workable in practice, particularly for long term contracts, ICT contracts and works contracts. The key criteria should be that modifications do not alter the overall nature of the contract and the economic balance at large between the parties, compared to the time for awarding the contract. The principle of proportionality is also central.

In our dialogues with the smallest local contracting authorities, they emphasise that additional procedural requirements would increase their administrative burden. Against this backdrop, we urge the Commission to **avoid introducing new procedural constructs** to the greatest extent possible. For example, instead of creating a new procedure allowing for broader use of negotiations, a better approach would be to retain the existing basic procedures (open, selective and limited/direct award) while allowing negotiations generally, regardless of whether the procedure is single-stage or multi-stage. In addition, the scope of the legislation should not be expanded to regulate pre or post procurement phases. The rules should continue to govern only the procurement procedure itself. Moreover, transforming the directives into a regulation would force practitioners to apply an entirely new legal framework, creating unnecessary disruption.

Highly **detailed provisions** or templates governing the practical handling of procedures risk causing more harm than anticipated, the ESPD being one example of this. We therefore urge the Commission not to regulate the choice of award criteria, division into lots and the structure of procurement documents or other templates. It is essential that the discretion of contracting authorities and entities is safeguarded. This also entails that the legislation should facilitate environmental and social considerations, as well as the procurement of innovation, while leaving such strategic decisions to the discretion of contracting authorities and entities, in accordance with relevant provisions in sectoral legislation. We would also like to underline the importance of access to – and the easy use of – voluntary international or European standards, as these can support the achievement of these objectives while keeping the administrative burden low.

Regarding award criteria, the new rules should clearly reflect the possibility of using **absolute monetary models** when applying the best price–quality ratio. This approach is more transparent and easier for economic operators to understand than specifying relative weightings. It also requires the contracting authority or entity to determine in advance how much additional value is worth, since the monetary value of each criterion must be stated in the tender documents. For example, including a desirable but not mandatory functionality would result in an absolute – rather than relative – price reduction during the evaluation. In this way, the value of the additional functionality is not determined in relation to the tender prices.

Data collection should be made less burdensome for contracting authorities and entities, and **data quality** must first be improved in order to fully realise the benefits of data-driven analysis. Data quality should therefore be the top priority when regulating data collection. A thorough assessment is needed to determine which data are genuinely necessary; the principle of “the more, the better” does not sufficiently respect the workload of practitioners. Data collection must be targeted, and manually entered data should be used only as a last resort – not only to reduce administrative burden but also to improve data quality. Currently, the focus is often on completing the form rather than ensuring the accuracy of the information. Any requirements on data collection must also be balanced against EU added value and security considerations, not only at the level of individual data points but also regarding the risks associated with aggregated and easily accessible data as well as the costs of implementing new systems.

We remain sceptical of introducing **preferential treatment for European production** within the procedural framework. If a European preference is to be used in public procurement, it must be proportionate, evidence-based and grounded in a clear understanding of their consequences.

It should however be clarified that Member States' ability to take measures to protect **national security** is not restricted by the procurement rules. A general clarification of this principle is preferable to explicit provisions – such as specific exclusion grounds – since such provisions risk giving contracting authorities and entities the impression that their discretion is more limited than what follows from primary law. Measures to address legitimate security concerns, including but not limited to national security, should always be permissible as long as the general principles for public procurement are respected.

The new rules should also support and promote **security of supply**, for example by allowing preparedness agreements that are exempt from procurement obligations or by enabling requirements for certain production capacities. Contracting authorities and entities should retain the discretion to determine the most appropriate solution, based on case-by-case assessments.

In recent years, awareness has grown regarding the presence of **criminal and rogue economic operators** in public procurement. Contracting authorities and entities must have the necessary tools to exclude such operators already during the procedure. Regarding exclusion grounds, we propose the following:

- Contracting authorities and entities should be able to assess natural persons with influence over the economic operator when applying both mandatory and voluntary exclusion grounds.
- Contracting authorities should have the possibility to apply additional exclusion grounds which are objective and proportionate but tailored to sector specific risks.
- The time limit for non-mandatory exclusion grounds should be extended.

Furthermore, it should also be permissible to set a price threshold as a requirement to mitigate abnormally low tenders.

Finally, clarification is needed regarding which forms of cooperation between contracting authorities and **civil society organisations** that fall outside the scope of the procurement directives. It should also be clarified that the legislation does not apply to service contracts inseparable from contracts that are excluded from the legislation, such as the **rental of immovable property**. We also welcome clarification on when contracting authorities and entities must procure works necessary to adapt a rented building.

Apart from improvements in the procedural legislation, there is a need for support in the form of practical tools, information and exchange of experience when it comes to **sectoral legislation** that includes public procurement provisions. The purpose is both to raise awareness of the sector specific rules, and to facilitate the practical application, where exchange of experience can be the most effective support. Another important issue for the provisions to have an effect is the need for coordination and support regarding verification and follow-up of the requirements.

In **summary**, we believe that the new legislation should:

- Focus on simplifying the procedural rules.
- Reduce the number of rules and the level of detail.
- Increase flexibility and discretion for contracting authorities and entities, subsidiarity should be the guiding principle.
- Make a complete overhaul of data collection.
- Not introduce horizontal obligations on European preference in the procedural legislation.
- Clarify the right to take measures to protect national security and other security aspects.
- Enable considerations regarding security of supply.
- Give the contracting authorities and entities better tools to exclude rogue and criminal economic operators.
- Clarify the scope for cooperation with civil society.
- Increase the legal certainty regarding the rental exclusion.