

# **Contribution of the Republic of Slovenia to the Revision of EU Public Procurement Legislation**

## **Non-paper by Republic of Slovenia**

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### **Introduction**

The Republic of Slovenia welcomes the initiative of the European Commission to revise EU's legal framework for public procurement. As a Member State with extensive experience in measures to raise competition and digital public procurement, Slovenia is committed to contributing constructively to the development of a simplified, coherent, and future-oriented procurement regime that reflects the realities faced by contracting authorities of all sizes across the EU.

Slovenia acknowledges the importance of this legislative process and emphasizes the need for a stable and predictable legal environment that fosters competition, strategic public procurement, and efficient use of public funds. The revision should be guided by the principles of proportionality, legal certainty, and administrative efficiency.

For the reform of the EU public procurement legislation to be effective, it must rest on three mutually reinforcing pillars:

- High-quality legislation that is clear, proportionate, and sectorially coherent across the Single Market.
- Professionalisation of the procurement function, including capacity building, training, and strong ethical standards for contracting authorities.
- EU-level digitalisation that ensures interoperable and secure e-procurement solutions with common data standards and analytics.

Advancing these pillars in parallel will improve outcomes for contracting authorities and economic operators, strengthen transparency and competition, and reduce administrative burdens.

### **Legal instrument: Preference for a Directive**

Slovenia firmly advocates for the continued use of a Directive as the most appropriate legal instrument. This position is grounded in several key arguments. Firstly, public procurement across Member States is deeply embedded in national budgetary frameworks, administrative structures, and socio-economic contexts. Slovenia's public procurement system is characterized by a large number of small, fragmented contracting authorities, many of which conduct only a few procedures per year. A Directive allows for flexibility in transposition, enabling Member States to adapt certain provisions to their specific market conditions and administrative capacities. In Slovenia, this flexibility is essential to ensure that procurement rules are both effective and proportionate.

Secondly, a Regulation would prevent rules from being adapted to national circumstances. It would impose a uniform framework that might not reflect the operational realities of smaller Member States or their legal traditions. Moreover, even where adaptation is possible, additional national legal acts would be required, thereby increasing complexity rather than reducing it.

Legally speaking, Slovenia considers it problematic for the foundational legal act in this domain to be a Regulation, particularly given the shared competence between the EU and Member States in public procurement. The transposition of Directives through national legislation ensures democratic legitimacy and coherence with domestic legal systems.

Furthermore, the study commissioned by DG GROW and conducted by Professor Robert Caranta of the University of Turin, supports this position. In his analysis of the internal coherence of EU public procurement legislation, Prof. Caranta concludes that a Regulation would not be appropriate for this field. He argues that EU public contract law currently only regulates the award procedures, while the broader context, including budgetary allocation and contract implementation, remains largely within the competence of individual Member States. These areas vary significantly across Member States and are only marginally addressed by EU law. Therefore, a Regulation would fail to achieve full harmonisation, and a Directive is preferable as it allows Member States to integrate procurement rules within their national budgetary and administrative frameworks.

In light of these considerations, Slovenia strongly recommends that the future EU public procurement framework be adopted in the form of a Directive to ensure both legal coherence and practical applicability across diverse national systems.

### **Simplification of Procedures and Legal Framework**

Slovenia strongly advocates for a substantial simplification of public procurement procedures at the EU level. The current legal framework includes a multitude of overlapping procedural types that are unnecessarily complex. This fragmentation leads to confusion among contracting authorities and economic operators, particularly in Member States where most contracting entities are small and conduct only a limited number of procurement procedures each year.

Based on national experience and supported by analytical findings, Slovenia proposes that the future EU procurement regime should be structured around **three core procedures**: an open and transparent procedure that expressly allows negotiation phases to address a key shortcoming of the current open procedure, the absence of negotiations; a restricted procedure for specific, justified circumstances; an exceptional procedure reserved for urgent or sensitive procurements. This streamlined approach would reduce administrative burdens and improve legal clarity, while preserving the flexibility and integrity in procurement processes.

Allowing negotiations (partly) in open procedures is important from an efficiency perspective. Today, when the contracting authority is faced with unacceptable bids because they exceed the budget, they must conclude the open procedure and formally start a new one. This is a burdensome and time-consuming task. If negotiations were allowed as part of the open procedure under these circumstances only, it would save a lot of time. This could be considered a slightly different form of an electronic auction.

Regarding **e-auctions**, which are an effective and economical tool for public procurement, we would suggest one minor legislative improvement. Specifically, according to Article 35, paragraph 5, the contracting authority should conduct a full initial evaluation of tenders when conducting an electronic auction. However, we believe that e-auctions should be conducted directly, with the tenderers (bidders) remaining anonymous and only their ranking being made public. This would mean that their names would not be known during the bidding process, reducing the possibility of bid-rigging in the same way as with the open procedure. This is possible because all bids are electronic, and the e-auction simply extends the open procedure before the bids are opened. Only after the e-auction has concluded bids with the full names of bidders and their prices/grades are shown.

Slovenia also considers certain existing tools, such as catalogues, to be outdated and no longer fit for purpose. E-catalogues, however, are an efficient ordering tool. As procurement devices are just one way to submit a bid, they are becoming an obsolete norm in an all-electronic environment. In our opinion, legal regulation of this is no longer necessary. They should be adopted and replaced with more

agile, digital solutions that reflect the technological advancements and operational needs of modern procurement. In this context, Slovenia recognises the potential of combining elements of the dynamic purchasing system with framework agreements to create a more responsive and efficient procurement model.

The current rules governing **framework agreements** are overly rigid. Although framework agreements are intended to provide flexibility in situations where exact quantities are unknown, the requirement to define the maximum value and quantity for the entire duration - typically four years - undermines their practical utility. According to case law of the Court of Justice of the European Union (e.g. C-23/20, C-274/21, C-275/21), once the predefined limit is reached, the framework agreement ceases to have legal effect. Slovenia therefore proposes that future rules allow for a more dynamic approach, whereby a framework agreement may remain valid for the certain period, even if the estimated quantities have been exceeded, provided the unit price remains unchanged. Namely,

Furthermore, Slovenia recommends that framework agreements be executable in **two distinct forms**: one with fully predefined conditions, and one allowing for mini-competitions among qualified suppliers. This dual approach would better accommodate the diverse needs of contracting authorities and enhance the usability of framework agreements.

Finally, Slovenia calls for a clearer and more permissive regulations on **tender modifications**. The current framework lacks sufficient clarity on what constitutes acceptable amendments, which can lead to legal uncertainty and procedural disputes. Reasonable and transparent modifications should be explicitly permitted, particularly in cases where they do not alter the fundamental nature of the contract or compromise competition. The regulatory framework should aim to ensure that only those tenders which do not permit the substantive performance of the contract are excluded from the procurement procedure, rather than being rejected based on purely formal or even minor irregularities. Furthermore, contracting authorities should be allowed to disregard manifest or immaterial errors, thereby contributing to the efficiency and cost-effectiveness of public procurement procedures and reducing the administrative burden on economic operators, by relieving them of the obligation to remedy errors that are evident at first sight or constitute negligible and non-material deficiencies, in so far as such deficiencies have no effect on the assessment of the economic operator's suitability or on the conformity of its tender.

Such comprehensive simplification is vital to ensure that the procurement system remains accessible, efficient, and legally sound, particularly for smaller contracting authorities that form the backbone of public procurement in many Member States.

### **Strategic Public Procurement**

Slovenia supports the integration of strategic objectives, such as sustainability, resilience, and innovation, into public procurement. However, this should be **encouraged** rather than **mandated** through rigid quotas or prescriptive measures. Strategic procurement should remain an adaptable tool that can be tailored to the specific needs of contracting authorities.

Supporting strategic objectives in public procurement inevitably narrows the pool of suppliers, reducing competition and potentially raising prices, unless these objectives are carefully designed and sequenced. While Slovenia agrees that the EU must fully embrace these goals because they reflect our values and long-term policy priorities, the EU must remain mindful of the associated trade-offs and manage them through proportionality, market engagement, lotting, and life-cycle costing.

### **Digitalization and EU-Level Tools**

Slovenia emphasizes the need for a **pan-European digital infrastructure** to support public procurement. A central element of this vision is the creation of an **EU-wide verification system for exclusion grounds**, inspired by Slovenia's national **eDosje** system. This tool would:

- Enable automatic verification of exclusion grounds.
- Reduce administrative burdens.
- Make the procurement procedures faster and smoother.
- Enhance transparency and trust in procurement procedures.

All contracting authorities have consistently highlighted significant issues with the current ESPD system. The current ESPD system is overly complex and should be replaced with a simplified, trust-based model. Economic operators should only be required to confirm compliance with the essential criteria, and verification should occur only for the most advantageous tender or in cases of serious doubt. As was discussed at the joint EXPP-EXEP meeting in Brussels in November, Slovenia would opt for an EU-wide e-procurement system supported by national systems. Interconnectivity would be established at the EU level.

### **Exclusion Grounds and Verification**

Slovenia proposes limiting the scope of exclusion grounds in public procurement procedures to legal entities, rather than requiring exhaustive verification of all individuals in management, supervisory, or representative roles. This recommendation is based on extensive national experience and supported by data from Slovenia's public procurement system. This data reveals that such individual-level checks, particularly in the case of foreign economic operators, are disproportionately burdensome, time-consuming, and inefficient. In some instances, contracting authorities must verify dozens of individuals, despite often lacking access to centralized or freely available national databases in other Member States. This process places a significant administrative strain on contracting authorities, especially smaller ones, and can lead to delays in procurement procedures.

Discussions held at EXPP meetings, the studies commissioned by the EC, and the surveys conducted over the past year have shown that limiting the time spent on the evaluation stage of the process is key to establishing efficient and speedy procurement procedures that will also contribute to better competition (an OECD report studying competition drivers in Slovenia has shown direct impact of time reduction on single-bid share).

Furthermore, Slovenia emphasizes the importance of **clearly defining the timing** of exclusion ground verification and **the country in which the verification must be carried out**, since the existing wording of the directive does not make it clear whether the entity should be verified in its home country only (and which is it, verification by residence or by citizenship), or also in the contracting authority's country if this is not the same, or possibly in all EU Member States. The current wording of the Directives is open to interpretation, which can result in speculative or inconsistent application. A precise and uniform rule would eliminate legal uncertainty and ensure equal treatment of economic operators across the Union.

In Slovenia, the verification of exclusion grounds is largely digitalized and streamlined through the national **eDosje** system, enabling efficient and automated checks. However, this level of efficiency cannot be replicated across borders without a harmonized EU-level solution. Therefore, Slovenia supports the establishment of a **trusted list of economic operators** at both national and EU levels. Such a list would enable contracting authorities to rely on pre-verified entities, reducing duplication of effort

and enhancing legal certainty. This approach would also contribute to a more trust-based procurement system, where verification focuses on the most relevant aspects and is conducted only when necessary.

This proposal reflects Slovenia's broader commitment to simplifying procurement procedures while maintaining integrity and transparency. It aligns with the principle that procurement rules should not impose unnecessary burdens, particularly on small contracting authorities that conduct only a few procedures per year. By focusing verification efforts where they are most needed and leveraging digital tools, the EU can foster a more efficient, accessible, and trustworthy procurement environment.

Additionally, Slovenia advocates for a **streamlined and transparent evaluation process**. The emphasis should be placed on the economic operator's ability to deliver the subject matter to required standard, rather than on extensive administrative documentation. Evaluation criteria should be clearly defined, proportionate to the nature of the procurement, and designed to facilitate fair and efficient decision-making.

### **Nothing on public procurement without public procurement**

Slovenia advocates for a **single, unified procurement legislation** covering all sectors, including defence. The current fragmentation between Directives 2014/24/EU and 2014/25/EU is unnecessary and leads to unnecessary duplication. Sectoral legislation should not take precedence over general procurement rules, except where the subject matter of procurement is inherently sector-specific. However, the growing number of sector-specific makes public procurement legislation inconsistent. Slovenia strongly supports taking an omnibus approach to consolidate or streamline sectoral requirements within or in accordance with the main procurement framework. Moreover, we believe that all public procurement legislation should be assigned to DG GROW as required for other files. This would solve many problems during the legislative process and the usage phase.

Slovenia also recommends reconsidering certain exclusions from the scope of public procurement legislation, such as employment contracts and financial services, and clarifying their definitions to ensure consistent interpretation across Member States. This recommendation is based on practical challenges encountered when applying current rules and on the jurisprudence of the Court of Justice of the European Union, which has highlighted ambiguities in interpreting terms such as 'employment contract' (case C-260/17).

Slovenia believes that exclusions should be clearly and narrowly defined using precise legal terminology that reflects both the objectives of the procurement legislation and the realities of national legal systems. This is particularly important for small contracting authorities, which often lack the legal expertise to navigate complex or ambiguous provisions. A clearer and more consistent approach to exclusions would reduce the risk of misinterpretation, enhance legal certainty, and support the efficient functioning of the internal market.

In this regard, it would be advisable to provide a clearer and more precise delineation of the issues concerning that remain outstanding concerning the fulfilment of the conditions for invoking the **in-house exception**. Although the Court of Justice of the European Union has developed substantial case law on this issue (most notably in Case C-107/98 Teckal), certain fundamental questions regarding the interpretation of these conditions and the definition of the concept of contracting authorities (Article 2 of the Directive) remain unresolved. This lack of clarity results in divergent interpretations and applications of the in-house exception, in particular:

- With regard to internal operators (dependent entities) of contracting authorities at the State level, it remains unclear whether the relevant conditions should be assessed for each authority separately or for the hierarchical structures of State administration as a whole (e.g. the State administration headed by the Government), or whether the State should be considered as a single monolithic contracting authority, such that the fact that one central authority exercises control over an internal operator would suffice to allow all other central authorities to rely on the exception.
- It would also be appropriate to establish a more precise definition of the content and scope of the powers that a controlling contracting authority must possess vis-à-vis the internal operator in order to be deemed to exercise control analogous to that exercised over its own departments. The vagueness of this legal standard leads to significant differences in interpretation, particularly particularly with regard to the various organisational or legal forms of internal operators. Furthermore, it would be useful to clarify the relationship between the control requirement and the obligations stemming from the OECD Guidelines on Corporate Governance of State-Owned Enterprises, as many Member States apply these guidelines also to companies functioning as internal operators. The guidelines require a clear separation between the State's ownership function and its other public functions, whereas the in-house exception is, conversely, predicated on an "organic integration" between the State's organisational structure and the internal operator.

### **Specific Exclusions from the Scope of Procurement Rules**

Additionally, Slovenia proposes three specific exclusions from the scope of EU public procurement rules. These exclusions are based on practical considerations and the unique characteristics of the respective markets.

Procurement of **foodstuffs** would benefit from an exclusion or a tailored, simplified regime reflecting characteristics of the subject-matter and the public interest in stable nutrition provision. Food contracts should be presumed to have no cross-border interest, enabling the justified use of short supply chains and local sourcing, including resilience measures for crisis situations (e.g., natural disasters, pandemics). Parity of treatment should be ensured between the two equivalent meal-provision models, in-house kitchens (food purchases) and outsourced catering services (social and other specific services) through analogous special rules and thresholds, avoiding unequal legal positions for identical public interests. This approach would strengthen food system resilience and self-sufficiency, support circular-economy objectives at a local level and reduce administrative burdens, all while safeguarding competition and equal treatment.

Similarly, **medicines for public pharmacies** are subject to strict regulatory regimes and public health imperatives as they operate as public institutions. The procurement of medicinal products must comply with national and EU pharmaceutical legislation, which imposes rigorous standards for safety, quality, and availability. In many cases, procurement decisions are driven by clinical guidelines, therapeutic needs, and supply chain constraints that do not align with the procedural timelines and competitive requirements of general procurement rules. In Slovenia, the prices of medicinal products are strictly regulated and are not and cannot be subject to negotiation, also, general prices have already been, according to law, set by (national) Health Insurance Institute. Additionally, a public pharmacy institution is required to ensure the supply of all medicinal products available on the market within 24 hours. A pharmacist is not permitted to dispense an alternative medicinal product on the basis of a prescription, as prescriptions are issued for a specific medicinal product rather than for the active substance. The pharmacist in a pharmacy is therefore obliged to dispense to the patient the medicinal product with the protected (brand) name as prescribed on the prescription. However, under public procurement

rules, tender documentation may as a rule not specify or require a precisely defined product; if such specification is exceptionally justified, the requirement must obligatorily be accompanied by the wording “or equivalent”, which is not possible in this situation. This requirement has been further tightened by the judgment of the Court in case C-424/23, *DYKA Plastics*. Excluding these procurements from the scope of the directive would allow public pharmacies to respond more effectively to patient needs and ensure timely access to essential medicines.

Furthermore, Slovenia proposes an additional exclusion from the scope of EU public procurement rules for **statutory audit services** (as defined in Article 16 of Regulation (EU) 537/2014) and **assurance services related to sustainability reporting**, introduced under Directive (EU) 2022/2464 (CSRD), which requires companies to obtain independent assurance on sustainability disclosures. These services are governed by detailed legislation, including specific procedures for the selection and appointment of auditors, which are aligned with EU corporate governance and auditing standards.

In practice, entities subject to public procurement obligations face a dual compliance burden: they must adhere to both general procurement procedures under EU directives and sector-specific rules governing auditor appointments. This overlap can create procedural conflicts and increase administrative complexity, potentially leading to inefficiencies or delays in meeting regulatory deadlines. Moreover, assurance services for sustainability reporting are often closely linked to statutory audit processes. In many cases, the same audit firm is appointed to perform both tasks to ensure consistency, coherence, and reliability in financial and non-financial reporting.

Therefore, Slovenia recommends that the revised legal framework explicitly recognize an exclusion for public contracts concerning statutory audit services and assurance services for sustainability reporting.

These proposed exclusions reflect Slovenia’s broader position that procurement rules should be proportionate and context-sensitive. Where sector-specific regulation already ensures transparency, competition, and public interest protection, duplicating requirements through procurement legislation may lead to inefficiencies and unnecessary administrative burdens. Slovenia therefore recommends that the revised legal framework explicitly recognize such exceptions, allowing Member States to tailor procurement practices to the realities of specific sectors.

### **Subcontracting and Capacity**

Slovenia is proposing a simplification of the rules governing subcontracting and reliance on third-party capacities. The current framework is overly complex and does not reflect the operational realities of most contracting authorities, particularly smaller ones. In practice, these rules often require extensive documentation and verification at early stages of the procedure, even when such information is not essential for assessing the ability of the economic operator to deliver the subject matter.

This complexity creates unnecessary administrative burdens and discourages participation, particularly among SMEs, which may rely on subcontractors or external partners to meet specific requirements. Slovenia believes that a more flexible and proportionate approach would facilitate broader market access and enhance competition, without compromising transparency or accountability.

In Slovenia’s national system, contracting authorities are not required to verify the existence and content of statements regarding subcontractors or third-party capacities unless there is a specific reason to doubt their accuracy. This trust-based model has proven effective in reducing procedural delays and focusing verification efforts where they are most needed. It also aligns with the broader principle that procurement procedures should be designed to attract capable suppliers, rather than to pre-emptively excluding them through excessive formalism.

Slovenia therefore recommends that future EU rules allow contracting authorities to defer detailed verification of subcontractors and capacities until the award stage or only in cases of justified concern only. This would streamline the process, reduce transaction costs, and make procurement more accessible to a wider range of economic operators.

Moreover, the legal framework must clearly distinguish between cases in which subcontracting forms a strategic part of the offer and cases in which it is merely incidental or operational. This would help to avoid unnecessary scrutiny and enable contracting authorities to concentrate on the main contractor's core capabilities.

Simplifying these provisions would enable the EU to foster a more inclusive and efficient procurement environment, that is better suited to the diverse structures and needs of contracting authorities across Member States.

## **Conclusion**

The Republic of Slovenia reaffirms its strong commitment to contributing actively to the revision of EU's public procurement legal framework. As a Member State with an established and data-driven procurement system, Slovenia is putting forward practical, experience-based proposals to improve the efficiency, accessibility, and strategic value of public procurement across the Union.

Slovenia believes that the future framework must be based on the principles of simplification, proportionality, and legal certainty. While the current system is comprehensive, it is often too complex for most contracting authorities, many of which are small and have limited resources. A streamlined legal structure, supported by digital tools and flexible procedures, is essential to ensure that public procurement remains a functional and strategic instrument for all Member States.

We emphasize the importance of maintaining the Directive as a legal instrument that allows Member States to adapt rules to their specific administrative and market contexts. Slovenia also calls for procedural fragmentation to be reduced, for clearer definitions of exclusions to be established, and for a more trust-based approach to verification and evaluation to be adopted. These changes would reduce administrative burdens and foster greater competition and innovation.

Slovenia is ready to engage constructively in expert-level discussions and policy development. We are prepared to share our national experiences, including the successful implementation of digital solutions such as the eDosje system, and to contribute data and analysis in support of evidence-based policymaking.

In conclusion, Slovenia urges the European Commission to pursue a balanced and forward-looking revision of the procurement framework - one that respects national specificities, promotes strategic objectives, and ensures that public procurement remains a reliable and effective tool for delivering public value across the European Union.