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2026-10-01
Komm2026/00063

The Implementation Council
KN 2024:04

Ministry of Finance
Division for Public Administration
Public Procurement Unit

Copy Ministry of Climate and Enterprise
Division for Enterprise, Innovation and Markets

Basis for Sweden's position ahead of EU negotiations – proposal for revision of the EU rules on procurement

The Implementation Council's contribution to the Swedish position is presented in full in section 8. The Council's proposals in summary are that the Government should:

- promote reasonable conditions for the digital reform, to ensure both interoperability and user-friendliness;
- safeguard the proposed rules on intellectual property rights;
- work to ensure that suppliers have sufficient time to submit tenders in well-balanced lots;
- ensure ways for quality criteria to be taken into account in the award of public contracts, allowing both fixed and floor prices;
- work to ensure that the concept of "best quality" can also refer to the quality that best meets the buyer's needs;
- support the proposals that relate to increased focus on functional requirements, market consultations and negotiations;
- ensure that the absolute valuation model can continue to be applied;
- ensure that contract follow-up should be carried out by the contracting entity;
- be prudent in the introduction of rules about EU preference;
- work on an impact assessment including a competitiveness test; and
- work to ensure that an evaluation of the proposed act after only three years by an independent party.

STATENS OFFENTLIGA UTREDNINGAR

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1. Task of the Implementation Council

The Implementation Council is tasked with assisting the Government in its efforts to strengthen the competitiveness of Swedish companies by avoiding implementation above the minimum level and counteracting unjustified regulatory burdens, as well as reducing administrative costs and other compliance costs in connection with the implementation of EU regulations in Swedish law. The Implementation Council's work must be based on a business perspective.

The Implementation Council is to submit documentation and recommendations to the Government, partly as a contribution to Swedish positions in negotiations and partly on how EU legal acts can be implemented in Swedish law in a way that is not more far-reaching from a business perspective than what the legal acts require.

The Implementation Council's work is based on problem descriptions that have been communicated to the Council, mainly from industry organisations and their member companies. During the work on the documentation, contacts are also made with others who are familiar with the respective subject area, such as government agencies. In the light of the information gathered, the Council makes a weighted and independent assessment of how the business perspective can be effectively addressed in each individual case.

In preparing this opinion, the Council has mainly used information and documentation received in contacts with the interest groups Almega, the Federation of Swedish Entrepreneurs, the Federation of Swedish Farmers, Swedish Enterprise, the Swedish Fire Consultants' Association, the Swedish Association of Local Authorities and Regions, Swedish Medtech, the Swedish Wood and Furniture Companies, the public authorities the Swedish Legal, Financial and Administrative Services Agency, the Swedish Competition Authority and the National Agency for Public Procurement, as well as researcher Torkil Schrøder-Hansen with the Faculty of Law at the University of Copenhagen, the construction group Skanska, the law firm Vinge and the clothing manufacturer Woolpower.

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2. Relevant proposal for an EU legal act

Commission proposal for a Public Procurement Act[1], which aims to replace the following directives:

- Public Procurement Directive (2014/24/EU)
- Directive (2014/25/EU) on procurement by entities operating in the water, energy, transport and postal services sectors
- Directive (2014/23/EU) on the award of concession contracts

3. Objectives and objectives of the proposal

The Commission's review of EU public procurement rules aims to modernise and simplify the procurement directives and to streamline the use of public procurement as a strategic tool. The ambition is for public procurement to be better for promoting innovation, investment, competitiveness and resilience. The aim is to make the rules easier to apply for both contracting entities and companies by simplifying and coordinating today's fragmented regulatory framework.

4. Where in the process is the proposal?

The proposal was presented on 9 September 2026 and negotiations in the Council will begin in autumn.

5. Responsible Swedish ministry

Ministry of Finance.

6. Problem description from a Swedish business perspective

There is a predominantly positive view among the stakeholders with whom the Council has been in contact that public procurement should be used to a greater extent as a strategic tool that can, among other things, promote innovation and sustainability, and contribute to increased competitiveness, preparedness and long-term value creation. At the same time, there is a

[1] COM(2026) 590 - Proposal for a regulation on public contracts and concessions.

widespread perception that the EU's current procurement rules have become too extensive and administratively burdensome, given how they have been interpreted and applied at national level. In addition, many of the stakeholders testify that it is often the application of the procurement rules, not necessarily the rules themselves, that creates excessive administrative burdens for Swedish companies. Some of the problems that have been communicated to the Council are described below.

Extensive and overlapping rules

Several stakeholders point out that the procurement rules have become increasingly extensive and difficult to grasp, despite previous attempts at simplification.

In addition to the procurement directives, both companies and contracting entities need to relate to a growing number of supplementary sector-specific rules that may, for example, entail obligations for suppliers to provide information about supply chains that is hard to overview. The fact that there are an increasing number of provisions on public procurement in other legal acts in different sectors makes it difficult for contracting entities to grasp and interpret the applicable rules on procurement. This is also perceived as burdensome for small and medium-sized enterprises, which often have limited resources to deal with this complexity.

The current regulatory form as directives leaves some room for interpretation for the Member States. As a result, several stakeholders feel that the rules are applied differently in different Member States, which increases fragmentation and hampers trade within the internal market.

Low price is rewarded over quality

Several stakeholders highlight that public procurement has become too focused on procuring at the lowest price. This is among the most common reasons why companies, especially companies in the service sector, choose not to participate in public procurements.[2]

A focus on the lowest price risks leading to a "race to the bottom", where serious companies with high quality ambitions leave the public market

[2] See Almega's report Public procurement - from the perspective of service companies (2024). See also Almega's latest *Industry Report 2024,* which shows that 75 percent of cleaning and service companies state that there is too much focus on the lowest price and that the proportion of companies participating in public procurement has decreased since 2014, pp. 50–51.

because price pressure makes it difficult to deliver the required quality. Contracting entities run a significant risk of review processes if they reject a low bid, while the consequences of accepting an unreasonably low price may not become apparent until the contract is executed. In consulting industries where the award of framework agreements is based on the lowest hourly rate, incentives for innovative solutions that could shorten the number of invoiced hours disappear.

Several of the stakeholders with whom the Council has been in contact therefore advocate for procurement models where quality is given greater importance, for example by using fixed prices or floor prices and where the evaluation is based on quality criteria. More room for genuine negotiation prior to the award of contracts is also considered to contribute to a greater focus on the right quality.

Disproportionate requirements

An excessively extensive set of requirements is highlighted by almost all actors as one of the biggest obstacles to companies' participation in public procurements. Requirement-setting is important both for suppliers' opportunities to submit tenders and for the public sector's ability to have their needs met. However, it is important that the requirements are proportionate, relevant, clear and appropriate. Today, the requirements are perceived as extensive, complex and in some cases irrelevant to what is actually to be procured. This applies, for example, to requirements linked to sustainable supply chains, where stakeholders have stated that the requirements are in some cases disproportionate and unreasonable.

A concrete example that has been put forward to the Council is that several contracting entities continue to formulate their requirements on the basis of the EU Directive on Corporate Due Diligence with regard to Sustainability (CSDDD), despite the fact that the EU has lowered the level of requirements through the Omnibus I package in order to reduce the regulatory burden on companies. If Swedish contracting entities continue to set requirements that go beyond the requirements that apply at EU level, there is a risk that the intended simplification will not materialise in Sweden. In general, it becomes a problem for the internal market when large buyers set requirements in public procurement via framework agreements that go beyond the mandatory regulatory frameworks.

Some actors also highlight that particular requirements in Swedish procurements, such as special environmental certifications or packaging requirements that go beyond European standards, constitute an additional obstacle for suppliers. In some sectors, such as medical technology, this leads to many suppliers refraining from submitting tenders on the Swedish market, as the costs of adapting products to the Swedish requirements are considered to be too high in relation to the limited value of the procurements.

The disproportionate requirements may also relate to the size of the lot or strict restrictions on the identity of the potential tenderer. Representatives of SMEs have particularly highlighted the problem of these companies with large contracts that are not divided into lots. In the services sector, there is a development where qualified suppliers risk being excluded from procurements in education, health and social services as a result of national rules limiting participation to nonprofit organisations. This can weaken competition in sectors where quality and efficient use of public resources are of great importance.

Several stakeholders believe that requirements are formulated without sufficient understanding of market conditions, which can lead to potential suppliers being excluded from the outset, especially small companies. Extensive and, in the worst case, unreasonable requirements, as a result of insufficient market knowledge, risk reducing competition by reducing the number of suppliers submitting tenders.

Lack of both strategic approach and innovation promotion

Public procurement can be a strategic and effective tool for promoting innovation, but several actors highlight that procurement is too rarely used for such purposes in practice. This is partly due to the fact that in today's procurement rules, there are significant uncertainties about suppliers' ability to retain their intellectual property rights. Ownership of intangible assets is often crucial for suppliers because these assets can constitute a large part of the company's value. The lack of clear wording in the current rules, ensuring that the supplier as a general rule retains ownership of its intangible assets, leads to companies avoiding participating in public procurements or avoiding using their most innovative solutions. There are examples of clauses on the transfer of intangible assets that have been reused by procurers seemingly without much reflection, to unclear benefit. This defeats the entire purpose of innovation procurement, which is to contribute

to new innovative solutions coming onto the market, for the benefit of society and competitiveness.

Several stakeholders also feel that procurers do not hold market dialogues to a sufficient extent or that they are held too late in the process, and that procurements are often characterized by detailed requirements rather than function or goal descriptions. The CPV codes are also perceived as inhibiting the purchase of new solutions. This reduces the scope for innovative solutions and makes it more difficult for suppliers to contribute with new technology, new products and business models or more efficient ways of working.

Some stakeholders also believe that the complexity of the regulatory framework, combined with the opportunities for judicial review, leads to public procurers being cautious and more concerned about not making mistakes than using procurement as a strategic tool. Some stakeholders are calling for increased professional training, so that procurers have better conditions to carry out strategic procurements.

Limited flexibility

Some stakeholders believe that the current regulatory framework excessively restricts the possibility of correcting contracts and supplementing tenders. According to these actors, this is mainly due to ambiguities associated with the interpretation of concepts such as “substantial amendment” and the “overall nature” of the contract. The ambiguities limit the possibilities for supplementing tenders without the risk of exclusion and for adapting contracts when conditions change. Against this background, clearer and more predictable rules are called for, which would allow for more flexible procedures and reasonable adjustments to contracts.

Need for increased digitalization and accessible data

All stakeholders believe that the review of the procurement rules should take a comprehensive approach to increase the digitalisation of public procurement.

Today’s system is in need of a cohesive and accessible digital infrastructure for procurement data. Above all, this would facilitate the possibility of analysis, follow-up and evaluation of procurements. The main obstacle today

is that access to procurement data is very limited in Sweden and that there is no public national advertising database[3].

The stakeholders that the Council has spoken to are positive about the fact that, in addition to a national advertising database, there would also be a transition to procurements based on open transaction data. This would further improve the conditions for follow-up and analysis, as well as creating better opportunities to evaluate the results of a procurement.

According to the stakeholders with whom the Council has been in contact, the ESPD system[4], which was introduced by the 2014 Public Procurement Directive, has not resulted in any significant administrative simplification in the procurement process. Stakeholders feel that the system is complex and they demand alternative solutions. One alternative that is highlighted is the initiative for a European Business Wallet.

Concerns about the issue of EU preference

Several stakeholders express uncertainty about the various initiatives being discussed within the EU to strengthen Europe's resilience by specifically rewarding European companies or European content within public procurement, so-called EU preference.

Stakeholders highlight that in many cases it is unclear how a European company or product should be defined in practice. Particular concern is expressed that the EU preference, and all the requirements it would entail, could create significant administrative costs, reduce access to fully functional products and possibly lead to undesirable trade policy backlash from third countries.

[3] The Productivity Commission's final report SOU 2025:96 resulted in a government assignment to Statskontoret to submit proposals on how a national procurement database and an analysis function for purchasing and procurement data can be established.

[4] European Single Procurement Document (ESPD), a standardised form of self-declaration as preliminary proof that the supplier is allowed to participate in a procurement.

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7. The Implementation Council's analysis

Results of the Council's competitiveness test

Annex 1 to this paper offers an early competitiveness test based on the Commission's impact assessment and its underlying reports.

The test is based on the Commission's Better Regulation Toolbox[5] and assesses the impact on Swedish competitiveness based on the following dimensions: cost and price competition, international competitiveness, innovation and investment incentives, and the competitiveness of small and medium-sized enterprises.

In summary, the Implementation Council considers that even if the data used has shortcomings, especially from a Swedish perspective, the Commission's calculations are of reasonably good quality given the conditions. However, they must be interpreted with caution in terms of the impact on Swedish companies.

The Implementation Council broadly agrees with the Commission's overall assessment for the dimension of cost and price competition. For the other three dimensions (international competitiveness; innovation and investment incentives; competitiveness of SMEs), the Council considers that the Commission's assessment is overly optimistic. This applies in particular to uncertainties related to the implementation of the digital reform, the distinctions in the application of EU preference, the fact that innovation procurement remains a relatively complex procedure and that it remains relatively complex for SMEs, especially micro-enterprises, to participate in procurement.

The Implementation Council's early competitiveness test aims to support the future preparation of a Swedish impact assessment on the effects of the proposal and is in line with the Commission's view of evidence-based analysis.[6]

[5] Se s. 163–198 i Better Regulation Toolbox.

[6] Se s. 20 i Better Regulation Toolbox.

Industries and companies concerned

In 2025, procurements worth SEK 982 billion were announced in Sweden.[7] The largest item pertained to purchases in health and social care (SNI Q) with an estimated value of SEK 339 billion. This was followed by purchases in public administration and defence (SNI O) with an estimated value of SEK 219 billion.[8]

Public procurement affects virtually all parts of the Swedish business sector, but to different extents. According to the National Agency for Public Procurement's statistics for 2024, 17,575 procurements were carried out and 71,128 tenders were submitted from 13,067 bidders.[9] Looking at business sectors, all SNI codes were affected, although the highest number of bidders were in the construction industry (SNI F; 2,798), companies in law, economics, science and technology (SNI M; 2,515) and trade (SNI G; 1,906).

Out of 13,067 bidders in 2024, around 11,518 were from the SME category (4,819 micro, 4,814 small and 1,885 medium-sized enterprises). Of the 71,128 bids submitted in 2024, SMEs accounted for around 53,676 of them (16,281 bids from micro-enterprises, 21,717 from small enterprises and 15,678 from medium-sized enterprises).[10]

It can also be noted that in 2025, only 429 so-called innovation procurements were announced, which corresponds to 2.4 percent of all procurements announced during the year. Since 2021, the number of announced innovation procurements has almost halved.[11]

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[7] https://www.upphandlingsmyndigheten.se/statistik/upphandlingsstatistik/statistik-om-annonserade-upphandlingar-2025/

[8] According to the National Agency for Public Procurement's statistical database

[9] https://www.upphandlingsmyndigheten.se/statistik/upphandlingsstatistik/statistik-om-annonserade-upphandlingar-2024/46-anbud-per-upphandling-2024/#bygg_och_anlaggningsforetag_lamnar_flest_anbud

[10] https://www.upphandlingsmyndigheten.se/statistik/upphandlingsstatistik/statistik-om-annonserade-upphandlingar-2024/46-anbud-per-upphandling-2024/#sma_ochmedelstoraforetaglamnarflestanbud

[11] https://www.upphandlingsmyndigheten.se/statistik/upphandlingsstatistik/statistik-om-annonserade-upphandlingar-2025/knappt-430-innovationsupphandlingar-2025/

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Consequences for Swedish companies

Comprehensive digitalisation is welcomed

The Commission's proposal for a regulation promises a better connected, accessible and data-driven digital infrastructure for public contracts. The Implementation Council sees great advantages in the proposal in this part.

A digital eligibility service based on the exclusion and selection criteria would, provided that it will be able to process comprehensive and up-to-date register data in a secure manner, represent a welcome simplification. It would significantly reduce the administrative burden for all companies wishing to participate in public procurement. If the digital eligibility service is used, in combination with the envisaged European business wallets, and is taken into account in public procurement in the way that the Commission envisages, this would be an important step towards the application of the "once only" principle highlighted by the Commission in its Communication on Better Regulation.[12] If it would no longer be the companies themselves that would have to request or translate current criminal records or other register extract, it would mean a reduced administrative burden and cost for Swedish companies. It would also ensure that the exclusion grounds are assessed on a reliable and more uniform basis for all competitors, regardless of nationality – which should ultimately strengthen confidence in the award process for public contracts.

The extensive reporting of data[13] that the Commission's proposal imposes on contracting entities should necessarily increase administrative costs for Swedish companies, but create conditions for better follow-up and evaluation of procurement processes and specific contracts. This is something that has been requested by the stakeholders with whom the Council has been in contact.

Creating a European digital eligibility service and a functioning marketplace for public contracts covering the entire internal market is not something that a single Member State can achieve and it is therefore necessary for the EU to

[12] See page 3 of the Commission Communication on *A simpler, clearer and more effective implementation of the EU regulatory framework*

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[13] The Confederation of Swedish Enterprise believes that it is absolutely crucial that this data contains transaction data, advertising data, contract data and an ID number that follows the procurement from planning to the last invoice. The Implementation Council agrees that this type of data is needed for both effective contract follow-up and for follow-ups and evaluations at a more aggregated level.

act both as initiator but also as an active care-taker to ensure the continuous functionality of the system. Some stakeholders have raised concerns to the Council as to whether, based on the lack of user-friendliness in the functioning of the official EU websites and the ESPD, [14] the Commission has the capacity to create a digital ecosystem for public contracts that is sufficiently user-friendly, especially from a small business perspective. At the Swedish national level, it is important that Statskontoret, in its reporting on its assignment for a national procurement database with an analysis function,[15] ensures not only interoperability within Sweden but also with the envisaged European system. The European business wallet will probably also need to be in place for the proposed eligibility service to function optimally.

The proposed digital infrastructure is ambitious and may bring major benefits for all parties involved in the procurement process, not least for companies. However, these are large implementation projects that risk being dragged with major cost overruns and delays.[16] It is therefore important that realistic schedules and budgets are established and followed up on an ongoing basis during the course of implementation.[17] According to the Commission's proposal, Member States must already by 15 June 2029 provide automated access free of charge to digital tools, such as the European Business Wallet, to criminal records, tax databases, insolvency registers and registers of beneficial owners, in order for the European digital eligibility service to function as intended. It is important that the Government makes a realistic assessment of its conditions for contributing to the common digital eligibility service, based on the current functionality of the said registers and databases.

Welcome promotion of innovation and protection of property rights

The Commission has identified innovation as one of the five strategic objectives highlighted for public procurement. To achieve this goal, a new

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[14] See also the problem of the TED database, mentioned in the competitiveness test annexed to this opinion.

[15] Submit proposals for a national procurement database and an analysis function for purchasing and procurement data - Statskontoret

[16] Se Flyvbjerg (2009), Survival of the unfittest: why the worst infrastructure gets built—and what we can do about it, Oxford Review of Economic Policy, 25 (3), 344–367, https://doi.org/10.1093/oxrep/grp024 samt Flyvbjerg el al. (2022), The Empirical Reality of IT Project Cost Overruns: Discovering A Power-Law Distribution. Journal of Management Information Systems, 39(3), 607–639. https://doi.org/10.1080/07421222.2022.2096544.

[17] To achieve realism of this kind, so-called reference class prediction is an important tool, see references in the footnote above.

special innovation procedure and new guidelines on innovation procurement are proposed. The special innovation procedure means that economic operators are invited to develop solutions based on societal challenges identified by the contracting authority. The development of these solutions will take place in different phases, including through market consultation, selection of proposals for innovative solutions, testing and validation, and evaluation of the proposals. The contracting authority will then have the opportunity to purchase the developed solution. The innovation procedure thus covers the entire life cycle of innovation procurement.

The Commission's proposal contains several positive changes in the area of innovation. Particularly welcome is the clarification that, as a general rule, the supplier retains ownership of the intangible assets that are developed within the framework of the procurement. This creates increased predictability and security for companies. At the same time, contracting authorities are given the opportunity to acquire the licences required to use the developed solution. Companies are thus given better opportunities to commercialise their innovations and scale up their operations.

In order to further promote innovation and participation in public procurement, it is proposed that, as a general rule, contracting authorities should design tender specifications as functional requirements. By focusing on the result to be achieved, rather than how it is to be achieved, suppliers are given more scope to present alternative solutions. This can contribute to better adapted, more innovative and cost-effective tenders. The proposal is particularly beneficial for SMEs, which are better able to compete through specialist expertise, innovative solutions and new business models.

The Commission also proposes increased opportunities for negotiation between contracting authorities and suppliers. This to some extent addresses the problems that arise from today's lack of flexibility and negotiation in procurement procedures.

In accordance with Article 60 of the proposal, innovation procurements must be clearly classified as such, which does not in itself necessarily strengthen the innovation power within the EU. However, this classification, in connection with the collected data to be fed into the EU's digital ecosystem for public contracts, can enable targeted analyses of how the use of innovation procurements develops over time and how these procurements affect innovation power.

In parallel with the proposal for the Public Procurement Act, the Commission has presented a proposal for a European Innovation Act, which will include a specific regulatory framework for the procurement of research and development services (R&D Procurement). Unlike the European Innovation Act, the innovation procedure in the Public Procurement Act also covers the purchase of the commercial final product. The Implementation Council intends to issue a separate opinion on the European Innovation Act.

The Council welcomes the focus on innovation procurement, the increased scope for negotiation and the use of functional requirements as they should collectively contribute to the companies' innovation capacity.

The Council also assesses that the wording that strengthens the protection of suppliers' intellectual property rights contributes in a positive way to increased clarity and predictability.

It is clear from the explanatory memorandum of the Commission's proposal that the system of CPV codes needs to be updated in order for the new digital infrastructure to function. However, it is not clear what changes are intended. The Council would like to draw attention to the importance of this type of update being implemented as a matter of urgency so as not to slow down the practical application of the improved regulatory framework.

Greater focus on quality is welcomed

The Commission's ambition is to create a coherent structure for integrating strategic policy objectives throughout the procurement process, from the design of procurement documents and the award of contracts to the execution of the contracts. A central part of this is to strengthen the quality dimension in award decisions. As a general rule, contracts should be awarded on the basis of the most economically advantageous tender, based on the best ratio between price (or life-cycle cost) and quality. The quality criteria may refer to functionality, technical quality, environmental impact, innovative character and other characteristics that contribute to a beneficial, efficient or sustainable result. The proposal therefore includes requirements for a minimum weighting of quality criteria, with particular emphasis on quality in labour-intensive contracts, where social considerations should weigh more heavily in the award of public contracts.[18]

[18] See recital 42 of the Commission proposal.

However, the wording of Article 98 of the Commission's proposal, which regulates the criteria for the award of public contracts, could have unfortunate consequences. First, according to this article, a public buyers shall award the contract to the economic operator that offers the "best quality" for money. This rule should reflect the principle of best quality for public money, and thus promote the objective of efficient public spending.[19] It would therefore be desirable to clarify that "best" quality does not necessarily correspond to the highest possible quality, but to the quality that best meets the buyer's needs. Given the objective of efficient public spending, it would be unreasonable to force a buyer to reward a level of quality for which there is no need.[20] Second, the use of the words "of the total points awarded" in Article 98(4) risks precluding the application of the absolute valuation model, which is the most common evaluation model in Sweden today.[21]

The Implementation Council is of the opinion that the Commission's proposal goes in the right direction by strengthening the quality dimension in award decisions. An increased weight for the quality criteria can improve the conditions for smaller and innovative companies to compete on equal terms with larger suppliers or with foreign suppliers that are subject to less far-reaching legal requirements than the Swedish ones. This is especially true in procurements where price and extensive detailed requirements have previously been prevalent. In its opinion on CEA, the Implementation Council also emphasised that companies see a need to include sustainability requirements in public procurement where relevant and proportionate. A shift from a one-sided focus on the lowest price to an assessment that also takes into account life-cycle costs, quality and sustainability can create better conditions for innovation and long-term value creation.[22]

The Council welcomes the fact that the award of public contracts explicitly can be based on a fixed price, where competitive tendering takes place solely on the basis of quality criteria. However, the Council would have liked the same clarity when it comes to the possibility for a public buyer to specify a

[19] See recital 7 of the Commission proposal.

[20] For example, prostheses that are for people who have already reached the age of 70 do not need to have a guaranteed life-span of more than 30 years.

[21] See What methods can be used to evaluate tenders ("evaluation models")? | National Agency for Public Procurement

[22] Opinion of the Implementation Council, *Basis for Swedish position ahead of EU negotiation – proposal for the Circular Economy Act (CEA),* 2026, section *6.5 Public procurement as a driving force*, p. 15

minimum price (a so-called floor price). This possibility, which has been excluded in Sweden through case law from the Supreme Administrative Court, has been requested by several stakeholders. They see a need to allow floor prices, especially in labour-intensive industries where unhealthy price pressure has become prevalent. The Council does not believe that a procurement based on floor price deprives suppliers of their ability to compete with their prices any more than a procurement based on a fixed price does. Compared to procurement based on a fixed price, there would be greater scope for variation in the tenders over the floor price.

Rules for more proportionate requirements are welcomed

The Commission's proposal contains several measures aimed at making requirements more proportionate, something that is requested by the Council's stakeholders. The proposal maintains that selection criteria should be limited to what is necessary and proportionate and clarifies the role of market consultations as a standard tool in the preparation phase of procurement. The retained requirement for the link to the subject matter of the contract is important, so that the public buyer's flexibility does not result in other types of disproportionate requirements.

The Implementation Council welcomes the clarity that contracting entities, according to the Commission's proposal, will no longer be able to impose disproportionate requirements regarding turnover or previous experience of public contracts. This is a positive change compared to the current regulatory framework, especially for smaller companies and start-ups. SMEs also benefit from the Commission's proposal that buyers must consider dividing contracts into several lots and justify when such division is not undertaken.[23] The possibility for companies to submit tenders for one or more lots should be clearly provided for in the rules.

The possibility for Member States to restrict supply chains, as found in Article 24(7) of the proposal, has been criticised by some stakeholders due to the negative impact such restrictions would have, in particular on the competitiveness of the Swedish construction industry. In order to ensure that this provision does not lead to disproportionate national requirements that make it impossible to achieve flexibility and effectiveness in works, the Council considers it very important that the proposed rule retains the

[23] In line with the proposed obligation to state reasons, the Federation of Swedish Entrepreneurs has stated that, prior to major procurements, public buyers should document how the contract's division, requirements, deadlines and financial conditions affect small and medium-sized companies' opportunities to participate.

requirement of a well-documented increased risk of specific regulatory violations. From a company perspective, however, it would be preferable if the prosecution of such violations were handled through contract follow-up.

Rules on procurements for resilience and and security of supply could relate to the design of the procurement and its long-term significance for production capacity and supply chains that benefit competitiveness, but it is important from a business perspective that these rules do not bring about disproportionate requirements for individual primary producers' stocks, reserve capacity or continuity plans.

The Council has received signals that the proposed rules allowing each Member State to apply national procedures for public contracts for a range of educational, health and social services is of importance to Swedish service providers. One concern is that these rules could lead to procurements in practice being reserved for certain types of actors, such as nonprofit organisations. This would be a clear restriction of competition that reduces the opportunities for other economic actors to participate in procurements, which is a development that is already seen today. Given that the health and social care sector constitutes the largest category of public procurement in Sweden[24] , procurements should be open as far as possible to all suppliers who can meet the set requirements, regardless of the form of organisation. This is to ensure high quality and efficient use of public funds that meet the needs of citizens. The provision risks cementing a fragmented internal market and may make it difficult for Swedish service companies to compete for public contracts in other Member States, despite the fact that Sweden has a strong and competitive service sector.

Call for caution in the use of EU preference

European preference criteria may entail higher requirements for documentation of origin and affect established supply chains. There is a risk that the current rules – that oblige suppliers to provide information about supply chains that is hard to overview – would worsen, and it does not appear that the digital eligibility service would be able to fully relieve this increased administrative burden.

In its previous opinion on the Commission's proposal for the Industrial Accelerator Act (IAA), the Implementation Council has discussed how rules

[24] In 2025, procurements in the sector worth SEK 339 billion were announced in Sweden.

on EU preference can affect the competitiveness of Swedish companies. [25] At that time, the Council deemed that the intentions to introduce procurement criteria for minimum EU content may be particularly harmful to competition and to the EU's competitiveness. Swedish Enterprise has recently presented calculations regarding increased costs of up to 30–40 % for certain industries at EU level if EU preference is adopted in the IAA.[26]

Some concerns about the increased flexibility

The Implementation Council have gathered that Swedish companies are generally positive to the increased flexibility that the Commission's proposal entails, especially when it comes to the possibilities for corrections and negotiations.

However, the Council sees a certain danger in the fact that an increased use of strategic criteria, which would happen on a voluntary basis according to the provision in the proposal, may increase complexity and fragment the internal market if the criteria are not sufficiently standardised within the EU. The Implementation Council has already drawn attention to this problem in its opinion on the Circular Economy Act (CEA), where the Council emphasises, among other things, that excessively detailed or narrow procurement and sustainability requirements can restrict competition, make it more difficult for smaller actors to participate and inhibit the development of new innovative and sustainable solutions. The Council has therefore emphasised the importance of procurement and sustainability criteria being designed in a functional and technology-neutral manner and that market conditions are taken into account.[27] The Council believes that the Commission's current proposal, which aims to increase the use of market consultations, as a standard tool in the procurement preparation phase, can have an important practical role in taking into account the market's real conditions when setting requirements.

The new dynamic procedure, combined with a more integrated European marketplace for public procurement, should provide easier market access for Swedish companies that want to expand in the internal market, at least to

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[25] The Implementation Council's opinion 20250609 "Basis for Swedish position for the upcoming EU negotiation – announced proposal for a regulation on accelerated decarbonization/emissions in industry (IDAA)"

[26] Svenskt näringslivs rapport European Preference and Competitiveness under the Industrial Accelerator Act

[27] Opinion of the Implementation Council, *Basis for Swedish position ahead of EU negotiations – proposal for the Circular Economy Act (CEA),* 2026

the extent that the administrative costs of being taken into account in a foreign procurement procedure would be reduced. On the other hand, the randomised selection in dynamic procedures could risk that companies that meet the requirements of the public contract in question would still not have the opportunity to submit a final tender. However, the randomised selection is voluntary to use and should lose its relevance as AI support is developed and adopted to a greater extent in the evaluation of tenders.

Under the open procedure, according to the Commission's proposal, a public buyer will be able to request the first tender within a twenty-day deadline, which is ten days shorter than the shortest deadline possible under the current regulatory framework. The fact that suppliers lose ten guaranteed days may make it more difficult, especially for SMEs, to submit well-prepared tenders. The proposed provision assumes that the digital eligibility service is operational, which would admittedly reduce the administrative burden for the tenderer and save some time. However, it is doubtful that the efficiency gains would amount to ten working days.

Professionalisation and support are needed, also for the supplier side

The Commission proposes to increase the EU's governance of support for professionalisation procurement. The proposal states that Member States should have a long-term and regularly updated national strategy for professionalisation, develop the skills of public buyers but also support companies' ability to participate in procurement procedures. Professionalisation efforts should include national, regional and local levels.

The Commission's proposed reform aims to steer public buyers towards acting more strategically and always taking into account quality criteria when awarding public contracts. However, the Implementation Council finds that a large proportion of Swedish public buyers have historically been hesitant to use the type of strategic procurement that has been possible already since the procurement directives were amended in 2014. At the same time, companies have felt that the requirements have often appeared unjustified and deviated too much from international standards. The Council therefore deems the EU's steering of support for professionalisation as welcome and justified. There is a need for strengthened competence among procuring authorities in areas such as early market dialogue, quality evaluation, negotiation and follow-up, with a focus on practical simplification. The competence support should also include practical examples of how procurements can be designed to make it easier for SMEs

to participate. The effects of such measures should be followed up through data on the number of tenders and contracts awarded to SMEs.

The Council considers it as positive that the proposal contains a more developed framework for national follow-up and reporting, but this framework also needs to be supplemented with skills development and support in how data is to be both reported and used for follow-up. In particular, follow-up of compliance with set requirements is crucial for public procurement to function as intended. Many of the stakeholders feel that competition is distorted when requirements for the work environment, quality and sustainability are not followed up during the contract period. For example, contracting services are an area where serious companies, which calculate with collective agreement wages, working environment requirements, machine safety and quality, risk competing with actors who do not live up to the same requirements.

From the companies' perspective, the proposed competence centre should also prioritise concrete support for suppliers in finding procurements, submitting tenders, using digital systems and describing the quality and sustainability of tenders.

Regulatory form

Since much of the complexity for companies comes from the national interpretation and application of the procurement rules, several actors believe that it would be a significant simplification if the procurement directives were replaced by a directly applicable regulation in order to achieve more uniform rules and reduce nationally specific rules. It should also be added that the comprehensive and welcome digital reform in principle requires the form of a regulation.

However, the Commission's proposal for a regulation will still coexist with a large number of more sector-specific rules on public contracts, which often contain binding requirements, in contrast to the Commission's current proposal, which primarily specifies different options for procurers. In addition, there will probably also be national rules for procurements below the thresholds of the EU regulation, and it is unclear to what extent the digitalisation reform will cover these procurements. If the form of a regulation is adopted, it will probably require an extraordinary educational effort in its implementation, both from the EU and national authorities. This would be particularly important in Sweden, where a new rules are normally

accompanied by detailed Swedish legislative preparatory work and legislative commentaries.

8. The Implementation Council's proposal for Sweden's positions for upcoming EU negotiations

The Implementation Council proposes that the Government should have the following starting points when developing Swedish positions for the negotiations about the proposal:

- **Promote reasonable conditions for the digital reform, to ensure both interoperability and user-friendliness**

The Commission proposes a comprehensive digital transformation that has the potential to reduce administrative costs for companies and broaden access to public contracts in practice. At the same time, a lack of inter-operability, technical problems or parallel systems during the transition period may instead increase costs for both companies and contracting authorities. It is therefore important that the Government works towards a realistic time and budget plan, in particular so that technical solutions can be developed in dialogue with end-users and that national authorities are given reasonable timeframes to ensure practical feasibility.

- **Safeguard the proposed provisions on intellectual property rights**

The Government should work to ensure that the procurement rules provide clear predictability as to when the transfer of ownership of intangible assets can be required, that licensing solutions are the starting point and that requirements for transfer may only be imposed when necessary and proportionate. From a business perspective, this is important because the opportunities to retain and re-use intangible assets can be crucial for a company's ability to commercialise a solution outside the procurement in question. If the Commission's parallel proposal for a European Innovation Act is intended to improve companies' opportunities to commercialise their intangible assets, it is also important that the procurement rules do not, at the same time, create incentives for companies to refrain from participating in public procurements or limit the possibility of commercialising their intangible assets.

- **Work to ensure that suppliers have sufficient time to submit tenders in well-balanced lots**

The efficiency gains that are expected to benefit suppliers through the proposed digitalisation reform do not justify drastically shortening the guaranteed timeframe for submitting a first tender in an open procedure. SMEs in particular would find it more difficult to submit well-prepared tenders within such a shortened timeframe. The Government should work to ensure that the current guaranteed tender period is not shortened until the digital eligibility service is fully operational, and that the shortening is not as radical as proposed. The opportunities for SMEs to participate in procurement procedures also increase significantly if contracts are divided into well-balanced lots.

- **Ensure ways for quality criteria to be taken into account in the award of public contracts, allowing both fixed and floor prices**

From a business perspective, greater emphasis on quality can give tenderers better opportunities to compete through innovation, technical quality, sustainability and long-term value rather than just by offering the lowest price. Public procurement can thus be used as a tool to create incentives for new innovative and sustainable solutions. However, it is important that quality criteria continue to be linked to the subject matter of the contract. In order for unhealthy competition not to undermine the incentives for higher quality, it should be possible to procure both on the basis of a fixed price and a floor price.

- **Work to ensure that the concept of "best quality" can also refer to the quality that best meets the buyer's needs**

It should be clarified in the preamble to the new regulatory framework that "best quality" does not necessarily correspond to the highest possible quality, but to the quality that best meets the needs of the buyer, where these are foreseeable for bidders. This clarification would promote the overall objective of efficient public spending and facilitate the application of the rules on criteria for the award of public contracts.

- **Support the proposals that relate to increased focus on functional requirements, market consultations and negotiations**

The Implementation Council believes that functional requirements should, as far as possible, be used to give suppliers room to propose different

solutions that can better contribute to better adapted, more innovative and cost-effective tenders. Market consultations should therefore be encouraged in order to provide contracting authorities with better knowledge of available solutions and thereby contribute to the requirements being formulated in a manner that is appropriate and proportionate for companies. Negotiations can also contribute to suppliers having more scope to find cost-effective solutions together with the buyer.

- **Ensure that the absolute valuation model can continue to be applied**

The words "out of the total points awarded" in Article 98(4) of the Commission's proposal risk excluding the application of the absolute valuation model, which is the most common evaluation model in Sweden today. The Government should therefore ensure that the provision is reworded so that this model can continue to be applied to the award of public contracts.

- **Ensure that contract follow-up should be carried out by the contracting entity**

In order to ensure fair competition and fair conditions, it is of the utmost importance that each contracting entity carries out an appropriate follow-up of how well the fulfilment of the contract meets the requirements set and the content of the winning bid. In order for this to be done in the best possible way, the Government should support the Commission's proposal not only on follow-up, but also on data access and increased professionalisation of public buyers.

- **Be prudent in the introduction of rules about EU preference**

The Implementation Council advocates a continued restraint regarding rules on European preference, as such rules can bring about extensive requirements and administrative burdens for companies. Instead of allowing each public buyer to freely apply EU preference criteria, such decisions should be taken at EU level, according to a decision-making procedure that requires the adoption of the Commission's implementing acts in accordance with a review procedure, which would ensure the influence of the Member States. Analyses of additional costs of EU preference, similar to the analysis recently presented by Swedish Enterprise, should also be carried out with regard to the impact on Swedish companies and competitiveness.

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- **Work on an impact assessment that includes a competitiveness test**

Annex 1 to this opinion presents an early competitiveness test regarding the impact of the proposal on Swedish companies and their competitiveness, based on the Commission's impact assessment. This early test can be used in the development of a Swedish impact assessment during the negotiations of the proposal for a new procurement framework.

- **The proposed act should be evaluated after only three years by an independent party**

Normally, the Commission carries out a major evaluation of new legislation after seven years. According to the proposal, parts will be continuously reviewed by both the Commission and the Member States. However, given the importance and ambition of the proposed legislative act, it is preferable that a larger objective evaluation takes place already after three years. The Member States should therefore also initiate an independent national evaluation in good time that follows up on how the regulatory framework and its practical application have worked nationally. In particular, the digitalisation reform should be analysed in terms of outcomes, but also time and budget plans. A good and early indicator can be the extent to which and how contract templates have been updated in accordance with the new regulatory framework.

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Decided per capsulam by the Implementation Council on 1 October 2026.