

International Certification Program in Strategic Public Procurement - for Lebanese officials

« Unlock Your Potential in Public Procurement »

EU Public Procurement Regulatory Framework PPP Model

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Agenda & Objectives

This presentation will explore the EU Public Procurement Framework, highlighting its key components and objectives.

1 Overview of EU procurement regulatory framework

2 Fundamental Principles of EU procurement

3 Challenges in procurement

4 Secondary law provisions: Directives 2014/24-25/EU

5 PPPs

6 EU Concession Directive 2014/23/EU

7 Project Financing

8 Future trends in EU Public Procurement regulatory Framework

EU Public Procurement Regulatory Framework

Legal Framework and Ongoing Revision (2025)

Introduction & Context

- Public procurement: the process by which government bodies and public organizations purchase goods, services, and works from the private sector.
- The co-operation between public and private operators may result in PPPs

- **Economic size:** It is a crucial government function that accounts for a significant part of GDP (14% - around € 2 trillion) and is governed by rules to ensure transparency, competition, and value for money
- **Strategic importance:** It is a powerful tool influencing the economy, with the power to create jobs, foster innovation, and promote more sustainable and socially inclusive growth.
- **Risks:** several risks/potential distortions involved – cartells/bid rigging/corruption/lobbying
- **Challenges:** Despite its economic importance, EU public procurement still faces challenges such as a lack of competition, complex procedures, and issues with data transparency.

Dinstitutions: Public Procurement versus PPPs

both share the common thread of private sector involvement... however...

- Traditional public procurement pertains to the acquisition of goods or construction works or services using **public funds sourced**.
- Under traditional public procurement, the funding, operation and maintenance of public assets remains the **responsibility of the public entity**.

- “PPPs” are generally understood to be **long term contracts** between private party and a government entity, for developing public infrastructure and providing public services.

- The private party primarily brings **funding and expertise** into areas that are normally the responsibility of Government; bears significant **risk and management responsibility** and **remuneration linked to performance**.

What about the sources of the EU Public Procurement Regulatory Framework ?



Ministry of Foreign Affairs
and International Cooperation

EU legal order: main sources

Primary law:

- The Treaties establishing the European Union:
- TUE – TFUE – CJEU CASE LAW

Secondary law:

- include regulations, directives, decisions
- Sources of rights and obligations protected by national Courts

Supplementary sources

- CASE LAW CJEU
- GENERAL PRINCIPLES OF EUROPEAN UNION LAW

+ transposition of the domestic orders and national rule

The EU legal order is special/different by internazionale law

BECAUSE

- is a **DIRECT** source of rights and obligations for States and citizens (*van Gend & Loos*, 1962)
- has **PRIMACY OR SUPREMACY (PRIORITY)** over Domestic Laws (*Costa-ENEL*, 1964)

Who manages the legislative power in Europe?

Institutional triangle

CJEU – i
and enfo
procure

European
Commission
legislative initiative
and compliance

European
Parliament
democratic
co-legislator

Council of Ministers
Co-legislator



Ministry of Foreign Affairs
and International Cooperation

What's the value of EU law?

FOR PRIMARY LAW AND REGULATIONS

DIRECT APPLICABILITY AND EFFECT:

- Capacity of a norm of EU law to be applied directly by a national Court to the case before it.
- Direct source of rights and obligations.

SUPREMACY IN CASE OF CONFLICTS:

Duty for a national court to set aside (*disapply*) the national norm conflicting with directly effective EU norm.

FOR EU DIRECTIVES

- NOT DIRECT APPLICABLE, NEED TO BE TRASPOSED
- NO DIRECT EFFECT IN PRIVATE RELATIONSHIPS, CLAIMS AMONG INDIVIDUALS AND ECONOMIC OPERATORS BEFORE TRASPOSITION
- INDIRECT EFFECT
- STATE LIABILITY IN CASE OF NO PROPER TRASPOSITION

The EU Public Procurement Regulatory Framework

- **PRIMARY LAW: MAIN PRINCIPLES OF PROCUREMENT**

Direct applicability and direct effect in single Member States and **Primacy** in case of conflicts

- **SECONDARY LEGISLATION: EU DIRECTIVES**

2014/23/EU, 2014/24/EU, and 2014/25/EU

- **The CJEU** guarantees consistent interpretation

- **EU COMMISSION**: supervisor by infringement action

Legal Framework

Directives and Principles

This table summarizes the core directives (SECONDARY LAW) and fundamental principles (PRIMARY LAW)

Directive/Regulation (SECONDARY LAW)		Description	Fundamental Principles (TEU - TFEU)
Directive 2014/24/EU		Regulates public procurement	Transparency and Competition
Directive 2014/25/EU		Focus on utilities	Proportionality – Mutual recognition
Regulation 2014/2016		Sets thresholds for procurement	Value for Money
Directive 2009/81/EC		Defense and security procurement	Equal treatment – Non-Discrimination
Directive 2014/23/EC		Concessions Directive	
Directive 2007/66/EC		Remedies Directive	

Challenges & Issues



Procurement procedures are often complex, leading to confusion and increased chances of errors.

Procedural Complexity



Several economic operators fail to meet all regulatory compliance requirements, resulting in potential penalties.

Compliance Gaps (difficulties for operators to meet the requirements and different interpretation/trasposition of rules)



Limited access to markets hinder competition and affect the quality of procurement outcomes.

Market Restrictions

Actual/Future trends



Innovative technologies like AI will transform procurement processes.

Emerging Technologies



Platforms are moving towards digitalization, making processes more efficient and transparent.

Digital Procurement Solutions



The framework is evolving to include sustainability criteria, influencing purchasing decisions more SME friendly rules

- Sustainability Focus
- SME friendly procurement

General principles of EU Procurement law

- Derived from the TFEU and clarified by the CJEU case law
- Govern how public authorities across the EU purchase goods, services, and works, ensuring that all potential suppliers are treated fairly and equally.
- EU provisions are highly aligned with the **Agreement on Government Procurement (GPA)** of the **World Trade Organization (WTO)** signed by 48 Member States

- The relevant EU procurement Directives implement Treaty principles: transparency, equal treatment, competition.
- **These principles apply above and below the EU thresholds**
- **Apply to contracts excluded by the scope of the community directives**

CJEU case-law

- The CJEU has stated on several occasions
- **'Although certain contracts are excluded from the scope of the Community directives in the field of public procurement, the contracting authorities which conclude them are bound to comply with the fundamental rules of the Treaty'**

paragraph 20 of the *Bent Moustén Vestergaard*

Case C-59/00, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62000C>

Links with corruption and other distortive behaviors?

(bid-rigging – corruption – collusion – organised crime)

2003 UN Merida Convention on Anticorruption

- **Article 9. Public procurement and management of public finances**
- Requires State Parties to establish procurement systems based on **transparency, competition, and objective decision-making criteria** to prevent corruption.
- Key elements of these systems include public access to information about procurement procedures and contracts, advance publication conditions and criteria, use of objective criteria, and effective review systems.

Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement based on **transparency, competition and objective criteria in decision-making**, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

- The **public distribution of information relating to procurement procedures and contracts** including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
- The **establishment, in advance, of conditions for participation**, including selection and award criteria and tendering rules, and their publication;
- The **use of objective and predetermined criteria** for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
- An **effective system of domestic review**, including an effective system of appeal, to ensure recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;
- Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as **declaration of interest in particular public procurements, screening procedures and training requirements**.

FREE COMPETITION, MOVEMENT OF GOODS, RIGHT OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES

- Public procurement tenders must comply with the general principles related to the single market treating all EU tenderers equally from the drafting of the selection criteria to awarding the contract.
- Example of selection criteria in a tender that would be **unlawful** based on this principle: *Preference is given to economic operators carrying out their main activity in the region where the works constituting the object of procurement are to be carried out.*

EQUAL TREATMENT

“SAME RULE OF THE GAME” - “EQUAL PLAY FIELD”

- All potential and participating bidders have to be treated the same, with any discrimination, to ensure fair competition. All tenderers must be subject to the same conditions and assessment criteria, and there should be no unjustified differentiation based on nationality or other factors. The principle applies to every stage of the procurement process, from the initial formation of bids to the final assessment, closely linked to the principle of

NON-DISCRIMINATION ON THE BASIS OF NATIONALITY

preventing treating people differently because of their nationality – *Art. 18 TFEU: «Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited»*

Key aspects of the principle

- **Fair and equal opportunity:** All candidates and tenderers should have an equal opportunity to compete. This prevents the process from being manipulated to favor any specific supplier.
- **Objective assessment:** Bids must be assessed objectively based on the quality and price of the tender, not on the personal abilities or circumstances of the individual economic operators.
- **Identical conditions:** The rules of the procedure must be the same for everyone, and there should be no restrictions based on nationality or origin that limit the pool of potential bidders.
- **No unjustified differentiation:** Contracting authorities must avoid treating different economic operators in different ways, unless there is an objective and justified reason to do so.
- **Conflict of interest:** The principle also requires that conflicts of interest be identified and prevented, as they can lead to partiality and distort competition. 

Examples of unlawful and discriminatory selection criteria

- Having at least 5 similar references from the public sector only, and not private sector, unless justified and non-discriminatory;
- Providing references for previous works that are significantly higher in value and scope than the contract being tendered, unless justified and non-discriminatory;
- Already having qualifications/professional certificates recognised in the country of the contracting authority at the time of submission of tender as this would be difficult for foreign tenderers to comply with in such a short timeframe;
- Complying with a particular professional standard without using the wording 'or equivalent'.

TRANSPARENCY

- It ensures that public contracts are awarded in an open, fair, and competitive manner by making the entire process visible and accessible. Public authorities have to guarantee this principle.
- Serves as the mechanism for verification of equal treatment and non-discrimination
- This means providing advance, equal access to information about tender opportunities, selection criteria, and awarding decision which allows for the impartial review of procedures and helps eliminate national discrimination.
- **Directive 24/2014 Section 2 and Art. 48-55** (publication and transparency).

Key aspects of transparency in EU public procurement

- **Disclosure of information:** All information about a tender, from its announcement to the award decision, must be made public in a timely and accessible way.
- **Equal access:** All potential bidders must have the same access to this information to ensure a level playing field.
- **Clarity of rules:** Public authorities must clearly state the criteria for selecting bidders and awarding contracts before the process begins.
- **Impartiality:** The principle of transparency allows for the impartiality of procurement procedures to be reviewed.
- **Market openness:** The goal is to open the market to competition, which can lead to better value for money and higher quality for public goods, services, and construction projects.
- **Accountability:** Transparency is crucial for accountability and can help reduce corruption and waste. 

ECJ case-law - Teleaustria

- The obligation of transparency, *‘consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and to impartiality of the procedures to be reviewed’*.

See paragraph 62 of the Teleaustria

(C-324/98, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61998CJ>

Examples

- The contract notice, any prior information notice (including clear technical specifications, exclusion grounds, selection and award criteria) and the results procurement need to be published with a minimum of specific information, with a specific timeline, in a specific form and published electronically. In cases of clarification requests by the tenderers, communication is recommended to be exclusively in writing, and all additional information provided by the contracting authority must be made public to all potential tenderers and not only to the tenderer requesting clarifications.
- While evaluating tenders, contracting authorities have to draw up an evaluation report and keep enough information on each contract to justify decisions made on the selection of tenderers and the awarding of contracts. The evaluation committee should ensure that there is a written justification for each score given and the scores and comments for each tenderer must be presented in a written letter to the tenderer and included in the evaluation report.

PROPORTIONALITY

- The contracting authorities must ensure that any action, requirement, or condition is no more than is necessary to achieve the contract's objectives.
- It prevents excessive or disproportionate measures in areas technical specifications, financial demands, and contract exclusions. Crucial for ensuring fairness, transparency, and preventing unnecessary burdens on businesses
- Article 18 of Directive 2014/24/EU

Implications

- Since proportionality principle ensures that procurement procedures and requirements are appropriate and not excessive, key aspects (such as participation conditions and award criteria) must be relevant and necessary to achieve the procurement's objective
- Choice of tender procedure: should be in direct link with the value of the contract and subject matter; whether or not to combine contracts or divide them into lots;
- number and contents of suitability requirements, requirements relating to financial and economic strength, requirements relating to technical and professional skill selection criteria (all these conditions should be related and proportionate to the object of the procurement); Having an annual revenue of EUR 10 million even if the contract value only EUR 1 million is a disproportionate selection criterion;
- award criteria: choosing the most appropriate award criteria between 'lowest price', 'lowest costs on the basis of cost-effectiveness' or 'best price-performance ratio' based on the relevance and nature of the contract.
- contract terms and conditions.

Key aspects of the principle

- **Appropriateness:** Measures must be appropriate for the specific objective. For example, technical or financial requirements should be proportionate to the nature and scope of the contract.
- **Necessity:** The action taken must be the least burdensome one necessary to achieve the desired outcome. A contracting authority cannot impose conditions that are more restrictive than needed.
- **Balancing interests:** The principle ensures a fair balance between the contracting authority's need for a proper performance bond or to achieve its goals and the potential economic operators' interests.
- **Application beyond specifications:** Proportionality applies to all aspects of the procurement process, including the exclusion of candidates, and even contract modifications.
- **Example of disproportionality:** A total prohibition on participation for parties who helped prepare the tender may be considered disproportional, as it goes beyond what is necessary to ensure fairness and transparency. 

Legal basis

- **General EU law:** The principle is enshrined in Article 5 of the Treaty on the Functioning of the European Union (TFEU), which states that the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.
- **Public procurement law:** Article 18(1) of Directive 2014/24/EU specifically mandates the application of the proportionality principle in public procurement. 

MUTUAL RECOGNITION

- Stated in art. 60 of the TFEU: certifications, standards, and qualifications from one EU Member State should be recognized by other Member States.
- It facilitates cross-border participation in public procurement reducing administrative barriers for suppliers from different EU countries.

Key aspects of the principle

- **Scope:** It applies to products and services where there is no EU-wide harmonization.
- **Core idea:** A product lawfully marketed in one EU country should be freely sold in other EU countries.
- **Application in procurement:** It is a component of the free movement of goods within the EU's internal market, but its application in public procurement is less direct than in general trade. Public procurement procedures are more heavily governed by EU directives that emphasize competition, transparency, and equal treatment.
- **Authority's role:**
 - Authorities must allow a product to be sold unless they can demonstrate a legitimate reason to restrict it.
 - When restricting or refusing a product, they must inform the company of the reasons and the national rules they are applying.
- **Exceptions:** A Member State can restrict a product if it can prove that the product does not guarantee an equivalent level of safety, health, or other public interest goals, but only under specific circumstances.
- **Enforcement:** The [EU Regulation on mutual recognition \(EU\) 2019/515](#) provides guidance to national authorities on how to apply the principle and gives companies a way to demonstrate lawful sale in another Member State. [↗](#)

How it works in practice

- When a public body issues a tender, it must allow companies from all EU member states to compete.
- The public body must evaluate each bid fairly and apply the same criteria to all tenderers, regardless of their nationality.
- The decision to award the contract must be based on the best value for money, not on the country of origin of the company. 

The 2014 Public Sector Directives: main rules

2014/24/EU and 2014/25/EU

The Public Sector Directive

- It modernized EU public procurement rules by replacing older directives and focusing on **competition, social, and environmental objectives**.
- Its structure includes provisions for standard procurement procedures like open or restricted procedures, but also allows for negotiation in certain cases.
- The content emphasizes principles like transparency and equal treatment, and integrates modern objectives such as sustainability innovation, and social criteria, which can be used in award decision

- **Core principles:** It is built on core EU Treaty principles like the free movement of goods, services, and freedom of establishment, plus derived principles such as equal treatment, non-discrimination, proportionality, and transparency.
- **Modern objectives:** It aims to align public spending with broader EU goals, including social and environmental objectives, sustainability, innovation, and the creation of high-quality jobs.
- **Social and environmental clauses:** It contains provisions that allow for the inclusion of social and environmental objectives as award criteria. This includes criteria related to sustainability, human rights, and fair trade.
- **Case law integration:** It incorporates and expands on principles developed through the case law of the Court of Justice of the European Union (CJEU).
- **Flexibility:** In some cases, it provides more flexibility than the CJEU case law, such as allowing for the use of staff-related criteria in award decisions under certain conditions. 

Objectives of the Directive

- Ensure **fair competition** and **non-discrimination** (Art. 18).
- Promote **innovation, environmental protection, and social inclusion**.
- Simplify procedures for contracting authorities.
- Enhance access for SMEs
- Improve efficiency and transparency in public spending
- Strengthen rules against conflicts of interest and corruption

Scope and Application

Applies to:

- Applies to **public contracts** for works, supplies, and services (Art. 1).
- Public sector bodies: central, regional, and local authorities
- Covers **mixed procurement** (Art. 3).

Exemptions:

- Defense/security procurement (Directive 2009/81/EC)
- concessions (separate directives).

Utilities Directive 2014/25/EU

Why a Separated Utilities Directive

- Procurement must be more efficient and commercially adaptive
- Network industries often in natural monopolies
- EU needed a tailored regime to avoid over-regulation

Scope of application

Applies to contracting entities operating in:

- Water (Art. 8)
- Energy (electricity, oil, gas) (Art. 9–11)
- Transport (rail, bus, automated systems) (Art. 12–14)
- Postal services (Art. 13)

Includes: works, supplies, and service contracts above EU thresholds

Applies to utilities operating in network-based sectors



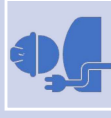
Replaces Directive 2004/17/EC



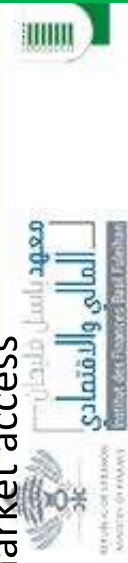
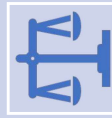
Aimed at improving procurement efficiency in “special sectors”



Recognises utilities’ operational flexibility needs



Balances competition, transparency, and market access



Thresholds for Application - principles

Directive applies only above certain contract thresholds (art. 4) updated periodically + revision mechanism (art. 6) :

- **Works contracts:** €5,382,000
- **Supplies and Services contracts:**
 - €140,000 (central government)
 - €215,000 (sub-central authorities)
 - €750,000 (social and other specific services)
- Equal treatment, transparency, proportionality (Art. 18).
- Avoid conflicts of interest (Art. 24).

Procurement Procedures

Main types under the directive:

- **Open Procedure art. 27** – any interested bidder may submit an offer
- **Restricted Procedure art. 28** – only invited candidates can tender.
- **Competitive Procedure with Negotiation art. 29**
- **Competitive Dialogue art. 30**
- **Innovation Partnership art. 31**
- **Negotiated Procedure without Prior Publication** (in exceptional cases).

Competitive dialogue

is a two-stage procurement process used for complex projects where **the contracting authority knows its needs but not the specific technical solutions**. It involves a dialogue with selected bidders to collaboratively develop and refine proposals before a final tender is submitted and awarded. This method is defined as a flexible public procurement procedure that allows for negotiations to address innovation, complexity, or the lack of pre-definable technical specifications.

Competitive procedure with negotiation

A competitive procedure with negotiation is a public procurement method where a contracting authority negotiates with pre-qualified bidders to refine and finalize their bids, which is often used for **complex purchases like advanced technology or services that require design inputs**.

Innovation partnership

An innovation partnership is a legal procurement procedure used by public authorities **to jointly develop and subsequently purchase new products, works, or services that are not available on the market**. It is a long-term contract that combines **research and development with the final purchase** structured in successive phases to find and acquire an innovative solution tailored to public sector's needs.



1. Why is **COMPETITIVE DIALOGUE** a still unexplored procedure?
2. Did the New Procurement Directive 2014/24 EC have a positive impact on competitive dialogue procedure?
3. Which are the factors driving or hindering the choice of competitive dialogue?



Strengths

- Flexibility
- Improved communication between the CA and the economic operators
- Reduction of informational asymmetries
- Maintenance competitive tension between the economic actors participating in the dialogue
- CAs obtain better value for money



Weaknesses

- Excessive complexity of the procedure
- Lack of experience of the contracting authorities
- Poor clarity around the process
- Lack of transparency or equal treatment among bidders
- Trade off between enhanced discretion and abusive behaviours



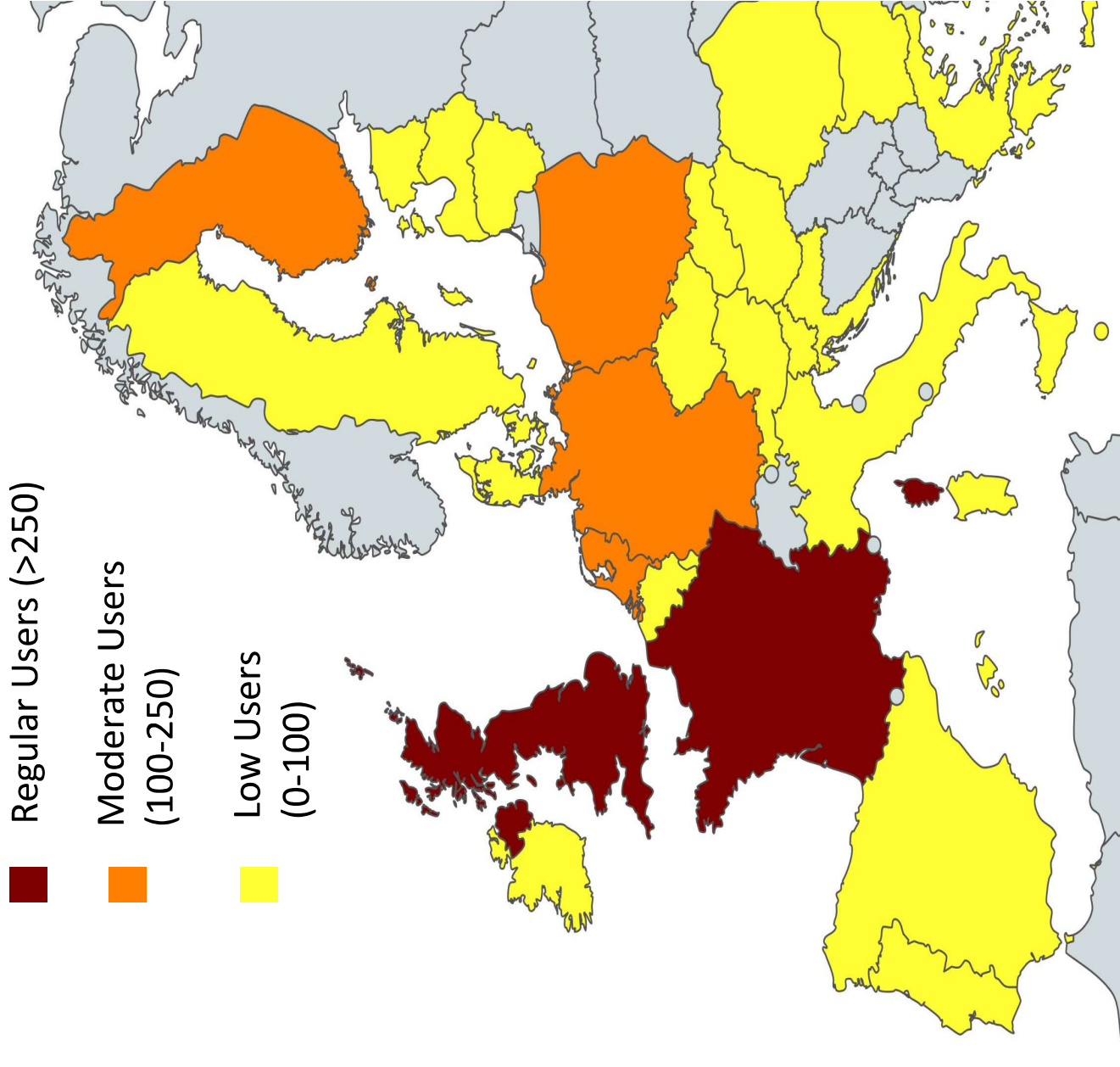
Potentialities

- Stimulate innovative solutions
- Face challenging market circumstances
- Value generating political tool at regional and local level

Regular, moderate and low users: a matter of approaches or legal traditions?

1. Trade-off between flexibility and abuse of discretionary power
2. Presence of PPPs scheme
3. Transposition of Directive 2004\18 EC: dealing with “complexity” issue
4. Directive 2014\24 EC: usefulness of the amendments

Regular Users (>250)
Moderate Users (100-250)
Low Users (0-100)



Regular Users

France: 1807 Contracts awarded
UK: 1274 Contracts awarded

- Broad scope of application due to wide interpretation of complex issue
- Competitive dialogue mainly used to procure PPPs
- Familiarity with procedures dealing with complexity
- Flexible regulatory framework

Moderate Users

Germany: 231 Contracts awarded
Poland : 164 Contracts awarded
Netherland: 156 Contracts awarded
Finland: 144 Contracts awarded

- Limited diffusion of PPP scheme
- Limited familiarity with procedures dealing with complexity
- Limited scope of application due to narrow interpretation of complexity issue
- Major use of negotiated procedure as substitute for competitive dialogue

Low Users

Spain: 74 Contracts awarded
Italy: 42 Contracts awarded

- Absence of established practice about PPPs
- Absence of clarity around the competitive dialogue procedure's structure
- Cultural issues to deal with discretion

New key aspects

Key measures for improving SMEs participation

- Mandatory electronic communication (Art. 22).
- **Electronic submission** of tenders (since October 2018)
- Aims to reduce costs, improve transparency, and increase participation
- Promotes efficiency and accessibility.
- Breaking contracts into smaller lots
- Simplified bidding procedures
- Reduced administrative burden
- Access to electronic procurement (eProcurement tools)

Directive promotes the twin shift

- **Innovation Partnerships** to develop and purchase innovative products/services.
- **Green Procurement** — supports sustainable environmental impacts.
- **Socially Responsible Procurement** — includes employment, accessibility, and equal opportunity clauses.

National oversight bodies (Art. 83)

Selection and Award Criteria

- **Art. 58 Selection criteria**

may relate to: (a) suitability to pursue the professional activity; (b) economic and financial standing; (c) technical and professional ability.

- **Art. 67: Award criteria**

Most Economically Advantageous Tender (MEAT) Based

on **price/quality**

ratio considering

environmental, social, and innovative aspects

Transparency and confidentiality

Contracting authorities must treat all bidders equally and fairly

Transparency ensured through publication on:

National platforms

Tenders Electronic

Daily (TED) database

Confidential information of bidders must be protected

- **Modifications** allowed on specific conditions:

- If clearly provided in contract
- For unforeseen circumstances
- Not altering overall nature of the contract

- **Substitution** of contractor in defined cases

Mandatory exclusions (Art 18)
corruption, fraud, money laundering.

Discretionary exclusions: poor performance, bankruptcy.

Contract award criteria - art. 67

Without prejudice to national laws, regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, contracting authorities shall base the award of public contracts on the **most economically advantageous tender (MEAT)**

- **cost-effectiveness approach**
- may include the **best price-quality ratio**, which shall be assessed on the basis of **criteria**, including **qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question**

- Award criteria shall **not** have the effect of conferring **unrestricted freedom of choice** on the contracting authority.
- They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow information provided by the tenderers to be effectively verified in order to assess how well the tenders meet award criteria.

The contracting authority shall specify, in the procurement documents, the **relative weighting** which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone.

Those weightings may be expressed by **providing for with an appropriate maximum spread**. Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

Implementation in Member States

- Member States were required to transpose the directive into national law by **April 2016**
- Each country has specific implementation rules aligned with EU principles
- Examples:
 - UK Public Contracts Regulations 2015
 - French Code de la commande publique
 - Italian Public Contracts Code - 2016
 - 1) Code 1: dlgs 50/2016
 - 2) Code 2: dlgs 36/2023

The trasposizione into the national legal order

PECULIARITIES AND ISSUES
Es. dealing with discretion

D.Lgs. 50/2016 (in force until 2023)
D.Lgs. 36/2023 (new Code in force by
1° luglio 2023, with updates in 2025)

The Italian case

REGULATORY
COMPLEXITY
(MORE THAN
600
PROVISIONS)

REGULATORY
INSTABILITY
(SEVERAL
REGULATORY
REFORMS)

DIFFICULTIES
AND
UNCERTAINTIES
OF ECONOMIC
OPERATORS

INCREASE
LITIGATION

□ Key Takeaways:

- Directive 2014/24/EU modernized EU procurement law
- Encourages innovation, sustainability, and SME participation
- Strengthens transparency and accountability

□ Future directions:

- Green and digital procurement
- Further simplification
- Enhancing strategic public procurement to meet EU policy goals

Public Private Partnerships





- Evidence of the large **growing gap between infrastructure needs and resources** is everywhere
- Congested roads; bridging need of repair; poorly maintained transit systems; recreational facilities; deteriorated hospitals, and waste treatment facilities all in urgent need of rehabilitation and repair



Issues linked to infrastructure needs and gaps impose high **costs on society**:

- ❑ **lower productivity**
- ❑ **reduced competitiveness**
- ❑ **increased number of accidents**

Implications

- A lot of Governments are turning to the private sector for **financing, design, construction and operation of infrastructure projects**.
- Public Private Partnerships (“PPPs”) are generally understood to be long term contracts between a private party and a government entity, *for providing a public asset service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance*” . (World Bank)
- **DIFFERENT MODELS AROUND THE WORLD**

EU PPPs Models peculiarity

- Not an harmonised regulation/directive
- Only 2014/23/EU directive on Concessions
- Green Book EU Commission (not a source of law) focus on the «**cooperation**» broad key concept between public entity and private partner and includes both
 - **contractual as well as**
 - **Institutionalised PPPs referring mixed companies**
 - **different by in-house providing**

IPPPs

Commission interpretative communication on the application of Community law on Public Procurement and Concessions to

institutionalised PPP (IPPP) [2008/C 91/02](https://eur-lex.europa.eu/EN/legal-content/summmary/rules-applicable-to-institutionalised-public-private-partnerships-ippvp.html)
<https://eur-lex.europa.eu/EN/legal-content/summmary/rules-applicable-to-institutionalised-public-private-partnerships-ippvp.html>

IPPP is generally set up through:

A) the creation of a **new entity** in which the capital is held jointly by the contracting entity and the private partner and which is assigned public procurement or concessions; or

B) the **participation of a private entity in an existing company** which has obtained public contracts or concessions in the past.

The contracting entity must comply with the Community's legal provisions on public procurement and concessions and in particular follow a fair and transparent procedure, either when selecting the private partner for the IPPP or when granting a public contract or a concession to the public-private entity.

A double tendering procedure is usually required:

- one for selecting the private partner to the IPPP and
- another one for awarding public contracts or concessions to the public-private entity)

In house

IPPPs/mixed companies

- Public evidence apply (tendering)
- *mixed companies*
(*1. Public-Private Partnerships, IPPPs*) involve collaboration between public authorities and private investors to deliver

services

- **Definition:** A public authority decides to *self-produce* services by creating it fully controls.
- **Legal Basis:** Recognized by the European Court of Justice (Teckal case).
- **Requirements:**
 - The authority must exercise control over the entity similar to its own
 - The entity must carry out the *essential/part of its activities* for the com

- **Direct awarding (exception public evidence usually)**
- *in-house providing means* public authority delivers through its own controlling entity, without opening market to private compe

PPPs: different nomenclature

- There is no standard, internationally accepted definition of PPP: **different jurisdictions use different nomenclature to describe similar models.**
- At EU level an harmonized regulation only of Concessions (single model)
- An increasing number of Countries introduced a definition of PPPs in their laws, each one tailoring the definition to their institutional and legal particularities.

- UK– Project Finance Initiative (PEI)
- France – contrat del partenariat, ordonnance del 2004, loi n. 735/08; 179/09;
- Germany – 2005 legislation does not regulate PPP, but simple modifies regulatory framework introducing elements of simplification and more flexibility such as competitive dialog
- Spain– Contrato de colaboracion en el sector publico y el settore privado, 30/2007
- Italy: Definition of PPP contracts. Different regulation for public contracts, concessions, project finance.

EU Definition

(Green book, European Commission, 2004)

- Cooperation between public authorities and the world of business which aims to ensure the funding of construction, renovation, management and/or maintenance of an infrastructure or the provision of a service.

European Commission

Why an increasing interest for PPPs ?

1. Budget constraints of States (a need for private funding)
2. Lack of Infrastructure
3. The aim to transfer to the public sector the know-how, technical competences and working methods of the private sector (More efficiency)
4. The change in the role of the State in the economy: from operator (entrepreneur) to organizer, regulator and supervisor (from public company to privatization).

Meeting needs and trade off

1. Need to contain public expenses

This need is easily feasible (in a political but not strategic point of view) by reducing capital spending and so primarily investments in new infrastructures. This is against need 2 and 3

2. Need to have more infrastructures

3. Need to push for economic development and more competitiveness

The development in infrastructures within a country is able to offer an important contribution to increase competitiveness and economic growth.

- LINK DEVELOPMENT IN INFRASTRUCTURES – ECONOMIC DEVELOPMENT – GROWING COMPETITIVENES
- PPP IS A TOOL THAT CAN HELP GOVERNMENTS MEET DEMANDS FOR THE DEVELOPMENT OF MODERN AND EFFICIENT FACILITIES, INFRASTRUCTURES AND SERVICES WHILE PROVIDING VALUE FOR TAXPAYERS

INFRASTRUCTURE
DEVELOPMENT

ECONOMIC
DEVELOPMENT

JOB
CREATION

COMPETITIVENES

Not a miracle for a public sector facing budget constraints.
(Euro-stat decision, February 2004)

For each project it is necessary to verify if the partnership option offers a real value addition, compared with a traditional contract.
(EC-Commission, Green Paper, April 2004)

HOW TO REDUCE DISTORTIONS LINKED TO INFORMATION ASYMMETRIES?

- **ADVERSE SELECTION**

(adequate screening and selecting procedures)

- **MORAL HAZARD**

(theory of incentives: incentives and sanctions)

PPP Key Elements

- **Design** (conceptualization of project)
- **Finance** (funding for project)
- **Build** (Construction of project)
- **Operate** (Management and cash)
- **Maintenance** (preservation)



PPPs Characteristics

The relatively **long duration of the relationship**, involving cooperation between the public partner and the private partner on different aspects of a planned project.

DURATION

The **method of funding a project** is supplied in part by the private sector, sometimes by means of complex arrangements between various players, with a contribution (sometimes substantial) of public funds.

METHOD OF FUNDING

The **Economic operator** participates at different stages in the **project** (design, implementation, funding, execution)

- The **PA** concentrates primarily on **defining the objectives** to be attained in terms of **public interest, quality of services provided and pricing policy + supervision**
- From direct operator (entrepreneur) to regulator and supervisor

DIFFERENT ROLES FOR THE PRIVATE PARTY and PA

Distribution of determined **case, according to**

- the **model chosen**
- **negotiation with the parties**
- the **ability of both to assume control and with the risks**

RISKS DISTRIBUTION



PPPs Benefits

THE ACCESS TO
PRIVATE FUNDS
RESULTS IN A
REDUCTION OF
PUBLIC
EXPENDITURES

ACCESS TO PRIVATE
CAPITAL

INTRODUCTION OF
MECHANISMS
STIMULATING
EFFECTIVE
COMPETITION ON
COSTS OF
PROVIDING AND
MANAGING
WORKS/SERVICES

COMPETITION

A BETTER AND
MORE EFFECTIVE
ACTION IN THE
PROGRAMMING
PHASE, EXECUTION
AND MANAGEMENT

EFFECTIVENESS

IMPROVEMENT
OVERALL QUALITY
OF
INFRASTRUCTURE
AND SERVICES
PROVIDED

QUALITY

PPPs other Benefits

FIRST, PPPs allow the costs of the investment to be spread over the lifetime of the asset. PPPs can allow infrastructure projects to be brought forward by years compared with the public financing typical of many infrastructure projects.

SECOND, PPPs have a solid track record of on-time, on-budget delivery.

THIRD, PPPs transfer certain risks to the private sector and provides incentives for assets to be properly maintained.

FOURTH, PPPs can lower the cost of infrastructure by reducing both construction and lifecycle costs.

FIFTH, because satisfaction metrics can be built into the contract, PPPs encourage a shift to customer service orientation.

FINALLY, the organizing theme around which a project is built is the destination, not the process. PPPs enable the public sector to focus on the public value they are trying to create.

Fields of Application

- Transport

- Roads

- Railways

- Urban Passenger Transport

- Ports

- Airports

- Public health, Education, Prisons

- Waste

- Innovation, research and development

Typical Funding Resources

- Tolls
- Tax Increment Finance
- Fees
- Grants
- Loans
- Bonds
- Other Revenue Streams

PPPs types

(Green paper, EU Commission, 2004)

Purely contractual PPPs

- Relationships based on contractual links.
- Parties collaborate in a position of equality.
- PUBLIC CONTRACTS
- CONCESSIONS

Institutionalized PPPs

- Imply cooperation within a distinct body.
- PA acts in a position of substantial supremacy.
- MIXED PUBLIC-PRIVATE COMPANIES
- DIFFERENT BY IN HOUSE PROVIDING

Public Contracts vs. Concessions

- The enterprise (economic operator) is remunerated by the PA for the provision of works, supply or services without assuming any risk.
- So called traditional PP

- The enterprise (economic operator) is remunerated only by the right to exploit the work/service or by this right together with a payment. It assumes the risk of work or service management towards the public (consumers).
- Most common used PPP model around the world

APPALTI
versus

CON(ES)

PA $\xleftrightarrow{T}$ PRIVATO

PA $\xrightarrow{CP}$ TRI



UTENTI

e il rischio di gestione

Directive 2014/24/EU

Public Contracts

contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services

Concessions

contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the execution of works, the supply of products or the provision of services to one or more economic operators on a basis for which consideration consists exclusively of the right to exploit the works, the supply of products or the provision of services or the right together with payment

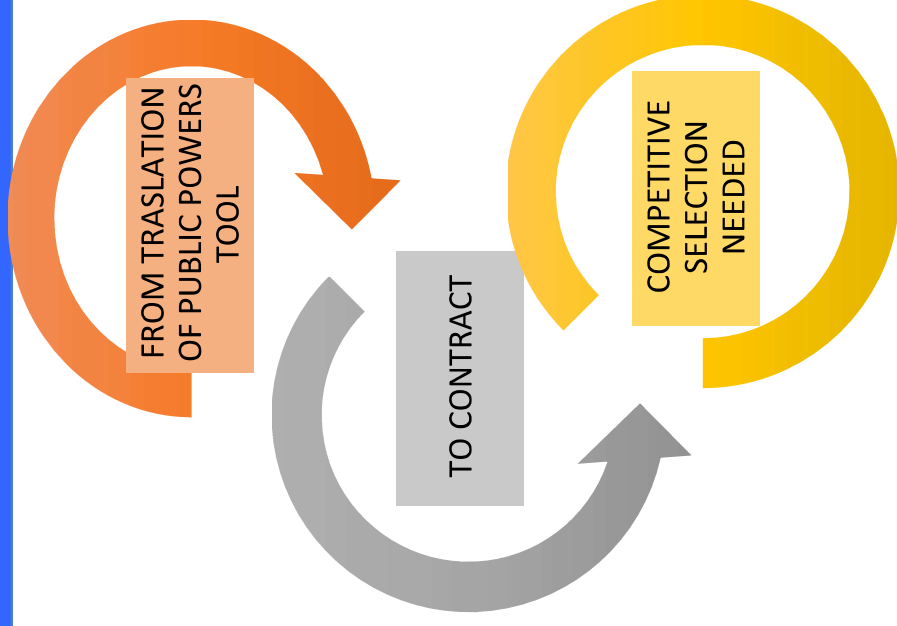
Remuneration and risk

- In a concession, a **company** is **remunerated** mostly through being permitted to run and exploit the work or service and is **exposed to a potential loss on its investment**.
- Example: a private company builds and manages a motorway and is remunerated through tolls, running the risk that the revenue generated will not cover its investment and other costs incurred.

Ownership of the work/infrastructure

- The ownership of the work done is not important, it can remain private during and at the end of the concession, but rather it is crucial that the **p.a. is the beneficiary, either directly or through the community.**
- The service linked to the work/infrastructure can be carried out by a private management.

Historical evolution in some civil law Countries



Managing risks

- Example of over-estimation of the number of users of a toll road.

- The Australian highway project failed to predict the number of users accurately, with actual traffic at least 30–40% below forecasts.

- Managing and correctly pricing risks throughout the different phases of an infrastructure project is essential. Specific risks for each different stage:

1) **PLANNING, TECHNOLOGY AND CONSTRUCTION RISKS**

2) **POST-COMPLETION RISKS – OPERATING RISK**

- **POLITICAL RISK** is usually the most difficult one to handle. It often depends on governments' actions, including **changes of laws and regulations, social unrest,**
- **PUBLIC ACCOUNTABILITY** can be a determinant in attracting investors to infrastructure.

EU REGULATORY FRAMEWORK

Guidelines for successful Public-Private Partnership, EU Commission, March 2003-2004;

Resource Book of PPP Case Studies, EU Commission, June 2004;

Decisione Eurostat sul trattamento contabile delle operazioni di PPP, febbraio 2004;

Green paper, EU Commission, 2004

EU Directives nn. 17-18/2004

Proposal 2006/2043 (INI) of Eur Parlamento.

Communication of the EU Commission on IPPP, February 5th 2008, C (2007) 6661.

EU Directives 2014/23, 24, 25

The 2014 Concessions Directive

2014/23/EU

Why the 2014/23/EU Directive? (Background Problems)

- **Before 2014: only work concessions had an harmonised light regulation**
- **System Weaknesses**
 - No EU-level concession rules → fragmentation among Member States
 - CJEU case law to fill legislative gaps
 - Unclear definitions, especially around “operating risk”
 - Inconsistent publication/award procedures across the EU
 - Limited cross-border participation due to legal uncertainty
 - SMEs faced barriers due to administrative complexity
- **Modernisation + more regulatory Harmonisation were necessary to improve market access, legal certainty, and efficiency**

Which Policy Drivers?

Strategic EU Objectives

- Support Europe 2020: smart, sustainable, inclusive growth
- Address post-financial-crisis infrastructure gaps
- Promote innovation and life-cycle cost efficiency

Political & Legal Drivers

- Ensure transparency and prevent corruption in concessions
- Align procurement rules with digitalisation and electronic tendering
- Reinforce fair competition and prevent preferential national regimes

Overall Aim:

- A modern, flexible, clearer framework for concessions and procurement in a unified EU market.

Core Structure

Key Components

- Definition of a concession (Art. 5)
- Operating risk as essential criterion
- Scope & exclusions (Arts 10–17)
- Rules for contracting authorities/entities
- Publication obligations (Arts 31–33)
- Award principles (Art. 3)
- Selection criteria (Arts 38–39)
- Award criteria (MEAT) (Art. 41)

Directive Logic

- **Providing flexible but transparent rules tailored to concessions**

Operational Rules

Contract Execution Rules

- Modification during execution (Art. 43)
- Termination grounds (Art. 44)
- Subcontracting rules (Art. 42)
- Performance requirements including functional/technical specs
- Duration limitations (Art. 18) tied to investment recovery

Balance Attempted:

- Flexibility for long-term projects vs. ensuring equal treatment and anti-corruption safeguards.

Definition of Concession (Art 5)

- A concession is a **contract** for pecuniary interest for works or services - Art. 5(1)
- Awarded by a contracting authority/entity to an economic operator/or more
- Remuneration consists of:
 - the right to exploit the works/services, or
 - this right plus payment - Art. 5(1)(a)
- **Concession must involve transfer of operating risk**
- **Works concessions:** related to execution of works.
- **Services concessions:** provision + management of services

Main innovations

1. SINGLE THRESHOLD – ONE PROTECTION

2. MULTIPLE AUTHORITIES VERSUS ENTERPRISES

3. OPERATING RISK (art. 5, co. 1, Directive 2014/23/UE)

4. DURATION OF CONCESSIONS (art. 18, Directive 2014/23/UE)

SINGLE THRESHOLD

- Art. 8 Direttiva 2014/23
- The Directive shall apply to concessions the value of which is equal to or greater than
- Every two years, the Commission shall verify that the threshold corresponds to the threshold established in the **World Trade Organisation Agreement on Government Procurement (the 'GPA')** for works concessions and shall, where necessary, revise it.

- 2014/23/EU Directive applies to both goods and services concessions.
- Minimum EU threshold: €5,186,000

MULTIPLE PARTIES

multiple parties on the demand side and the supply side:

2. Possible merger of the CONTRACTING AUTHORITIES to meet demand from several large pools of users.
3. On the supply side, possible entrust the concession to groups of enterprises, CONTRACTING ENTITIES, to face complex deals.

SUBJECTS INVOLVE

DIRECTIVE applies to:

contracting authorities (state, regional, bodies governed by public law (Art. 6); **contracting entities** (Art. 7).

Concession must involve a genuine economic activity risk transfer.

Contracting Authorities & Entities (Arts 6–7)

Contracting

Contracting **authorities** (Art. 6):

- State, regional and local authorities
- Bodies governed by public law

Contracting

Contracting **entities** (Art. 7):

- Entities operating under special/exclusive rights in utilities sectors
- Public undertakings in water, energy, transport, postal services
- Mirrors definitions in 2014/24 and 2014/25.

Operating Risk (Art. 18–20)

- A concession must transfer substantial operating risk to the concessionaire (Art. 5).
- **Demand risk:** uncertainty regarding demand for the service.
- **Supply risk:** uncertainty regarding the cost of providing the service.
- Risk relates to exposure to market forces (Recita 20).
- Operator may not recoup investments under normal market conditions.
- If risk is eliminated (e.g., guaranteed revenue), contract is NOT a concession.

Duration of Concessions (Art 18)

UK (until 2003) and Sweden used to admit concessions without temporal limits.

The Directive does not provide for a maximum number of years that a concession may last.

- **Duration must be limited.**

- Ratio: preventing excessively long concessions resulting in quasi-monopolies.

The contracting authority shall estimate the duration on the basis of the works or services requested.



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How to calculate?

- The maximum duration must be reflected in the **concession documents**, either
 - **as a part of the fixed conditions**
 - **as a point subject to negotiation** (part of the award criteria and so be through competition)

- **If exceeding five years**, contracting authority must justify duration based on
 - time needed to recoup investments and
 - a reasonable return on invested (initial investments + investments) during the life of the concession

Can a concession be extended?

- This must be assessed under the regime for contract modifications.

Principle of free administration by public authorities (art. 2)

- Public authorities are free to decide how best to the execution of works or the provision of services ensure in particular a high level of quality, safety, affordability, equal treatment and the promotion of universal access and of user rights in public services.
- Those authorities may choose to perform their public interest tasks with their own resources, or in cooperation with other authorities or to confer them upon economic operators.
- The directive does not affect **MS' systems of public ownership**. In particular it does not require the privatisation of public enterprises providing services to the public.

Improving the level of PA discretion

Exclusions (Arts 10–17)

Audio-visual and broadcasting services (Art. 10).

Water services and related services (Art. 12).

Certain legal services (Art. 10).

Employment-related contracts (Art. 11).

Licences, authorisations & customer-choice systems (Art. 10).

Non-economic services of general interest.

Public domain/land leases.

Special exclusions for defence/security-related activities.

General principles
of EU primary law:
transparency,
equal treatment,
non
discrimination,
other apply

Principles Governing Concession Awarding (Art 35)

Equal treatment of economic operators.

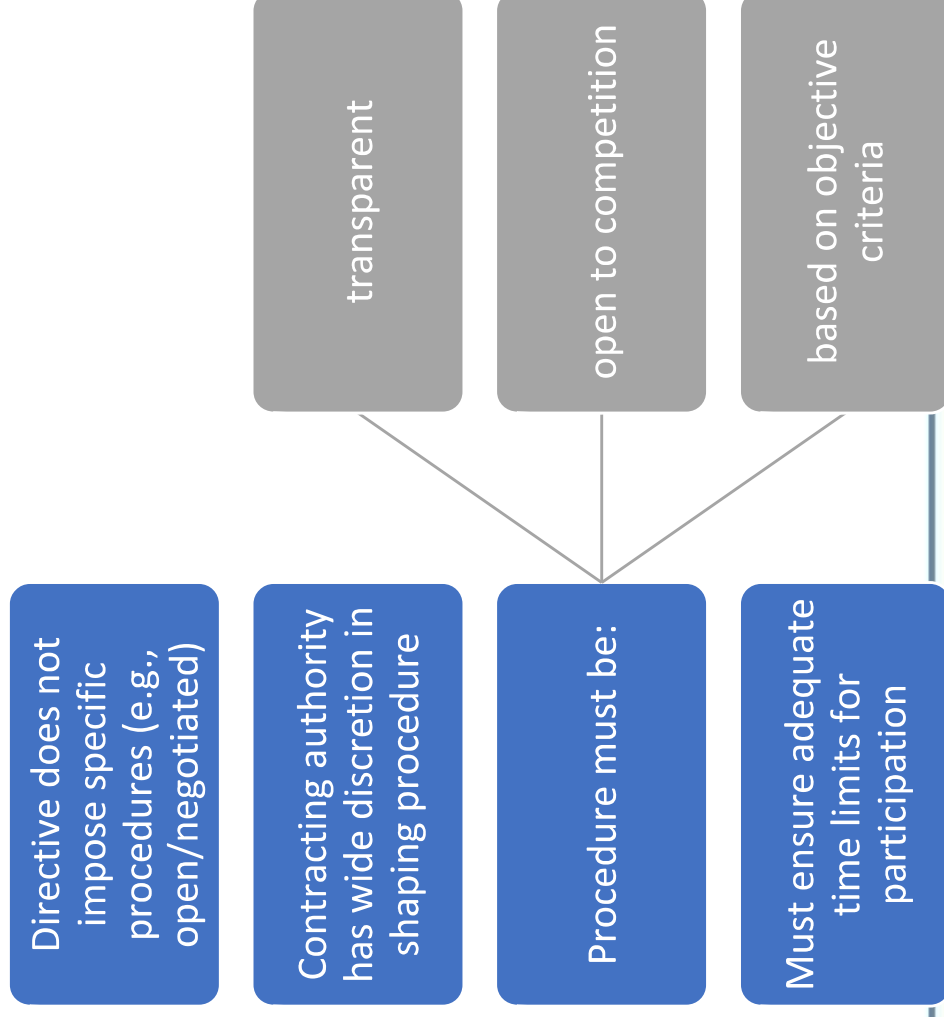
Non-discrimination based on nationality or location.

Transparency in award and decision-making.

Proportionality of requirements and criteria.

Conflict of interest prevention (Art. 35).

Procedure for Awarding Concessions (Art 30)



Combating distortions and preventing conflict of interests – art.35

Any situation where staff members of the contracting authority or entity involved in the conduct of the concession award procedure have, directly or indirectly, a **financial, economic or other personal interest** which might be **perceived to compromise their impartiality and independence** in the context of the concession award procedure.

MS shall require contracting authorities and contracting entities to take appropriate measures to **combat fraud, favouritism and corruption** and **effectively prevent, identify and remedy** conflict of interest arising in the conduct of concession award procedures, so as to **avoid any distortion of competition** and to ensure the transparency of the award procedure and the equal treatment of candidates and tenderers.

Selection & Award Criteria (Arts 38–41)

Selection criteria:

- economic & financial standing (Art. 38)
- technical and professional ability (Art. 39)

Award criteria must:

- be linked to subject matter (Art. 41)
- ensure competitive and fair award

Authorities may use best price-quality ratio, including:

- social, environmental (ESG), and innovative factors

Publication & Transparency (Arts 31–33)

Obligation to publish:

- Concession notice in OJEU (Art. 31)
- Concession award notice after award (Art. 32)
- Notices must use standard EU templates
- All communication must be electronic, transparent and accessible
- Ensures cross-border visibility

Procedural guarantees

- The contracting authority or contracting entity shall provide in the concession notice, in the invitation to submit a tender or in other concession documents

- **DESCRIPTION OF THE CONCESSION**
- **CONDITIONS OF PARTICIPATION;**
- **DESCRIPTION OF THE AWARD CRITERIA**
- and, where applicable, **THE MINIMUM REQUIREMENTS TO BE MET**

- The contracting authority or contracting entity shall:
 - Limit the number of candidates;
 - hold negotiations with candidates and tenderers

Technical & Functional Requirements (Arts 24–29)

Authorities may define technical specs or functional performance requirements.

Requirements must not restrict or distort competition (Art. 25).

References to standards must allow equivalent solutions.

Selection and qualitative assessment of candidates – art. 38

- C.A./C.E. shall verify the conditions for participation relating to:
 - a) **professional and technical ability** and
 - b) **financial and economic standing** of the candidate tenderers, on the basis of self-declarations, required to be submitted as proof in accordance with the requirements specified in the concession notice.
- The conditions for participation shall be related proportionate to the **need to ensure the ability concessionaire to perform the concession**, taking account the **subject-matter of the concession and purpose of ensuring genuine competition**.
- C.A./C.E. shall verify the conditions for exclusion

Subcontracting (Art 42)

- Concessionaire free to subcontract unless restricted by law.
- Authority may require:
 - a list of intended subcontractors,
 - replacement of subcontractors who fail to meet eligibility criteria.
- An opportunity for SMEs

Modification of Concessions (Art 43)

- It codifies Presettext principles.
- Ratio: Protecting transparency, competition, and equal treatment.

Examples of Substantial M.

1) Large extensions of duration not foreseen in the contract. 2) Adding major new works/services. 3)

Increasing contractor

compensation beyond original

terms.

• REQUIRED A NEW AWARD PROCEDURE for *substantial modifications*

- Substantial = changes that would:
 - alter economic balance,
 - extend scope,
 - have attracted different bidders.

- NOT REQUIRED NEW AWARD PROCEDURE:
 - clear review clause
 - additional works/services
 - unforeseeable circumstances
 - non-substantial changes.

The Presetext Case

Presetext Nachrichtenagentur GmbH v Austria (C-454/06, 2008).

- Key CJEU Case Defining “Substantial Modification” in EU Public Procurement
- Concerned changes to a long-term public contract without a new tender.
- CJEU established the test for when a modification is so significant that it is equivalent to awarding a new contract.

Key Legal Principles

- *The CJEU held that a modification is substantial when results in the contract becoming materially different in character from the original:*

1. Would different bidders have participated?

If the change would have allowed other bidders to enter competition had it been included initially → substantial

2. Would the modification alter the economic balance

If the change shifts the economic balance in favour of the contractor in a way not provided for in the original contract → substantial change.

3. Does the modification extend the scope of the contract

If the change significantly expands the scope of the contract services/works not originally covered → substantial.

Termination (Art 44)

- Mandatory termination when:
 - the concession was substantially modified
 - it should not have been awarded under law
 - concessionaire commits serious breach of the contract.
- Public Authorities must include termination clauses in the concession contract

Project Financing

- No Harmonised EU Regulation
- Different Models in single MS

Introduction – What is Project Financing?

International Project Finance Association (IPFA) defined project financing as:

“The financing of long-term infrastructure, industrial projects and public services based upon a non-recourse or limited recourse financial structure where project debt and equity used to finance the project are paid back from the cash flows generated by the project.”

Project finance is especially attractive to the private sector because they can fund major projects off balance sheet.



Characteristics

- The focus on the project (self liquidating)
- Economic – legal autonomy of the project (Ring fence, off-balance sheet financing)
- Sharing of risks (security package)

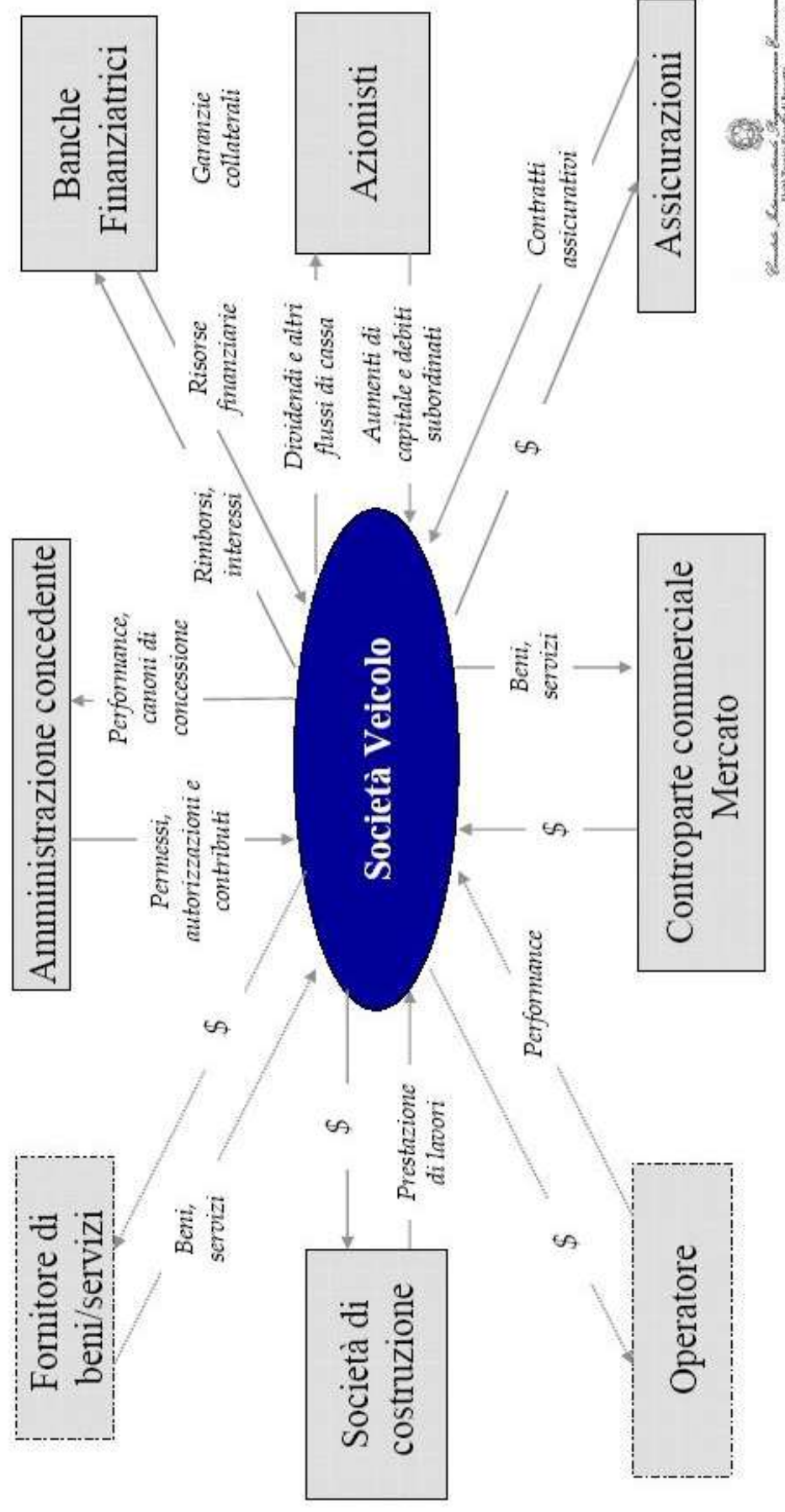
Corporate finance - project finance

		CORPORATE FINANCE		PROJECT FINANCE	
FINANCIAL GUARANTEE	ASSETS OF PROMOTER	ASSETS OF THE PROJECT PLUS GUARANTEE			
ACCOUNTING ASPECTS	On balance	Off balance			
ASSIGNMENT OF THE CREDIT	Based on assets of the promoter	CASH FLOWS OF THE PROJECT			
 المملكة المغربية ROYAUME DU MAROC MINISTRE DES AFFAIRES ÉTRANGÈRES ET DE COOPÉRATION INTERNATIONALE	 TOR VERGATA UNIVERSITY OF ROME	 IMPPM International Master in Public Procurement Management	 Ministry of Foreign Affairs and International Cooperation		

Contractual Models

- BOT: Built Operate and Transfer. The most used (Channel Tunnel).
- BOO: Build Own Operate

The structure



Risk identification and allocation

- Risk identification and allocation is a key component of project finance.
- A project may be subject to a number of risks, technical, environmental, economic and political risks, particularly in developing countries and emerging markets.
- Financial institutions and project sponsors may conclude that the risks inherent in project development and operation are unacceptable (unfinanceable).

The Promoter Who is he?

- The regime focuses on the role of the promoter, who is a private sector legal entity who proposes to public sector the legal, financing and technical model for construction and operation of infrastructure.

Selection of the Promoter

- The public sector entity selects among the proposals of various promoter the one that intend to carry out and it tenders out the proposal for construction and operation of infrastructure that it has selected.
- The concessionaire for the building and operation of such infrastructure is selected means of a **public tender procedure**.

Project financing versus traditional concessions in some Countries

PROJECT FINANCING	CONCESSIONS
● Financing the idea ● self liquidating ● Ring fence – off balance risk financing ● Security package/SPV	● The Public program is always the first step of the procedure ● There is not a real “promotion” of the initiative by the promoter ● To start the procedure the work has to be listed in the public program by the PA

Final remarks & Revision of 2014 Directives

Public consultation (Dec 2024–Mar 2025) seeks to simplify and modernize EU procurement.

Focus: sustainability, digitalization, and better SME participation.

Commission proposal (2026) Based on Better Regulation Framework



OPEN ISSUES AND CHALLENGES

1. Excessive Flexibility

- No fixed award procedures → inconsistent implementation
- Wide discretion risks unequal treatment

2. Grey Zones

- “Operating risk” still interpreted differently by MS
- Mixed contracts difficult to classify

3. Variation Across Member States

- Differences in legal transposition
- National interpretations diverge

The Directive is a major improvement, but from implementation asymmetry and practical inefficiencies

1. Enforcement Weaknesses

- Monitoring & oversight vary across
- Remedies rely heavily on national courts

2. High Transaction Costs

- Cultural/legal differences still represent a barrier
- PPPs require complex contracts and negotiation
- SMEs still struggle despite reforms
- Market remains nationally fragmented

FUTURE REVISION NEEDS

1. Green Transition

- Need for stricter ESG criteria
- Integration of climate-resilience requirements

2. Digitalisation

- AI-based procurement decisions need clear EU rules
- Need for transparency in algorithmic evaluation

3. Post-Pandemic Realities

- Supply chain shocks → need for more flexible modification rules
- Increased demand for resilient infrastructure

PPPs



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- First EU-level harmonised regime concessions :
 - balanced flexibility with legal certainty.
 - increased competition, transparency and SME access.
- Challenges remain:
 - complex risk allocation,
 - long concession durations,
 - balancing public interest with private investment.
- Continues evolving through national implementation & CJ case law.

Formal Reasons for the Revision

- Complexity: Procedures remained long and burdensome
- Competition fell: Fewer bidders per tender
- SME barriers: Small firms still struggle to access contracts.
- Uneven uptake: Green and social goals rarely applied.
- Legal uncertainty: National “gold-plating” created divergence.

Expected outcomes

- The 2025 revision will hopefully simplify, digitise and strengthen strategic procurement.
- We hope the new rules will make procurement smarter, greener, and fairer.