

Joint Call by the Republic of Austria, the French Republic and the Federal Republic of Germany,

supported by the Republic of Bulgaria, the Republic of Croatia, the Czech Republic, the Republic of Estonia, the Republic of Finland, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, the Republic of Malta, the Republic of Poland, the Portuguese Republic, Romania, the Kingdom of Sweden, the Republic of Slovenia and the Kingdom of Norway,

to the European Commission to Retain the Legal Form of Directives in the EU Public Procurement Law Reform

May 4th, 2026

As part of the ongoing **public procurement reform**, the European Commission seems to consider transforming the existing **procurement directives into a regulation**. In the view of the signatory Member States, such an approach would be **impractical** and is therefore **not supported**.

The **signatory Member States** take note that the **European Council**, in its conclusions of **19 March 2026**, invited the Commission to **favour regulations over directives** to simplify the EU regulatory framework. They also understand that one of the Commission's objectives is to **prevent "gold-plating" by Member States**. While these objectives are in principle broadly supported, **public procurement law** is different from many other areas of EU law and therefore requires a **different approach**.

First and foremost, it should be noted at the outset that, under Article 4 of the TFEU, the shared competences between the Union and the Member States – and thus **the principle of subsidiarity – apply to the internal market**. The principle of subsidiarity is intended to safeguard the Member States' capacity for decision-making and action, and legitimizes EU action only if, and to the extent that, the objectives of the proposed action cannot be sufficiently achieved by the Member States, whether at central, regional or local level, but can be better achieved, by reason of the scale or effects of the proposed action, at Union level (Article 5 of the TEU). Given the application of this principle to the internal market and the diversity of national specificities, particularly economic ones, which justify maintaining a degree of flexibility for Member States, the directive appears to be the most appropriate and suitable instrument for establishing the legislative framework for public procurement, as the Commission itself has pointed out when proposing the revision in 2011.

Secondly, **EU Member States** face a significant **investment backlog**. Large financial resources – amounting to **billions of euros** – must be deployed **quickly**. Turning the directives into a **regulation** would **significantly slow this process**, as practitioners in contracting authorities would need years to learn a **completely new legal and operational framework**.

The hundreds of thousands of practitioners applying **procurement rules** across the EU are predominantly **not fully trained EU law specialists, whose professionalization remains an ongoing challenge**. They are administrative staff who rely on **clear, structured, and nationally adapted rules and the well-established terminology** that comes with them. The direct application of an **EU regulation** –

potentially combined with **multiple delegated and implementing acts** – would create **fundamental practical challenges** for them, which would be further intensified by **complex interplays between different regulatory layers**.

Clarity and **legal certainty** are essential in public procurement. Contracting authorities operate under constant risk of **legal challenges** and **review procedures**. A complete switch in the “operating framework” of public procurement from familiar national rules to a directly applicable EU regulation would increase **uncertainty** and **administrative burdens** for an unforeseeable period of time, slowing down the use of **public funds**. Such a radical switch would also **negatively affect the strategic use of public procurement**, undermining the efficient and targeted deployment of public funds, which cannot be in the interest of the Commission.

Thirdly, converting the current directives into a **regulation** would **not prevent “gold-plating”**. In areas like **sustainable or social procurement**, any regulation would **not be fully harmonising**. Even if Member States did not intend to exceed the level of harmonisation required by EU law, they **would have to adopt measures** to adapt to the new provisions of the regulation, given the specificities of their national laws, **thereby reintroducing, due to the scale of these measures, a form of “implementation”**. This would lead to contracting authorities having to apply both the regulation and the complementary national rules in parallel, resulting in further fragmentation of public procurement law and increased complexity. Thus, a regulation would **remove necessary flexibility** and **hinder implementation in national terminology and structures** without fully achieving the goal of **avoiding regulatory divergence**.

If the Commission considers a “**framework regulation**” where Member States could regulate certain areas, it has to be pointed out that such a legal construct **would also create the abovementioned problems** and would create an unreadable and not comprehensible legal framework for the stakeholders. Additionally, the “**below threshold**” area of public procurement would still need to be regulated by Member States; a regulatory approach with a regulation would therefore create a **multi-level complex legal framework** and not an integrated framework as is the case now.

Directives, by contrast, allow Member States to **transpose EU rules into their own legal systems**, while maintaining the **system and terminology familiar to users**. This makes the **rules easier to use**, while still **achieving EU-level objectives**. In this way, the **resources of contracting authorities** would not be tied up for years in adapting to a new directly applicable EU regulation, but could instead be **focused on faster procurement processes and a more strategic allocation of public funds**.

A regulation would **disrupt the balance achieved thus far** — through a series of directives adopted as the internal market was gradually opened up to competition, **between the coordination of public procurement procedures for contracts above a certain threshold and the flexibility that Member States must retain** to adapt the rules to the specificities and particularities of their national laws.

As a consequence, a switch from directives to a regulation would be likely to **undermine the Commission’s objectives of simplifying the applicable legal framework and increasing efficiency**. Indeed, in theory, a regulation is supposed to ensure the direct and uniform application of European law but, **in practice**, in the field

of public procurement, it is not guaranteed to make the rules automatically and easily applicable.

For these reasons, we strongly **urge the Commission to keep the legal form of directives** in the upcoming reform of **EU public procurement law**, rather than converting them into a regulation.