



The EU procurement rules – what should be modernised?

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

Discussions on elements regarding the wish for modernisation of the EU procurement rules from different angles.

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<b>Federal Ministry of Justice Austria</b>	Michael Fruhmann, Directorate for Public Procurement
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<b>Confederation of Swedish Enterprise</b>	Ellen Hausel Heldahl, Confederation of Swedish Enterprise

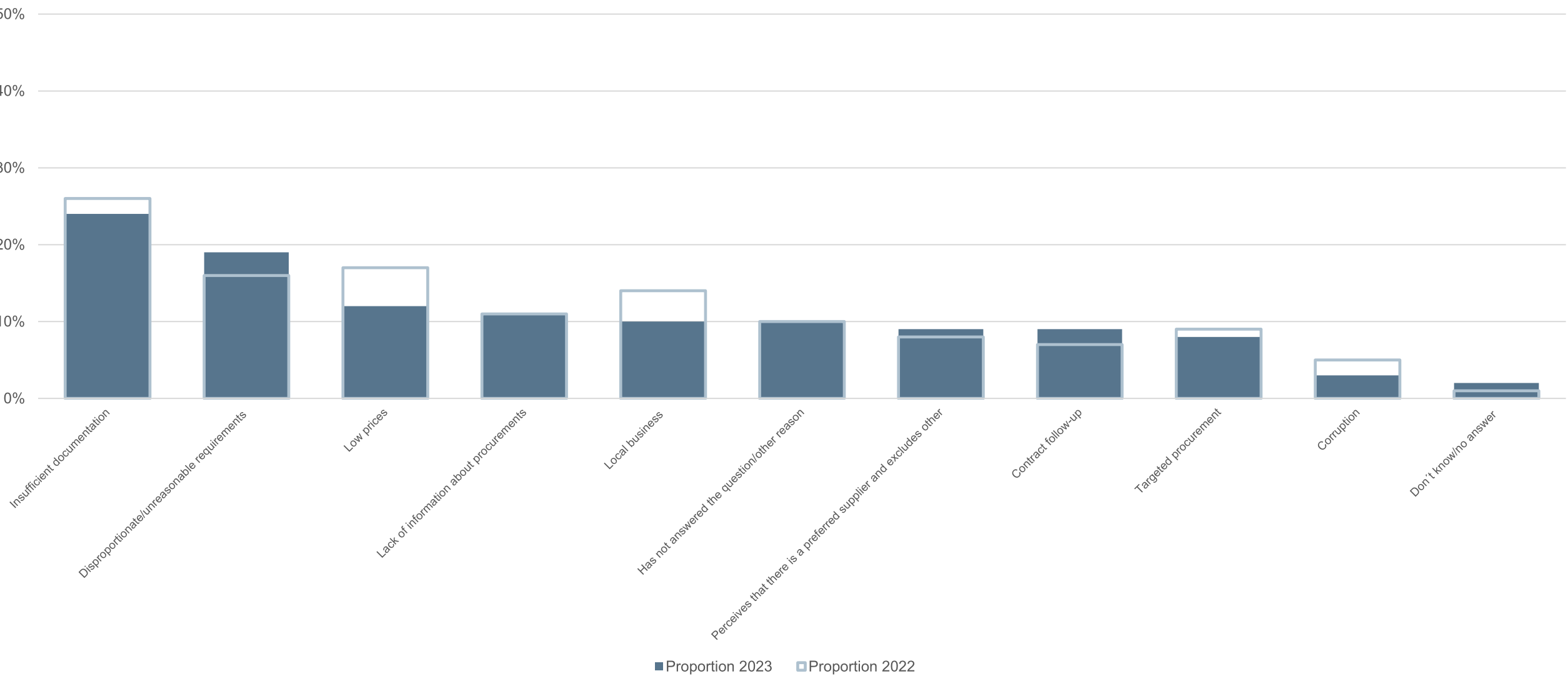


## *Christmas wishlist*

New directives on  
Public Procurement



# Local business climate survey - 32 000 reply



## The ECA-report - Does the competition work?

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An analysis of a data set containing 328 pairs of a previous and a subsequent procurement. 34.8 percent of procurements have no recurring winners.

The results are divided into three categories:

**The sum of recurring and partially recurring winners is 65.2 percent.**

- Completely repeat winner
- Partially recurring winners
- No repeat winners.

Fully recurring winners in 35.7 percent of procurements,

partially recurring winners in 29.5 percent of procurements,

# IPR in public procurement

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In a survey carried out by Confederation of Swedish Enterprise,

It appears that of 197 randomly selected procurements that were advertised in 2022 and that contained the heading "intellectual property"

The authority required ownership over IPR in **93.9 percent** of the cases

(not a license or right of use).

**Who wants to bid?**

# What are the end goals?

- **European preference** in public procurement for critical sectors and technologies.
- Promotion of green technology and digitalization.
- New measures to **encourage demand for low-carbon products**, such as benchmarking/labelling, mandates or preference in public procurement or financial incentives through contracts for difference.
- Increasing recourse to **joint defense procurement**.
- Ensure **resilience of the supply chains**, especially for critical raw materials.
- **Joint procurement of critical raw materials** to reduce dependencies.
- **Simplification** of reporting requirements for businesses.

# Digitalization in public procurement

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- would lead to simplifications,
- cost savings,
- better data for analysis and follow-up,
- simpler sustainability reporting,
- increased contractual fidelity,
- a higher degree of automation,
- better opportunities to identify crimes and corruption,
- support for work on security of supply and
- a qualitative data basis for the development of new AI solutions.



# Main Issues in the Current System

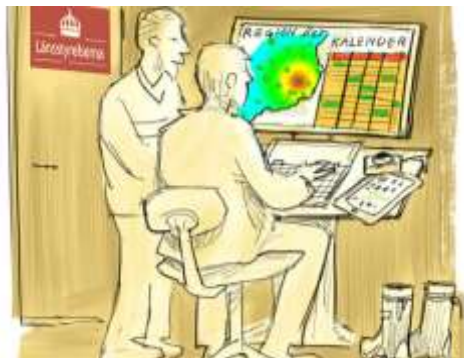
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- Outdated Approach to Digitalization
- Limited Impact of Innovations
- Data Quality and Completeness Issues
- Reliance on Outdated Notices

# Path Forward- Three Key Actions

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- Replace the Current Legal Framework with a Digital-First Approach.
- Shift from Notification-Based to Transaction-Based Systems.
- Integrate Procurement with Broader Public Administration.



### Q&A exemple

- How many possible suppliers in the area?
- Devide in to lots?
- Suitable environmental criteria?
- Suitable social crieria?
- Suitable commercial conditions?
- Regulate IPR?
- Degree of innovation / functional criterias?
- Evaluation method
- LCA



# Simplification

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How many  
directives?

How many  
procedures?

Dialogue

Negotiated  
procedure

References

# European preference

GPA renegotiate?

Free trade agreements ?

Kolin and Qingdao-cases?

What strategic products?

Supply chain?

Competition?

Trade war?





## Other issues

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Abnormally low  
bids

Supplements to  
tenders

Green public  
procurement

Social criteras  
and labor clauses

**Defens, security  
resilience and  
readiness**

# The EU procurement rules – what should be modernised?

Michael Fruhmann  
AT Federal Ministry of Justice

## Background – starting point

### Scope of revision

- PP Directives (excluding 2009/81, 89/665/EEC, 92/13/EC)
- + currently around 60 (!! ) PP provisions outside the Directives

### Highlighting/Analysis of some (!) problems:

- ECA/Letta/Draghi Reports (competition declining, recommendation to clarify and prioritise PP objectives ....)

## “Sectoral PP files”

### ADOPTED FILES

Green/other strategic criteria	Special PP rules	Exclusion Ground	Joint procurement	Other
Clean Vehicles [D]	Foreign Subsidies (FSR) [R]	Fraud and Counterfeiting of Non-cash Means of Payment [D]	Cross-border threats to health [R]	European Standardization Regulation [R]
Heavy Duty Vehicles [R]	Foreign Subsidies Implementing Regulation [R]	Money Laundering [D]	Medical countermeasures [R]	Single Digital Gateway (SDG) [R]
Net Zero Industry Act (NZIA) [R]	e-invoicing [D]	Sanctions against Russia because of Ukraine [R]	Ammunition Production (ASAP) [R]	Energy Efficient Buildings [D]
Critical Raw Materials Act (CRMA) [R]	Electricity Directive [D]	Employers of illegally staying third-country nationals [D]	EDIRPA (defence procurement) [R]	Waste [D]
Energy Efficiency Directive [D]	Passenger transport services by rail and by road [R]	Fight against fraud [D]	Union Secure Connectivity Programme [R]	European Media Freedom Act [R]
Energy from Renewable Sources [D]	EU Space Programme [R]	Equal pay for equal work [D]	Chips Act [R]	Electricity Market Design (EMD) [R]
Ecodesign (ESPR) [R]	Financial Regulation (recast) [R]	Deforestation Regulation [R]	Internal Market Emergency and Resilience Act (IMERA) [R]	Single European Sky [R]
Batteries Regulation [R]	IPI [R]	Breach of EU sanctions [D]		Cyber Resilience Act [R]
Construction Products (CPR) [R]	Enforcement Regulation [R]	Environmental Crimes [D]		Women on Boards [D]
Packaging (PPWR) [R]	Anti-coercion instrument (ACI) [R]	Trafficking in human beings [D]		Minimum wages [D]
		Shipments of waste [R]		NIS2 [D]
In force and applicable	[D] directive	Ecodesign (ESPR) [R]		European Accessibility Act [D]
To be transposed/ not yet applicable	[R] regulation			Due Diligence [D]
Delegated/ implementing act yet to be adopted				European Health Data Space (EHDS) [R]

## Modernisation ↔ Revision?

- Revision should aim at “fit for purpose” which includes “modernisation
- Proper analysis needed (for ex: why is competition declining?) – multi-causal reasons, not “one (simple) answer for every negative effect”
- unfortunately rushed process - time/money/personnel restraints on COMs side
- COM and MS are tasked to decide about purpose of PP before drafting starts (how/what to buy?, political priorities)



## Some personal ideas

- simplify by merging 2014/24 with 2014/25 based on the later
- “clean up” sectoral files, develop templates for regulatory topics (exclusion grounds, common purchases, COM as CPB ....)
- technology neutral approach concerning “emerging technologies”
- flexibilisation + reduction of number of procedures (framework agreements, negotiated procedures)
- better incorporation of “security/crisis concerns” in “civil” procurement
- stay with Directives (= no Regulations)