POSITION PAPER TO THE EUROPEAN COMMISSION

UNLOCKING INNOVATION THROUGH EU PUBLIC PROCUREMENT
– TARGETED AMMENDMENTS TO DIRECTIVE 2014/24/EU

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1) INTRODUCTION

A decade after the adoption of Directive 2014/24/EU, innovation-oriented procurement remains the exception rather than the rule – even though EU public procurement represents roughly 14% of EU GDP and is a powerful lever to accelerate green, digital and security transitions.[1] The current framework offers already flexible procedures and measures. Yet in practice, buyers often default to open/restricted procedures, use “price only” rewards, limit variants, and avoid early engagement for fear of challenges.

Public procurement of innovation in the European Union is not simply underperforming and fragmented – it is structurally incapable of delivering on its strategic potential. Despite decades of political declarations, the share of innovative procurement remains at a marginal rate of total public spending.[2] This is not a case of market failure, but rather a failure of regulation.

The consequences are severe: Europe is voluntarily surrendering first-mover advantages in critical technologies to competitors who have designed their public purchasing systems precisely to create and scale breakthroughs rather than to prevent errors.

The Commission’s ongoing policy work to strengthen strategic procurement and update the legal frameworks is the right moment **to make innovation the easiest compliant choice**, without compromising transparency, equal treatment and competition.

This position paper has been prepared in view of the European Commission’s forthcoming discussions in December 2025 on strategic procurement and the role of public procurement in driving innovation.

[1] https://commission.europa.eu/document/download/e3872422-2adc-4802-a40e-e0660e622f3d_en?filename=european-semester_thematic-factsheet_public-procurement_en.pdf European Semester Thematic Factsheet Public Procurement, page 1; https://www.eca.europa.eu/ECAPublications/SR-2023-28/SR-2023-28_EN.pdf, page 4.

[2] https://www.koinno-bmwk.de/fileadmin/user_upload/EU_Kontaktstelle/Download/Summary_KK02212523AN.de_en_fr.pdf, page 10.

2) ROOT CAUSES EMBEDDED IN THE CURRENT LEGAL FRAMEWORK

The barriers are well known; their underlying causes are, however, less frequently acknowledged:

- Enabling conditions are constrained by extensive justification, documentation, and ex-ante control requirements, which turn every innovative project into a professional risk for the responsible public official.
- The persistent innovation gap between prototype and deployment is structurally reinforced: Article 72 of Directive 2014/24/EU limits contract modifications that are essential for genuine innovation processes.
- Institutional learning is impeded by the absence of harmonised functional taxonomies.
- Strategic alignment and monitoring remain voluntary, thereby limiting the effectiveness of the policy framework.
- Fixed percentage targets for innovative procurement are lacking. Nonetheless, coercive measures of this type should be avoided. Instead, legal frameworks should introduce appropriate incentive mechanisms.

An additional, decisive factor is the duration of procedures – frequently 18 to 36 months – which guarantees that any technological edge has long evaporated by the time the contract is awarded.

In short: the current directives are too rigid, risk-averse and bureaucratic for innovation procurement. The result is a self-inflicted competitive disadvantage.

3) RECOMMENDATIONS / SOLUTIONS

To transform public procurement into Europe's most powerful demand-side innovation instrument, the legal framework must be rebuilt around three principles: speed, flexibility and scale. Here are our suggestions:

A) FULL EXEMPTION FROM THRESHOLDS FOR STRATEGIC INNOVATION PROCUREMENT IN DEFINED HIGH-PRIORITY TECHNOLOGY FIELDS

The EU already recognises that innovation cannot be treated like the procurement of regular services or products. This is why Article 14 of Directive 2014/24/EU and the dedicated Pre-Commercial Procurement (PCP) framework (COM(2007) 799 and Commission Communication 2011/C 198/02) provide a specific exemption for certain R&D services under defined conditions from the scope of the directive and from all EU thresholds. In practice, however, this exemption is limited to pre-commercial phases and attached to requirements and does not cover the subsequent deployment and scaling of the developed solutions – fully intended but exactly where the real market-creating effect would occur.

The New European Innovation Agenda (COM(2022) 332 final) goes significantly further and proposes and politically calls for exploring targeted exemptions or simplified rules in order to accelerate Europe's technological sovereignty.[3] The Agenda explicitly lists AI, quantum technologies, semiconductors,

[3] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0332, COM(2022) 332 final, page 2.

clean energy technologies, biotechnologies, and health as priority fields requiring bold regulatory action.[4]

Building directly on these political commitments, we propose to consolidate and extend the exemption regime into a single, clear rule:

> *Contracts having as their main object the provision, first deployment or scaling of innovative solutions in strategic technology fields designated and updated by the Commission every two years shall be exempted from the application of this Directive, provided that:*

- *the contracting authority duly demonstrates that the contract is indispensable to safeguard essential technological interests of the Union or of one or more of its Member States,*
- *effective competition between suitable economic operators within the internal market is preserved, and*
- *the contracting authority ensures an adequate level of transparency and ex post reporting to the Commission regarding the use of this exemption.*

Similar to the thresholds, the strategic fields, such as AI, quantum technologies etc. should be published, so that the European Directive does not have to be constantly updated.

B) CREATE DOCUMENTATION INCENTIVES FOR THE PROCUREMENT OF INNOVATIVE SOLUTIONS

The procurement of innovative solutions is perceived as "paper-heavy". However, innovative solutions and its criteria cannot be defined in detail at the outset and require procedural flexibility. This administrative burden can discourage contracting authorities from using innovation-oriented procedures such as competitive procedures with negotiation, innovation partnerships or competitive dialogues.

To address this, a short-form documentation of the procurement file and/or notices should be introduced for clearly defined innovation fast-track procedures. A short-form documentation and/or notices would operate through pre-populated eForms, drawing on existing electronic publication data. Contracting authorities could omit non-essential narrative fields where standard templates are used and referenced. This would streamline documentation while ensuring compliance with core transparency requirements.

C) THE "INNOVATION PASSPORT"

A company that has successfully developed and validated an innovative solution for one contracting authority (for example a smart energy grid component, an AI-driven telemedicine platform or a zero-emission urban logistics drone) will, when approaching another public buyer in the same or in a different Member State, still typically face substantial duplication of effort:

- The new buyer often insists on its own technical dialogue or proof-of-concept, even where equivalent use cases already exist.
- National certification bodies, standardisation organisations or sectoral regulators re-assess largely identical technical characteristics under their respective procedures.

[4] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0332, COM(2022) 332 final, page 12, 17.

- Evidence and compliance packages that may have taken up to 18–36 months to compile during the first procurement are treated as only partially transferable.
- The innovator must enter yet another multi-stage tender procedure essentially to demonstrate again what has already been demonstrated elsewhere. This repeated validation significantly weakens the business case for European deep-tech and scale-up companies and acts as a de facto barrier to scaling innovative solutions within the public-sector market.

To reduce this structural waste and improve cross-border uptake of innovation, the European Union should establish a European PPI Knowledge and Conformity Platform. The Platform would offer a voluntary, EU-level one-stop assessment procedure resulting in a digital EU Innovation Passport. This Passport would:

- consolidate technical, safety, interoperability and performance evidence generated in one or more reference procurements;
- be recognised by participating contracting authorities and relevant regulators across the Union as creating a strong presumption of conformity for equivalent use cases; and
- trigger an obligation for those authorities to rely on the Passport or to justify in a transparent manner why additional local assessments are strictly necessary. The expected impact would be a shorter time-to-market for publicly supported innovations, higher cross-border volumes of public procurement of innovation, and a stronger incentive for private co-investment in PCP and innovation partnerships, because investors can see a more credible and less fragmented route to scale.

D) ARTICLE 14: CLARIFY AND ENLARGE THE R&D CARVE-OUT TO COVER R&D-DRIVEN SUPPLIES/SERVICES THAT SERVE RESEARCH OBJECTIVES[5]

Article 14 currently limits the exemption of R&D services and does not consider R&D supplies. Therefore the current drafting pushes many research-intensive buys back into full procedures even when the purpose is clearly research and experimentation. Especially research-performing authorities are systematically slowed down by public procurement procedures which often take six to twelve months. In fast- moving scientific fields, such timelines blunt international competitiveness: laboratories miss windows to acquire frontier equipment or lose first-mover advantages in experiments and data-collection. The result is a persistent timing penalty vis-a-vis peers in jurisdictions with more agile purchasing regimes (USA & China).

→ The framework should introduce a purpose-based exemption for R&D-enabling procurements (besides R&D services also e.g. microscopes and other research instruments) – so that compliance no longer comes at the expense of research velocity.

A purpose-based rule must not become a backdoor to exclude ordinary, general-purpose purchases from competition. Two simple guardrails keep the change targeted: (i) the main purpose of the contract must be to perform or enable R&D in a concrete project, and (ii) the exclusion covers only supplies, works and services strictly necessary to carry out that R&D (not routine operational stock).

[5] The recommendation on Article 14 draws on discussions with members of the Alliance of Science Organisations in Germany and on an internal working document shared with SPRIND. This section does not reflect a coordinated position of the entire Alliance of Science Organisations in Germany. However, elements of this section were partially developed and discussed in collaboration with the listed organisations of the Alliance: **Fraunhofer Gesellschaft, Max-Planck-Gesellschaft, Helmholtz Gemeinschaft, Deutsche Forschungsgemeinschaft**.

The European Commission could add light-touch transparency (e.g. short ex-ante R&D notice identifying the project) without recreating heavy procedure. This preserves equal treatment and verifiability while removing process friction that slows research.

→ Proposed drafting:

Article 14 – Research and development

*"This Directive shall not apply to public contracts whose main purpose is **to perform or enable** research and development, including the acquisition of equipment, infrastructure and related supplies or services **strictly necessary for that purpose."***

Article 32 (3) a) could then be deleted.

E) ARTICLE 27: SHORTENING OF MANDATORY TIME LIMITS FOR ALL PROCEDURES INVOLVING INNOVATIVE SOLUTIONS

One of the most critical challenges of the current public procurement framework is the considerable duration of procurement procedures. Even when contracting authorities intend to procure innovative solutions, the average time from publication to contract signature often extends beyond 18 to 36 months. By the time contracts are awarded, the technological advantage may have eroded, and start-ups could face financial strain or shift their focus elsewhere.

The 2025 evaluation of the public procurement directives (SWD(2025) 332 final) explicitly identifies the excessive length of procedures as a significant barrier to innovation procurement.[6] Three-quarters of the asked public authorities perceived procurement procedures above the EU thresholds as slower than those conducted below the thresholds.

Despite Article 27(3) of Directive 2014/24/EU permitting contracting authorities to shorten the minimum time limit for receipt of tenders to 10 calendar days in duly justified urgent cases, this provision is rarely employed for innovation procurements. Public buyers often hesitate due to fear of legal challenges and lack of explicit political support for recognizing urgency in innovation contexts.

To address this, an amendment to Article 27(3) could introduce a rebuttable presumption of urgency for contracts concerning innovative goods, services or works. Such a presumption would reduce legal uncertainty and encourage broader use of accelerated procedures for innovation procurement, while maintaining safeguards for competition and transparency.

Add the following subparagraph at the end of Article 27(3):

"*The existence of a case of urgency within the meaning of this paragraph shall be presumed, where the contract concerns the procurement of innovative goods, services, or works."*

[6] https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2025)332&lang=en, SWD(2025) 332 final, page 19.

F) ARTICLE 26: MAKE NEGOATION/DIALOGUE THE PRACTICAL DEFAULT FOR FUNCTIONALLY SPECIFIED SOLUTIONS

Where needs are described functionally and solutions require iteration, buyers still feel they must justify negotiation/dialogue against a restrictive list.

→ Introduce a rebuttable presumption that competitive procedure with negotiation or competitive dialogue is appropriate whenever the authority uses functional/performance specifications. The authority may at all times reserve the right to accept the initial offer and to abstain from negotiations, should negotiations not be considered necessary. The authority may still choose open/restricted procedures but should record a short reason (two lines) in the Article 84 file.

This helps normalising iterative solution-finding and faster convergence on feasible designs and innovation, reducing failed tenders and change orders.

→ Proposed drafting:

Article 26 (Amendment of No. 4):

4. "*Member states shall provide that contracting authorities may apply either a competitive procedure with negotiation or a competitive dialogue in case the authority's needs are defined through functional or performance specifications or in the following situations:*

(a) …."

G) ARTICLE 29 - MAKE THE COMPETITIVE PROCEDURE WITH NEGOTIATION A BETTER PATHWAY FOR INNOVATIVE SOLUTIONS

The current competitive procedure with negotiation already allows successive stages and a controlled closure of negotiations, and even award on initial tenders if this is reserved in advance. But it is not explicit that this procedure can end in a multi-partner, staged development and deployment path similar to an innovation partnership. To facilitate the catalogue of procedures, the competitive procedure with negotiation could be designed in a more flexible manner, allowing the innovative partnership to be reflected within it.

H) ARTICLE 32: LEGAL CLOSURE OF THE INNOVATION GAP – AUTOMATIC DIRECT AWARD OF FOLLOW-ON PRODUCTION AND SCALING CONTRACTS UP TO 300 % OF THE ORIGINAL R&D VOLUME

In our view, the main reason why Europe struggles to convert R&D pilots into real markets—often referred to as the 'Innovation Gap'—is the legal and procedural obligation for contracting authorities to initiate a new, full-scale competitive tender after a successful PCP, R&D, or pilot phase for the actual deployment and commercialization.

Although the current Directive includes a legal tool that can partially address this issue, namely Article 32(3)(b) of Directive 2014/24/EU, it is very narrowly framed. This provision allows negotiated procedure without prior publication only for additional deliveries by the original supplier where changing the supplier would cause incompatible technical characteristics and disproportionate technical difficulties, and generally limits such contracts to a maximum duration of three years.

To truly accelerate market uptake and strengthen the Union's technological sovereignty, Member States should be empowered, under strictly defined cumulative conditions and transparency

safeguards, to directly award follow-on production, commercialization, or scaling contracts to the original innovator. Crucially, this possibility should be made explicit and reserved from the outset in the initial contract, to ensure legal certainty and fair competition.

→ Proposed drafting:

Article 32:

(2) following point d) is inserted:

„for supplies, services or works intended for the production, commercialization or scaling-up of an innovative solution which has been developed and successfully tested by the contracting authority under a preceding research and development contract, pre-commercial procurement (PCP), innovation partnership or design contest, provided that the following cumulative conditions are met:

i) the original R&D contract explicitly reserved the option of awarding a direct follow-on contract for production, commercialization or scaling;

ii) the innovative solution continues to meet the original performance requirements and does not undergo substantial modifications;

(iii) the estimated total value of the follow-on contract does not exceed 300 % of the value of the original R&D contract (excluding any prototypes or test series already delivered under the R&D phase);

(iv) the follow-on contract is awarded within five years of the completion of the original R&D phase;"

I) ARTICLES 40: ESTABLISH A "SAFE-HARBOUR" FOR PRELIMINARY MARKET CONSULTATIONS

Authorities may under-use early engagement with market operators due to convenience/lack of resources or fears around prior involvement and unequal access. This can lead to an information gap at the expense of innovative solutions.

→ Codify that consultations shall be made and are presumed lawful if buyers (i) publish a brief note of meetings and materials shared, (ii) ensure symmetrical access (Q&A log), and (iii) set adequate time limits.

→ Add recitals specifying which lawful sources/techniques of market research are permissible, e.g. modelled on the current version of U.S. Federal Acquisition Regulation (FAR) 10.002 (2)[7].

→ Provide model templates (agenda, confidentiality, conflict management) aligned with EAFIP.

It normalises early dialogue while addressing fairness and conflict-of-interest concerns.

→ Proposed drafting

Article 40:

[7] https://www.govinfo.gov/content/pkg/CFR-2007-title48-vol1/pdf/CFR-2007-title48-vol1-sec10-002.pdf.

"Before launching a procurement procedure, contracting authorities shall conduct market research with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.

The extent of the market research shall be appropriate to the circumstances, depending on such factors as urgency, estimated contract value, complexity and past experience.[8]

[…]"

J) ARTICLE 45: FLIP THE DEFAULTS ON VARIANTS: ADMIT UNLESS REASONED EXCLUSION

Under current provisions in Article 45, variants are only admissible if the buyer expressly allows them - otherwise they are excluded – suppressing innovative solutions.

→ Make variants admissible by default whenever the tender uses functional/performance specifications; require the authority to define minimum requirements and evaluation rules; allow a reasoned exclusion only where variants would compromise comparability.

To enhance flexibility, where variants are permitted, overarching award criteria could be established that may be further refined transparently before the submission of final tenders in later stages of the negotiated procedure. This should, however, only apply where the contracting authority has not reserved the right to award the contract on the basis of the initial offer.

→ Proposed drafting

Article 45 (new No. 3 and No. 4):

3. Notwithstanding No. 1 of this Article, contracting authorities shall authorise the submission of variants where the procurement documents make use of functional or performance-based specifications. In this case, contracting authorities may decide to exclude variants only where this is duly justified on objective grounds, in particular where the admission of variants would compromise the comparability of tenders.

4. Where variants are permitted in the context of a competitive procedure with negotiation, contracting authorities may establish overarching award criteria which may be further refined in a transparent manner prior to the submission of final tenders in the later stages of the competitive procedure with negotiation. This shall apply only where the contracting authority has not reserved the right to award the contract on the basis of the initial offer.

[8] Modelled on FAR 10.002 (1) https://www.govinfo.gov/content/pkg/CFR-2007-title48-vol1/pdf/CFR-2007-title48-vol1-sec10-002.pdf.