



REPLIES OF THE EUROPEAN COMMISSION

TO THE 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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This document presents the replies of the European Commission to observations of a Special Report of the European Court of Auditors, in line with Article 259 of the [Financial Regulation](#) and to be published together with the Special Report.

I. THE COMMISSION REPLIES IN BRIEF

The Commission welcomes the European Court of Auditors' (ECA) special report on Public Procurement in the EU. While the Commission and the Member States have taken actions to increase the level of competition in public procurement, the report highlights several remaining challenges which public procurement in the EU is facing, analysing indicators such as the share of single bidding, the number of direct awards in several Member States, and the limited number of cross-border procurements.

The Commission is already addressing these challenges through relevant guidance, programmes and initiatives. The actions and measures recommended in the framework of the European Semester and the improvements requested from Member States as part of the Recovery and Resilience Programmes are powerful tools to trigger structural changes at national level. The recently launched dialogues on strategic procurement with Member States will help identify the causes of low competition and how to address the obstacles to greater participation of economic operators in the public procurement market. The Public Procurement Data Space (PPDS) will allow for new insights through a state-of-the-art analytical toolkit to ensure appropriate monitoring of the market.

The Commission wishes to highlight that public procurement, which represents 14% of the EU GDP, can play a major role in achieving key strategic objectives of the European Union, in particular the need to improve the resilience and sustainability of the EU economy and the security of supply. In this perspective, enhancing effective competition is of pivotal importance. The Commission has taken a number of initiatives in recent legislative proposals to introduce obligations for public buyers to assess the tenders' contribution to sustainability and resilience. These new objectives will need to be integrated in any future assessment of the relevant regulatory framework for public procurement.

II. COMMISSION REPLIES TO MAIN OBSERVATIONS OF THE ECA

1. Level of competition in public procurement over the past 10 years

The Commission appreciates the importance attached by the ECA to the promotion of a competitive and efficient public procurement market within the EU. The public procurement directives do not impose an obligation for the Member States to measure the level of competition in public procurement nor to report to the Commission in that regard. The monitoring of national and EU public procurement markets relies on tools available mostly at EU level, such as obligations for Member States to report published calls for tender and awarded contracts in the Tender Electronic Daily (TED) database, and statistical information.

The Commission agrees that the three indicators used by ECA are important available numerical data sources for assessing competition in public procurement. As recognised in the ECA's report, the three numerical sources alone do not allow for a complete and comprehensive measurement of competition in public procurement. A number of additional, less measurable factors have a major impact on the level of competition, as explained further below.

Competition depends on the management of the public procurement procedure, including its planning and its communication with the market, the adequate publication of the tender, the subject matter of the tender, the duration of the contract as well as sufficient time limits to submit the offers. The administrative capacity of buyers and the level of professionalisation are decisive criteria which are not quantifiable. The increased complexity of the subject matter of purchasing (for instance because of technological development) and additional requirements imposed by public buyers on potential contractors (for instance to promote more strategic procurement) may result in complex and lengthy procedures as well as a higher cost to prepare offers. These may have an impact on bidders' participation in a call for tender.

The decrease in competition in public procurement are also related to the overall macroeconomic environment. In the past ten years, the world as well as the EU economy have faced two major recessions. These have significantly affected markets, created disruptions in the supply chains and reduced the capacity of many economic operators to offer reliable bids in public tenders. These developments had a significant impact on the level of competition in public procurement markets.

The Commission is actively working on fostering competition in public procurement markets and has launched a number of initiatives in that regard. For instance, the European Semester and the Recovery and Resilience Facility play a key role in identifying market inefficiencies and structural weaknesses and promoting relevant reforms of the national public procurement framework. Recently, the Commission launched an initiative to support Member States in a greater uptake of strategic public procurement (green, social and innovation) through the creation of dedicated dialogues with all relevant stakeholders. This initiative will serve to assess the interaction between strategic procurement and competition and address potential obstacles which prevent companies to participate in tenders with a more strategic dimension. As an outcome of those dialogues, Member States will be asked to present a roadmap or strategies to identify and address these obstacles by end-2024. Moreover, the Commission's activities aiming to promote strategic procurement may lead to new market opportunities for bidders. Such activities include, for instance, training courses provided by experts for Central Purchasing Bodies, which are among the largest public buyers in Europe, and the projects funded by the EU on public procurement of innovation to promote collaboration between big buyers in Europe and to bring together public buyers, suppliers of innovation, investors and researchers¹.

The Commission agrees with the observation of the ECA on the level of direct cross-border procurement, which has been relatively stable over the years, though increasing from around 3% to reach a figure of around 5% in 2021. However, as rightly highlighted in the ECA report, if indirect cross-border procurement is taken into account, the overall figure reaches 20% for contracts below EUR 200m and 30% for larger contracts. The harmonisation of public procurement rules created the conditions to make this indirect cross-border participation easier. Moreover, cross-border participation in tenders can always take place via the subsidiary of a company established in another Member States.

Activities such as the above-mentioned project bringing together the big buyers, or initiatives stimulating the use of procurement of innovation, may contribute to foster cross-border procurement by aiming at closing the gap between buyers and innovative suppliers which will primarily be from other Member States. The Commission study on the Innovation Partnership confirmed a higher rate of direct cross-border procurement than what was observed for public procurement in general.

The Commission observes that the results of the ECA data analysis differ from the results produced by the methodology the Commission uses for the Scoreboard. As an example, related to the single

¹ Big Buyers Initiative: <https://public-buyers-community.ec.europa.eu/about/big-buyers-working-together>;
Innobroker: <https://innovation-procurement.org/innobrokers/> .

bids indicator, ECA includes also public contracts awarded through negotiated procedure without publication of a contract notice, which are not used for the Scoreboard. These are contracts which can be awarded directly after negotiations (e.g. in a monopoly situation). Another example is that while contracts under the concessions Directive 2014/23/EU are considered in the Scoreboard, this data was not used in the ECA analysis. Moreover, the ECA report uses as the main data source for TED data Opentender.eu, while for the Scoreboard TED data is used directly. The ECA report mentions that Opentender.eu is used as a data source and indicates the difference in methodology between the ECA report and the Scoreboard in the Annex.

Finally, the Commission recognises that it does not monitor the price of works, goods, and services, as this information is usually covered by business confidentiality. Revealing this information at contractual level could have the effect of deterring competition by limiting the competitive advantage of bidders. Therefore, it is not straightforward to monitor prices. The TED database includes only information on launched procedures and the total price of the subsequent contracts, but not about unit prices. Moreover, TED does not provide information on types of products, nor numbers of units, and introduction of such requirements would be difficult and pose an additional administrative burden on the Contracting Authorities (i.e. the public buyers).

2. Key objectives of the 2014 reform of the directives: simplification, SME access and strategic procurement

The Commission recognises that some of the factors influencing competition on the public procurement market and the efficiency of public spending are difficult to assess, as public procurement is very heterogeneous. It is estimated that there are about 250,000 contracting authorities in the EU and 300,000 contracts awarded every year. Public spending and action can take many different forms, and the way contracting authorities conduct their public procurement policies can depend on a number of structural factors linked to the sector, object of the contract or the type of acquisition. Measuring the administrative capacity of all stakeholders involved (buyers, suppliers, auditors, Courts etc.) is a challenging task. The wide diversity of contracts and authorities makes it difficult for Member States and the Commission to monitor the implementation of relevant changes.

The Commission has recommended a number of Member States to adopt structural reforms (through Country Recommendations adopted within the European Semester and milestones set up in Recovery and Resilience Plans) and has financed training courses through the Structural Funds or the Technical Support Instrument aiming at improving their administrative capacity, i.e. organisational and governance structures, human resources and systems and tools used by the Member States as well as professionalisation of public buyers². The outcome of these initiatives has been overall very positive in terms of increased capacity and skills and in terms of collaboration between buyers. The Commission has launched new initiatives to further scale up these training opportunities, including a training programme on the development of innovative solutions to meet green and social objectives³.

² For instance, the SMEs friendly procurement of CPBs has included 3 issues of a 6-week training programme targeted to staff working for CPBs and in policy/regulatory affairs. Over 100 people have been trained so far. A budget has been allocated to scale up the project. The evaluation of the bids received is ongoing.

³ The training programme includes two different types of training courses: one on site for operational staff (one week); the other one is online only and is targeted for senior managers/elected representatives (2 hours maximum). Additionally, the Commission published in 2020 the European Competency Framework for Public Procurement Professionals (ProcurCompEU) to support the professionalisation of public procurement in Member States: https://commission.europa.eu/funding-tenders/tools-public-buyers/professionalisation-public-buyers/procurcompeu-european-competency-framework-public-procurement-professionals_en

Additional actions have been taken to increase participation of SMEs in public procurement markets. In September 2023, the Commission adopted the proposal for a Regulation on combating late payment in commercial transactions in the context of the SME Relief Package. In particular, the proposal tackles payment delays, an unfair practice that compromises access to SMEs to public procurement markets, by introducing new provisions to ensure timely payments by contractors to subcontractors in public works contracts. In the SME Relief Package, the Commission has also announced that it will promote the use of standardised procurement provisions and conditions suitable for SMEs to improve the participation of SMEs in public procurement⁴.

Moreover, the activities carried out in the field of strategic procurement indirectly create the conditions for an increase of SMEs participation. In 2022, the Commission published two brochures on public procurement and start-ups (one addressed to buyers, the other to start-ups⁵). Furthermore, the Commission funded a training course specifically aimed at fostering SMEs access to CPBs (central purchasing bodies) procurement.

With regard to the limited use of strategic public procurement by contracting authorities, the data provided in the Single Market Scoreboard indicate that in many cases public buyers buy using the lowest price award criterion. While such approach would be reasonable in the case of simple and standardised products, it is questionable when used by default, especially when dealing with more complex goods or services.

Additionally, the Commission has been actively promoting the use of strategic procurement by

- publishing, in 2021, two relevant guidance documents on Innovation⁶ and on Socially Responsible Procurement⁷;
- organising webinars on these topics;
- setting up a Helpdesk on green and social procurement⁸;
- financing the production of a newsletter on this topic; and by
- funding several projects on procurement of innovation linked to social and green objectives⁹.

Furthermore, the Commission has funded the creation, animation, and training of groups of large buyers aiming to steer the development of green, social and innovative procurement¹⁰. Finally, the Commission has created a digital Platform¹¹ to foster the sharing of information and use of collective

⁴ https://single-market-economy.ec.europa.eu/system/files/2023-09/COM_2023_535_1_EN_ACT_part1_v12.pdf

⁵ These brochures are available in all EU languages. “Scale up with the public sector – a brochure for start-ups” <https://ec.europa.eu/docsroom/documents/54276>; “Public Procurement of Innovation – how do start-ups fit in”: <https://ec.europa.eu/docsroom/documents/54254>

⁶ <https://ec.europa.eu/docsroom/documents/45975>;

⁷ <https://ec.europa.eu/docsroom/documents/45767>;

⁸ https://green-business.ec.europa.eu/green-public-procurement/green-public-procurement-helpdesk_en;
https://green-business.ec.europa.eu/events/eu-gpp-helpdesk-webinar-2023-06-15_en

⁹ Ecoquip + and Radar in the field of health; P5 Innobroker and Brink including calls in several innovative areas such as health, waste management; etc. Drugdetect concerns the development of a sensor for the detection of drugs in prisons.

¹⁰ Two pilots of the Big Buyers project which covered the development of innovative solutions in relation to zero emission construction sites, circular construction asphalts, heavy-duty vehicles for street cleaning and waste collection, and digital health.

¹¹ <https://public-buyers-community.ec.europa.eu/> At this moment of writing, the Platform counts 1200 members, out of which 500 share their profile publicly.

intelligence; many communities of practice relate to the purchase using strategic procurement¹² (e.g. for sustainable solar panels or the purchase of circular and fair ICT products, etc.). As of today, the Platform counts 1200 members and it is becoming a hub for knowledge sharing on procurement issues.

The Commission is of the opinion that the specific objectives of 2014 reform and the objectives of strengthening the competition need to be achieved simultaneously. The possibility to award directly contracts without competition is mentioned as one of the cases where the objective of simplification leads to a restriction of competition. Whereas the direct award allows for easier selection within short deadlines, simplification was not the primary objective pursued, but rather the need to ensure provision of public services under strictly defined exceptional circumstances. The second example is the possibility to divide contracts into smaller lots. This aims not only to promote larger participation of small and medium-sized enterprises, but also to promote more generally tender participation, avoid single-supplier dependency and spread the risks (e.g. of unsuccessful implementation).

3. The Commission's monitoring of public procurement in the EU

Overall, the Commission agrees with the ECA's observations on data and monitoring tools (Single Market Scoreboard Indicators) and wishes to offer some clarifications based on data available to it and taking into consideration the complexities of public procurement.

As regards data availability, the Commission emphasizes that TED data also includes a larger number of notices below EU thresholds which are outside the scope of the Public Procurement directives which could have a significant impact on the monitoring indicators. At the same time, the Commission would like to underline that some indicators proposed in the ECA report cannot yet be computed due to the unavailability of the required data. However, following the introduction of eForms, the situation may change in relation to several indicators, especially on the application of strategic procurement. While the current forms do not provide the possibility to provide structured data on this topic, eForms allow for this. Nevertheless, those fields are optional, and it needs to be evaluated on how Member States make use of them.

Secondly, it is important to underline that data providers – i.e., the contracting authorities in the Member States – play a pivotal role in ensuring the quality and the completeness of the data. The Commission highlights that, at the EU level, significant efforts are undertaken to improve the quality and the completeness of the data by implementing relevant business rules in TED, in collaboration with the Publications Office of the EU. It is important to flag that the Commission is constantly striving to improve the quality and completeness of its database. This includes both manual cleaning operations and implementation of algorithms to check errors. The Commission has also initiated studies based on TED data to obtain new insights on the above-mentioned issues. An example is the Public Procurement Indicators report, for which the contractors in charge of the analysis used a complex methodology to deal with well-known data weaknesses.

Concerning the Single Market Scoreboard, the Commission underlines that it was originally designed to provide an overall view of the performance in public procurement. Nevertheless, as indicated in the ECA report, the results are static, unidimensional, lacking flexibility and advanced reporting features. Several years ago, the Commission launched two important projects to address the issues related to the quality and the completeness of data and of the monitoring tools, taking advantage of modern digital technologies. These projects are the eForms and the Public Procurement Data Space

¹² The Platform hosts eight Communities of Practice around various themes, such as Sustainable Solar panels, Circular and Fair ICT Pact; in relation to innovation, there are two communities of Practice: the Network of Competence Centers and Public Procurement of AI.

(PPDS). eForms are used to submit notices to TED and are at the core of the digital transformation of public procurement in the EU. Indeed, the use of common standards and terminology should help to significantly improve the quality of the underlying data. On the other hand, the PPDS will pool data on the preparation for tenders, calls for tenders and outcome of tenders which is currently spread in different formats at European and national levels. In this perspective, the data space will allow for new insights through a state-of-the-art analytics toolkit, including artificial intelligence technologies - e.g. machine learning and natural language processing.

The Commission concurs with ECA's observation that the Scoreboard does not include any information on appeal procedures launched by unsuccessful bidders challenging award decisions on procurement procedures in which they have participated. However, information on the review procedures in Member States is regularly collected through the *Network of the First Instance Review Bodies* (number of procedures, length of the procedures and number of appeals against the first instance decisions) and is a good basis for reflections and decisions aiming to remedy public procurement policies.

4. Addressing the obstacles to competition in public procurement

The Commission underlines that, as the guardian of the EU Treaty, it is under the obligation to carry out transposition checks. In parallel to this process, Member States' performance is continuously monitored while steer is provided via the relevant guidelines.

In that regard, monitoring and concrete actions have been undertaken within the framework of the European Semester, that assess public procurement from the perspectives of economic efficiency and single market. Over the years 2011-2021, at least 15 member states received CSRs aiming to improve the competition and efficiency of public procurement.

The Recovery and Resilience Plans (RRPs) of some Member States include reforms of public procurement with milestones and targets that are being assessed in the context of payment requests.

Finally, the Commission stresses that Technical Support Instruments projects have proven successful in numerous Member States by supporting the professionalisation of public procurement staff.

As mentioned above, the Commission is currently implementing the PPDS which, as a single point of access to procurement data across Europe, will be of great benefit for businesses, public buyers, policymakers and interested citizens alike. Compared to the Single Market Scoreboard it will provide a much more flexible way for end users to work with the data, namely through several dashboards. The PPDS aims to improve data quality, availability, and completeness through closer cooperation between the Commission and Member States and the introduction of the new eForms, which will allow public buyers to provide information in a more structured way.

Additionally, the Commission addresses issues linked to low competition in public procurement through its enforcement activities. The Commission has identified provisions in the 2014 Public Procurement Directives that have an impact on the number of direct awards and focuses on them during compliance checks of the national law transposing them. Instances of non-compliance were addressed in infringement proceedings launched against 18 Member States. Further to that, the Commission pays an increased attention to the instances of illegal direct awards in major cases.

The enforcement of public procurement rules is a shared responsibility between the Commission and the Member States. In 2017, the Commission initiated the creation of a Commission Experts' Group of national bodies responsible for review of public procurement rules at the national level: the

Network of First Instances Review Bodies. The group gathers representatives of judicial and administrative bodies that hear the public procurement cases to identify challenges and solutions concerning the remedies through review procedures and increase the cooperation among the members.

III. COMMISSION REPLIES TO THE RECOMMENDATIONS OF THE ECA

Recommendation 1 – Clarify and prioritise public procurement objectives

The Commission should initiate a process in order to:

- a) formulate and prioritise fewer, but clear and measurable objectives;**
- b) reflect whether EU strategic policy objectives should be achieved by means of:**
 - **strategic requirements for public procurement procedures, or rather**
 - **further regulation of the specification for works, goods and services.**

Target implementation date: mid 2025

The Commission **accepts** recommendation 1a.

Considering the growing political consensus to use public spending as a tool to contribute to the broader strategic objectives of the European Union such as sustainability, resilience and security of supply, it is indeed essential to focus the EU's public procurement policy on a limited number of ambitious and measurable objectives. These should however remain fully consistent with the strategy of a competitive internal market where contracting authorities, entities and economic operators can continue to interact in an effective manner. Several recent sector-specific legal initiatives have given a new focus to the EU public procurement system, conferring to it the status of an economic tool to support the resilience and the sustainability of the EU economy.

Public procurement will increasingly play a key role in achieving sustainable growth by ensuring the most efficient use of public funds. This may require a modern, more focussed, and digitalised legal framework which provides for simplified procedures and a more strategic use of public procurement. Such framework may result in easier access of SMEs to procurement and drive innovation.

The Commission **accepts** recommendation 1b.

Reflections on how to better achieve strategic policy objectives is ongoing. As explained above, the Commission has taken a number of specific initiatives to contribute to these objectives by tabling proposals for legislation in targeted sectors. These often add specific requirements to the procedures defined in the public procurement directives. In the future, the Commission may consider whether these initiatives should be consolidated and aligned in a single EU legal text.

Moreover, each Member State is developing its own strategies at national level as well as action plans to further encourage the use of strategic public procurement, adapted to its specific context and needs. The Commission is strongly supporting Member States in coordinating these efforts by promoting the exchanges of best practices, through financial and practical means, and by engaging with all stakeholders to build the necessary competence and capacity.

Recommendation 2 – Address the shortcomings of public procurement data

The Commission should:

- a) further improve the reliability and completeness of TED data, notably by promoting the use of optional input fields and embedded controls at data entry;
- b) collect additional relevant monitoring data from complementary sources, such as the Public Procurement Data Space, to feed monitoring indicators (this data should include unique identifiers for suppliers, beneficial owners and contracting authorities and, where available, information on appeal procedures by unsuccessful bidders);
- c) use the Public Procurement Data Space to monitor the quality of the data provided through eForms and published in TED;
- d) require member states, in their monitoring reports on public procurement, to provide complete and accurate data in a consistent manner.

Target implementation date: end of 2025

The Commission **accepts** recommendation 2a.

The Commission accepts this recommendation with the caveat that it cannot impose on Contracting Authorities to provide information that is not mandatory, or controls that are not foreseen in the legislation. Moreover, unnecessary administrative burden on the Contracting Authorities/public buyers should be avoided. Finally, it notes that around 75% of the public procurement notices published in TED are generated and managed at national level.

The Commission **accepts** recommendation 2b.

The Commission notes that, through eForms, it is possible to collect additional data on a voluntary basis, such as data on green/social and innovative procurement. Nevertheless, it is important to underline that those fields are optional. How much Member States and their contracting authorities will make use of them remains uncertain. According to the European Court of Justice's case law, some Member States indicated that data on beneficial owners will not be collected. Due to the importance of unique identifiers, the PPDS will provide a dashboard on their application in Europe and reflect this back to the Member States. Finally, data on appeal procedures is not collected through the current forms but may be made available by member States in their national reports sent to the Commission every three years.

The Commission **accepts** recommendation 2c.

One of the objectives of the PPDS is to monitor the implementation of the eForms in the Member States and to understand how the forms are impacting data availability and quality. For example, eForms will include fields on strategic procurement (like green, social and innovative procurement). The PPDS will help better understand how contracting authorities fill in these new fields that are offered through eForms. Another example is that with eForms, the use of code lists (lists of pre-defined replies/information to be put into procurement notices) is extended. This should also help to get better data quality, the latter to be monitored through the PPDS. While the PPDS will also be monitored, the focus should be on using PPDS to assess on how eForms has an impact on data quality and availability.

The Commission **accepts** recommendation 2d.

The Commission concurs in principle with the desired aim of the recommendation that the referred country reports provided by Member States according to Article 83 of Directive 2014/24/EU are based on complete and accurate data. It is important to keep in mind though that the public procurement directives do not require a specific format and the reporting obligations are limited in their scope. However, the Expert Group on Public Procurement has been consulted on a template for Member States reporting developed by the Commission, which is now used by a number of Member States.

Recommendation 3 – Update the Commission tools to better monitor competition in public procurement

The Commission should:

- a) align the Scoreboard’s scope with the objectives in the directives, in particular, by including additional indicators, e.g. relating to cross-border and strategic procurement;**
- b) show the multiannual trends in competition in public procurement at EU, member state and economic sector level;**
- c) disclose its indicator definitions and calculation methods (and any changes thereto) in a timely manner;**
- d) introduce advanced reporting features allowing further exploration of public procurement data;**
- e) disclose information on appeal procedures launched by unsuccessful bidders;**
- f) include information in its reporting on competition in member states, regions and economic sectors based on key performance indicators;**
- g) explore new ways of monitoring public procurement prices in EU and member states.**

Target implementation date: end of 2025

The Commission **accepts** recommendation 3a.

The Commission however wishes to state that it cannot systematically compute indicators if the data required is not available. Moreover, the methodologies for assessing the data available are extremely complex. For example, only direct cross-border procurement (where the tender winner is in another country as the contracting authority (the buyer)) can be computed easily. Yet, due to the complexity of the methodology and the data required, regular study can only be initiated about every 5 years to comprehensively analyse cross-border procurement (direct/indirect and other relevant aspects). In relation to strategic procurement, data is not available currently, but the future eForms will contain relevant fields. Still, these fields will be voluntary and the indicators on strategic procurement will be reliable depending on data quality and completeness.

The Commission **accepts** recommendation 3b.

In the future the PPDS will be able to show procurement trends.

The Commission **accepts** recommendations 3c and 3d.

For each indicator that is used in the PPDS specific documentation that covers the underlying calculation methods will be provided. Besides providing documentation on the indicators, PPDS will make use of advanced analytics features to analyse the data based on state-of-the-art artificial intelligence technologies, e.g., machine learning and natural language processing.

The Commission **accepts** recommendation 3e.

The Commission already collects the quantitative information on national review procedures in Member States which is regularly shared and collected through the *Network of First Instance Review Bodies*. The information includes the number of first instance decisions, the length of the review procedures and the number of appeals against the first instance decisions. Moreover, available data is published as a part of the triannual Member States report on public procurement, i.e. the so-called Article 83 report:

https://single-market-economy.ec.europa.eu/single-market/public-procurement/country-reports-and-information-eu-countries_en

The Commission **accepts** recommendation 3f.

The Commission will analyse ways to provide, on the basis of the TED data, more detailed information on indicators on public procurement performance, e.g. in relation to regions and sectors or other relevant factors.

The Commission **accepts** recommendation 3g.

The TED data does not provide a basis for analyzing individual prices and trends in their changes. Thus, the Commission will analyze the possibilities for basing this kind of observations on different sources of information or analytical methods.

Recommendation 4 – Deepen the root cause analysis and put forward measures to overcome key obstacles to competition and promote best practice

- a) **Based on the results of our audit, and in cooperation with the member states, the Commission should, further analyse in greater depth the root causes of weak competition in public procurement at EU, member state, regional and, where relevant, economic sector level.**
- b) **Depending on the outcome of this root cause analysis, the Commission should put forward measures to overcome the main obstacles to competition in public procurement, addressing contracting authorities' key concerns, such as:**
 - **reduce any unnecessary administrative burden;**
 - **promote the development of efficient procedures, particularly as regards choosing selection and award criteria;**
 - **strengthen administrative capacity;**
 - **foster the exchanges of best practice;**
 - **facilitate cross border procurement by centralising member state specific information and leveraging artificial intelligence to overcome language barriers;**
 - **make public contracts more attractive to companies, in particular for SMEs.****This could take the form of an EU-wide action plan.**

Target implementation date: end of 2025

The Commission **accepts** recommendation 4a.

The Commission will undertake work to analyse the causes of limited competition in public procurement markets. The ongoing Strategic Procurement Dialogues with Member States will play a key role in this analysis. Once all Dialogues result in a roadmap at national level, the Commission will get a better overview of the situation at national level. The Dialogues will not address specific issues at regional and sectoral level and will therefore not provide relevant information necessary to carry out a similar analysis at those levels.

The Commission will continue to use all tools at its disposal to increase the administrative capacity of the relevant stakeholders in the Member States. The Commission will also explore how the upcoming PPDS can be facilitated to make such analysis. The Commission aims to make PPDS a tool that can also support contracting authorities and not only EU users or policy makers in the Member States.

Lastly, feasibility of the exercise will depend on the collaboration of Member States that at the current stage lack relevant data. Most Member States will have to develop *sui generis* methodology to assess their performance, possibly helped by the strategic procurement dialogues.

The Commission **accepts** recommendation 4b.

The Commission will take stock of, and analyse, the state of play of different approaches and measures used by Member States to promote efficient public procurement. On this basis, the Commission will propose further possible steps and appropriate actions.

The Commission recognises the urgent need to identify the measures, of regulatory or other nature, required to promote public procurement as an efficient and simple-to-use tool to drive the green transition and ensure the resilience and sustainability of our economy. The Commission has already adopted a number of actions to support this objective. As a follow up to the Strategic Procurement Dialogues, the Commission will initiate a process of exchange of best practices among Member States based on the roadmaps or strategies they will develop.

Based on these initiatives, the Commission will consider whether further specific actions, if needed of a legislative nature, may be required to combine the objectives of simplification of the public procurement procedures with measures to align the public procurement market with the strategic objectives of the EU.

Moreover, the challenges faced by public buyers and economic operators, especially small and medium enterprises, are diverse and have different root causes. There is no one-size-fits-all solution to address these challenges.

While the Commission welcomes the objective of a potential Action Plan and the proposed topics which could be addressed, taking stock of the initiatives taken at national level would be the first necessary step before considering the design of a specific action plan addressing all the concerns mentioned. Other options, such as the use of legislation, will also be explored.