



**Local & Regional
Europe**

Tailoring Public Procurement to local realities

Priorities by Local and Regional Governments

CEMR position paper on the revision of Directive 2014/24/EU on Public
Procurement

January 2025

Council of European Municipalities and Regions (CEMR)
Registered in the Register of Interest Representatives
Registration number: 81142561702-61

Key messages

1. Streamlining procedures, reducing red tape, and increasing flexibility must be at the core of the upcoming revision of the Public Procurement Directive. For LRGs and SMEs more simplification is essential to foster greater participation, enhance competition, and ensure value for money in public procurement processes.
2. Maintaining sustainability, social, and innovation criteria non-binding and voluntary. Mandatory inclusion of such standard risks undermining the primary objective of procurement: the efficient and responsible use of public funds. Flexibility must be preserved to allow LRGs to adapt procurement strategies to local realities while avoiding additional administrative burdens.
3. Raising procurement thresholds and broadening exemptions for public-public cooperation. These aspects are critical to addressing the unique challenges faced by LRGs, particularly smaller municipalities.

Public procurement is a vital part of the European Union's economic framework, representing 14% of the EU's GDP, as President Ursula von der Leyen highlighted in her Political Guidelines for the European Commission 2024-2029. Local and Regional Governments (LRGs) play a significant role in this area as they are the largest investors and contracting authorities in the EU, both in terms of numbers of contracts and contract volume. European public procurement provisions should therefore better reflect LRGs different realities, capacities and concerns.

For over 30 years, CEMR has been engaging with the EU institutions on reforms related to this Directive. As the European Commission embarks on the possible targeted revision of the Public Procurement Directive 2014/24/EU, the Council of European Municipalities and Regions provides evidence regarding the implementation practices of the current public procurement directive and recommendations on its possible revision.

For CEMR, the issues impacting public procurement stem from a lack of flexibility in the directive and an overwhelming administrative burden that discourages participation from both LRGs and potential bidders, particularly small and medium sized enterprises. This reluctance to participate reduces the number of bidders, ultimately stifling competition rather than fostering it. This also explains the drop in the participation of SMEs and the decreasing cross-border participation the European Court of Auditors has noticed in the last 10 years in its *Special Report on Public Procurement in the EU*.

A revision of the directive must, therefore, focus on providing more flexible and straightforward legislation. Local authorities and SMEs are willing to participate, but they lack the financial or technical resources to navigate complex legislation. Mario Draghi's report, *The Future of European Competitiveness*, mentions that excessive red tape is hampering innovation and competition generally. In this situation, public procurement is key in fostering both, but only if the revised directive supports a more flexible and enabling framework, avoiding the imposition of additional rules. At the same time, Draghi has also warned for unfair competition and the need to reinforce the European economy and safeguard our security and resilience.

The current directives' excessive complexity has led to higher administrative burdens and financial costs, with many LRGs forced to seek costly legal specialists and technical advice to navigate in the multiple provisions provided by different legislations and procurement processes. A reduction of the administrative burden would, therefore, have positive effects on contracting authorities as well as economic operators.

For example, the Commission should review which services should fall outside the directive's scope as such, and which should be subject to a light regime. It is impractical that services, such as snow removal on a small island with infrequent ferry connections, are subject to EU notices, as only local suppliers can effectively provide the service.

Therefore, CEMR calls the European Commission to recognise these realities and ensure that a potential revised directive support, rather than restrict, public procurement. By introducing more flexibility into the directive, the European Commission can encourage greater participation from LRGs and economic operators, thereby enhancing competition and fostering innovation.

PUBLIC PROCUREMENT AS A SIMPLE LEGISLATIVE FRAMEWORK

LRGs have long experience in public procurement and contributing to economic growth, and have also led in the delivery of sustainable, climate-friendly and social procurement for a long time on a voluntary basis.

CEMR fully supports simplifying the Public Procurement Directive. Public Procurement is a useful and necessary instrument, but it must be made simpler and more flexible for LRGs to use it efficiently. For example, according to a survey from CEMR's member KL – Local Government Denmark, from 2024, each Danish municipality used an average of 284 hours on processes related to a single EU regulated tendering process, reflecting the current legislation's complexity.

The EU has adopted in the past five years over 50 sectoral legal acts with public procurement obligations. This has led to a myriad of rules, complicating the public procurement regime with risks of coherence and compliance for contracting authorities and the economic operators.

However, CEMR emphasises that public procurement laws are not the right instrument to promote European products or achieving sustainability goals on a mandatory basis. Public procurement should not be a tool for resolving the specific challenges of various interest groups through the purchasing power of public entities. Its primary function must be the efficient and responsible use of public funds.

The current directive already provides public authorities with significant strategic procurement opportunities, particularly regarding climate, environmental, social and even innovation goals. While these options and considerations should remain available and facilitated, they must not overshadow the core purpose of public procurement: enabling public authorities to acquire works, supplies, and services effectively to meet public needs.

However, the success of procurement mainly depends on the readiness and capacity of the supply side to meet these objectives. Currently, there are significant gaps in supply in some sectors, which risk undermining the effectiveness of such policies. Therefore, the European Commission should, in the first instance, ensure that its approach addresses supply challenges by developing mature markets in all sectors rather than placing the burden on contracting authorities through increasing regulations.

Consequently, as an alternative, CEMR advocates for a better use of internal market and product related rules to set ambitious standards for sustainability goals, e.g. the Construction Products Regulation and the Ecodesign for Sustainable Products Regulation. Introducing more and more ambitious sustainability goals into the public procurement directive risks introducing more complexity and administrative burden. CEMR, therefore, calls for the Commission's purpose behind the revision of the directives, including simplifying the rules and increasing flexibility, to be upheld throughout the entire legislative process.

Moreover, flexibility in procurement processes is further hindered by the limited use of negotiation procedures. However, in many instances where its use is restricted, better outcomes could be achieved by engaging in dialogue with bidders. For these reasons, CEMR calls for a simplification of the current requirements and the allowance of the general use of negotiation procedures with prior notification.

RAISING THE THRESHOLDS

Most public contracts awarded by local authorities are above the thresholds and are, therefore, subject to European public procurement law. Currently, procurement thresholds are set at around EUR 5,000,000 (works) and EUR 220,000 (goods and services). These values are set far too low, as the rules for procurement above these thresholds are too restrictive and lead to administrative burdens.

Therefore, CEMR strongly advocates for an increase in the EU thresholds for works and supplies, services and professional services. In order to raise the thresholds in principle, CEMR urges the EU Commission to negotiate with the World Trade Organization on the Government Procurement Agreement (GPA) as referenced in Recital 18 and Art. 92 of Directive 2014/24/EU.

Also, it should be taken into notice that the threshold for social and other specific services, as mentioned in Art. 74 of Directive 2014/24/EU, has not been increased since 2014. Therefore, CEMR calls for their increase as well.

ENHANCING FLEXIBILITY IN AWARD CRITERIA

Under Art. 67 of the Directive 2014/24/EU, public authorities must award their contracts identifying the most economically advantageous tender (MEAT). This often leads to significant administrative burdens, particularly when all criteria in the technical specifications must be fully detailed in the tender documents.

The current rules on award criteria also lack flexibility, preventing contracting authorities from making rational and professional procurement decisions in line with economic operators in the private sector. Overall, the current procurement rules create concerns among contracting authorities about making mistakes, which may lead to costly legal actions being taken against them.

Moreover, rigid, one-size-fits-all requirements undermine local autonomy, and flexibility must be preserved to ensure that award criteria are relevant, practical, and easily applied at the local level. Mandatory use of strategic criteria, such as Environment, Social, and Governance (ESG) goals, further exacerbates these challenges, placing additional burdens on local administrations and taking away the necessary freedom for locally specific solutions.

To address these challenges, CEMR emphasises that strategic criteria must remain non-binding and be applied on a voluntary basis. Public procurers should have the discretion to identify quality aspects, suitability criteria, or award criteria within the contracts themselves on a case-by-case basis, reflecting the specific circumstances of each procurement. Preserving flexibility and respecting the principle of local self-government and autonomy are crucial for ensuring that award criteria remain relevant, practical, and easily applicable.

In practice, many LRGs are already guided by ESG criteria in their procurement decisions. To further support this, the European Commission should provide technical assistance rather than mandating their use through rigid legislative requirements.

Contracting authorities should have the discretion to decide whether to include quality aspects, suitability criteria, or award criteria within their contracts, fostering a more flexible and efficient procurement framework.

BETTER DEFINING PUBLIC-PUBLIC COOPERATION

The current directive's conditions are overly restrictive and not manageable for local authorities. Public-public cooperation has proven to be a practical and voluntary approach through which LRGs jointly deliver public services, which is crucial for ensuring effective and cost-saving service provision across regions and municipalities.

LRGs often collaborate through joint legal entities or inter-communal arrangements to deliver public services more efficiently and effectively. These structures have proven to work well, enabling municipalities to pool resources and expertise to address common challenges.

For smaller municipalities, the limited exemption in Article 12 of the Directive presents significant challenges. Their practical realities often include situations where public tenders fail to attract interest from private sector bidders or where specific services require a level of flexibility that current procurement rules do not provide. These scenarios demonstrate the need for a revised framework that accommodates the unique requirements of municipalities and recognises the value of inter-communal cooperation in such contexts.

CEMR firmly believes that LRGs must retain the freedom to choose how services are delivered, whether through formal legal entities or more flexible inter-communal contracts. This flexibility must be respected within the revised directive, ensuring alignment with Member States' constitutional structures and the principle of local self-government (Article 4, paragraph 2 TEU).

Therefore, CEMR strongly advocates for the current directive's concept of public-public cooperation to be revised, with the cooperation being recognised in the revised directive as any contracts or agreements concluded between two or more contracting authorities, with a broader exemption for public-public cooperation.

CLARIFYING THE CERTIFICATION PROCESS

Another significant barrier LRGs face in the public procurement process is the complex and confusing landscape of labels and certifications. Under the status quo, the absence of uniformity in labels makes it difficult for contracting authorities to apply their meaning and scope. CEMR calls on the Commission to initiate a process for reliable and unambiguous EU-wide recognised labels and certificates, especially in the area of environmental compatibility, in order to create legal certainty and relieve the burden on local contracting authorities. We also urge the European

Commission to provide greater support and clearer guidance to address this issue if a complete harmonisation is not envisaged in this area. This would empower LRGs to navigate and implement certifications and labels properly, ensuring their alignment with EU objectives while reducing administrative complexity.

Revising the Public Procurement Directive presents a pivotal opportunity to simplify the rules and enable public authorities to focus on the core objectives of procurement policy: ensuring value for money and the efficient use of public resources. Additionally, the exemption for public-public cooperation should be expanded to enable local authorities to collaborate with neighbouring local authorities more cost-effectively.

By adopting a more flexible approach, promoting dialogue between LRGs and economic operators, simplifying the certification process, and raising the thresholds, the European Commission can ensure that public procurement serves as a true engine of competition, prosperity, and public interest. CEMR stands ready to collaborate with the Commission to achieve these goals and to ensure that a revised directive reflects the needs and realities of LRGs across Europe. To this end, CEMR will propose specific legislative amendments based on the proposal of the Commission.



Contact

Hamza Bennis

Adviser – Employment, Digitalisation and Public Services

Square de Meeûs 1, 1000 Brussels

+ 32 470 88 33 42

hamza.bennis@ccre-cemr.org

About CEMR

The Council of European Municipalities and Regions is Europe's first and broadest association of Local and Regional Governments. We are unique, being the only organisation that encompasses 60 national associations of Local and Regional Governments spanning over 41 European countries. Through them, we bring together more than 110,000 governments across all tiers of governance – local, intermediate, and regional. Additionally, as the European section of the global organisation United Cities and Local Governments (UCLG), we champion European Local and Regional Governments on the world stage.

www.ccre-cemr.org