



## Public procurement aims and principles

UNIVERSITY OF COPENHAGEN



# Developing procurement rules at EU level

## Going from free movement

"... the principal objective of the Community rules in the field of public procurement is to ensure the free movement of services and the opening-up to undistorted competition in all the Member States"

C-454/06, *Pressetext*, para 31

## To many other things!

"Improved public procurement rules will also allow contracting authorities to:

- make better use of public procurement in support of common societal goals, such as
  - the protection of the environment,
  - higher resource and energy efficiency and combating climate change,
  - promoting innovation and
  - social inclusion, and
- ensuring the best possible conditions for the provision of high quality social services. "

Commission proposal for the 2014-Procurement Directive, COM/2011/0896 final

# Finding the right balance in public procurement law?

## Council Conclusions, May 2024

... new rules that promote **sustainable procurement** and **fair and effective competition** while achieving, as far as possible, the **removal of excessive and unnecessary administrative barriers** and **streamlining the present regulatory** provisions but **UNDERLINES** the importance for public buyers to **retain flexibility** in determining the nature and inclusion of strategic considerations in their procedures;

<https://data.consilium.europa.eu/doc/document/ST-9963-2024-INIT/en/pdf>



## What should the procurement rules do?

Traditionally	Now	Future?
How to buy – not what to buy	<p>Still Directives that regulate How to buy – not what to buy</p> <p>But – sectoral legislation</p> <p>Clima, environment, social considerations,, SMEs, innovation, security, (trade), value for money..</p>	
<p><b>Aim(s):</b></p> <p>Internal market: equal access/competition</p>	<p><b>Main aim: ?</b></p>	
<p><b>Contracting authorities' wishes:</b></p> <p>More flexibility and emphasis on transaction cost (and higher thresholds)</p>		



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



## Current and future aims?

**Annamaria La Chimia**, professor and Director Public Procurement Research Group (PPRG), University of Nottingham

**Albert Sanchez-Graells**, professor of Economic Law, University of Bristol Law School

**Trygve Gudmund Harlem Losnedahl**, phd. student, Centre for European Law, University of Oslo

**Gustavo Piga**, professor of Economics at the University of Rome Tor Vergata



# A Focus on EU SMEs (and their enemies)

**Gustavo Piga**

*Director, International Master in Public Procurement Management  
University of Rome Tor Vergata*

Panel: Public procurement aims and principles

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

Copenhagen, April 24, 2025



## EC CONSULTATION - CALL FOR EVIDENCE FOR AN EVALUATION / **FITNESS CHECK**

“In the Political Guidelines 2024-2029 for the next European Commission, the President Ursula von der Leyen announced a revision of the public procurement directives to: ... modernise and simplify public procurement rules, in particular with **EU startups and innovators** in mind.”



### EUROPE'S CHOICE

POLITICAL GUIDELINES  
FOR THE NEXT EUROPEAN COMMISSION  
2024–2029

**Ursula von der Leyen**  
*Candidate for the European Commission President*



TOR VERGATA  
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24 million European SMEs (VDL)  
24.000 start-ups (EU Startups database)  
1 per 1000?

10 times the word procurement  
5 times out of 10: **joint/common**







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“The special report from the European Court of Auditors on public procurement in the EU, published in 2023 and followed by the Council Conclusions (C/2024/3521), points to the need for further action to address the problem of a **decrease of competition** in public procurement and make full use of the potential of the EU’s public procurement market.”

EN 2023

28



EUROPEAN  
COURT  
OF AUDITORS

Special report

**Public procurement in the EU**

**Less competition for contracts awarded for works,  
goods and services in the 10 years up to 2021**



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# Less SMEs (≠ less competition)

“Key objectives of the 2014 reform of the directives have not yet been met: simplification, **SME access** and strategic procurement.”

“The share of contracts **awarded** to SMEs has not increased overall. High SME participation in public procurement was another important objective of the 2014 reform of the directives... In general, the data does not show an overall increase in **SME participation**”.

EN 2023

28

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P.S.

SMEs do not care about participation. They only care about winning.

“In the case of subdivision into lots, their value should be adjusted to ensure the effective possibility of **participation** by micro, small and medium-sized enterprises.”

Art. 58 Italian new Procurement Law

EN 2023

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# Evidently...

## These things did not work as expected:

- Splitting the supply contract into many smaller lots;
- Setting the reserve price at sufficiently high level;
- Defining less restrictive participation requirements;
- Promoting grouping of enterprises among smaller firms;
- Using awarding constraint in order to have more than one winning supplier;
- Disclosing as much information as possible to level information asymmetries;
- Promoting subcontracting?
- **“Simplification”?**

## Why?



# The culprit? The Directives.

*«Un homme compétent est un homme qui se trompe selon les **règles**».*

Paul Valéry







## The culprit? The Directives.

### *The Mantra of Centralization and Aggregation of Tenders*

Mantra which makes sense if your overarching goal is the one of enlarging the EU (public) market through cross-border transactions, something only large firms can do.





# The culprit? The Directives.

## *The Mantra of Centralization and Aggregation of Tenders*

«favor the possibility of access to the market and the possibility of growth of SMEs, **as long as** («purch ») it is compatible with the need to obtain **economies of scale** able to **reduce public spending**»

Art. 10 Italian new Procurement Law



# A Different Goal: since 1953 with no change of heart.

## The US Small Business Act.

“The essence of the American economic system of private enterprise is free competition ... The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. **It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business enterprises ....**”

**A different vision of COMPETITION? Or role for FAIRNESS?**





# Protecting and Preferring SMEs

A few **tiny** nations have been using **affirmative action** preferences:

- USA (since 1953), SB Act and SB Authority
- Brazil
- South Africa
- China
- India
- Mexico
- South Korea
- Japan
- Kenya
- Liberia
- Canada....

**Shouldn't we at least discuss it?**  
**No. Why?**



# Overvaluing Centralization

«Centralization of public procurement can lower prices for the government's direct purchase of goods and services. This paper focuses on **indirect savings**. Public administrations that do not procure directly through a central procurement agency might benefit from the availability of centrally-procured goods. We exploit the introduction of a central purchasing agency in Italy and find that prices came down by 22% among administrations that bought autonomously.

This allows public administrations purchasing outside Consip (the Italian CPB) to learn and benchmark their reserve prices against those of the CPB.

A publicly observable benchmarking price from a well-informed central buyer may also discourage or limit corruption, as prices can no longer be easily inflated without raising suspicion about the purchase.

These indirect effects appear to be driven by informational externalities, especially for **less competent public buyers** purchasing technologically more complex goods».

Centralizations vs. Competences. The case of Slovakia's Commission on base prices.

Lotti, Clarissa, Ariada Muço, Giancarlo Spagnolo and Tommaso Valletti. 2024.

"Indirect Savings from Public Procurement Centralization." *American Economic Journal: Economic Policy*, 16 (3): 347–66.





# Undervaluing Preferences

**Preferential clauses are often seen as generating dis-savings.**

**To the contrary**, they often reduce the bargaining power of powerful

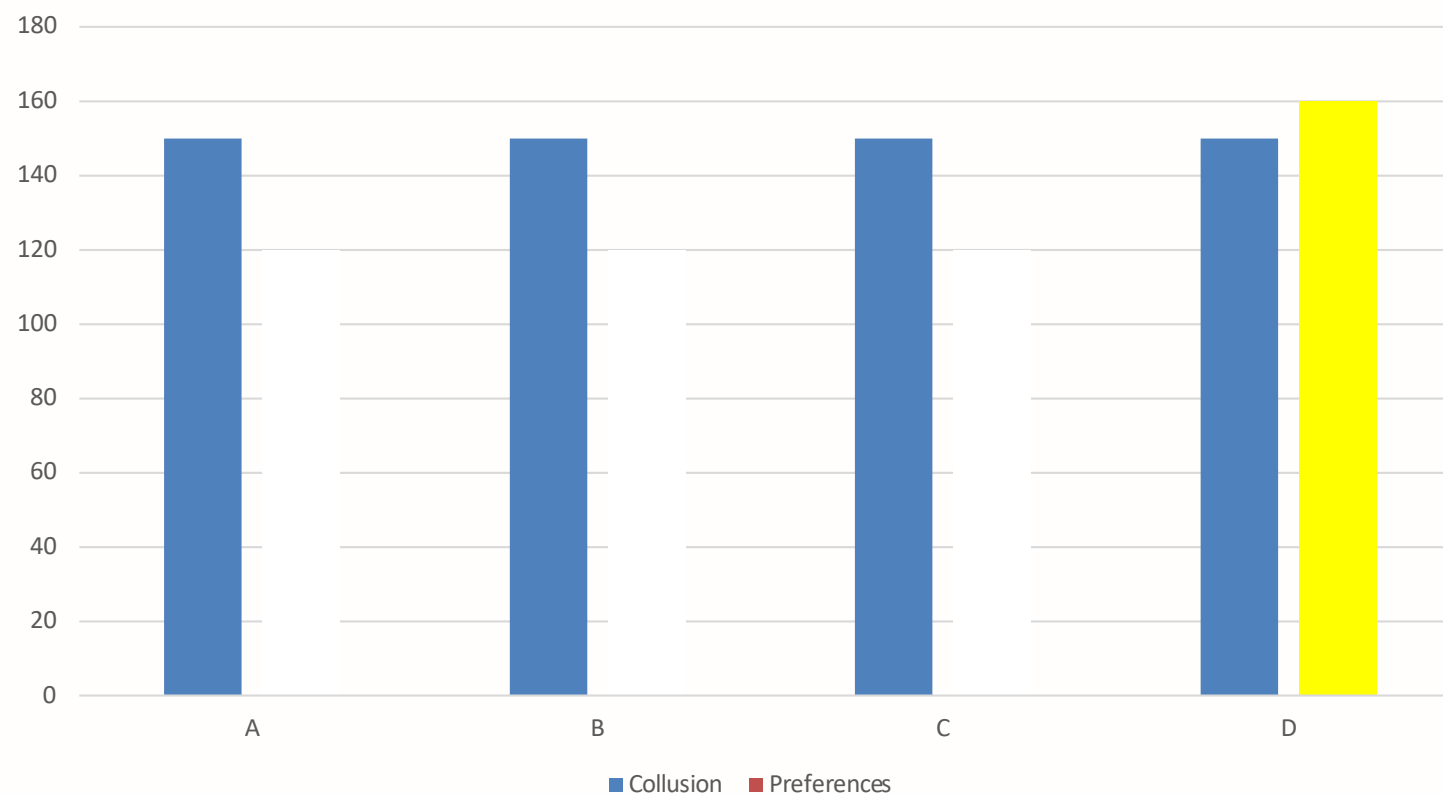


## Example n. 1

- “For example, if **four** incumbent construction firms were bidding to build **four** different playgrounds, they might be able to coordinate their bidding (either tacitly or explicitly) to divide the contracts among themselves.”
- “Setting aside one of the bidding contracts for traditionally disadvantaged, non-incumbent firms may enhance intragroup competition, as the four incumbents must now compete for just three contracts. Any incumbent that believes it may end up empty-handed is likely to reduce the markup in its sealed bid. **While the government may pay more on contracts set aside for traditionally disadvantaged bidders, reduced costs for non-set-aside contracts can lower overall procurement costs.**” Again: what do taxpayers see?



## The impact of preferences for small non incumbents. 4 lots A, B, C and D



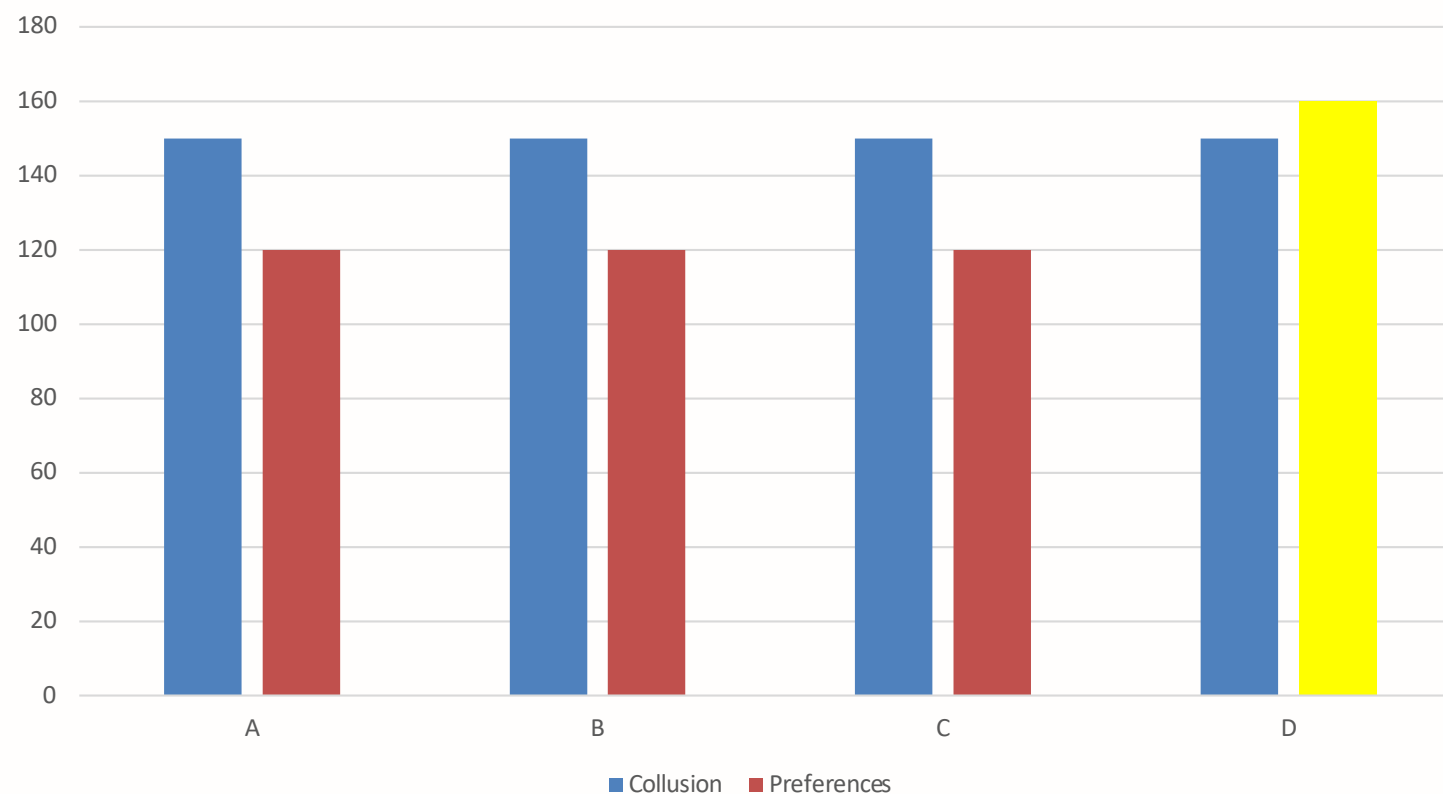


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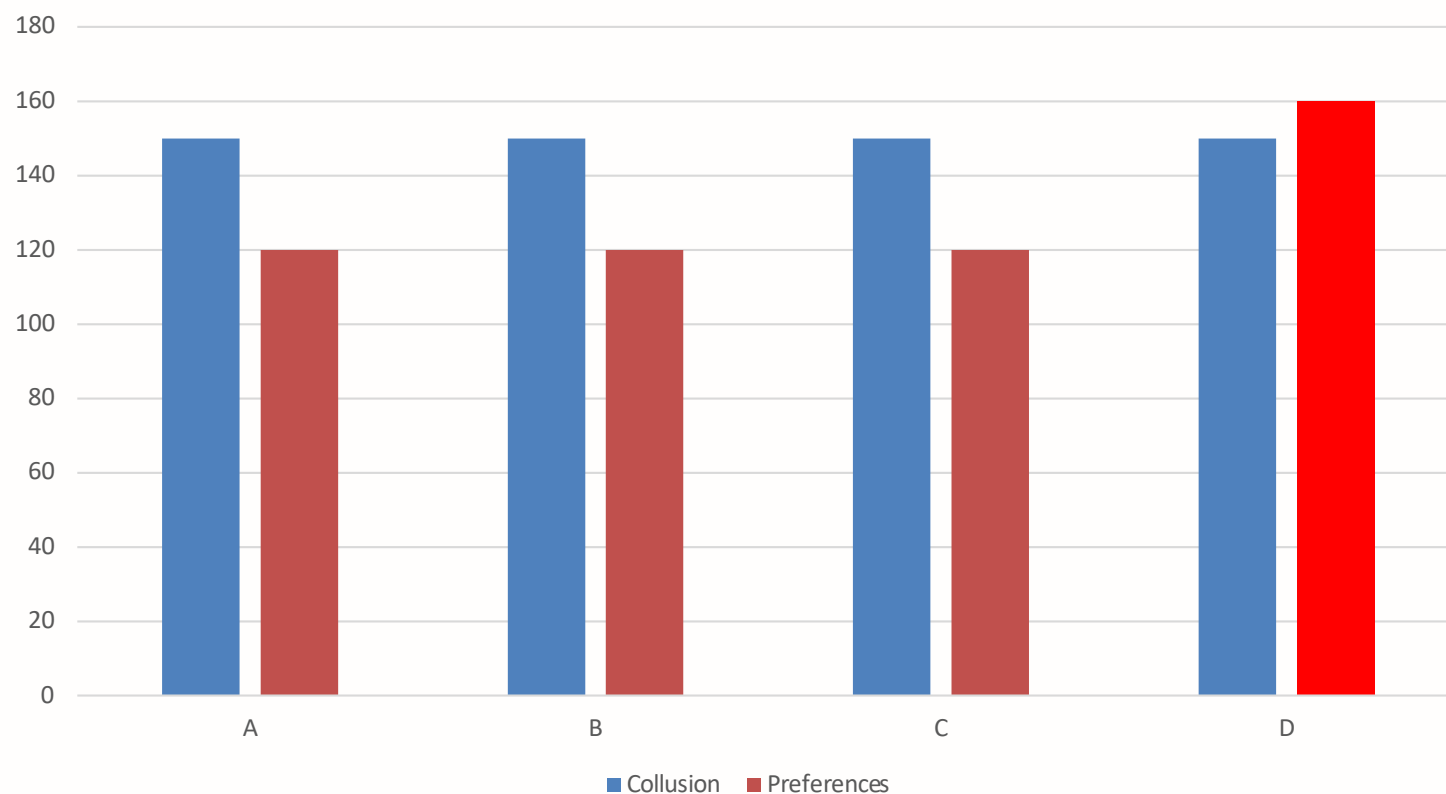


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- But what do taxpayers see?



## The impact of preferences for non incumbents. 4 lots A, B, C and D





## Example n. 2

Removing set-asides in small tenders in Japan would lead to:

- a) In high-end projects, the number of LBs (large businesses) would drop from 8.85 to 5.60, which would raise the expected winning prices of those projects by 1.03 percent. **Large firms switch to small tenders.**
- b) At the same time, the LBs' participation in low-end projects would reduce small business (SB) entry into low-end projects. The mean number of SB participants would decline from 8.33 to 5.33. The number of both large-firm and SB participants in low-end projects would drop from 8.33 to 7.49 on average because, according to the static entry model, the participation of one more LB in the low-end projects would eliminate 1.56 SB participants on average.

**Set-asides decrease effective contract prices by 0.22 percent.**  
**Set-asides raise participation (and victory!) of small firms by 40%.**

*Small business set-asides in procurement auctions: An empirical analysis, Jun Nakabayashi*



# The EU Focus

**Preferential clauses are often seen as being **costly**, like green procurement or human rights stringent requirements.**

**Maybe**, but they often increase the **future** competitiveness of a country.  
(i.e. an «**investment**»)



# The EU

**Preferential clauses are meant to fight discriminations.**

**What is the EU Principle the EU wants Procurement to Stand for?**

**Indirect discrimination** is when a *law, policy, or practice* is presented in *neutral* terms (that is, no explicit distinctions are made) but it **disproportionately** disadvantages a specific group or groups.

*Amnesty International*

Are the Directives a source of indirect discrimination?

Why do junior sport competitions exist?





# The Question

**Fitness or**

**Fairness?**





# **A Focus on EU SMEs (and their enemies)**

***THANK YOU***

Panel: Public procurement aims and principles

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

Copenhagen, April 24, 2025

# **SIMPLIFYING THE AIM AND GOALS IN PUBLIC PROCUREMENT LAW**

Prof Albert Sanchez-Graells

*'EU Public Procurement anno 2025 - Are the  
rules fit for purpose?'*, Copenhagen, 24.4.25

# The Prompt (?)

- Decreasing level of competition and “lack of awareness for competition as a key prerequisite for value for money”
- No simplification AND no significant strategic use of public procurement
- “Some of the objectives of the 2014 reforms do not aim for, sometimes even conflict with competition”
- Recommendation 1:
  - “formulate and prioritise fewer, but clearer and more measurable objectives”;
  - reflect on alternative approach to mandating strategic requirements or further regulation of (technical) specs

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# The (Micro) Problem(s)

- Proliferation and lack of prioritization of 'strategic goals', some of which are readily compatible with the internal market, while others are not
- Goals are largely incompatible with each other or, at best, randomly compatible
- (Unspoken?) trade-off between technical capacity and ability to implement measures seeking to reach those goals
- Asymmetrical industry interest in supporting (different) goal pursuit

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# The (Macro) Problem(s)

- At the 'bigger picture' level, we face very similar issues
- Lack of clear political commitment to addressing (sub)set of issues as a matter of priority
- Lack of recognition of the need for massive 'catch up' investment (in data, in skills, in centres of knowledge, etc)



# Can Procurement be (part of) the Solution?

- Procurement is a very bad regulatory tool and a poor policy tool when based on voluntary uptake
- Procurement can be a 'reasonably effective' lever to strengthen enforcement of other (mandatory) rules
- Procurement is a (large) small part of the economy – which is relevant both in terms of scope and impact of interventions
- Industry fragmentation would only run against the interest of the public buyer by creating separate 'public markets' ripe for collusion and abuse



# Competition as (Micro) Solution (?)

- Pressure on legislative interventions on markets as a whole
- Return to procurement as a mechanism for engagement with the market (not a market regulation tool)
- Focus on what can be done within procurement to foster competition
  - Technical neutrality and minimisation of requirements
  - Pro-competitive tender design, including lot division
  - Focus on dynamic competition reinforcing interventions, rather than competition-restrictive interventions

# Conclusion

- Simplification can only be achieved in a pro-competitive manner if the regulatory burden is placed elsewhere (EU-level legislation applicable across the economy)
- Explicitly changing goal/s and principles likely to only have marginal effect
- Only investment in capacity and development of active market intelligence strategies can start to make a difference in practice

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