

CONSULTATION RESPONSE

Revision of the EU Public Procurement Directives Consolidated Open-Text Replies (Complementary Note)

Brussels, 26/01/2026

Key messages

This document is provided as a complement to FIEC's reply to the European Commission's online questionnaire. It compiles FIEC's responses submitted in open (free-text) fields, with the corresponding question and page reference.

The sections below reproduce the text-only answers provided in open fields of the consultation questionnaire. For each open-text field, the relevant question is reproduced and briefly explained so the document can be read without the questionnaire.

Overview (open-text fields included)

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1. Simplification – additional information

Questionnaire page: 17

Open question (as in the questionnaire):

“If you wish, you may provide more information on ways to simplify procurement procedures:”

What the Commission is asking (plain description):

Additional ideas on how EU procurement rules could be simplified in practice for contracting authorities and bidders.

FIEC reply (text submitted):

FIEC supports simplifying the revised public procurement rules and reducing administrative burdens for both contracting authorities and bidders. Simplification should help address reduced competition, the growth of direct awards and the over-reliance on price. In construction, streamlining should also include clearer, more predictable rules on (i) in-house procurement (restricted and made transparent via a digital, public and accessible informative system), (ii) abnormally low tenders (effective checks and rejection when justification is insufficient), and (iii) proportionate exclusion/selection requirements. Joint procurement/central purchasing can contribute to simplification where buyers have adequate expertise and procurement is designed to avoid 'mega-lots' that hinder SMEs.

2. Simplification – other likely impacts

Questionnaire page: 18

Open question (as in the questionnaire):

“If you wish, you may indicate any other likely impacts below:”

What the Commission is asking (plain description):

Any additional impacts (beyond the tick-boxes) that simplification measures could have on procedures, costs, participation, and outcomes.

FIEC reply (text submitted):

Greater simplification and reduced administrative burdens should contribute to faster procedures and lower costs for bidders and public buyers, and could support increased participation (including SMEs) and competition. By improving transparency (including for in-house procurement) and tackling abnormally low tenders and direct awards, it can also strengthen trust in procurement outcomes and the quality of delivered works/services.

3. Coherence between general rules and sectoral rules – “Other”

Questionnaire page: 19

Open question (as in the questionnaire):

“Other: Please specify:” (under questions on how future sectoral “what to buy” requirements should be handled).

What the Commission is asking (plain description):

A short suggestion on how to keep sector-specific “what to buy” requirements coherent with the general procurement framework.

FIEC reply (text submitted):

Future “what to buy” requirements should be subject to common rules defined in the general legislative framework to avoid conflicts or incoherencies (e.g. the new general legislative framework should foresee mechanisms and templates for harmonised legislation ensuring

coherence of “what to buy” requirements contained in sector-specific rules with the general legislative framework).

4. Digitalisation and transparency – additional functionalities

Questionnaire page: 23

Open question (as in the questionnaire):

“Please describe any additional functionalities you would like to see introduced:”

What the Commission is asking (plain description):

Suggestions of additional features for a digital EU public procurement marketplace / eProcurement services.

FIEC reply (text submitted):

A digital, public and accessible informative system to ensure transparency, notably regarding the use of in-house procurement and direct awards, and to facilitate access to key procurement information. Measures should also prevent contracting authorities from imposing the use of a particular BIM software on tenderers, preserving interoperability and fair competition.

5. Made in Europe – additional information on possible criteria

Questionnaire page: 26

Open question (as in the questionnaire):

“If you wish, you may provide any additional information on what Made in Europe criteria should be included in EU legislation:”

What the Commission is asking (plain description):

Any additional comments on potential “Made in Europe” criteria/tools, including conditions and safeguards.

FIEC reply (text submitted):

FIEC is broadly supportive, in principle, of exploring simple and proportionate criteria or tools that could help promote a “Made in Europe” approach in public procurement, provided this does not create additional administrative complexity or bureaucracy for contracting authorities and operators.

This reflects the view of a clear majority of members, while a limited minority urges caution, notably in light of potential supply-chain impacts (costs/availability) and the risk of trade retaliation.

FIEC also underlines that the objective of strengthening Europe’s industrial base and resilience should go hand in hand with a reinforced level playing field, including through a more effective EU framework on the participation of tenderers from third countries, the consistent use of reciprocal market access arrangements (including the GPA and bilateral agreements), and a stronger focus on state-backed operators and SOEs where market distortions are identified—in particular in the context of EU-co-funded projects.

6. Green public procurement – “Other”

Questionnaire page: 31

Open question (as in the questionnaire):

“Other: Please specify:” (in the section on green/environmentally friendly public procurement).

What the Commission is asking (plain description):

Additional proposals on how EU rules could better support green procurement in practice.

FIEC reply (text submitted):

EU-wide guidance is needed to overcome fragmentation and help define workable, objective environmental criteria, while keeping award criteria/contract performance conditions directly linked to the purpose of the contract and avoiding SME barriers. An overview and analysis of methods for the calculation of life-cycle costs should be provided to support broader use of LCC and the move away from price-only decisions. Any approach should remain flexible; EU-wide mandatory minimum weights/thresholds for quality criteria would be too rigid.

7. Social considerations – “Other”

Questionnaire page: 35

Open question (as in the questionnaire):

“Other: Please specify:” (in the section on socially responsible public procurement).

What the Commission is asking (plain description):

Additional points on how to handle social/labour compliance and exclusion grounds in procurement.

FIEC reply (text submitted):

Contracting authorities shall not award a contract where they have established that the tender does not comply with applicable obligations in the fields of environmental, social and labour law. At the same time, grounds for exclusion should be proportionate and focused on the essence of the procurement procedure; the wording of Article 57(4)(c) should be more precise to ensure legal certainty and avoid disproportionate exclusion decisions. Social considerations must remain linked to the subject matter; FIEC would not support introducing collective agreements as an award criterion at EU level.

8. Subcontracting – “Other”

Questionnaire page: 36

Open question (as in the questionnaire):

“Other: Please specify:” (in the section discussing possible EU rules on subcontracting).

What the Commission is asking (plain description):

Additional comments on whether (and how) EU-level subcontracting rules should be introduced or limited.

FIEC reply (text submitted):

Subcontracting should not be overregulated at EU level. Any EU-level rules should not be more restrictive than those already in place in several Member States, and construction companies should retain flexibility (works combine specialised activities and SMEs often participate via subcontracting). In particular, FIEC does not consider appropriate: (i) an EU-wide mandatory limitation of subcontracting tiers/levels, (ii) EU-level 'full chain' joint-and-several liability, or (iii) an EU pre-qualification system for subcontractors, which would be overly burdensome and not aligned with national systems.

9. Public procurement of innovation – “Other”

Questionnaire page: 40

Open question (as in the questionnaire):

“Other: Please specify:” (in the section on incentivising procurement of innovation).

What the Commission is asking (plain description):

Additional suggestions on how procurement rules could support innovation in practice.

FIEC reply (text submitted):

Variants should, as a rule, be allowed unless the contracting authority specifies otherwise in the tender notice, as they foster the implementation of new techniques and innovative solutions.

Unforeseen or unforeseeable findings during the works (e.g. geological or archaeological) should be explicitly recognised as a valid basis for variants during the construction phase.

10. Final comments

Questionnaire page: 42

Open question (as in the questionnaire):

“Would you like to make any additional comments or provide further information relevant for the revision of the EU public procurement legal framework, including on the impacts of policy choices (e.g. quantify impact in terms of costs and benefits)?”

What the Commission is asking (plain description):

Any final, overarching messages and priorities for the revision of the EU public procurement framework.

FIEC reply (text submitted):

- FIEC priorities for the revision of the EU public procurement framework (construction works/services):
- Keep the legal instrument as a Directive (not a Regulation).
- Reinforce competition and transparency, addressing reduced competition, growth of direct awards and single-bid procedures; restrict and make in-house procurement transparent via an effective informative system (digital, public and accessible).
- Level playing field / Made in Europe: ensure convergence on inclusion/exclusion of third-country bidders; for EU-funded projects, make greater use of existing possibilities to exclude bidders from countries without the WTO GPA/reciprocal agreements, notably State-owned enterprises where market distortions exist.
- Abnormally low tenders: oblige rejection when evidence does not satisfactorily account for the low price; do not award where applicable environmental, social and labour law obligations are not complied with.
- Strategic procurement (ESG): EU guidance to avoid fragmentation; maintain the link to the subject matter; support robust LCC methodologies to move away from price-only decisions; avoid EU-wide mandatory minimum weights/thresholds for quality criteria.
- Social: social considerations must remain linked to the subject matter; do not support collective agreements as an award criterion at EU level; grounds for exclusion should be proportionate and Article 57(4)(c) should be clarified for legal certainty.
- Subcontracting: avoid overregulation; no EU mandatory caps on tiers/levels, no 'full chain' joint-and-several liability and no EU pre-qualification of subcontractors.
- Other: extend the reference period for demonstrating technical capacity (works) to ten years; Member States should be obliged to apply price revision mechanisms without prejudice to the legal frameworks which exist at national level in several countries and

which (according to the sector) function well, and tailored to contract duration/project specificities (fair risk allocation); prevent imposing a particular BIM software; allow variants by default and recognise unforeseen findings as a basis for variants; joint procurement/central purchasing bodies can help if procurement avoids mega-lots that hinder SMEs.



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