

January 2026

## UFE's reply to the EC Call for evidence on the revision of the public procurement directives

UFE welcomes the European Commission's intention to **address the excessive prescriptiveness of public procurements procedures**, to **streamline the framework** and to **better align it with EU's strategic priorities**, including economic security and sovereignty. For activities related to energy, the revision of the public procurement directives should indeed be an opportunity to **preserve and reinforce the more flexible treatment granted to the energy sector**, given its closed and security-sensitive nature, and to design tools to **strengthen Europe's energy and industrial sovereignty**.

### 1. Ensure competitiveness by simplifying the legal framework

Public procurement procedures can be experienced as a regulatory constraint, which can hinder competition. The revision of the public procurement directives, in particular the Utilities directive, **must maintain a dedicated regime for contracting entities operating in the energy sector, which should be able to maintain and strengthen the more flexible treatment they benefit from**. To this aim, UFE calls for:

- **Maintaining the format of a directive**, rather than transforming it to a regulation, to give Member States the opportunity to adjust national specificities.
- **Raise the application thresholds** (section 2 of directive 2014/24 and article 15 of directive 2014/25).
- Clarifying that contracting entities, when acting in the context of competitive calls for tender, must be **exempted from public procurement requirements in order to compete on an equal footing with private economic operators**.

- This is already stated in recital 7<sup>1</sup> of implementing regulation 2025/1176, but it would have more legal certainty if it were included within articles of the directives.
- **Exit the case-by-case logic of article 34 of Utilities Directive** by exempting *ab initio* contracting entities operating on the competitive market of electricity generation and wholesale. This procedure is lengthy, applied unevenly across Member States, and no longer reflects today's reality, as these activities are already fully exposed to competition.
- **Improve possibilities for direct award**, notably for IT procurement and contracts where there is limited competition, while **preserving the negotiated procedure**, which allows buyers to negotiate the contract conditions directly with an operator of its choice, under conditions.
- Preserving the **qualification systems** in directive 2014/25, which enables contracting entities to shortlist operators considered qualified to perform the services within the relevant procurement segment.
- Allowing contracting entities to act as ordinary economic operators in competitive procedures.
- **More flexibility in framework agreements**. UFE also believes that framework agreements, currently capped at 8 years, should be allowed to be concluded for longer periods, in order to better align contracts with the timelines of industrial projects and provide greater visibility to industrials.
- **More flexibility to amend ongoing contracts**, without having to restart the process. Directives 2014/23 (art. 43) 2014/25 (art. 89) should consider that requirements linked to the energy transition and to the EU's resilience, notably during major supply shortages, can justify to modify a contract during its term.
- Setting up a European register of excluded economic operators.
- Revising the **European Single Procurement Document (ESPD)** system in directive 2014/24. The system remains complex to set up and difficult to access.
- **Simplifying verification procedures for buyers**, for instance through the implementation of a "single portal" enabling notably to collect relevant information on the contract and translate them into any language.

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<sup>1</sup> "In order to ensure such fair and equal competition, for the purposes of assessing resilience and environmental sustainability requirements, public undertakings participating in renewable energy auctions pursuant to Article 26 should be subject only to the rules laid down in Article 26. The rules set out in Article 25 should apply to the procurement of the net-zero technologies, except where such procurement is used to carry out projects awarded in the context of renewable energy auctions subject to Article 26".

## 2. Strengthening EU energy and industrial sovereignty

It is essential that the revision of the public procurement directives **build on and go beyond the Net-Zero Industry Act (NZIA) by fostering the development and reshoring manufacturing value chains in the EU**. Depending on the maturity of the technologies and the degree of dependency on external sourcing of the targeted sectors, this approach should at the same time consider the short-term realities of the EU industrial value chains to avoid slowing down project implementation or undermining competitiveness.

This can be achieved by:

### A. Promoting environmental sustainability

Current article 82 (§2) of the 2014/25/EU directive provides that the most economically advantageous tender *“shall be identified on the basis of the price or cost, using a cost-effectiveness approach [...] and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects”*.

For contracts relating to net-zero technologies, or involving work that includes such technologies, **those provisions could be modified to be aligned with provisions of the NZIA on environmental sustainability in public procurement** (art. 25, §1-5), as well as with the CSRD requirements, including the obligation to publish a sustainability report, in order to promote and encourage good CSR practices. Those requirements should fully recognise the strategic role of grid technologies for the energy transition. Regarding non-price criteria related to sustainability, they must be **ambitious, easy to implement and specific to the contract's subject**, notably to consider the conditions of contract execution.

### B. Promoting European Preference

The current mechanism of Article 85 of Utilities Directive<sup>2</sup> is limited in scope, complex to implement and does not promote offers made by European economic operators. For the same reasons, we should not replicate the **resilience criterion** of the NZIA (art. 25, §7), which is too complex to understand and implement. Moreover, **the revision should go beyond the diversification objective embedded in the NZIA's resilience criterion and aim instead at the development and reshoring of manufacturing value chains in the EU**. We therefore recommend introducing ambitious easy-to-implement and EU preference

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<sup>2</sup> Under the current framework (art. 85-2, dir. 2014/25/EU), contracting authorities have the possibility to reject any tender where the proportion of the products originating in third countries exceeds 50% of the total value of the products.

provisions, while taking into account the reality of value chains and avoiding being overly prescriptive.

Several levers can be considered:

- In case of equal bids, award the contract to the European offer.
- Possibility for buyers to open their contracts only to European operators (understood as EU, UK, EEA and Switzerland).
- Consider a **“European content criterion”** that would incentivise the production of “made in Europe” products by granting companies that integrate part of their value chain(s) in Europe with extra points in procurements. It could also offer advantages in terms of speed of delivery, environmental performance and SMEs’ access to public procurement (made difficult due to the complexity of procedures). It could take different forms, including:
  - A % of CAPEX/OPEX associated with a European company.
  - The number of production stages carried out in factories located in Europe (e.g. based on the French “Induscore”).
- **Strengthen requirements relating to the location within the EU of the means of production** of the products covered by the contract (art. 78). Contracting entities should be able to include this requirement into technical specifications (art. 60) or in conditions relating to the performance of contracts (art. 87).
- If the mechanism of Article 85 is maintained, **contracting authorities should be allowed to set the threshold themselves** (currently set at 50%). For certain **strategic components** covered by the contract, contracting entities should also be able to reject a tender where the proportion of such components originating in countries outside the EEA exceeds the threshold set. This possibility should remain optional to avoid creating more tension on technologies markets.
- In general, beside “direct” European preference, the **directives could be more demanding with regard to non-price criteria in order to promote virtuous operators** (electrification criterion, carbon footprint, location of production facilities...).
- The revision should also include measures for purchases made in the outermost regions given their specific geographical, social and economic situation (e.g. market share allocated to local businesses up to certain %).

Finally, the **revision should address sovereignty considerations linked to security**:

- By maintaining the exemption based on **essential security interests** (Art. 24 of Utilities Directive).
- By respecting the confidentiality of some contracts (for example the security of IT system) and acknowledging that it requires greater flexibility in procedures (for example by avoiding publication constraints).

- By addressing the growing importance of cybersecurity and digital sovereignty. For instance, by allocating part of public procurement contracts to operators demonstrating their data centers are located in Europe. It can also be based on the NZIA (Art. 26, §1) which provides for the application of prequalification criteria relating to cybersecurity and data security for net-zero technologies related to renewables energies.