



EU Public Procurement anno 2025 - Are the rules fit for purpose?

Key Conclusions¹

April 23-24, 2025 the [CPB-Project](#) (A Sapere Aude research project funded by the Independent Research Fund, Denmark) and [Centre for Climate Change Law and Governance](#) hosted the Conference "[EU Public Procurement anno 2025 - Are the rules fit for purpose?](#)". The aim of the Conference was to discuss relevant emerging issues in EU public procurement and how the rules should develop in the future – a topic that is highly relevant in these days where the European Commission's [Consultation](#) on evaluation on the EU public procurement rules just ended in March.

During the two-day Conference both practitioners, researchers, people from organisations representing relevant sectors and policy makers working with EU public procurement presented and discussed different topics of relevance for the ongoing evaluation of the EU procurement rules. Some of the presentations can be found on the [CPB-Project](#) website.

This paper aims to present some of the key elements, as observed by the authors that was raised during the Conference regarding different elements and wishes for modernising the EU public procurement rules.

During the two days, the conference was divided into different tracks where some specific issues was discussed in more detail. The (obvious) main findings at the Conference was that the question of fit for purpose cannot be answered without clear objectives and defining what the purpose is.

The discussions in the tracks were related to specific aspects of unclear provisions or lack of certainty based on for example a ruling from the CJEU. Other discussions focused on e.g. behavioural aspects or research and experiences with public procurement. Specific details are not addressed here. Nonetheless, it seems obvious that once the door is open to modernise the EU public procurement

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rules, there are many provisions that could benefit from a detailed examination to ensure the effectiveness of the rules and in order to create a simpler procurement process to the benefit of both contracting authorities and undertakings. Creating a common wish list that represent all speakers and the discussions during the Conference does not seem possible with the many different wishes and suggestions raised. Perhaps a new Conference should be set up once the EU Commissions proposal is published.

Introduction

The Commission opened the Conference setting the scene as to why there is a need to modernise the EU procurement rules and increase competition in the public procurement market with references to the [European Court of Auditors report](#), [Draghi report](#), [Letta report](#) and the [Council Conclusions from May 2024](#). The Commission presented what they are currently evaluating and how the evaluation is taking place. The presentation focused on the paradoxes of different objectives. Simplification was a key word in the presentation as the current legal framework with the increasing amount of sectoral legislation has complicated the EU procurement rules and procedures.

A line of open questions was raised including:

- What are the main regulatory and procedural barriers faced by contracting authorities and economic operators?
- Which procedural rules need to be simplified?
- What is considered to be excessive administrative burden resulting from EU public procurement rules?
- How to streamline public procurement procedures?
- How to provide more flexibility to amend tender documents and contracts? How to reduce documentation requirements?
- How can digitalisation contribute to simplify public procurement procedures?

At the moment there is no clear plan for the process and time line for the modernisation of the procurement rules, but as mentioned in the [Clean industrial deal](#): *"The Commission will make a proposal to revise the Public Procurement Framework in 2026. This will allow for sustainability, resilience and European preference criteria in EU public procurement for strategic sectors."*

The Commission's presentation raised many questions from the audience and in the following panel debate various issues regarding how to simplify and create additional flexibility was discussed.

Panel debate: The EU procurement rules – what should be modernised?

Following the opening from the Commission, a panel continued the discussions on the need for modernisation of the EU procurement rules from various perspectives including perspectives from the industry and Member States. In addition, some perspectives on the GPA and its relevance for the EU procurement rules was also touch upon.

The debate including some of the following questions and perspectives:

- What are the aims for the revision?
- What objectives should be achieved?
- How many Procurement Directives do we need?
- Could the classic directive be deleted and a revision take the starting point with the rules as stated in the Utilities Directive.
- Could it be a Regulation? (And even – do we need rules? – could we use GPA alone?).
- Simplification is needed – there was in this regard a discussion on who the rules need to be simpler for and whether less rules (e.g. one Directive) will create a simpler procurement regime. Several points were raised regarding keeping options for contracting authorities as this create flexibility. A point was also raised that the rules should not just be simpler for e.g. SME's but for all undertakings (particular regarding documentation requirements).
- How many different procedures is necessary – which to keep and do we need new once?
- The procurement rules must be fit for purpose – but what is the purpose? (also discussed on Day 2 – see below) Before a modernisation can take place it is necessary to define what the objective of a revision is as well as the objectives of the procurement rules in general.
- Is it a reform or a revision?
- Can the identified objectives be achieved by making adjustments, or is a major reform necessary?
- There is a need for better digital tools and simplifying documentation requirements
- A proper analysis of the current framework is needed in order to ensure procurement rules support appropriate and effective procurement processes and competition. It was also mentioned that it should be evaluated whether challenges was a result of the rules or the behaviour of contracting authorities.

Aim of the procurement rules

On Day 2 of the Conference a whole session focussed on the aim and objectives of public procurement going from Internal Market considerations to include many different aspects such as strategic procurement. The discussions on aims followed to a large extent the discussions from the panel-session on Day 1, but from a more academic perspective.

One of the key elements raised was that before discussing whether the EU Public Procurement anno 2025 are fit for purpose, it is relevant to explore what the purpose is – and should be. Different objectives can overlap, making it difficult to effectively achieve the individual objectives. Should the objectives be prioritized or should the rules leave it to the contracting authorities to decide on the specific objectives?

It was also a key element that not just the procurement rules need simplification the same goes for the aim and goals of the procurement rules. If wanting to “do too much”, this can have a negative impact on competition (also in the with the [Court of Auditors report from 2023](#)). It should also be borne in mind that many of the current aims and principles are developed by

the Court of Justice and later on incorporated into the procurement directives – some principles are therefore expressions deriving from TEUF provisions on free movement.

Competition for public contracts

Regarding competition for public contracts, a panel focussed on the number of participants in public procurement processes and methods to create competition.

A major concern was the number of bids in public procurement. Several [research reports](#) show that competition varies between sectors, and that there is a correlation between the number of bids and price. This was emphasized by one-bid-situations, where the problem is particularly prominent in specific sectors and in connection with specific purchase-types, especially the purchase of medical equipment.

In order to address the challenges of one-bid-situations, a proposal from Finland was discussed. The proposal from Finland entails an obligation for the contracting authorities to cancel a public procurement process if only one bid is received. The proposal aims at enhancing effectiveness of public procurement in addition to generate savings in public spending and the proposal is expected to become part of the Finnish regulation of public procurement. Although there was agreement among the audience about the problem, it was discussed how best to address it. In addition, there was also discussion about the extent to which the problem related to one-bid-situations is a general problem or whether it was only particularly prominent in certain countries and in certain sectors.

In relation to simplification of the competition, procedures were discussed, including the structure and the number of procedures. Furthermore procedures and flexibility from the Utilities Directive were discussed as methods to improve competition.

Common procurement rules were discussed using the Utilities directive as inspiration. Furthermore points were made, that in order to promote simplicity in the use of the procurement rules the options and procedures the contracting authorities already know should be kept. As a result no new procedures should be introduced. Further measures to support simplification were suggested including improvement of effective requirements connected to documentations.

How can public contracts be more attractive?

A panel focused on the behavioural aspects of public procurement. The panellist shared a worry that public contracts often are over specified, not flexible, with unilateral and special requirements from the contracting authority which ends up in unattractive contracts for the tenderers. Compiled with contracting authorities generally being risk adverse the flexibility in the procurement rules is not being used to the fullest. Examples were provided with long-term

partnerships and formal-relational contracting achieving more collaborative processes with lower end cost within the existing rules.

A [preliminary study](#) showed that contracting authorities in Denmark mainly are negotiating with a distributive negotiation strategy leading to lack of value creation in the flexible procedures.

Who can participate in procurement procedures in the EU

A panel focussed on who can participate in procurement procedures in the EU. A topic that is also one of the focuses in the modernisation, with a wish to increase the competitiveness of European undertakings. Recent case law from the CJEU (*Kolin* (C-652/22) and *Qingdao* (C-266/22)), has increased the focus on the (lack of) rights for undertakings outside EU in public procurement procedures. There was general agreement that these cases raise more questions than the answer and that the need for guidance is necessary. One concern was e.g. the problems with origin of economic operators and economic operators established in the EU but relying on capacities of entities from third countries.

Concerns were raised regarding the choice of excluding undertakings from third countries lies at the contracting authority and that this raises different practice across (and inside) Member States. Clear rules on this aspect are needed and should create identical practises.

Also, exclusion grounds have existed in the Public Procurement Directive since 2004 and the type of reasons that can lead to exclusion of undertakings have increased over the years and it was discussed whether these are fit for purpose.

The foreign subsidy Regulation (EU) 2022/2560, that has been in force since July 2023 was also discussed and concerns were raised as to whether exclusion of undertakings outside EU can hinder innovation as well as there is a heavy administrative duty as to collecting and declaring foreign financial contributions – also for EU undertakings.

Strategic procurement – sectoral legislation

Several times during the Conference concerns were raised regarding the high number of sector legislation and its impact on the public procurement rules. A panel discussed e.g. CSRD and CSDDD and the influence these instruments have on public procurement.

Finding the right balance with sectoral legislation and procurement is difficult. Sustainability is not the main focus of the revision but considerations such as Buy European and security of supply have taken over. Where does this leave sustainability considerations in procurement (legislation)?

Many emphasized during the conference to “keep what to buy” in sectoral legislation. However, the Commission mentioned on Day 1 of the Conference that the topic of whether the procurement rules should not regulate what to buy is no longer a question – that ship has sailed.

If contracting authorities should be able to conduct more sustainable – green procurement – the requirements need to be easier and guidelines should be better. Identical types of provisions should be created across sectoral legislation – and templates for e.g. exclusion grounds and similar.

There should be better *tools* in addition to new *rules*.

Review systems and sanctions

Although the Commission mentioned in its presentation that the Remedies Directive is not a target for the revision, a panel focussed on enforcement of the procurement rules in light of the *Ingsteel* case. Practises regarding damages various in the different Member States and the panel discussed specific requirements related to damages as well as a general discussion regarding the need to modernise also the Remedies Directive.

The way forward?

The Conference raised many opinions and proposals regarding what specifically should be modernised in the procurement rules and how. It was however, an element raised several times during the Conference was whether it was the procurement rules or the procurement practises that needed to change?

Particular the topic on who can/should be able to participate in procurement procedures in the EU raised concerns and there was not a clear line on how to create more competition in the EU procurement market, and what should be regulated by the procurement rules. It will certainly be a difficult balance for the EU Commission to strike in the upcoming revision.

However, generally, there was agreement regarding the need for better digital tools and simplifying documentation requirements and that the rules should support an end-to-end digital process, so that the public procurement processes is digital by design – if possible in a simple way to use the digital tools.

Mainly two elements seem, however, to stand out from the conference as points where there was general agreement as to what should be central elements in an upcoming modernisation of the EU public procurement rules:

- **Define the purpose of the procurement rules**
 - What should the procurement rules mainly aim to do?

- The objectives of the procurement rules must be identified (and reduced in numbers) and the right balance achieved.
- **Simplification:**
 - The procurement rules should be easier to use. This does not necessarily mean fewer rules, but simpler rules. In this regard, it may be necessary to clean up rules related to the sectoral public procurement legislation.

What the evaluation shows and what the Commission will propose will be interesting to follow in the near future.

Thank you to all speakers, moderators, participants for two great days to remember.