

Response to the public consultation of the European Commission on the revision of EU public procure- ment rules

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About the Association of Public Services and Enterprises Austria

We are committed to ensuring that essential public services remain accessible, affordable, and of high quality for everyone in Austria – today and in the future. Representing more than 120 companies, institutions, and organisations in the field of public services, VÖWG fosters cross-sector collaboration and knowledge exchange — especially in areas such as energy supply, public transport, water and wastewater management, waste disposal, economic and financial governance, housing, as well as health and social care. VÖWG supports its members with a wide range of services and advocates for the values and interests of the public sector at national and European levels.

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Introduction

VÖWG welcomes the opportunity to contribute to the European Commission’s consultation on the revision of EU public procurement rules. The revision of the procurement directives offers an important opportunity to strengthen practicability, efficiency, competition and legal certainty.

From VÖWG’s perspective, EU public procurement directives should primarily regulate the “how” of procurement (procedures and principles), rather than prescribing the “what” (policy objectives to be pursued through procurement in every case). Overloading the procurement directives with additional strategic objectives and overlapping sector-specific requirements increases complexity, discourages participation and, in practice, may undermine competition.

Experience from the implementation of the 2014 reform shows that simplification objectives have only been achieved to a limited extent. Procedures remain complex and resource-intensive. This affects contracting authorities/entities as well as economic operators: procedures take longer, legal risks increase, and participation declines—especially in specialised markets. In many cases, this results in low numbers of tenders submitted, including procedures with only a single bidder, which negatively affects value for money and the proper functioning of the internal market.

VÖWG therefore highlights the following reform priorities:

1. **Genuine simplification (“decluttering”) and reduction of administrative burden**, in particular with regard to evidence requirements, standard forms and reporting obligations.
2. **Strengthening competition in practice**, by lowering barriers to participation.
3. **Enabling strategic procurement objectives**, without introducing mandatory “overlay layers” applicable to all procedures.
4. **Embedding security and resilience (critical infrastructure) as core procurement considerations**; transparency must not create security risks.
5. **Digitalisation delivering measurable added value**, user-oriented, interoperable and fit for purpose.
6. **Strengthening the social economy**, ensuring continuity of essential social services and making relevant procurement rules (including reserved contracts) workable in practice.
7. **Concessions**: increasing consistency and legal clarity across Member States; safeguarding the specificities of essential services such as water supply.

1. Background and problem definition

Public procurement is a key tool to ensure the delivery of high-quality public services and infrastructure. At the same time, EU procurement rules aim to enable competition, transparency and fair market access. VÖWG fully supports these objectives.

However, implementation experience shows an increasing gap between regulatory complexity and practical feasibility. In many areas—particularly in utilities procurement and in the context of critical infrastructure—markets are already specialised or constrained. Additional administrative requirements or overly rigid standardisation may reduce efficiency and may in fact discourage participation.

Typical practical situation: For infrastructure or IT procurements involving high security requirements and complex interfaces, contracting entities increasingly experience very low bidder participation, as only a limited number of operators have the resources and willingness to submit fully compliant tenders under highly burdensome procedural requirements.

The revision should therefore focus on restoring the basic conditions for competition and legally sound implementation: simpler procedures, clearer rules, and practical digital tools.

2. Simplification and reduction of administrative burden (“decluttering”)

VÖWG advocates a procurement framework that is more strongly focused on core principles and less on excessive detail. Simplification is not an end in itself; it is a key lever for improving participation, shortening timeframes and reducing litigation risks.

2.1 Evidence requirements and administrative obligations

A major burden in practice stems from extensive evidence requirements, redundant documentation and the growing complexity of digital compliance processes. This creates significant cost for both contracting authorities/entities and bidders, without necessarily resulting in higher quality or increased competition.

VÖWG therefore suggests:

- consistently applying a “once only” logic to evidence requirements,
- ensuring requirements are proportionate and risk-based, and
- granting contracting authorities/entities clearer discretion to request only evidence that is truly necessary for a specific procedure.

2.2 Standard forms: ensuring procurement is legally compliant and practicable

Standardisation becomes problematic where standard forms do not properly allow contracting authorities/entities to reflect complex procurements. This may lead to incomplete or inconsistent information and can increase legal risks, delays and challenges.

VÖWG therefore recommends improving standard forms so that they:

- allow the lawful and comprehensive representation of complex procurements (e.g. systems, infrastructure, IT, critical infrastructure),
- avoid formal “forced entries” that distort the description of procurement needs, and
- actually improve data quality instead of creating new error sources.

2.3 Main cost driver: technical specifications / bill of quantities

From VÖWG’s perspective, the main costs for bidders do not primarily result from formal procedural steps, but from the substantive work required for preparing offers, in particular the completion of technical specifications and bills of quantities. This workload remains largely unchanged even if procedural simplification measures are introduced.

At the same time, the quality of technical specifications is a key prerequisite for sustainable, social and high-quality procurement. Producing robust and detailed specifications requires considerable resources and expertise. Against this background, purely procedural simplifications are unlikely to significantly reduce bidding costs as long as substantive requirements remain unchanged.

3. Strengthening competition and efficiency

Competition is at the heart of EU procurement rules. In practice, however, growing complexity and administrative burden may reduce competition—particularly in specialised markets. Reform measures should therefore be assessed based on whether they actually increase participation and supplier diversity.

3.1 Thresholds: ensure realism and regular adjustments

Procurement thresholds have not been sufficiently adjusted to economic developments for many years. As a result, routine procurements increasingly fall under the full EU procurement regime, even where no clear cross-border interest exists. In many regional or local procurement contexts (e.g. certain services and works), cross-border participation is practically limited due to local standards, logistics, workforce constraints, language and other local factors.

VÖWG therefore recommends a comprehensive review of thresholds, including the introduction of an automatic indexation mechanism / regular adjustments in order to reflect the principles of proportionality and subsidiarity. In light of long-term inflation trends, a significant upward adjustment may be justified. The EU should also consider advocating for corresponding adjustments at WTO level.

4. Flexibility of procedures and tools

Many procurements—especially in infrastructure and critical sectors—require flexibility. Procurement needs often cannot be determined in purely schematic terms and require dialogue with suppliers. Overly rigid procedures can lead to non-comparable offers or discourage participation altogether.

VÖWG therefore supports in particular:

- the possibility of single-stage negotiated procedures (allowing immediate submission of initial tenders),
- workable rules for dynamic purchasing systems, and
- modernisation of framework agreements, including clear mechanisms to address insolvency or replacement of partners and more practical call-off arrangements.

5. Legal certainty through clarifications and definitions

The revision should aim at reducing interpretation issues, as legal uncertainty in practice leads to delays, increased administrative burden and litigation.

Priority areas include:

- clearer criteria for distinguishing subsidies/grants vs. public contracts,
- a clear legal framework for open-house models,
- workable rules for procuring used goods,
- clarifications regarding in-house arrangements (including reverse/sister in-house), and
- adjustments regarding public-public cooperation in line with CJEU case-law.

5.1 Article 72: contract modifications

There is a clear need to improve the framework for contract modifications (Article 72 of Directive 2014/24/EU). In practice, unclear or overly restrictive rules can create legal risks even for objectively justified adaptations (e.g. price developments, supply shortages, technical changes or security requirements).

The objective should be to provide contracting authorities/entities with greater legal certainty and a workable level of flexibility for justified contract modifications, without automatically triggering new tender procedures. This is particularly important for infrastructure projects and procurements in critical sectors.

5.2 In-house and public-public cooperation (Article 12)

In-house procurement and public-public cooperation are essential tools for the efficient organisation of services of general interest and inter-municipal cooperation. VÖWG suggests clarifying and further developing the existing rules to facilitate lawful cooperation models and reduce legal uncertainty.

6. Concessions (Directive 2014/23/EU): harmonisation, clarity and safeguarding water supply

In the area of concessions, significant challenges remain due to diverging application and interpretation across the EU. Concessions are handled very differently among Member States, leading to legal uncertainty, reduced comparability and potential quality losses in procurement outcomes. Fragmentation also creates misaligned incentives and may increase the risk of circumvention practices and non-compliance.

VÖWG therefore supports further harmonisation and clearer guidance in the concessions framework to strengthen transparency, quality and legal certainty—without increasing complexity. Safeguarding the water supply exemption: Water supply is an essential service of general interest and requires long-term investment planning and operational continuity. The possibility to exclude water supply from general concession obligations should therefore be maintained under Directive 2014/23/EU. A short-term concession logic could otherwise negatively affect service quality and security of supply, and weaken established public governance and inter-municipal cooperation models.

7. Utilities contracting entities, critical infrastructure and resilience: security as a procurement principle

Utilities contracting entities provide essential infrastructure and services. Procurements often relate to critical components, networks or security-sensitive IT systems. Procurement therefore forms part of ensuring continuity of essential services and resilience.

7.1 Transparency must not create security risks

When improving transparency, information exchange and procedural time limits, simplification must not come at the expense of security requirements. In critical infrastructure procurements, excessive transparency may lead to the disclosure of sensitive information (e.g. network architecture, critical components, materials, security mechanisms). VÖWG therefore recommends clarifying that transparency requirements in the critical infrastructure context should be applied in a risk-based manner, ensuring that security and resilience considerations can prevail where necessary.

7.2 Standard contract templates are of limited use in critical infrastructure procurement

In critical infrastructure procurement, standard contract templates are only feasible to a limited extent. Tailored provisions are often required on security, service levels, resilience requirements and liability. Over-standardisation can lead to security and legal risks.

8. Social economy and social services

Social services, health and emergency services are core components of services of general interest. In light of demographic developments, strengthening the social economy is essential. Procurement rules should support continuity, planning certainty and quality.

8.1 Article 10(h): clarification of the exemption

Clarification of the exemption in Article 10(h) of Directive 2014/24/EU would be useful to ensure consistent implementation. Relevant CJEU case-law (including Falck) should be reflected, in particular regarding the concept of qualified patient transport. 8.2 Article 77: reserved contracts – making rules workable

Stable planning horizons are necessary in social, health and emergency services for staff retention, training, investment and quality assurance. The current limitation to a three-year contract term (Article 77(3)) and the exclusion rule relating to previous awards in the last three years (Article 77(2)(d)) are therefore problematic.

VÖWG recommends revisiting or removing these restrictions in order to strengthen long-term continuity and quality.

9. Avoiding overlaps: coherence of EU rules

An increasing number of sector-specific requirements and overlapping special rules contribute to complexity and can lead to inconsistent obligations. This makes implementation more difficult for contracting authorities/entities and can deter suppliers.

VÖWG supports an approach where procurement-related requirements are, as far as possible, regulated within the procurement directives themselves (including annexes), while product requirements are addressed in separate legal acts, ensuring coherence. Sector-specific flexibilities should be explicitly safeguarded. 10. “Made in Europe” / “Buy European” and strategic autonomy

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10.1 Non-mandatory approach and exemptions for critical sectors

A mandatory preference for European products/services may in certain sectors lead to procurement blockages or severely reduced competition. Exemptions and flexibility should therefore be ensured, particularly for critical infrastructure and services of general interest.

10.2 Practical implementation: certification instead of additional control burdens

In practice, third-country products often enter procurement processes through EU-based traders. Therefore, exclusion mechanisms based on customs definitions are difficult to operationalise.

At the same time, the burden of proving origin/value added must not result in additional verification and control obligations for contracting authorities/entities. VÖWG therefore recommends exploring practical implementation tools, such as an EU-wide recognised “Made in Europe” label with clear criteria and certification mechanisms that contracting authorities/entities can rely upon. A “Buy European” approach can only have realistic prospects of success if accompanied by parallel measures to strengthen Europe’s industrial base.

11. Environmental and quality standards: baseline approach rather than procurement complexity

Sustainability objectives can be achieved more efficiently through horizontal minimum standards and European standardisation than through increasingly complex case-by-case procurement obligations.

VÖWG therefore recommends:

- defining horizontal minimum standards in appropriate legal frameworks,
- avoiding procurement-specific overlays that create contradictory requirements, and
- systematically using standardisation to establish a European baseline (e.g. for construction materials).

11.1 MEAT and price as award criterion

In practice, strategic procurement discussions may imply that price should not be used as an award criterion. VÖWG recalls that the concept of the “most economically advantageous tender” explicitly includes the lowest price. Where high quality and sustainability standards are already defined as minimum requirements in the technical specifications, price can be the most transparent and proportionate award criterion.

Closing remarks

VÖWG supports a reform of EU procurement rules that strengthens competition and quality, accelerates procedures and increases legal certainty. It is essential that the procurement framework remains compatible with the practical needs of services of general interest and critical infrastructure, and that digitalisation is implemented as a practical efficiency tool.

Content Responsibility

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