



Position of Dutch Municipalities regarding the Revision of the Procurement Directives

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About VNG

The Association of Netherlands Municipalities (VNG) is the advocacy organisation and knowledge platform for all Dutch municipalities. We act in the interest of local government and its residents. We achieve this by exerting influence at the national and European level and placing societal challenges at the forefront. We also help authorities to implement legislation. Together, we ensure a strong and resilient local and regional government.

Introduction

Local authorities need a practical set of procurement rules and more flexibility to achieve local objectives. A renewed focus on markets and competition is therefore necessary. For the upcoming revision, the VNG stresses the need to streamline and consolidate public procurement provisions, which are currently scattered over more than 60 EU sectoral legislative acts. A review should be started to eliminate inconsistencies, redundancies and conflicting obligations that are unmanageable for contracting authorities.

Main requests

The VNG has six main requests.

1. **An exemption for Local Services with a non-cross-border interest.** The VNG proposes a direct measure to make European public procurement rules simpler and more flexible for local and regional authorities. As local authorities are closest to citizens and directly influencing their everyday life, these authorities are also best placed to determine what procurement approaches work in their specific contexts, in line with the subsidiarity principle.
 - a. **Exemption for local public services:** Specifically, we argue that an explicit exemption should be introduced in current article 10 for regional and local public services with a non-cross-border nature, such as child and youth care, elderly care, food services for schools, housing for homeless people and refugees. With no cross-border impact, EU involvement is unnecessary and disproportional; subsidiarity makes that these purchases should be managed locally (local self-government). Competition should be replaced by community driven solutions, provided by local or regional business or community initiatives.

2. **Simplification, more flexibility and fewer rules.** Dutch local authorities, especially small authorities, struggle with the current complexity of the procurement framework. Local governments need a greater flexibility in modifying and submitting missing procurement documents during procedures to increase competition. The VNG pleads for simpler and more understandable procurement rules within a lean framework with the following suggestions:
- a. **Allowing contract amendments after conclusion of the contract:** doubling of the de minimis thresholds in Article 72(2) of Directive and enabling multiple application of the de minimis thresholds in the case of multiple amendments
 - b. **Extension of Article 32 or Article 72(1)(d) Directive:** In the event of contract termination due to disrupted contract performance during an ongoing measure, replacement procurement through a negotiated procedure without competitive tendering must be permissible without separate justification. The same must apply if it subsequently transpires that the contractor is unable to perform the service.
 - c. **Fundamental permissibility of amendments and contract extensions without a new procurement procedure:** restriction to cases of abuse, in the case of deliberately postponed or significant amendments, technically and functionally separable extensions with an independent subject matter. (Article 72 of Directive)
 - d. **More specific presentation and reliable interpretation of the terms in the CPV nomenclature:** specifically, for social and other specific services. This is too general and therefore associated with considerable legal uncertainty in its implementation.
 - e. **Introducing a special regime for modifying IT-contracts:** Explicitly allowing extensions of contracts where forced retendering would result in high transition costs, and therefore a significant waste of public funds, and broader possibilities to modify the contract in case of the availability of new technologies (Article 72 of Directive).
 - f. **Clarifying and codifying the regime for framework agreements:** allow the use of long-term framework agreements where continuity, investment, and security of supply are essential. This can reduce the frequency of procurement procedures and lower transaction costs for authorities and suppliers (article 33 Directive).
 - g. **Design a more practical procurement procedure:** Adopting a multi-step procedure, merging all procedures into one procedure (articles 25 to 32 Directive). Local authorities should be able to use all procedures more freely without having to justify why and allow more room for negotiation.
 - h. **Clarify, reduce and consolidate the number of rules for the following procedures:** for dynamic purchasing systems (article 34 Directive), auctions (Article 35 Directive), electronic catalogues (article 36 Directive), centralized purchasing

activities and centralized purchasing activities and central purchasing bodies (current article 37 Directive).

- i. **Reduce and clarify the rules on communication:** communication between tenderers and contracting authorities is essential for having a successful procurement process (article 22 Directive). More flexibility is needed, and clarity is necessary to enable communication during the procedure between parties.

3. **A greater scope for collaboration with social and citizen-led initiatives.** Active citizens (individual or in a group) and communities contribute to local communities by engaging in public tasks or serving the public interest (*e.g. maintaining the local swimming pool or running the community bar*). It should be made possible to engage these initiatives without requiring a formal public procurement procedure.

- a. **Revise the definition of “economic operator”:** this definition should be revised or clarified to ensure that these initiatives are not included (Article 2 Directive). An example of a ‘community’ definition can be found in the Directive 2018/2001 on the promotion of the use of energy from renewable sources.
- b. **Reserved contracts for social and citizen-led communities:** Alternatively, contracts should be reserved specifically for social and community initiatives, similar to the reserved contracts in Articles 20 and 77 Directive.

4. **One clear and broad exemption for In-house procurement and public-public cooperation.** Public collaborations, both the institutionalized and the non-institutionalized ones, are of great importance for enabling local authorities for effective public service delivery. Cooperation often improves service resilience, reduces administrative duplication, and enables resource pooling in rural or low-capacity areas.

- a. **Simplify public cooperation:** the possibilities for in-house procurement and public-public cooperation should be simplified, establishing one exemption for public cooperation, instead of several exemptions. Contracting authorities must retain democratic discretion to choose public cooperation models, based on efficiency, service quality and local priorities.
- b. **Clarify the definition public-public cooperation:** Public cooperation should be better defined, provided that the cooperation serves the public interest and is not used to circumvent competition. This definition should include both formal legal structures and flexible inter-communal arrangements, reflecting the realities of municipal cooperation across Europe. Asymmetric cooperation, where one authority provides technical execution while others jointly govern, should also be expressly permitted. Article 12 Directive is too restrictive and ambiguous, creating uncertainty for many forms of legitimate cooperation. Review Article 12 to clearly

define public-public cooperation in the revision as *any contracts or agreements concluded between two or more contracting authorities*.

- c. **No introduction of an economic assessment for public cooperation:** Protect in-house procurement from a market-oriented approach to the execution of government tasks, disregarding the effectiveness of LRGs to address societal problems.
- d. **Facilitate public cooperation for IT solutions:** Clarify that IT can also serve the public interest—for example, by strengthening the digital autonomy of regional and local governments and reducing undesirable dependencies on non-EU suppliers. Public cooperation between different contracting authorities is essential to strengthening the resilience of local authorities and their IT systems.

5. **Promoting and providing guidance on strategic procurement (buying green and social), with room for choosing local sustainability goals.** A minimum set of standards is needed to enable local authorities to procure green aligned with their corresponding sustainability level.

- a. **Voluntary criteria, not mandatory:** Local authorities should benefit from having sufficient flexibility to select their sustainability objectives independently and to determine how best to achieve them. Therefore, green and social criteria should remain voluntary, not mandatory. Insert a recital recognising that technical and minimum requirements are legitimate tools to pursue social and environmental objectives.
- b. **Guidance on strategic procurement:** Provide guidance to local authorities on green and social procurement to help professionalize public buyers.
- c. **Using labels more easily:** Facilitate the use of environmental labels and certificates to support public purchasing of green solutions and establish a list of labels and certificates to provide clarity for local authorities.

6. **Strengthening and introducing new possibilities for including resilience and security into public procurement by local authorities.** Create space in procurement rules for strategic sectors to safeguard security, supply reliability, sovereignty, and resilience.

- a. **Buy European & Made in Europe:** it should be possible to procure EU products from EU suppliers especially in the IT sector, certain security services (such as the protection of municipal buildings or mayors), and the procurement of items like surveillance cameras.
- b. **New exclusion grounds:** The exclusion ground in article 39 (2) (e) of Directive 2009/81 should be added to the new public procurement rules. In addition, the following new exclusion grounds (article 57 Directive) should be included:
 - an exclusion ground allowing suppliers from third countries with an offensive cyber agenda to be barred, including subsidiaries of companies

whose shareholders are established in, and/or have a significant risk exposure to, countries pursuing an offensive cyber agenda; and

- an exclusion ground to exclude suppliers due to the risk of a ‘digital monoculture’, in which many organizations depend on a small number of providers (Microsoft, Google). Reference to: Report Ministry of the Interior and Kingdom Relations: [blg-1213117.pdf](#))
- c. **Design a specific procedure for all IT services and products:** in this procedure negotiations are permitted, interim adjustments in the tender documentation are possible and the IT-contracts can be modified during and after the procedure, allowing negotiations on, for example, terms and conditions of third-party software.
 - d. **Expanding the scope of the Defense Security Procurement Directive (2009/81/EG):** to also cover critical IT infrastructure, but also critical infrastructure like bridges.
 - e. **Include possibility to keep information confidential:** a new article concerning sensitive information in tender documentation to ensure this information is not disclosed via TED (or TedNed), for example details of a municipal IT environment that could pose a security risk. Like current articles 22 and 36 in the Defense Security Procurement Directive 2009/81/EG.
 - f. **More possibilities to verify integrity and capacity of (sub) contractors:** adopting the subcontracting provisions of the Defense Security Procurement Directive 2009/81/EG, Article 21, regarding the integrity screening of suppliers and subcontractors. Adding a flexible possibility to require from bidders IT certification schemes, CRA conformity marks, and penetration tests.

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