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**COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE EVALUATION**

of the Public Procurement Directives

Staff Working Document

**Evaluation of Directive 2014/23/EU on Concessions, Directive 2014/24/EU on Public
Procurement and Directive 2014/25/EU on Utilities**

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Public authorities in the EU spend around 15% of GDP a year on public procurement, encompassing key sectors such as energy, transport and the provision of healthcare and education services. EU rules on the procurement of goods, services and works apply to as much as a quarter of this expenditure, with an average annual value of EUR 616 billion, three times the annual budget of the EU. Hence, these rules are crucial for ensuring that public funds are invested efficiently to achieve policy objectives and serve European citizens, while also preventing corruption and anti-competitive practices.

This is why European Commission President von der Leyen announced a revision of the EU public procurement rules, emphasising the strategic importance of public procurement and announcing the introduction of Made in Europe criteria for certain strategic sectors. Executive Vice-President Séjourné has underlined the enormous potential of public procurement as part of the European investment strategy to boost the EU's competitiveness, resilience and economic security.

PURPOSE AND METHODOLOGY

This evaluation aims to assess the effects between 2016 and 2024 of the 2014 Directives on public procurement¹. For certain elements, the time frame is extended to capture longer-term phenomena for comparative purposes or shortened when constrained by data limitations.

The quantitative analysis of the evaluation is based on TED data, which primarily covers public contracts above the European thresholds, combined with several national procurement databases (depending on accessibility) and other third parties' data (e.g. corporate ownership data to complement the estimate of SME participation in public procurement). Furthermore, the Commission contracted a series of studies in support of this evaluation. Stakeholders' feedback was collected through an Open Public Consultation (OPC), contributions in reply to a call for evidence and targeted consultations and surveys (e.g. a survey on the eProcurement infrastructure addressed to Member States).

The robustness of the findings presented in this evaluation is considered satisfactory, while certain limitations are acknowledged and discussed in the evaluation.

EFFECTIVENESS

Scope

The Directives aimed at providing increased legal certainty and clarity for contracting authorities and economic operators with regard to the actors and subject matters covered by EU public procurement rules. Findings from the evaluation conclude that this aim was not achieved.

Regarding actors covered, the Directives codified existing case-law and provided new streamlined definitions of contracting authorities and entities. Despite these efforts, contracting authorities and stakeholders report frequent difficulties in interpreting new provisions pertaining to contracts between entities within the public sector, exclusion grounds, reliance on the capacities of other entities and abnormally low tenders, as well as difficulties in determining

¹ The evaluation covers Directive 2014/24/EU on public procurement ["Classical"]; Directive 2014/23/EU on the award of concession contracts ["Concessions"]; and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport, and postal services sectors ["Utilities"], hereafter referred to as a whole as "the Directives" or "the 2014 Directives".

the applicable legal instrument and interpreting key definitions such as “public contract”, “central government authority”, and “body governed by public law”. A lack of clarity also emerged concerning the access of economic operators, goods and services from third countries without secured access to EU public procurement market.

On the subject matter, the interaction between Classical, Utilities and Concessions created interpretation challenges. For utilities, the clarification of the opt-out system has worked as intended, although there is still a margin for further clarification. As for concessions, the introduction of a new legal instrument has increased legal certainty, although selected definitions have caused a significant number of case-law on the matter.

Procedures

The 2014 Directives aimed to make public procurement procedures simpler and more flexible, thereby reducing the administrative burden associated with conducting procedures above the EU thresholds. However, the 2014 Directives only partially achieved these objectives.

Flexibility of procedures was translated into the possibility for contracting authorities to choose among six procedures and two procurement techniques to adapt to their different purchasing needs, while ensuring a transparent system and a competitive procurement market. However, the possibility to choose did not translate into more flexibility in practice as little use was made of several of the procedures introduced. The open procedures have been used in the majority of procurement processes: their use increased from 73% before the adoption of the Directives (2006–2010) to 82% in 2017–2024, primarily at the expense of restricted procedures, which fell from 11% to 2% over the same period, mainly in the utilities sector. The use of negotiated procedures without publication decreased from 7% (2006-2010) to around 5% (2017-2024), while the use of framework agreements and dynamic purchasing systems has increased. Stakeholders often highlight that the system still does not allow the possibility to use negotiation outside limited circumstances, or to adapt to unforeseeable situations.

On simplification, the Directives sought to lower the administrative burden, facilitate faster procurement processes and clarify the possibilities to introduce modifications in procurement contracts. Overall, stakeholders stated that the simplification objectives of the 2014 reform have not been fully met: 54.1% (out of 364 replies) of respondents to the open public consultation stated that the Directives did not lead to simpler rules and 69% of local and regional authorities report increased complexity arising from gold-plating, i.e. the addition of regulatory requirements by Member States when transposing the EU Directives.

As regards the length of procedures, the length of the preparatory stage (affected by obligations concerning documents and references) and the evaluation stage increased, with the average time spent between the deadline for the submission of offers until the award – excluding potential litigation – rising from an average of 58 days (2006-2010) to 62 (2017-2024).

Concerning digital public procurement, the results are mixed. The introduction of digital procurement tools is viewed positively by many stakeholders, with 42% of respondents to the open public consultation believing it reduces burden and 38% believing it is faster. However, some of the tools introduced, in particular the European Single Procurement Document (ESPD), did not meet their intended aims. Although system integration is progressing, it is uneven with only 18 Member States having integrated digital procurement with other systems, which often forces economic operators to have to resubmit documentation requested through the procurement process, causing additional administrative burden.

Market access

The 2014 Directives have been partially effective in maintaining competition in EU public procurement markets. The Directives aimed to facilitate unhindered cross-border participation by firms from other countries, to ensure fair and open competition and to establish a level playing field for all economic operators, including SMEs.

In terms of competition, since the entry into application of the Directives, the number of contract notices published on TED increased by nearly 70%, while the real value of above the EU threshold procurements more than doubled, suggesting improved accessibility to procurement opportunities. Concentration indicators also suggest that, compared to other markets, the EU-27 and most large contracting authorities have a diverse supplier base. The average number of bids dropped from 5.4 in 2006-2010 to 3.4 in 2017-2024. However, the number of bids received increases with the value of the call for tender, with contracts worth more than EUR 20 million, which represent 62.1% of the total procurement value, attracting an average of 9.2 bids. The proportion of single-bidder procedures increased, whereas the use of direct awards remained stable, with a decrease of 0.4%, resulting in an EU average of 3.44%.

The 2014 Directives and supportive measures (e.g. guidance, helpdesks) effectively improved access of SMEs to procurement markets, with SMEs winning 71% of contracts published in TED in 2017–2024 (and 55% in value terms), compared to 64% prior to the 2014 reform (47% in value terms). Given that SMEs account for 49% of EU company turnover, they generally perform well, particularly for low-value contracts and contracts divided into lots.

Finally, regarding cross-border participation, the evaluation presents a mixed picture. Whereas only about 4% of the total awarded value and 2% of the number of awards were made directly to firms established in other EU Member States or third countries (with significant variations between Member States), indirect cross-border procurement accounts for around 20% of overall procurement (of which 80% is intra-EU procurement and 20% is extra-EU procurement). This suggests a deeper degree of cross-border integration, reflecting integrated value chains and corporate structures. Concerns remain regarding the significant participation by non-EU firms especially in some strategic sectors, at times without EU companies enjoying the same access to procurement markets in third countries.

Strategic Objectives

The 2014 public procurement reform sought to encourage the uptake of green, innovation and social aspects in public procurement, supporting broader EU policy goals. In this regard, the evaluation shows mixed results.

While the share of awards based on most economically advantageous tender decreased from 70% in 2006-2010 to 63% in 2017-2024, this decrease can be attributed to changes in the composition of tenders rather than actual changes in the use of award criteria. With this in mind, the use of non-price criteria has remained relatively stable over the years and is beginning to increase after reaching a low point in 2017, with higher-value contracts more likely to include non-price criteria.

In the OPC, while public authorities tended to believe that the directives encouraged green (56%) and socially responsible (55%) procurement, as well as innovation (45%), economic operators were more sceptical. Only a third recognised increased efforts in environmental standards, and even fewer saw any impact on innovation.

The uptake of green public procurement by contracting authorities varies across Member States with an average of 25% of their contracts containing green procurement criteria reported by 14 Member States. The adoption of socially responsible public procurement is difficult to evaluate, but from the available evidence, is gaining ground. The uptake of public procurement of innovation remains very low across Member States.

The 2014 Directives marked a step forward in promoting green, social and innovation procurement and public procurement legislation has become a tool to pursue strategic policy objectives. Nevertheless, many stakeholders express concern about a lack of coherence and difficulties in applying an increasing number of procurement provisions aimed at promoting strategic policy objectives and contained in sector-specific legislative acts.

Governance

The extent to which the 2014 Directives improved transparency, prevented corruption and promoted the professionalisation of public buyers remains uneven and difficult to measure in the absence of reliable and comparable data.

The 2014 Directives effectively increased the transparency of procurement procedures by almost doubling the number of tenders published on TED and more countries providing direct links to procurement documents. However, data gaps and concerns over the quality of procurement data persist. Despite regulatory efforts, the lack of publication of key information such as award criteria, contract duration, and price weighting has increased in many Member States. The lack of quality procurement data compromises the integrity of procedures and automated controls, despite the key function of complete and accurate data in the fight against corruption. It also weakens the orientation of procurements to support policy objectives and as an instrument of a strategic public investment agenda. Electronic procurement tools have significant and yet to be exploited potential to further enhance transparency and data quality.

While the Directives do not include legal measures affecting the professionalisation of contracting authorities, the Commission and Member States have taken numerous measures to this effect over the evaluation period. Yet, challenges persist, together with skills and competency gaps. Limited competency models and certification frameworks, insufficient training opportunities in advanced procurement topics, low attractiveness of the profession, along with the difficulty in retaining skilled procurement professionals are recurrent themes in many Member States. The increasing complexity of procurement, linked to the alignment with broader strategic policy goals and geopolitical and technological challenges, has only reinforced the need for a highly skilled procurement workforce and administrative capacity.

EFFICIENCY

The efficiency of public procurement procedures is determined on the basis of direct and indirect costs and benefits. Direct compliance costs showed mixed results. While for economic operators the average number of person-days spent on each tender fell from 16 (2008-2010) to 11 (2019-2024), for contracting authorities, the decrease was more moderate, falling from 22 (2008-2010) to 20 (2019-2024) only. Among the most burdensome phases of the procedure, contracting authorities refer to the pre-award phase and economic operators the pre-proposal phase.

Indirect effects, both positive and negative, are more difficult to measure. Indirect costs mainly arise from missed opportunities due to complex sectoral rules, restrictive requirements,

language barriers and weak pre-commercial incentives, which can deter bidders and reduce supplier diversity. Indirect benefits include environmental sustainability, innovative and socially inclusive practices, improved public services and SME participation.

The evaluation provided new information on transaction costs, with the average cost of the procedure estimated at 1% of the contract value. This represents an increase during the period analysed, from around EUR 34,600 (2008–2010, in constant prices) to around EUR 43,200 (2019–2024). In terms of savings, each additional bid results in an average reduction of 2.5% in the contract price. Furthermore, increased competition reduces the risk of an overvalued winning bid. This indicates that, despite the transaction costs involved, the overall efficiency of the system is positive in terms of direct effects. From a broader perspective, the evaluation suggests that overall, direct and indirect costs for contracting authorities and businesses are compensated by direct as well as wider societal benefits generated by the Directives.

COHERENCE

The 2014 Directives aimed to achieve a number of different interrelated and at times complex objectives, while ensuring a coherent legal framework. The evaluation showed that while coherence was initially improved, the introduction of procurement provisions in other EU regulatory acts caused legal coherence concerns.

The evaluation shows that the 2014 Directives are coherent among themselves and no significant incoherence between the main objectives of the Directives was found (internal coherence). However, legal uncertainty arises from the fact that the enforcement of environmental, social and labour law obligations is left to the discretion of Member States, which leads to variations in their application.

As regards the coherence of the 2014 Directives with procurement provisions included in other EU legislation (external coherence), the rapid increase of the latter in sectoral legal acts ranging from energy to digital and environmental regulation has fragmented the legal framework and led to inconsistencies in terminology, scope and reporting obligations. Contracting authorities and stakeholders warn of the increasing complexity and incoherence that the proliferation of overlapping legal frameworks creates and the growing difficulties in applying them in practice.

RELEVANCE

The evaluation confirms that the 2014 Directives and the objectives they aimed to achieve remain highly relevant today, and in some cases even more so than in 2014. In particular, the need to simplify and modernise public procurement is even more important today, given Europe's competitiveness challenges and high overall bureaucratic burden. The procurement of sustainable works, products and services remains urgent given accelerated climate change and wider environmental challenges. In the current geopolitical context, the 2014 objective of fostering an integrated internal market is more important than ever for securing Europe's strategic autonomy and economic security.

CONCLUSIONS AND LESSONS LEARNT

The 2014 public procurement Directives aimed to ensure fair competition and deliver best value for public money while optimising societal outcomes and aid the prevention of corruption. These objectives have partially been met.

Despite attempts to simplify procurement procedures and make their use more flexible, procedures are perceived as too complex and rigid for contracting authorities to achieve their public investment objectives effectively. The interaction between public procurement provisions in sectoral legislation and the 2014 Directives has created regulatory incoherences that further complicate public procurement.

The 2014 reform transformed public procurement into a strategic policy tool for the pursuit of environmental, innovative and social objectives, but the use of procurement procedures towards these objectives remains uneven across Member States. New priorities such as economic security and strategic autonomy have emerged as market access inequality persists and are accentuated by recent geopolitical developments.

Despite improvements in transparency, data gaps and quality issues at both EU and national level hamper effective governance, strategic decision-making and the prevention of corruption. The increasing complexity of public procurement requires highly skilled procurement authorities, yet investments in professionalisation and capacity building, while beneficial, have proven too limited to date.

These challenges demonstrate that while initially defined policy objectives have been partially met, the current public procurement framework lacks the agility, coherence and strategic focus needed to respond effectively to current and emerging challenges.