

**RESPONSE TO THE EUROPEAN COMMISSION'S  
PUBLIC CONSULTATION****Revision of EU public procurement rules**

Link to the consultation : [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/15492-Regles-de-lUE-en-matiere-de-marches-publics-revision\\_fr](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/15492-Regles-de-lUE-en-matiere-de-marches-publics-revision_fr)

**Introduction :**

Public procurement accounts for nearly 14% of the European Union's GDP, representing approximately €1.8 trillion per year. In this context, the ongoing revision of the European legislative framework on public procurement constitutes a major opportunity to reposition public procurement as a strategic lever for reindustrialisation, the securing of value chains, and the strengthening of the European industrial base.

This ambition is now clearly embraced at the highest political level through the proposed introduction of a European preference in the award of public contracts. Both the Draghi report on European competitiveness and recent speeches by the President of the European Commission, Ursula von der Leyen, explicitly identify public procurement as one of the primary areas for the application of a European preference, conceived as a key non-tariff instrument serving the competitiveness, sovereignty, and resilience of the European economy.

At present, European public procurement markets remain largely open to international competition, in line with the Union's commitments under the World Trade Organization's Government Procurement Agreement and the fundamental principles of the internal market enshrined in the Treaties, in particular the free movement of goods and services. This openness, however, stands in stark contrast to the practices of the European Union's main economic competitors.

The United States, China, and India openly mobilise public procurement as an instrument of industrial policy. In the United States, the Buy American Act imposes domestic content requirements in many public contracts and public support schemes. In China, industrial planning and access criteria for public procurement systematically favour national companies. In these economies, public procurement is fully integrated into the pursuit of industrial, technological, and geopolitical objectives.

Against this backdrop, the Draghi report explicitly calls on the European Union to equip itself with mechanisms of European preference, notably through the introduction of minimum local production quotas in public procurement related to clean technologies and defence. This shift forms part of a dynamic that is already underway. The Net-Zero Industry Act, which entered into force on 29 June 2024, does not formally establish a European preference but introduces resilience criteria into public procurement and tendering procedures in the renewable energy sector. Similarly, the Franco-German economic agenda of 1<sup>st</sup> September highlights the determination of both states to work jointly on the implementation of targeted and legally robust European preference mechanisms in essential and critical industrial sectors.

## France Industrie's recommendations

Three major and cumulative approaches can be envisaged for the European Union:

- **The first approach is based on exclusion.** The EU should reserve access to European public procurement markets to countries that are parties to the WTO Government Procurement Agreement (GPA) or that are bound by a free trade agreement providing for reciprocity. Accordingly, economic operators, or bids submitted by operators, originating from third countries not covered by such an agreement or not party to the GPA may be freely excluded by any contracting authority, at any stage of the procedure and without the need for justification. Adjustment or exemption mechanisms should nonetheless be provided for exceptional cases, in particular where European supply is insufficient or unaffordable in certain markets, where price differentials are disproportionate, or where value chains are highly integrated at global level, making it necessary to continue allowing non-European companies to participate in tenders. The current situation is unsatisfactory: although the European Commission and the Court of Justice of the European Union have acknowledged that third countries not benefiting from a free trade agreement or WTO commitments do not enjoy legally secured access to EU public procurement markets, the decision is, in practice, left to each contracting authority on a contract-by-contract basis. This exclusion option could also be extended to operators from countries that have concluded a free trade agreement, where circumstances so justify, notably when such countries expose contracting authorities to the extraterritorial application of their laws or where the subject matter of the contract is sensitive or strategic. Lastly, the revision of the directives should explicitly provide contracting authorities with the possibility to reserve access to their contracts to European operators only, as well as to award contracts preferentially to them where bids are equivalent. France Industrie supports all three exclusion-based approaches, which should not be considered as alternatives but as cumulative instruments, their effectiveness relying precisely on their combined use. The relative importance and implementation modalities of each proposal should be defined on a case-by-case basis, in consultation with the relevant sectors, in order to reflect the specific economic, industrial, and strategic realities of each market.
- **The second approach is based on an inclusion logic,** centered on the valorisation of European control criteria, under the supervision of a European oversight authority. These criteria would notably include the origin and control of intellectual property. This approach would translate into the introduction of a criterion designed to encourage the production of goods that are “designed and manufactured in Europe”. Additional points could thus be awarded in procurement procedures to European companies (with both their registered office and administrative headquarters located in the EU), under European control, whose products fall under a European design authority, whose intellectual property is controlled from within the EU, and which integrate a significant share of their value chains within the territory of the Union.
- **A third approach would aim to strengthen inclusion mechanisms** by granting contracting authorities greater leeway to take into account, at the award stage, qualitative “non-price” criteria contributing to a European preference. These criteria must be objective, transparent, verifiable, and legally robust, and fully compatible with EU law. They include, in particular: the origin of products and/or the production; the resilience of value chains; contributions to industrial sovereignty and the European economy; social and territorial spillovers; innovation capacity; recognised certifications and labels; and the valorisation of compliance with European standards and regulatory requirements (CE conformity, social and environmental standards, cybersecurity). This avenue would make it possible to remain within the EU legal framework while de facto favouring virtuous actors established in the EU and European products, by ensuring that these strategic objectives genuinely guide the award of contracts beyond the sole criterion of price. This orientation is fully aligned with the EU's objectives of competitiveness, reindustrialisation, security, and sovereignty, and is relevant to ensuring EU added value and securing the supply of vital technologies, products, and services.

## Methodology for introducing European preference in the revision of the public procurement directive:

- **Avoid overburdening tender procedures:** there is a need for proportionality between the award criteria and the size of the tender and of the undertaking concerned. A pilot phase should be implemented prior to generalisation, with testing on smaller-scale tenders.
- **Simplification of the legislative framework:** numerous legal instruments contain provisions that relate, directly or indirectly, to the application of the public procurement directives (for example, the Net-Zero Industry Act, the regulation on foreign subsidies, or the Ecodesign for Sustainable Products Regulation). This regulatory proliferation is complex, lacks clarity, and creates legal and operational risks for contracting authorities. Moreover, the new rules are sometimes difficult to reconcile within certain procurement procedures. Simplifying public procurement rules should also benefit EU start-ups and innovators.
- **A cross-cutting introduction that goes beyond public procurement:** European preference must also be pursued through industrial strategies, European funding instruments, and coherent regulatory frameworks.
- A gradual and pragmatic approach:
  - The provisions should be ambitious, easy to implement, and supportive of European preference, while taking into account the reality of value chains and avoiding an overly prescriptive approach, so as to prevent counterproductive effects that could penalise established European industries.
  - The progressive introduction of non-price criteria is necessary in order to avoid restricting access for European suppliers where the supply base is not yet sufficiently mature.
  - To ensure the effective implementation of these non-price criteria, contracting authorities must be supported and encouraged to conduct transparent market consultations with the relevant stakeholders. Such consultations would help better align public-sector needs with private-sector capabilities, by providing authorities with a detailed understanding of available technologies and market supply, thereby facilitating the definition of requirements that are both ambitious and realistic.
  - Where a uniform approach cannot be adopted for a given product or category of products, targeted incentives could be envisaged when research and development activities and a significant share of manufacturing take place in Europe.
  - For certain critical products or sectors contributing to the EU's strategic autonomy, the concept of "trusted suppliers" could also be considered in order to strengthen European security and resilience. These "trusted suppliers" should be companies whose executive management, ownership, and control are established within EU Member States.
  - A balanced approach should be sought across value chains, in particular with regard to subcontractors, with vigilance against rent-seeking effects that excessively strict local content requirements could generate, and with a need to preserve flexibility in their application.
- **Ensure that European companies are not subject to stringent standards while public procurement markets remain unconditionally open to products that do not comply with those same standards.**
- **Ensure objectivity through common indicators** (for example, corporate social responsibility indicators) in order to avoid arbitrary assessments.
- **Introduce favourable tax arrangements:** to offset competitiveness and price gaps for companies that rely on European value chains, use recycled materials that are more costly than primary raw materials, or incorporate specific materials such as certain types of waste. This could be coupled with a raw-material purchasing compensation mechanism, which could be optional depending on the sector.
- **Recognise the specificities of certain sectors**, in particular health, defence, aerospace, electronics, critical raw materials, and certain sectors undergoing transition. A specific regime for the defence sector should be maintained through the dedicated directive (Directive 2009/81/EC).
- **No opt-out should be granted to Member States** wishing not to apply the directive.

Finally, France Industrie stresses the need to define clear and ambitious European industrial strategies, underpinned by adequate funding and greater coherence across the various legislative instruments. If public procurement is to act as a strategic lever for competitiveness, the simplification of legal frameworks and the transparency of criteria must be matched by a level of financing commensurate with the objectives pursued. It is

essential to maintain a European and sector-based approach in defining these criteria, in order to ensure effective harmonisation and a coherent sectoral framework across Member States—an essential condition for avoiding distortions of competition.