



# The Reform of the EU Regulatory Framework

## Towards Improved Performance

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## Current Rules

### **Classical Directive (2004/18/EC)**

Public works, public supplies and public services

### **Utilities Directive (2004/17/EC)**

Water, energy, transport and postal services sectors

### **Directive on Defence procurement (2009/81/EC)**

### **Remedies Directives (89/665/EEC and 92/13/EC )**

# New Rules: Preparatory works

**Green paper on modernisation** (January 2011)

**Evaluation of existing rules** – Impact Assessment

**Results of public consultation** (June 2011)

- *623 replies (Business, public authorities, civil society, academics & legal experts, citizens...)*

**Public procurement conference** (June 2011)

**European Commission proposal** (December 2011)

# New Rules: Legislative process

*February 2014: Adoption*

*Directive – needs to be transposed by EU Member States*

*2 years for transposition*

*4.5 years for e-procurement (at the latest)*

# New Rules: Legislative process

*Directive 2014/24/EU on public procurement*

*Directive 2014/25/EU on procurement in water, energy, transport and postal services sectors*

*Directive 2014/23/EU on the award of concession contracts*

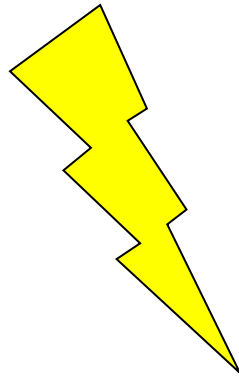
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[http://ec.europa.eu/internal\\_market/publicprocurement/modernising\\_rules/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/index_en.htm)

# Objectives of the reform

1. Simplification,  
flexibility and  
reduction of  
administrative  
burden

2. Strategic use



3. Better access for  
Small & Medium  
Enterprises (SME)

5. Governance

4. Sound  
procedures

# I: Simplification, more flexibility

- *Increased use of negotiated procedure*
  - competitive procedure with negotiations
  - **New: Innovation Partnership (Research and developemnt)**
- *Simplified advertising for sub-central authorities*
  - **Prior information notice**
- *Reduced time limits*
- *Light touch regime for social and other services*

# I: Reduction of administrative burden

- *Self -declarations for bidders*
  - **Single European Procurement Document**
- *Proof for winning bidder*
  - **Certificates submitted by winning bidder**



## II: Strategic procurement

- (1) Strategic policies may be considered in award decision
- (2) Technical specifications may refer to production process
- (3) Integration of disabled & disadvantaged workers
- (4) Innovation Partnership
- (5) Use of labels

## II: Strategic procurement

### Sole Award Criterion:

*Most economically advantageous tender (MEAT)*

- to be assessed on the basis of
1. **price, or**
  2. **cost**, using cost-effectiveness approach (e.g. "life cycle"), **or**
  3. **the best price-quality ratio** using criteria such as
    - Production process
    - Social & environmental criteria
    - Innovative characteristics

*NB: Criteria must be linked to the subject matter of the contract !*

## III: SME-friendly measures

### Division into lots

- *"apply or explain" principle;*

### Proportionate criteria for financial standing

- *limited to twice contract value*

### Reduced documentary requirements

- *"European Single Procurement Document"*

## IV: Sound procedures

- Conflicts of interests clarified
- Exclusion grounds strengthened and extended
- Compulsory exclusion in case of abnormally low tender
- Modifications of contracts simplified

## IV: Sound procedures

### Main changes:

#### Competitive procedures with negotiation

- Replaces current negotiated procedure with publication

#### Competitive dialogue

- slightly broader scope for negotiations in the final stages

#### Innovation partnership

- **Research** services for the development of an innovative product by one or more providers **plus supply** contract

#### Negotiations without publication

- no substantial changes

## V: Governance

- *Monitoring, reporting (3 years)*
  - **level of SME participation**
  - **procurement fraud, corruption, conflict of interest and other serious irregularities**
  - **Keeping of contracts (1 million, 10 million)**
- *Guidance and support*
- *Statistical reports (below threshold estimates)*
- *Individual reports*

# Utilities Directive

- Procurement for services, supplies or works
- By utilities (public or private)
- Utility activity (water, energy, transport, postal)
- *Private entities subject to procurement rules if "operating on the basis of special and exclusive rights"*
- *More flexible regime for utilities*

# Utilities Directive

- Essentially same changes for the Utilities as for the Classic Directive

## Differences

- **Framework contracts:**
  - max 8 years (classic 5 years)
- **Contract modifications**
  - Unforeseen circumstances: unlimited (classic: max 50%)
- **Definition of special or exclusive rights**



# New Directive on Concessions

- **Works & service concessions  $\geq$  € 5 million**
- **Classical & utilities sector**
- **Contracting authorities and entities**

# Distinction contracts – concessions

## Right to exploit the work or services (sometimes with payment)

- transfer of operating risk
- no guarantee to recoup the investments and costs.
- risk can be limited by regulation, but always real exposure to possible loss, not merely nominal or negligible
- demand or supply risk or both

# Duration of Concessions

**The duration of concessions shall be limited**

**General principle for concessions lasting more than 5 years:**

- Shall not exceed time necessary to recoup investments made for operating works/services with return on invested capital
- Possibility to take into account investments at beginning and during life of concession and those necessary to achieve specific contractual objectives.

## Concessions: few procedural rules

- **Publication (ex-ante & ex-post)**
- **Transparency, equal treatment, non-discrimination**
- **Procedural guarantees, not defined procedures**
- **Exclusion (=), selection criteria (light)**
- **Objective award criteria**

# Single Market Scoreboard

## Public procurement performance indicators

# Introduction

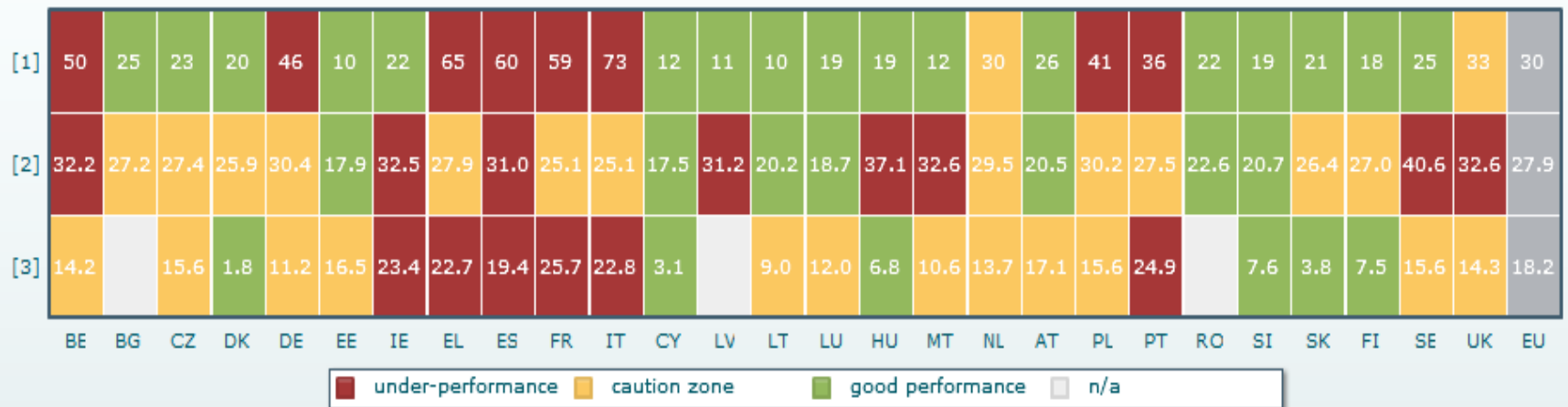
- Single Market Scoreboard – 28 Member States
  - First published 2013, paper scoreboard successor.
  - [http://ec.europa.eu/internal\\_market/scoreboard](http://ec.europa.eu/internal_market/scoreboard).
- Raises awareness and provides information about important policy issues.
- Functions as a motivating benchmark, highlights strengths and weaknesses, helps finding best practice.

## Performance

TOP ▲

### Performance per indicator

- [1] Number of pending infringement proceedings
- [2] Duration of infringement proceedings (in months)
- [3] Duration since Court's ruling (in months)



Indicators [1] and [2]: An average (+/- 10 %) score was rated as "yellow"; a score below it as "red" and a score above it as "green".

Indicator [3]: Duration of more than 18 months was rated as "red", between 8 and 18 months, as "yellow", and less than 8 months as "green".

# Public procurement in the Single Market Scoreboard

## *Motivation*

- Promotes public procurement as an important policy issue for the wider public.
- Highlights aspects of ground-level procurement market functioning, helps identify best practices and problem areas.
- Single information platform for performance indicators, annual public procurement indicators and other statistics, achievements, and priorities.



# Three indicators for key aspects

## *Public procurement*

- Bidder participation indicator: proportion of awards with more than one bidder (excluding framework agreements).
- Accessibility indicator: proportion of notices with procedures facilitating access for bidders.
- Procedural efficiency indicator: the average time between receiving bids and awarding a contract for open procedures.

# A simplifying yet useful perspective

- Indicators provide rough and simplifying information. They disregard:
  - Structure of procurement
  - Structure of the economy
  - Interdependency of tendering options
- They still reflect crucial aspects of public procurement.
  - Clear normative interpretation
  - Comparable even with underlying differences
  - Transparent and simple

# Other possibly relevant indicators

## *Public procurement*

- Performance of public procurement has many other aspects. For example:
  - Professionalism of contracting authorities
  - Digitalization
  - Corruption
  - Administrative burden
  - ...
- These are more difficult to measure. If we succeed in finding more indicators, however, we will add them.