



Unlocking the full potential of the European Public Procurement Market

This paper outlines existing barriers in the EU's public procurement market, in particular related to the accessibility and openness of national public procurement markets.

CONTEXT

Accounting for about 14% of the EU GDP, public procurement is an important economic lever for growth and investment. At a time of strained public finances, a transparent, open and competitive system of public procurement in the Single Market can not only streamline public finances and raise investment opportunities for business, but also provide high quality goods, works and services for citizens.

However, the European public procurement market still offers untapped potential to achieve economic growth. Companies continue experiencing difficulties when competing for public tenders, which limits the benefits of the Single Market for business and citizens and results in less efficient spending of public money.

LEGAL FRAMEWORK

The EU legal framework on public procurement¹ sets out minimum harmonised public procurement rules, aiming to establish a level playing field for businesses across the EU and promote the free movement of goods and services, while at the same offering flexibility to contracting authorities. Rather than establishing a *common* regulatory regime, the 2014 Public Procurement Package permits Member States to maintain or adopt substantive and procedural rules at national level and covers only contracts affecting cross-border trade². The Directives aim to increase access to procurement markets, improve transparency and equal treatment, and promote digitalisation.

In practice, however, companies continue facing barriers when participating in public tenders. Poor enforcement of public procurement rules at national level, ineffective administration, and practices narrowing cross-border procurement opportunities and favouring national suppliers are prevailing in the EU's public procurement market, limiting the benefits of the Single Market for business and delivering less advantageous solutions for citizens.

¹ Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sector, Directive 2014/23/EU on the award of concession contracts

² Tenders falling within the scope of the Directives are those whose monetary value exceeds a certain threshold, and which are presumed to be of cross-border interest. National rules apply for tenders of lower value.



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EXAMPLE

In some Member States, such as in Belgium, tendering processes for construction contracts are based on a classification system for suppliers and contractors. To be able to compete in a public tender, a construction company must inform itself about the functioning of the system and then qualify for a certain class. Information about the classification and required steps to qualify are however difficult to find or only available in the local language. Thus, not only divergences in the functioning of national tendering systems, but also the lack of information about the structure of a national procurement market, projects available or complain systems impede the access to public procurement, making it difficult for companies from other Member States to participate in a tendering process.

In the healthcare sector, suppliers often cooperate with contracting authorities to deliver healthcare solutions and services. However, companies who offer such services across the Single Market are often confronted with difficulties when competing with domestic companies in public tenders due to contracting authorities' usage of overly prescriptive qualification tender requirements, thereby favouring national or regional suppliers. For example, healthcare service suppliers must in some Member States comply with specifications requiring the operational presence of trained staff, inventory and infrastructure in the market of interest or submission of regional or local certifications as a prerequisite to compete in tenders. Such prohibited discriminatory conditions may block new suppliers from entering markets and participating in public tenders, thus failing to respect the principles of market openness and non-discrimination, and limiting the potential of delivering innovative goods, works and services for citizens.

Moreover, under the existing regulatory framework, competent authorities may require a specific label either to draw up technical specifications and award criteria, or as a means of proof of compliance. It is often experienced that labels used in public procurement procedures conflict with one another, making it difficult for contracting authorities to compare labels and for suppliers to comply with specifications of the tender, resulting in uncertainty and increased bureaucracy.

SMEs in particular face another obstacle when attempting to participate in public procurement. In some Member States, for example in Germany, the Netherlands and Austria, national contracting authorities only divide a limited number of public contracts into lots, which may be awarded and performed by different economic operators, and instead predominantly offer single contracts.³ This approach makes it easier for large companies to make an offer, discouraging SMEs to bid for public contracts and restricting new entrants to the market.

HOW TO ACHIEVE BETTER RESULTS

To fully unlock the potential of the EU's public procurement market and remove barriers for companies participating in cross-border public tenders, the focus must be on safeguarding the full, correct and consistent implementation of the existing Directives across the Single Market, rather than revising the current legal framework. As poor enforcement and incorrect or ineffective application of the rules at national level, often

³ See e.g. European Commission (2023), [Single Market Scoreboard](#), Access to public procurement



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reinforced by a lack of training amongst contracting authorities, are among the causes of barriers to cross-border trade, a revision of the rules would do little to remove these obstacles.

Instead, the focus must be on the following priorities:

- **Harmonisation of public procurement processes** at national level is needed to improve access to Member States' public procurement markets and enable companies from other Member States to participate in tenders. Therefore, it is necessary to strengthen cooperation and increase the exchange of best practices between Member States, for example through cooperation of national competence centres, or the creation of a Public Procurement Portal providing access to information on national procurement markets, publication platforms, complaint systems and availability of projects.
- **Qualification and performance criteria and the use of labels should not be overly prescriptive**, especially where it would result in impeding participation opportunities for cross-border suppliers and narrowing the public procurement procedure to include only localised suppliers or restrict potential solutions.
- **Professionalisation of public buyers** is key. As public procurement concerns the area between the public and the private sector, it is essential that professionalisation should be organised in such a way that experts from the industry side are involved in the training for public purchasers to ensure the application of attainable and feasible requirements. Moreover, exchange of information and practices between Member States regarding recruitment, skills assessment and professional development of staff should be strengthened and promoted.
- **Compliance with the existing legal framework must be guaranteed.** Infringements of public procurement rules should be rigorously enforced in a national and EU context, in particular those relating to transparency and non-discrimination.

CONTACT INFORMATION

Jan Rempala, Adviser, Single Market Department, j.rempala@businessseurope.eu