## Procuring Europe's Energy Transition

# Aligning Public Procurement with Strategic Grid Needs

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entsoe

# Foreword

**ENTSO-E, the European Network of Transmission System Operators for Electricity, is the association of the European transmission system operators (TSOs).** The **40 member TSOs, representing 36 countries,** are responsible for the secure and coordinated operation of Europe's electricity system, the **largest interconnected electrical grid in the world.**

**Before ENTSO-E was established in 2009, there was a long history of cooperation among European transmission operators, dating back to the creation of the electrical synchronous areas and interconnections which were established in the 1950s.**

**In its present form, ENTSO-E was founded to fulfil the common mission** of the European TSO community: to power our society. At its core, European consumers rely upon a secure and efficient electricity system. Our electricity transmission grid, and its secure operation, is the backbone of the power system, thereby supporting the vitality of our society. ENTSO-E was created **to ensure the efficiency and security of the pan-European interconnected power system** across all time frames within the internal energy market and its extension to the interconnected countries.

**ENTSO-E is working to secure a carbon-neutral future.** The transition is a shared political objective through the continent and necessitates a much more electrified economy where sustainable, efficient and secure electricity becomes even more important. **Our Vision: "a power system for a carbon-neutral Europe"*** shows that this is within our reach, but additional work is necessary to make it a reality.

In its Strategic Roadmap presented in 2024, ENTSO-E has organised its activities around two interlinked pillars, reflecting this dual role:

- "Prepare for the future" to organise a power system for a carbon-neutral Europe; and
- "Manage the present" to ensure a secure and efficient power system for Europe.

**ENTSO-E is ready to meet the ambitions of Net Zero, the challenges of today and those of the future for the benefit of consumers, by working together with all stakeholders and policymakers.**

* https://vision.entsoe.eu/

# Contents

# Executive Summary

## Why TSOs need a fit-for-purpose framework

Europe's transmission system operators must deliver the largest grid build-out in EU history to meet climate, security-of-supply and industrial policy objectives. Yet the current EU public procurement framework slows down critical infrastructure delivery instead of enabling it. Rules designed for stable markets do not reflect today's realities: long lead times, concentrated supplier markets, geopolitical uncertainty, rapidly evolving technologies, new sustainability obligations and urgent project timelines. As a result, tenders are delayed or cancelled, competition is reduced, costs rise, and essential grid projects take longer to reach consumers.

A fit-for-purpose framework is therefore essential to ensure TSOs can procure strategically, efficiently and securely, while still respecting transparency, equal treatment and competition. Without targeted reform, Europe risks falling short of its decarbonisation and security goals because the grid cannot be built fast enough.

Public procurement accounts for € 2.3 trillion annually, and the ongoing revision of the Public Procurement Directives presents a critical opportunity to modernise the system. Recent analyses from the European Court of Auditors, the Letta and Draghi reports, the Competitiveness Compass, European Council conclusions and the European Parliament underline declining competition, growing administrative burden and insufficient alignment with EU strategic priorities.

ENTSO-E's paper identifies fourteen reforms, grouped into three overarching themes, to ensure the framework supports, rather than obstructs, the energy transition.

## 1 Turn Grid Procurement into a Strategic Tool for Europe

TSOs need procurement rules that better support Europe's industrial, security and innovation objectives. This requires a more flexible approach to non-price criteria, guided by an EU toolbox and adapted to market realities, rather than rigid mandatory thresholds. It also calls for a procurement framework that ensures not only "Made in Europe", but also "Sell in Europe", so that European manufacturing capacity is available to European buyers. In parallel, clearer use of security-related procurement rules is needed for critical grid technologies, alongside dedicated regimes for particularly sensitive TSO activities. Legal certainty on the use of functional requirements, particularly in light of NZIA obligations and recent CJEU interpretation, is also crucial. Finally, the current rules for procuring innovative materials and processes must be made more workable, including through more flexible negotiated procedures modelled on the Defence and Security Procurement Directive.

## 2 Give TSOs the Flexibility to Deliver Grids on Time

TSOs operate in markets defined by long lead times, rapidly evolving technical needs and geopolitical instability. Current procurement rules force cancellations and make it difficult to adjust tender procedures or contract conditions when circumstances change. To deliver infrastructure on time, TSOs need greater flexibility to select and adapt procedures, to introduce technical alignment phases during tenders, and to make justified changes without restarting the process. Clearer rules on what constitutes substantial and non-substantial modifications, as well as the ability to renegotiate long-term contracts and framework agreements, are essential for managing complex, multi-year projects. At the same time, TSOs must be able to transfer, sell or swap equipment and call-off rights among themselves to strengthen crisis response, avoid duplication and accelerate project delivery.

## 3 Cut Red Tape and Fix the Data Backbone of EU Procurement

Excessive administrative burden and incomplete data undermine supplier participation and reduce competition. Thresholds that no longer reflect economic reality force low-value contracts into unnecessarily complex procedures. Documentation requirements remain heavy and inconsistent, and digital tools do not yet offer the interoperability needed for seamless participation. A modern procurement system requires simplified forms, automated reuse of company data, harmonised requirements across Member States, and EU-wide supplier identifiers to enhance traceability. Strengthening monitoring tools such as TED, the Public Procurement Scoreboard and e-Certis is also essential to ensure meaningful oversight, policy evaluation and evidence-based reform.

**Together, these reforms would modernise the EU procurement framework to reflect today's energy, industrial and security realities. They would enable TSOs to deliver the grids Europe needs, at the pace required, while maintaining transparency, competition and value for money.**

# 1 Introduction

The European Union's public procurement market is a cornerstone of its economy, with over 250,000 public authorities collectively spending around € 2.3 trillion annually on services, works, and supplies. This expenditure represents approximately 15 % of the EU's GDP[1]. The market encompasses a wide range of sectors, including infrastructure, construction, transport and logistics, healthcare, education, social services, catering, IT and communication, energy, waste management, and security and defence.

Public procurement is a powerful tool for stimulating jobs, growth, and investment, fostering an economy that is more resilient, innovative, resource and energy-efficient, and socially inclusive. High-quality public services rely on modern, well-managed, and efficient procurement processes. Enhancing public procurement can lead to significant savings: a 1 % efficiency gain could save € 20 billion per year.

This paper sets out ENTSO-E's internal analysis and proposals to shape the upcoming revision of the EU public procurement framework, considering not only the Public Procurement Directives but also other interconnected EU directives and regulations that influence procurement practices[2]. A comprehensive and coherent approach is essential to ensure that the proposed reforms address the full spectrum of legal and procedural constraints affecting infrastructure delivery.

The rationale for the revision by the EU can be traced to several recent high-level policy documents and evaluations, including:

- European Court of Auditors' Special Report 28/2023, Public procurement in the EU – Less competition for contracts awarded for works, goods and services in the 10 years up to 2021 (European Court of Auditors, 2023);
- the Letta Report, much more than a market – Speed, Security, Solidarity: Empowering the Single Market to deliver a sustainable future and prosperity for all EU citizens by Enrico Letta (April 2024);
- the Presidency Note from the Polish Presidency, Public procurement – strategic goals and the way forward, Council Document 8638/25, 8 May 2025, prepared for the Competitiveness Council meeting on 22 May 2025;
- the Draghi Report, The future of European competitiveness – A Competitiveness Strategy for Europe by Mario Draghi (September 2024);
- Competitiveness Compass for the EU (29th January, 2025)
- The Clean Industrial Deal: A joint roadmap for competitiveness and decarbonisation (26 February, 2025)
- European Parliament resolution of 9 September 2025 on public procurement
- (2024/2103 (INI)) and
- the Mission Letter to Commissioner Stéphane Séjourné, which references both the Letta and Draghi reports and outlines strategic priorities for EU competitiveness and procurement reform (European Commission, 2024).

The European Commission officially launched the revision process with a public consultation which took place between 13 December 2024 – 07 March 2025. According to Commission's work programme of 2026, the Public Procurement Act will start in Q2 of 2026.

1 European Commission, Public procurement , Internal Market, Industry, Entrepreneurship and SMEs, *Improving public procurement can yield big savings: even a 1 % efficiency gain could save € 20 billion per year*, accessed January 2, 2026.

2 For example, General Data Protection Regulation (GDPR), CBAM (Carbon Border Adjustment Mechanism), FSR (Foreign Subsidies Regulation), FDI Regulation, Ecodesign Regulation, NZIA (Net Zero Industry Act), Utilities Directive, Clean Vehicles Directive, Environmental Impact Directive



Grid investments are central to Europe's climate and energy goals. Yet the current public procurement regime – designed for a different market era – limits TSOs' ability to respond effectively. On the ENTSO-E side, the goal is to align procurement rules with the operational realities of Europe's TSOs as they face unprecedented infrastructure challenges. Several important issues need to be addressed. On the one hand, numerous legislative acts are being elaborated with the intention of steering public procurement in different and sometimes conflicting directions, which increases complexity and distorts the purpose of procurement. On the other hand, key infrastructure projects are delayed, costs are driven up, and prices for end consumers have multiplied. This situation is not beneficial to the EU, its Member States, or the public that TSOs are expected to serve. In the context of supply constraints, accelerating decarbonisation, and shifting industrial policies, the procurement framework must enable rather than obstruct progress.

## 1.1 Current Legislative Background

To ensure fair competition for businesses across Europe, the European Parliament and the Council have adopted Directive 2014/24/EU on public procurement, Directive 2014/25/EU on utilities, Directive 2014/23/EU on concessions and Directive 2009/81/EC on defence and security procurement. These rules guide how public authorities and entities including certain utility operators buy goods, works, and services, above the stated threshold values.

The 2014 reform of the EU public procurement Directives aimed to simplify procedures, increase flexibility, reduce the administrative burden. It also sought to boost SME participation, promote strategic procurement for goals like innovation, social responsibility and environmental sustainability, and improve transparency to reduce fraud and corruption.

With the European Green Deal, public procurement has shifted focus from just *how* to procure to also *what* to procure. Recognizing its strategic role, the EU introduced requirements in various legislative acts to improve the sustainability, resilience and security of supply of public purchases.[3]

While these acts introduce key legal elements completing the EU public procurement legislative framework, they also represent an additional challenge to implement and apply for national authorities, public buyers and suppliers alike, due to their fragmentation which causes complexity.

3 These include, for instance:
- The Ecodesign for Sustainable Products Regulation. It lays the legal basis for the EU to adopt harmonised minimum mandatory green public procurement criteria with a product or sector-specific dimension.
- The Net Zero Industry Act. It requires public buyers to apply green requirements when purchasing the net zero technologies covered. It also requires them to apply at least one condition related to cybersecurity aspects, or social aspects, or the timely delivery of the contract. Finally, it creates the conditions to apply resilience public procurement requirements to technologies for which the EU has a high level of dependency from third countries.
- The Corporate Sustainability Due Diligence Directive. Clarifies that it is possible to take due diligence aspects into account as part of the award criteria or contract conditions for public procurement.
- The Energy Efficiency Directive. Requiring Member States to ensure that only products, services and works with high energy-efficiency performance are purchased and that the energy efficiency first principle is applied in public purchases.

## 1.2 Policy Background

On December 4, 2023, the European Court of Auditors published a special report titled "Public procurement in the EU: less competition for contracts awarded for works, goods, and services in the 10 years up to 2021." The report underlined the decreasing competition in public procurement over the past decade, highlighting the large proportion of direct awards in some member states and single bidder in procurement procedures. **Within the last ten years, the report finds, the number of bidders per tender has halved.** It also underscored the low proportion of contracts awarded to SMEs and the insufficient use of strategic public procurement. Other shortcomings identified included the low level of direct cross-border procurement and the lack of monitoring by the Commission and Member States.

Similarly, the Letta Report, "Much More Than a Market" highlighted the importance of integrating sustainability and innovation into procurement processes to support broader EU policy goals. The Draghi "The Future of Competitiveness" Report stresses the necessity of reducing the EU's dependency on external suppliers for critical goods and improving economic governance to foster a more cohesive and competitive internal market. Additionally, it calls for the introduction of "Buy European" clauses in procurement rules to prioritise EU-based suppliers.

In May 2025, the Council adopted conclusions on public procurement in response to the European Court of Auditors' report, emphasizing the need to improve fair and effective competition for EU public procurement contracts. Key points include simplifying and enhancing procurement rules for clarity and efficiency, ensuring high-quality data availability and advanced tools, consulting stakeholders and promoting best practices, and launching an EU-wide strategic action plan to address identified shortcomings and enhance the overall framework.

As part of the 2024 – 2029 political guidelines, the President of the European Commission announced an evaluation of the current regulatory framework and a review of the Public Procurement Directives. The Executive Vice-President responsible for prosperity and industrial strategy, will leverage this revision to further unleash the potential of public procurement to shape the European economy, creating lead markets, and fostering the growth and resilience of European businesses, thereby creating quality jobs.

The January 2025 Competitiveness Compass confirmed this course of action, stressing the need to adopt new measures to encourage demand for low-carbon products, ensure the resilience of the supply chains, especially for critical raw materials and reduce dependencies. The Clean Industrial Deal sets the timeframe for the public procurement reform for Q4 2026.

Ultimately, European Parliament resolution of 9 September 2025 on public procurement (2024/2103 (INI)) stressed the specific challenges faced by electricity grid operators, with increased delivery times and costs; calls for public procurement procedures for electricity grid operators to be simplified and their flexibility and efficiency ensured; advocates for more consistency between EU regulations impacting the public procurement of electricity grids.




# 2 Proposals for Reform

## Turn Grid Procurement into a Strategic Tool for Europe

### 1 Propose voluntary non-price criteria to support strategic procurement

ENTSO-E understands that the EC is considering the introduction of mandatory non-price criteria in the revision of the Public Procurement Directives. While important to drive sustainability and resilience, a rigid approach can have unintended consequences in oligopolistic markets, such as the grid technology sector. An analysis by the European Commission has indeed found that the grid sector is very resilient in terms of technology leadership, with high shares of domestic manufacturing for most critical components, and a low degree of third-country dependency.[4]

At the same time, some markets for specific grid technology components are still developing mature sustainable and circular supply chains but are characterised by limited supplier bases and capacity constraints. Imposing uniform thresholds or fixed weightings may therefore increase prices, restrict competition, or exclude viable suppliers from third countries.

As grid technology is predominantly manufactured in Europe, baseline compliance with environmental and social standards is already high. On top of that, European TSOs compete with worldwide demand for production slots of grid technology made in Europe. **In this context, non-price criteria should be used flexibly to assess genuine risk exposure and incentivise innovation, rather than impose prescriptive thresholds that markets may not yet be able to meet.** The EU must avoid setting criteria where no material added value can be expected. For example, in cases where the supplier base is almost exclusively European, local content criteria for grid technology purchasing would fail to deliver any added value regarding quality and differentiation of offers. Tailored approaches on the other hand allow buyers to reward suppliers that invest in sustainable and circular solutions[5], and innovation in Europe, while maintaining affordability and security of supply.

**Possible outcomes with the lack of flexibility:**

- A lack of flexibility also complicates the practical application of sustainability rules. For example, contracting authorities must decide whether environmental requirements belong in the technical specifications or in the award criteria, a choice that demands detailed market insight and legal scrutiny and often adds unnecessary complexity and time to already challenging tenders.
- High fixed weightings (e. g., 30 %) can produce distorted outcomes in price-tight tenders, particularly when linear scoring models lead to paying disproportionately for marginal sustainability differences.
- Rigid criteria increase the risk of challenges, as buyers must substantiate each methodological decision and exemption.
- Suppliers often prefer a balanced model combining minimum requirements with qualitative award criteria, as it rewards progress while encouraging further innovation.

#### Solution

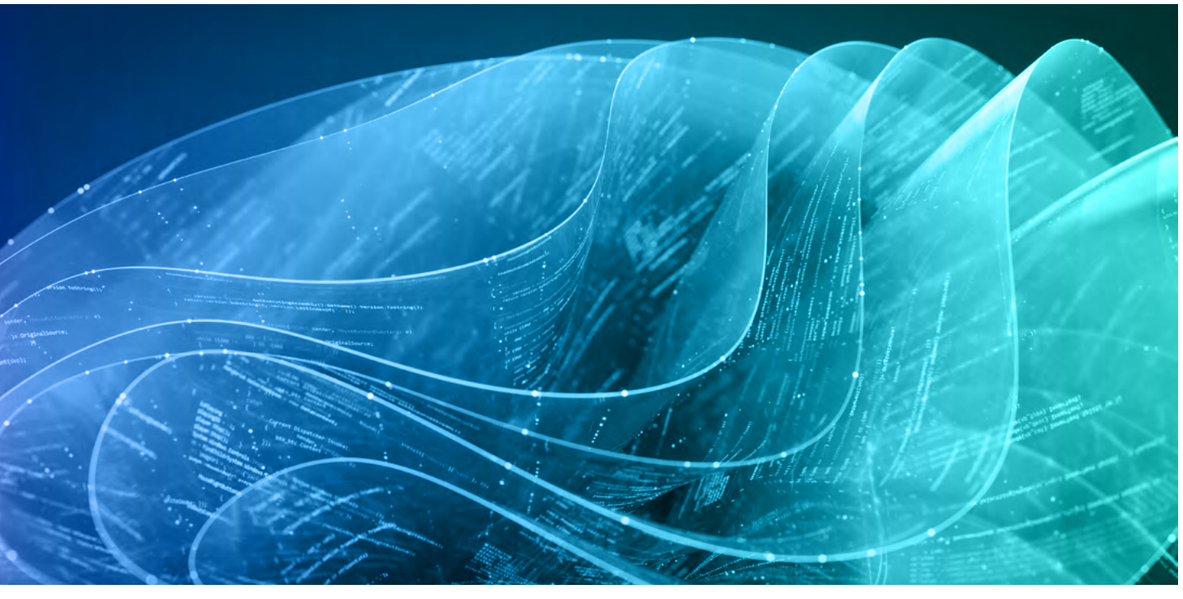
To ensure that procurement supports sustainability without jeopardizing feasibility, TSOs should be granted freedom to select technically relevant and appropriate requirements in a tendering process. This flexibility should entrust TSOs to apply measures including context-specific non-price criteria or requirements that encourage sustainable and circular manufacturing, taking into account market maturity and technological readiness. This approach advances sustainability goals where appropriate while maintaining affordability, competition, and security of supply.

At the same time, ENTSO-E acknowledges the fact that currently, non-price criteria (for sustainability, local content, resilience etc.) lack mainstreaming for both contracting authorities and tenderers. To ensure both legal certainty and market acceptance upon application, streamlined criteria may indeed provide useful guidance for all market participants.

4 Communication from the Commission C/2025/3236 of 18.06.2025

5 Minimum sustainability requirements for public procurement procedures, including the Commission's decision not to include grid technologies for now (still in discussion). See ENTSO-E response to the European Commission's call for feedback on Draft Implementing Regulation – Ares (2025) 7728646

We therefore invite the EC to produce a toolbox on voluntary non-price criteria that TSOs may use where appropriate. Such guidance would support contracting authorities in applying non-price criteria consistently and effectively, while retaining the flexibility necessary to adapt to specific market conditions and product types.



## 2 Strengthen the procurement of innovative materials and processes

One of the objectives of the 2014 revision of the procurement directives was to encourage innovation in public tenders and create a legal framework supporting this. The rules on innovation procurement remain underused, as also noted in the INI report. However, in practice the legal framework is restrictive, heavy with bureaucracy, and difficult to apply. A prerequisite for applying innovative partnerships is that the contracting authority can formulate the innovative idea in functional requirements. However, if the innovative solution is already patented by a supplier, it becomes difficult to ensure equal treatment in a tender procedure.

An innovative solution is rarely procured for its innovative character alone. It becomes interesting for public procurers when it enables better results at optimised cost by procuring in a more cost-efficient way. Public procurement in the EU faces controversy regarding the balance between price and innovation, with tensions arising from the need for both value for money and technological advancement. While traditional procurement focuses on the lowest price, the EU is increasingly using procurement as a strategic tool to promote innovation through public procurement of innovative solutions, where buyers act as early adopters of new products and services. However, challenges remain, including administrative burdens, inconsistent enforcement, and the difficulty of applying innovation-friendly rules in a system historically geared towards price competition.

While contracts with the sole objective of creating research, experimentation, studies, or development can be entered into using the negotiated procedure without prior call for competition, it remains a requirement that the award does not preclude future tenders. This makes it undesirable for suppliers to invest time, innovative resources, and costs in partnerships with contracting authorities. Thus, the current public procurement framework is not fit for purchasing innovative materials or enabling genuine innovation partnerships, making targeted adjustments necessary.

### Solution

We call on the EC to support innovative solutions and new technologies for grid development by introducing clearer and more usable provisions on innovative partnerships and the negotiated procedure without prior call for competition. These provisions should follow the model already established in Directive 2009/81/EC, article 13 (c) and article 28 (2), which allow more flexible negotiated procedures where innovation, research and development are required. Strengthening the possibility to apply negotiated procedures for innovation-driven procurement would make cooperation with suppliers commercially viable, ensure genuine innovation uptake, and allow contracting authorities to procure advanced solutions in a legally secure and efficient manner.



## 3 Made in Europe and Sell in Europe

European TSO are already purchasing the majority of grid technologies from manufacturers located in Europe.

It is important to emphasise that alongside the "*Made in Europe*" approach, we must also focus on "*Sell in Europe*". This means not only encouraging contracting entities to purchase EU-made products but also ensuring that European manufacturers are genuinely motivated to sell to European buyers.

In several strategically important markets for example, large power transformers-European manufacturers dedicate a significant share of their production capacity to exports outside Europe, while European buyers compete with global demand. As a result, European buyers often face:

- insufficient available capacity in Europe,
- long delivery times,
- limited choice and reduced competition,
- significant increase in prices,
- single bids and unsuccessful tenders[6].

This demonstrates that origin requirements alone do not guarantee actual availability of European-made products to European purchasers.

### Solution

Therefore, when considering new "European preference" or origin-based requirements, it is essential to ensure that, in parallel, economic incentives are created for European manufacturers to prioritise the European market, rather than placing compliance obligations solely on contracting entities. "Made in Europe" alone will not solve the problem; we also need "Sell in Europe" so that European buyers can access high-quality, competitively priced, and reliably available products manufactured in Europe.

## 4 Apply established practices from the Security and Defence Directive to certain grid technologies and services under Utilities Directive

Unclear boundaries between the Utilities Directive (2014/25/EU) and the Defence and Security Procurement Directive (2009/81/EC) create uncertainty for TSOs when procuring technologies essential for network security and resilience.[7] The Defence and Security Procurement Directive formally cover only defence and security fields and does not explicitly address critical infrastructure, although TSOs increasingly face security-driven threats that give certain grid assets clear defence relevance. This mismatch leaves TSOs without a coherent legal basis and leads to delays or overly cautious interpretations, as seen with incidents such as the outage in Spain and drone sabotage in Ukraine. Clarifying or expanding the Defence and Security Procurement Directive to reflect today's security realities would reduce this ambiguity.

### Solution

Clarify the interface between the two directives and assess whether certain procurements, particularly those linked to cybersecurity, critical grid protection, or resilience, could justifiably fall under the Defence and Security Procurement Directive. This would provide clearer legal grounds, reduce procedural delays, and strengthen security-related procurement flexibility. According to scope of the Defence and Security Procurement Directive 2009/81/EC, it only covers the fields of defence and security. Critical infrastructure is not mentioned as such, but should be explicitly included, as we see that our scope as TSOs clearly is targeted from a defence and security perspective.

6 Single bidding increased from 23.5 % to 41.8 % over a decade. (European Court of Auditors (ECA)

7 TSOs are often unable to rely on certain DSPD2009 mechanisms, such as access to security-classified procurement procedures or the ability to exclude high-risk suppliers, which creates uncertainty and slows the procurement of technologies essential for network security.

## 5 Special Regimes and Exemptions for Contracting Entities

Network operators carry out their activities in a complex economic and industrial environment that requires a high degree of procedural flexibility. For this reason, the public procurement framework has long included a separate regime for contracting entities, either through a dedicated directive or through specific provisions within a single public procurement directive.

However, several areas of TSO activity are not adequately addressed under the general rules and face legal uncertainty or disproportionate administrative burden. These include contracts involving critical infrastructure or security-of-supply considerations, the procurement of ancillary services essential for system operation, and the acquisition of services that TSOs are legally required to obtain from Regional Coordination Centres (RCCs). Applying standard procurement obligations to these areas creates inefficiencies, risks conflicting with sectoral legislation, and may hinder TSOs in fulfilling their statutory duties.

### Solution

To ensure that TSOs can fulfil their statutory obligations efficiently and securely, specific exemptions or special regimes should be maintained and clarified in the reformed directive.

- **Sensitive contracts relating to security and critical infrastructure:** Contracting entities should be exempt from publishing a contract notice for sensitive contracts involving security, in particular security of supply. These contracts may relate to critical infrastructure or IT systems used to manage system operation or network data. They should be eligible for negotiated procedures without publication following competitive bidding, in order to avoid exposing sensitive information and to safeguard system security.
- **Ancillary services procured by TSOs:** Ancillary services, as defined in Article 2 (48) of Directive (EU) 2019/944, are essential to maintaining the reliability and security of transmission system operation and the quality parameters of electricity. Through these services, TSOs contribute directly to security of electricity supply and fulfil their obligations under Article 40 (1)(c) of Directive 2019/944. Given the critical nature of ancillary services, legal certainty in their procurement must be guaranteed.[8] To avoid ambiguity, it is proposed to exclude ancillary services procured by TSOs from the scope of the procurement directives, in the same way that contracts for the supply of energy awarded by TSOs are already excluded under Article 23 of Directive 2014/25/EU.
- **Services provided by Regional Coordination Centres:** TSOs procure certain services from RCCs in accordance with Regulation (EU) 2019/943 (Article 35 and Annex I) and subsequent network codes and guidelines. RCCs are legally obliged, and the only entities entitled, to provide these services. Requiring a full procurement procedure for such legally mandated services is unnecessary and creates avoidable administrative and financial burden. It is therefore proposed to exclude these services from the scope of the public procurement directives.

8 This clarification is important as ancillary services are procured through market mechanisms that must operate close to real time, making the application of general procurement procedures impractical and potentially detrimental to system security.



## 6 Provide legal certainty in Applying Functional Requirements

Purchasing complex technical solutions based solely on functional requirements is challenging. Under the public procurement directives, and in particular Article 42 of procurement Directive 2014/24 or Article 60 of procurement Directive 2014/25, contracting authorities/entities must describe what they want to buy in functional terms, while the end product and its technical composition should not be prescribed unless necessary. This approach creates difficulties in practice, especially for highly technical or regulated equipment where detailed specification is often required to ensure compliance, safety, interoperability, or long-term system performance.

The newly published ruling in Case C-424/23 further increases this complexity. The Court's interpretation of Article 42 confirms that contracting authorities are obliged to rely on functional requirements and may specify, for example, the type of material only where such material is essential. This interpretation places the burden of justification on the contracting authority and makes the task of formulating requirements, often determined by other technical or sectoral regulation, increasingly complex.

Same reasoning could apply for TSOs under Article 60 of the Directive 2014/25.

The ruling also creates uncertainty as to whether a tendered solution meets the functional requirements, reducing transparency for suppliers regarding what is required, how compliance will be assessed, and how the final evaluation will be conducted. This uncertainty affects the efficiency of public procurement and increases risks and potential costs for both contracting authorities and suppliers.

The decision additionally raises questions in relation to the NZIA Regulation. Article 25 requires contracting authorities to incorporate resilience and sustainability criteria when procuring net-zero technologies or where such technologies form part of the subject matter. If, however, contracting authorities are obliged under Article 42 to apply only functional requirements, they may be unable to ensure that NZIA-related measures are reflected in the tender documents. In such cases, authorities would not know whether NZIA obligations are met until tenders are opened. This illustrates how obligations deriving from different legal acts may conflict and create barriers to conducting efficient and legally compliant tender procedures.

### Solution

To ensure legal certainty and effective tendering, the EC should clarify the interaction between Article 42 of the procurement Directive 2014/24 or Article 60 of procurement Directive 2014/25, the NZIA Regulation, and other sector-specific obligations. Contracting authorities/entities must have a legally secure way to integrate necessary technical, resilience, and sustainability requirements into tender documents without breaching the functional-requirements rule. Clear guidance, interpretative notes, or targeted legislative adjustments are needed to ensure that functional requirements can be applied in a manner that maintains transparency, reduces legal risk, and enables compliance with other regulatory obligations.

# Give TSOs the Flexibility to Deliver Grids on Time

## 7 Introduce flexibility in the choice of the tender procedure

Under the present regulation the tender procedure must be decided at the time of tender.[9] The reasoning behind these rules is to enhance transparency. However, the rules have the downside of being an obstacle to conduct efficient tenders on behalf of relevant inputs from participating tenderers. By choosing the procedures at the time of publishing the tender notice, the contracting authority is forced to adhere to the chosen procedure during the entire tender even if it proves that switching to another procedure would benefit the competition and the tendered contract.

For example, when conducting a competitive dialogue, the tenderers are only allowed to submit one tender. If this tender proves to be uncompetitive e. g., in terms of disproportionate prices, the contracting authority is not allowed to negotiate with the participants but forced to terminate the procedure and retender the contract. Termination of tender procedures and subsequent relaunch of tenders are a common challenge and do not only impact the contracting authorities in terms of significant delays, transactional costs and risk but also participating suppliers in term of uncertainty, obligations towards subcontractors and transactional costs. This rigidity increases the risk of unsuccessful bids and makes it unattractive for market participants to participate in European tenders, especially in markets where competition is low.

### Solution

Instead of being limited to the pre-defined procedures set out in Articles 45–49 of the Utilities Directive, contracting authorities should be free to select and adopt the procedure best suited to ensure efficient competition for the tendered contract or framework agreement. This flexibility should allow contracting authorities to adjust and combine procedural elements where appropriate, in order to ensure more effective and competitive tendering processes and to foster dialogue with economic operators.

The objective of this flexibility is not to weaken transparency or equal treatment, but to enable contracting authorities to adapt the procedures to the specific characteristics and complexity of each procurement. Such adaptability would make it possible to respond more effectively to market feedback, avoid unnecessary termination and re-tendering, and achieve better value for money.

Greater procedural adaptability should also allow for modifications or negotiated adjustments within ongoing tenders in response to objective technical or market developments. However, any adapted procedure must remain firmly based on the fundamental principles of EU procurement law, equal treatment, transparency, and proportionality, and include appropriate safeguards to ensure fairness and legal certainty for all participants.

9 EU procurement law and the GPA 2012 impose a "numerus clausus" of procedures and require the chosen procedure to remain fixed. Flexibility would therefore require legislative change. The main text identifies this limitation and points to how future reforms could reduce unnecessary re-tendering while safeguarding transparency and equal treatment.

## 8 Increase flexibility to renegotiate ongoing contracts and framework agreements

TSOs rely on specialised electrical equipment that is indispensable for electricity transmission, such as power transformers, HVDC converters, cables, and various types of switchgear. Because these components have long production times and are procured in significant volumes, TSOs commonly use long-term contracts or framework agreements rather than tendering each item individually. However, both instruments are constrained by Article 89 of the Utilities Directive, which strictly limits permissible modifications once a contract is signed. In practice, only non-substantial changes are allowed. As a result, TSOs are frequently forced to cancel and re-tender agreements in response to market developments, outdated pricing, new technologies, or revised technical requirements, creating unnecessary administrative and operational burdens for both TSOs and suppliers.

These regulatory constraints were designed in a more stable geopolitical and market environment and are not adapted to today's conditions. Supply chains, raw material availability, customs barriers, lead times, and global competition have become far less predictable. At the same time, heightened geopolitical tensions require better protection of information and more secure handling of critical infrastructure projects. Meeting these challenges requires greater flexibility in procurement processes.

Given the long duration of these contracts and the difficulty of defining all technical needs in advance, many of which emerge only during construction, TSOs need more flexibility to adjust contracts and framework agreements after signature.

### Solution

The EC should enable the renegotiation of long-term contracts and framework agreements between TSOs and suppliers, allowing adjustments throughout the contract period. The aim is to introduce flexibility for:

- Technically or legally required changes to equipment.
- Price adaptations due to external cost increases beyond the supplier's control (e. g., labour costs, market availability of goods), avoiding one-sided early cancellations.
- Call-off value flexibility, ensuring contracts remain functional over time.

To achieve this, more flexible and modular framework agreements are needed, allowing periodic adjustments to scope, pricing, and technical requirements. This would maintain transparency and competition, while enabling TSOs to respond to evolving needs and giving manufacturers greater planning and investment security.

In particular, flexibility should be increased by allowing renegotiation of both the contract amount and the contract duration when new needs arise during the agreement's validity:

- **Residual contractual amount extension:** If a 4-year framework agreement still has unused contractual value at the end of its term, the parties may – subject to mutual agreement – extend the agreement (e. g., by one additional year) to use the remaining budget, provided that the extension is applied fairly and equally to all signatories.
- **Early completion of the residual contractual amount:** If the contractual amount is exhausted earlier than expected (e. g., by the end of year 3 of a 4-year agreement), the parties may – again with the consent of all signatories – increase the contractual amount to cover additional needs in the final year, ensuring the adjustment is equitable and in the interest of all parties.

**Additional examples of the needed flexibility include:**

- Project interchangeability: allowing supplies originally assigned to one project to be reallocated to another when operational priorities change, helping optimise resources without compromising procurement integrity.
- KPI-based price adjustment review: enabling updates to price-adjustment formulas when existing indicators become outdated, ensuring that price adjustments remain applicable throughout the contract's life.

To enable these forms of flexibility, regulatory adjustments are required so that framework agreements remain practical, balanced, and effective throughout their duration.

## 9 Allow justified changes during tender processes

Tender processes are not self-serving. Their purpose for TSOs is to find the most appropriate technical solution or service at a competitive price. At times, the subject of the tender may require changes due to unforeseen developments, technical innovations, or other events, leading to a situation where the tender process reaches the limits of its flexibility: Under current regulation, changes to requirements can only be implemented in an ongoing tender if deemed non-fundamental. In practice, this often leads to the cancellation of tenders and subsequent re-tendering to avoid the risk of legal challenges, leading to high transactional costs, delays, time consuming procedures and overly cautious contracting authorities, who need to justify that a change was non-fundamental. Such rigidity increases transaction costs and discourages innovation, particularly in markets with a limited number of suppliers.

In this context, an example of proposal to implement changes during the tender procedure is the possibility of formally embedding a technical negotiation or alignment phase into MEAT (most economically advantageous Tender)-based public tendering procedures, in order to enhance both efficiency and fairness in procurement. We therefore propose the possibility to implement a technical alignment phase before the submission of the final economic offers to foster the dialogue with the economic operators. This would involve allowing bidders to present their initial technical proposals, even if these do not fully match each other. A technical negotiation would then take place, aimed at aligning all bidders, for the non-mandatory requirements, to a common, agreed-upon technical offer. Once all the technical offers are aligned, all bidders would be asked to submit their economic offers based on this unified technical solution.

### Solution

Delayed publication of all tender documents and allowing well-defined technical negotiation and mid-procedure adjustments under controlled conditions (e.g., significant lead time for bid preparation), without requiring cancellation or re-tendering. This approach would reduce risks, accelerate the procurement process, and enhance the ability of contracting authorities to adapt to new technical information during the tendering phase.

## 10 Clarify Substantial and Non-Substantial Contract Modifications

Article 89-4 of Directive 2014/25 provides that contracts and framework agreements may be modified without a new procurement procedure where the modification is not substantial, i.e., where it does not render the contract significantly different in nature from the one initially concluded. The same article sets out a list of four cases of substantial modifications (introduction of new conditions that could have affected the initial competition, modification of the economic balance in favour of the other party, considerable extension of the scope of the contract, replacement of the other party). The directive does not specify whether this list is exhaustive or not, which is a source of legal uncertainty.

### Solution

To remove this uncertainty, ENTSO-E proposes to affirm the restrictive nature of the list of substantial changes:

**4.** *A modification of a contract or a framework agreement during its term shall be considered to be substantial […], where it renders the contract or the framework agreement materially different in character from the one initially concluded. Without prejudice to paragraphs 1 and 2, a modification shall be considered to be substantial if one or more of the following conditions is met:*

**(a)** *the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;*

**(b)** *the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreemen;*

**(c)** *the modification extends the scope of the contract or framework agreement considerably;*

**(d)** *where a new contractor replaces the one to which the contracting entity had initially awarded the contract in other cases than those provided for under point (d) of paragraph 1.*



## 11 Enable TSOs to sell/swap equipment and services among themselves

The current legal framework treats contracts between TSOs as contracts subject to public procurement law. For example, if one TSO has a contract under adherence to EU-procurement law, a TSO which was initially not part of this scope (e.g. no call-off right) is not able to receive equipment under this contract, even if the initial TSO would like to pass on call-off-rights to the second TSO. This is an unnecessary obstacle as goods or services have already been procured by a TSO through public procurement. Further, allowing selling/swapping between TSOs would strengthen the resilience of the European grid. This is a key contribution to the resilience of critical grid infrastructure, for example, in emergency situations or where grid equipment for common projects is not otherwise available on the market.

### Solution

To alleviate supply chain bottlenecks, or to react swiftly to emergencies, the updated Public Procurement Directives shall allow for selling or swapping of publicly tendered goods and services between contracting authorities and the passing on of call-off-rights to framework agreements with the possibility to adapt the contract according to the national regulations. This practice of re-selling and swapping among similar entities already exists in the Defense and Security Procurement Directive c.f. article 13, litra f). It could save 6 – 12 months of time because double (or redundant) public procurement procedures can be avoided. It also increases flexibility in terms of crisis response, for instance, in an emergency or a security-related incident.

# Cut Red Tape and Fix the Data Backbone of EU Procurement

## 12 Raise value thresholds to better attract cross-border participation

Despite harmonised rules intended to foster EU-wide supplier engagement, cross-border interest remains negligible in tenders under € 2 million (goods/services) and € 13 million (works). The majority of procedures at these values attract only national bidders. According to EU Court of Auditors data, average bidders dropped from 5.7 to 3.2 over the last decade, while single-bid tenders increased to 41.8 %.

Current EU procurement thresholds for supplies, services and works have remained virtually unchanged since 1994. Because these thresholds do not reflect current market prices or inflation, they are effectively decreasing in real terms. As a result, an increasing number of small and mid-value contracts must now be tendered at EU level through procedures that are often lengthy and complex, generating disproportionate administrative burden for contracting authorities and bidders without delivering additional cross-border participation.

### Solution

Adjust EU-wide thresholds to € 2 million for goods/services and € 13 million for works to reflect real supplier behaviour and reduce administrative burdens on low-value procedures. Higher thresholds would allow procurement rules to remain proportionate, increase efficiency and predictability, and ensure that EU-level procedures are used where they deliver real added value. 10

10 Implementing such higher thresholds would require revising the EU procurement directives and, where relevant, GPA commitments. Current law does not allow raising thresholds to this level.

## 13 Lower Administrative Burden (e.g. ESPD, national forms, eForms)

Public procurement procedures in the EU remain administratively heavy and difficult to navigate for suppliers, particularly SMEs. Complex and inconsistent documentation (ESPD, national forms, eForms) and increasing data requirements have made participation costly and time-consuming.

Digital tools like eForms and eNotices have increased transparency but also introduced usability issues: forms are difficult to read, overly standardised, contain redundant information, and require repeated manual data entry.

Administrative inefficiencies contribute to longer procurement timelines: according to the EU Cort of Auditors, average award periods rose from 62.5 to 96.4 days between 2011 and 2021. Furthermore, contracting authorities often require documents already available in public registers, and there is limited cross-border access to verified company data. This delays procedures, increases error risk, and may discourage foreign bidders, reducing competition and value for money.

### Solution

A more proportionate and accessible procurement system requires targeted simplification measures in three areas: documentation, data access, and certificate management.

First, procurement documentation should become lighter, clearer, and easier to handle. The ESPD, eForms and national templates still contain redundant fields, inconsistent structures, and information that suppliers must repeatedly enter. Streamlining these documents by removing unnecessary elements, improving readability and allowing the reuse of previously submitted information would significantly reduce administrative costs. Introducing digital pre-qualification and harmonising documentation requirements across Member States would further ease participation, particularly for SMEs.

Second, contracting authorities should be able to rely on trusted, automatic access to company data. Much of the information requested from bidders already exists in public registers. Allowing authorities to retrieve this data directly, rather than requiring suppliers to submit new certificates each time, would shorten procedures and minimise errors. A central EU platform offering free, interoperable access to core company information (identity, financial standing, authorised persons, beneficial ownership) would make this approach viable across borders.

Third, e-Certis needs to be strengthened and kept continuously up to date. Clear, comparable information on certificates and exclusion grounds is essential for cross-border procurement. Ensuring that e-Certis reflects the latest national requirements would support both contracting authorities and suppliers in navigating compliance rules more efficiently.

## 14 Simplify Monitoring and Data Governance

Effective oversight and monitoring of public procurement remain hindered by fragmented, incomplete, and inconsistent data across the EU. Although transparency tools such as TED, the Commission's Scoreboard, and e-Certis were designed to support evidence-based policymaking and facilitate participation in public procurement, they currently fall short of these objectives.

TED data lacks completeness, as a large share of published notices is missing essential information: 86 percent of notices do not contain supplier IDs and 63 percent lack estimated contract values. The absence of a mandatory EU-wide supplier identifier further prevents meaningful aggregation of procurement data, limits traceability across borders, and restricts the ability to monitor market concentration, competition levels, and supply chain dependencies.

Similarly, the EC's Public Procurement Scoreboard provides only partial information and is not well aligned with strategic procurement objectives, including those supporting Europe's energy transition. In addition, e-Certis, which should offer a clear and up-to-date overview of national documentation requirements, remains incomplete, inconsistent, and difficult to use in practice. As a result, contracting authorities, policymakers, and system operators cannot rely on these tools for accurate market insights, regulatory assessment, or cross-border comparison.

These gaps undermine the efficiency and credibility of procurement monitoring, increase administrative burden for contracting authorities, and limit the EU's ability to conduct evidence-based reforms or evaluate the performance of procurement systems.

### Solution

Simplified monitoring and data availability are necessary to underpin evidence-based reforms and align procurement practices with Europe's energy transition objectives. ENTSO-E supports streamlining the information that can directly serve system operators and policymakers alike for example:

- All above-threshold procedures should be accompanied only by necessary information to ensure transparency, market analysis, and effective oversight.
- ENTSO-E supports the introduction of EU-wide supplier identification mechanisms (e. g. EORI or eIDAS) and authentication (i. e. electronic signature) to ease cross-border procurement transactions, enhance data traceability, facilitate procurement planning, and better assess supply chain risks.

The obligation to provide comprehensive information and data sometimes prevents achieving the goal of being efficient and simplifying the procurement process. These changes would not only align with the Commission's digitalisation and transparency goals but also help TSOs and regulators; speed up processes and reduce administrative burden.

# Reference Materials

**Note on Geographic Scope:** In this paper, **"Europe"** refers to **EU Member States plus EEA countries**. For the avoidance of doubt, this includes the following countries:

- **EU Member States (27)**
  Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden.
- **EEA countries that are not EU Member States (3)**
  Iceland, Liechtenstein, Norway.

Unless explicitly stated otherwise, all references to "European", "Europe" or "European market" in this paper should be understood to cover this group of countries.

# List of Abbreviations

| | |
|---|---|
| **ANC** | Ancillary Services |
| **CJEU** | Court of Justice of the European Union |
| **Directive 2009/81/EC** | Defence and Security Procurement Directive |
| **Directive 2014/23/EU** | Concessions Directive |
| **Directive 2014/24/EU** | Public Sector Procurement Directive |
| **Directive 2014/25/EU** | Utilities Procurement Directive |
| **Directive (EU) 2019/944** | Directive on common rules for the internal market for electricity |
| **EC** | European Commission |
| **ECA** | European Court of Auditors |
| **EEA** | European Economic Area |
| **ENTSO-E** | European Network of Transmission System Operators for Electricity |
| **EP** | European Parliament |
| **ESPD** | European Single Procurement Document |
| **EU** | European Union |
| **HVDC** | High Voltage Direct Current |
| **MEAT** | Most Economically Advantageous Tender |
| **NZI / NZIA** | Net-Zero Industry Act (Regulation on a net-zero industry framework) |
| **PPI** | Public Procurement of Innovative Solutions |
| **RCC** | Regional Coordination Centre |
| **SME** | Small and Medium-sized Enterprise |
| **TED** | Tenders Electronic Daily (Supplement to the Official Journal of the EU devoted to public procurement) |
| **TSO** | Transmission System Operator |

# EU Policy Documents and Institutional Reports

- European Court of Auditors, Special Report 28/2023:
  *Public procurement in the EU – Less competition for contracts awarded for works, goods and services in the 10 years up to 2021.*
- Letta Report (April 2024):
  *Much more than a market – Speed, Security, Solidarity: Empowering the Single Market to deliver a sustainable future and prosperity for all EU citizens.*
- Draghi Report (September 2024):
  *The future of European competitiveness – A Competitiveness Strategy for Europe.*
- Competitiveness Compass for the EU (29 January 2025).
- The Clean Industrial Deal: *A joint roadmap for competitiveness and decarbonisation* (26 February 2025).
- Council Conclusions on Public Procurement (May 2025), following ECA Special Report 28/2023.
- European Parliament Resolution of 9 September 2025 on public procurement (2024/2103(INI)), with specific references to the challenges faced by electricity grid operators.
- Mission Letter to Commissioner Stéphane Séjourné (2024), setting out priorities on competitiveness and public procurement reform and referring to the Letta and Draghi reports.
- European Commission Public Consultation on the Revision of the EU Public Procurement Framework (13 December 2024 – 7 March 2025).
- European Commission Work Programme 2026 announcing the forthcoming Public Procurement Act (start of work foreseen Q2 2026).



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