

CISPE's Recommendations for the revision of the EU Public Procurement Directives

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Checklist of CISPE's recommendations for the revision of the EU Public Procurement Directives

- ✓ **Establish strategic autonomy as one of the main procurement objectives**, on the same level as price, quality, sustainability and innovation.
- ✓ **Establish sovereignty and resilience of services as binding procurement criteria**, to protect Europeans' data from foreign surveillance and ensure the continuity of public services even in case of foreign shut-down orders.
- ✓ **Lower barriers to entry for SMEs and SMCs into public procurement processes** by (a) dividing tenders into the smallest viable lots; (b) removing or significantly reduce turnover, liquidity, and prior-experience thresholds and/or introducing alternative risk-mitigation tools that do not rely on balance-sheet size, such as an SME procurement risk guarantee; (c) limiting the use of direct awards and closed framework re-openings; (d) encouraging forming of consortia and partnerships; (e) requiring an ex-ante SME eligibility test for all major tenders; and (f) promoting the use of Dynamic Purchasing Systems instead of long, closed framework agreements.
- ✓ **Reform procurement mechanisms to favour openness and portability**, including explicitly rewarding the use of open source and open standards, multi- and federated-cloud models and architectures, as well as conducting life-cycle costs assessment that include calculating for lock-in risk.
- ✓ **Set concrete targets in the Digital Decade Policy Programme related to public procurement**, such as minimum SME/SMC participation and awarding.
- ✓ **Introduce a condition for public contracts on responsible tax behaviour** and exclude bidders that refuse transparency or fail such compliance checks.

Introduction

Public procurement accounts for around 15% of EU GDP and is one of the strongest levers the Union has at its disposal to shape markets. Unfortunately, in digital infrastructure and cloud services, the current procurement rules and practices have unintentionally reinforced market concentration, vendor lock-in, and dependence on non-European providers. The announced revision of the Public Procurement Directives is an opportunity to correct this and to turn procurement into one of the motors of European digitalisation, competitiveness, growth and sovereignty.

We therefore call on the Commission to introduce a revised framework that explicitly supports EU home-grown industries, challenges market concentration and supports choice and fair competition. These can be achieved through clear preferences for European and sovereign services or services offering equivalent resilience; stronger recognition of open-source and federated solutions; and significantly simpler procurement procedures, tailored to ensure SMEs can successfully participate.

Below, we outline these suggestions in more detail.

1. Preference for European services

We believe that strategic autonomy should be recognised in the revised Directives as general objectives of public procurement. Price, quality, as well as effects on sustainability and innovation are all important aspects and should remain as such, but procurement policy should explicitly aim to support the continued availability, growth, and emergence of European supply in areas where public authorities rely on services for the long term.

Public procurement is not neutral in its effects: repeated purchasing choices shape markets. If EU public buyers systematically source critical services from non-European providers, European supply will erode over time, regardless of technical merit. This will lead to a continued decline of European competitiveness and autonomy.

EU-first procurement policies do not need to go beyond domestic preference rules that have already been applied for decades by third countries, such as the United States – and without ever being found in breach of global trade rules. In the current geopolitical context, the EU cannot remain naive and pedantic. Instead, the Commission should treat EU-first procurement as a necessary and proportionate element of its overall industrial strategy.

2. Requirements for sovereign and resilient services

Besides the general preference for European products and services, the EU and Member States should also ensure that procurement does not undermine Europe's security and autonomy. Services procured by public authorities underpin public services essential for European society and economy, including in areas such as health, justice, taxation, public administration, among others. As such, procurement rules should reflect the strategic importance of such services, especially in sectors where disruption, loss of control, or external interference would create significant public risk. Consequently, public sector buyers should make sure that they are able to ensure effective control and access to cloud data, infrastructure and services, even in the event of interference by foreign governments or other third parties.

In CISPE's view, 'Sovereignty' and 'Resilience' are complementary but different ways to achieve a similar outcome – effective control. Sovereignty can be achieved by companies by demonstrating sovereign ownership and control and by having critical assets and data residing and are under exclusive control of EU entities. Resilience on the other hand means that the company offering the service does fall under non-EU jurisdictional rules, but its services are structured in a way as to compensate by meeting clear, objective criteria regarding effective protection against the risk of extraterritorial tampering. These would include data security and immunity from access through encryption and customer management of keys; demonstrated ability to access data in case of foreign government intervention; and effective redeployment of the service to an alternate provider.

Member States should be able to procure 'resilient' services as an alternative to sovereign services, but this does not mean that the two should be regarded as indistinguishable. Resilient services need to compensate for a serious shortfall (extrajurisdictional

exposure) via additional technical and organisational measures, adding an extra layer of potential vulnerability. As such, procuring organisations should conduct additional checks on non-sovereign resilient services, for example to ensure that they have the necessary sovereign fallback capacity in case they receive a switch-off order, as well as the necessary staff to handle the urgent migration process. The cost of handling these additional risks and checks should be calculated in to any price consideration by the procuring authority.

Finally, in order to ensure sovereignty not only as a snapshot but continues to be guaranteed over time, there could be additional safeguards introduced for situations where sovereign providers change ownership and therefore lose their sovereign status. Tenders should contain an early termination option for contracts in such scenarios, which could become mandatory if the service in question handles sensitive data.

CISPE will soon publish a framework for service providers to obtain badges for both sovereignty and resilience. We recommend that the European Commission analyse the possibility of integrating these into the upcoming revision of the Public Procurement Directives.

How sovereignty and resilience are complementary

Due to the global nature of complex supply chains, many use-cases will require the use a stack of various EU and non-EU providers and services. In such cases, where complete sovereignty of the service is not a possibility, guarantees of 'resilience' become important also for EU providers.

Moreover, in certain cases even European providers may fall under foreign surveillance rules and therefore need to either create sufficient institutional distance between their European and foreign entities to remain 'sovereign', or establish technical measures to ensure the resilience of their services.

3. Lowering and facilitating entry for SMEs and SMCs

Complexity remains one of the main barriers to effective and competitive public procurement, especially in digital markets. The evaluation of the 2014 Directives shows that procedures are often slow, rigid, and legally uncertain. We therefore encourage the Commission to adopt reduced administrative and documentary requirements, especially for SMEs and majority-SME consortia, as well as clear limits on the use of direct awards and closed framework re-openings that currently lock public bodies in contracts with incumbent providers. Such steps would be strongly in line with the Commission’s simplification push and the Draghi and Letta reports.

Below are several concrete ideas on how this could be achieved:

Proposal	Explanation
Mandatory division into smallest possible lots	If tenders are ‘broken up’ into viable lots, not only SMEs will be able to compete on parts where they excel, but it also promotes interoperability and reduces reliance on a single vendor.
Remove or reduce financial/turnover barriers	SMEs are still often disqualified from procedures due to unrealistic financial thresholds or gatekeeping conditions (such as prior participation in public sector tenders). These should be removed or replaced by other types of guarantees that don’t perpetuate an ‘elite club’ of tender participants, such as a ‘EU SME Procurement Risk Guarantee’ (see framed box below).
Reward service portability	As explained below in Point 4, tenders should explicitly reward the use of open source components and open infrastructures, as well as other tools facilitating portability, in order to reduce the risk of lock-in.
Promote the use of dynamic purchasing systems (DPS)	Rather than a single monolithic closed framework with 5-year cycles, national administrations should transition to using Dynamic Purchasing Systems, i.e. a continuously open list of qualified suppliers that SMEs can join even mid-cycle as long as they meet the requirements.

Public authorities should also perform ex-ante SME eligibility tests to ensure that there are no such unnecessary administrative barriers and disproportionate requirements (financial thresholds, certifications, references) that would hinder SME access or conditions that would favour concentration or lock-in.

Finally, the Commission and Member States should set up targeted workshops, training, and hands-on support to help SMEs actually bid for and deliver public contracts, especially at EU level. Such channels could help improve understanding of procurement rules and procedures, strengthen administrative and operational capacity to respond to tenders, support compliance with required standards, certifications, and contractual obligations, and help SMEs move from purely local or national markets into EU-level procurement without being overwhelmed by complexity. This would also address a capability gap that regulation alone cannot fix, and ensure that simplification efforts translate into real participation rather than just formal eligibility.

Proposal for an ‘EU SME Procurement Risk Guarantee’

A persistent barrier to SME participation in public cloud and digital infrastructure procurement is not technical capability but financial qualification. Large tenders routinely impose high turnover thresholds, performance bonds, and liquidity requirements that reflect a generalised risk aversion toward smaller providers rather than actual risk of non-delivery. In practice, this pushes contracting authorities toward the ‘safe option’ of large providers, which therefore reinforces market concentration and often leads to long-term dependency on a narrow set of mostly non-EU providers.

As part of a revision of the public procurement framework, the Commission should consider establishing something akin to a European SME Procurement Risk Guarantee Facility to complement existing access-to-market measures. The facility could provide certain performance and liquidity guarantees for eligible European SMEs bidding for cloud and digital infrastructure contracts (and potentially beyond). This could be operated at EU level through the European Investment Fund or the European Investment Bank, and implemented via national promotional banks, so that the mechanism preserves full financial security for public buyers while avoiding moral hazard through co-insurance and risk-based premiums.

We believe that such a facility could allow procurement decisions to focus on technical merit, compliance, and value for money rather than balance-sheet size. It would increase effective competition in large-scale digital tenders (which in turn could reduce price via increased supply), reduce systemic lock-in to dominant providers, and align public procurement practice with the EU’s stated objectives on SME participation, digital sovereignty, and resiliency of infrastructure.

4. Requirements for portable and open services

Portability is an often underappreciated aspect of procurement, which allows public administrations to continue to procure services at reasonable costs by virtue of a stronger negotiating position. In this regard, the use of open source and open standards can be a powerful tool to reduce lock-in, improve transparency and strengthen Europe's digital autonomy. Unfortunately, current procurement practices still often treat portability as a low priority. CISPE therefore recommends that the revised directives:

- Explicitly recognise portability as a positive evaluation criterion in tenders for digital services and for other products and services with digital components.
- Encourage life-cycle cost assessments for large tenders that account for lock-in risk and reduced long-term flexibility.
- Push contracting authorities to require open standards, open APIs, and access to source code where justified by the subject matter of the contract.

The revised framework should better support bids from partnerships of European providers, for example via evaluation criteria that recognise the resilience and risk reduction benefits achieved through multi-provider architectures, and without excessive liability or administrative burdens that penalise their setups. Such criteria should also help promote the emergence of healthy market structures based on SMEs, rather than oligopolistic models. The Commission should also refrain from promoting or endorsing the idea of joint or pooled procurement procedures that disproportionately benefit large providers.

5. Establish quantitative targets

In order to keep the objectives outlined above at the top of the EU policy agenda, we propose the introduction of concrete, quantitative targets, for example into the revised Digital Decade Policy Programme. With regards to Public Procurement, we would like to see the following targets by 2030 – and ideally earlier:

1. Each national or European authority should ensure that it does not award more than 50% of its annual budget to a single provider or to entities which fall under the same non-EU jurisdiction;
2. At least 75 percent of European digital public services should be run on infrastructure certified as sovereign;
3. At least 25% of the total annual value of public and private contracts (in any sector) should be awarded to SMEs and SMCs (alone or in a consortium);

4. At least 35% of the total annual value of public and private cloud contracts should be awarded to European SMEs and SMCs (alone or in a consortium);
5. 90% of all procurement processes should have either a European or SME applicant (and 75% should have both).

6. Condition public contracts on responsible tax behaviour

Recent analysis by the Centre for International Corporate Tax Accountability and Research*, shows that several major suppliers of cloud, software and consulting services to the public sector operate through corporate structures that significantly reduce their effective tax contribution in the countries where public contracts are performed. The authors convincingly argue that this creates a double distortion: public authorities may pay higher contract prices while simultaneously losing tax revenue that would otherwise support public services. In this context, procurement decisions directly shape Member States' fiscal capacity and cannot be treated as tax-neutral.

As part of the revision of the EU public procurement Directives, the Commission should consider empowering contracting authorities to assess whether bidders contribute a fair level of tax in the jurisdictions where contracts are executed. This could be implemented through proportionate tax transparency obligations for large bidders, drawing on existing country-by-country reporting already provided to tax authorities, combined with an EU-level tax compliance certificate to reduce administrative burden and ensure consistency across the Single Market. Clear exclusion grounds should apply where bidders fail this test or refuse to provide basic information to conduct the assessment. Such measures would ensure that public procurement does not indirectly reward aggressive tax avoidance, and that public money strengthens both public services and the tax base on which they depend.

* <https://cictar.org/all-research/eu-procurement>

Conclusions

The revision of the Public Procurement Directives is a rare opportunity to align Europe's most powerful industrial policy instrument with its digital, industrial, and security objectives. Without explicit changes, procurement will continue to favour lock-in over innovation and large businesses over SMEs. By introducing a clear preference for sovereign European or equivalently resilient services, recognising the strategic value of open source, enabling collaborative European offerings, and simplifying procedures, the EU can once again make public procurement a driver of competitiveness, not dependence.

We are keen to work with the Commission to make sure that the revised Directives incorporate these principles and turn them into workable legal provisions and guidance.

About CISPE

CISPE is the most representative, respected and relevant association for cloud service providers in Europe. Working for the benefit of cloud vendors and users, CISPE gives a voice to all players from local SMEs to global hyperscale cloud providers. It has proven itself a valuable partner to European institutions through insight and the development of practical tools, frameworks, codes of conduct and guides that help implement EU policy. CISPE is a founding member of Gaia-x.

CISPE is governed by an exclusively European board that enshrines the power of smaller players whilst understanding the reality of federated, distributed, and multi-cloud approaches.

