Session 4

Public procurement from red flags to corrective measures

Interact | 04.11.2026

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Public procurement news

EU Public Procurement, a new framework for simpler and smarter procedures

Commission proposal of 9 September 2026, Public Procurement Act, **not yet adopted:** Proposal for a Regulation on the Public Procurement Act (PDF)

Public procurement references

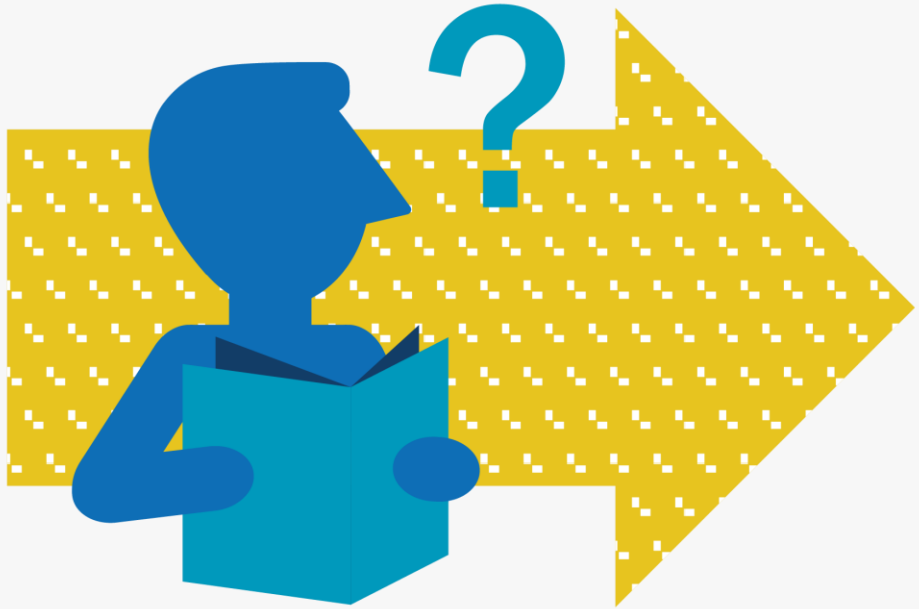
Relevant EU rules, national legislation and programme requirements

- Directive 2014/24/EU: Directive - 2014/24 - EN - EUR-Lex
- COCOF – guidance for financial corrections:

  C(2019)3452 - Register of Commission Documents

Why is it important
to take a closer look at procurement?

Procurement issues can affect **the legality and regularity of expenditures, the sound financial management of EU budget, and confidence in the institutions and bodies responsible for implementing programmes and projects.**



Public procurement in Interreg
three fundamental principles

Competition

Did the procurement give economic operators a fair and genuine opportunity to compete for the contract?

Value for money

Did the contracting authority obtain the best overall outcome, considering quality, cost and the intended results?

Integrity

Was the procurement done fairly and honestly, without corruption, manipulation, or conflicts of interest?

Key principles that ensure EU funds are spent legally, efficiently, and in the public interest.

Competition
what this means in practice?

Example

- An Interreg beneficiary needs a communication service. The tender specifications require a particular software product that only one company can provide, although equivalent solutions would meet the project's needs. Unless there is an objective and justified reason for that restriction, the specifications may unduly limit competition.

- **Q: w*as there a genuine opportunity for the relevant market to compete on fair and equal terms?***

- A: Directive 2014/24/EU, Article 18, principles of procurement, expressly requires equal treatment, non-discrimination, transparency and proportionality, and prohibits designing procurement in a way that artificially limits the competition.

Value for money
what this means in practice?

Example

- An Interreg project receives three offers for an IT system. The cheapest offer has a lower initial price but excludes essential support and maintenance, which would have to be purchased separately at substantial additional cost. A more expensive offer may provide better overall value if it meets the requirements more effectively and has lower total lifecycle costs

- ***Q: Did the beneficiary obtain an appropriate outcome for the money spent, considering quality and the intended results, rather than simply select the cheapest offer?***

- A properly conducted competition does not, by itself, guarantee value for money if the contract is poorly specified, overpriced or inadequately delivered.

Integrity
what this means in practice?

Example

- An evaluator participates in assessing tenders even though a close relative owns one of the bidding companies. The evaluator does not disclose the relationship. Even if the company submits the lowest priced offer, the undisclosed conflict creates a serious integrity risk and must be addressed under the applicable rules.

- ***Q: Were procurement decisions made impartially?***

- A: Integrity is not limited to detecting proven fraud. Preventive measures, declarations of absence of conflict of interest, appropriate checks and a clear audit trail are also important.

Challenges
often arise during the process

Planning
Need, budget, estimated value

Preparation
Specifications and criteria

Publication
Publication, time limits, access

Selection
Scoring, impartiality, records

Award
Scoring, impartiality, records

Implementation
Need, budget, estimated value

Do not stop at the tender file. Link the procedure to the contract, and evidence that the service or goods were actually delivered.

Common errors in practice

Before publication

The need is poorly justified;
contract value is underestimated;
similar purchases are split without a sound reason.

Tender design

Specifications are too narrow;
criteria favour one supplier;
award criteria are unclear or changed mid-process.

Selection and award

Scoring is inconsistent;
reasons are missing;
a panel evaluation member has an undeclared link to a provider.

Contract and payment

Supplies, services, work are not evidenced;
procurement documents do not match deliverables;
material changes are made without checking the rules.

A procedural error is not automatically fraud. However, it may still make expenditure irregular or ineligible.

Red flags
notice them, and test them

Possible warning signs

- Several bids share unusual wording or formatting
- One bidder appears to know the specification in advance
- Repeated awards go to the same supplier
- Tender documents or scores change without a clear audit trail

What could explain them

- A common template was used
- The market is small or specialised
- A documented clarification explains a change
- There is a legitimate reason for continuity; supported by evidence

When identifying a red flag, we should neither ignore it nor immediately jump to conclusions based on suspicion.

Example
three offers, one clear winner?

A project partner starts an acquisition for external communication services.

What you see?

Three bids have strikingly similar formatting, and the same unusual typo.

What you also see?

The winning bid scores highest, however, the evaluation notes are very brief.

What is missing?

No clear record of who drafted the specification or how the bids were received.

*Q: **What would you check before deciding whether this is a documentation weakness, an irregularity or suspected collusion?***

*Tips: **Do not jump straight to fraud. First build the facts.***

Example
three offers, one clear winner?

Useful answers

- Original offers files and data submission and time
- Procurement correspondence, including data for tender publication and the process for receiving the offers
- Evaluator declarations and scoring sheets
- Supplier ownership or connections
- Similar formatting alone is not proof of collusion
- The purpose is not to re-perform every step in every procurement
- It is to make checks proportionate to risk while preserving a justifiable trail
- If a concern cannot be resolved at control level, use the programme's procedures.

From error to irregularity having suspicion of fraud

Error

A missing record or procedural mistake may be explainable or correctable;

establish its effect before taking a decision..

Irregularity

A breach of applicable rules affecting or potentially affecting the EU budget;

needs assessment under the relevant framework.

Irregularity having suspicion of fraud

Evidence suggests intentional deception or manipulation;

preserve evidence and follow the applicable reporting and referral procedures..

The programme does not need to point a suspicion of fraud as established fraud before taking the procedural administrative steps.

Take away
corrective measures

A financial correction should be proportionate and consistent

- Identify the applicable procurement rule and the specific breach
- Assess whether competition, equal treatment, transparency or the award outcome may have been affected
- Establish the expenditure affected and whether the contract or part of it can be clearly separated
- Apply the relevant EU, national, programme methodology and guidance for the applicable rate for financial correction; explain the basis
- Record the evidence, clarifications from the project partner, the decision and any follow-up action.

Take away public procurement

The goal is not to find fraud in every file. Instead, we want to make sure we do not ignore the risk and that our decisions are justified.

- Always start with the applicable rules that apply to our procurement
- The contracting entity, contract type, estimated value and procurement route matter
- Check the applicable EU rules, national legislation, programme requirements and current COCOF guidance for financial corrections
- Keep a clear audit trail: facts, evidence, assessment, decision, calculation and follow-up
- When having an irregularity with suspicion of fraud is suspected, follow the designated reporting and referral procedures
- Follow the evidence, document the reasoning, respond consistently.

Q&A

Interreg public procurement exercise

Procurement Irregularity

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A PIN was published, however, where is the Contract Notice?

Your tasks

- Assess the compliance issue,
- Test the evidence of competition,
- Recommend a proportionate corrective measure.



Public procurement
References

- Directive 2014/24/EU: Articles 48 (Prior Information Notices) and 49 (Contract Notices): Directive - 2014/24 - EN - EUR-Lex
- INTERREG "Euros Sin Fronteras“ programme manual: Programme Manual
- TED notice supplied for the case: TED notice 423270-2026
- COCOF – guidance for financial corrections:

  C(2019)3452 - Register of Commission Documents

This is an example, not a final legal opinion.
Verify the exact notice and applicable rules before deciding on the corrective measures.

Public procurement
References

Relevant EU rules, national legislation and programme requirements

- Directive 2014/24/EU: Directive - 2014/24 - EN - EUR-Lex
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Public procurement
Example

A Spanish project is procuring services above the EU threshold.

- The project published a Prior Information Notice (PIN) on TED/OJEU.
- However, did not publish a Contract Notice.
- Instead, it advertised the tender in national newspapers.
- Eight suppliers requested the tender documents, one supplier has its headquarters in Romania.
- The project argues that the PIN and the interest shown by suppliers demonstrate that the opportunity was open to European competition.

Public procurement
The case

Procurement issues

Known facts

Above threshold services contract PIN published on TED.

Missing information

Procedure used,

PIN content,

bids received,

advertising reach.

Decission to make

Is there a breach?
What evidence is needed?
What next?

Public procurement
Group work

Prepare a recommendation to the managing authority / control body

1. Compliance

Does the PIN meet the publication requirement? What legal/programme rule must be checked?

2. Competition

What can / cannot the eight requests and Romanian supplier prove?

Public procurement
Exercise

Group work: prepare a recommendation to the managing authority / control body

3. Evidence

List the important documents or facts you would request before deciding.

4. Follow up

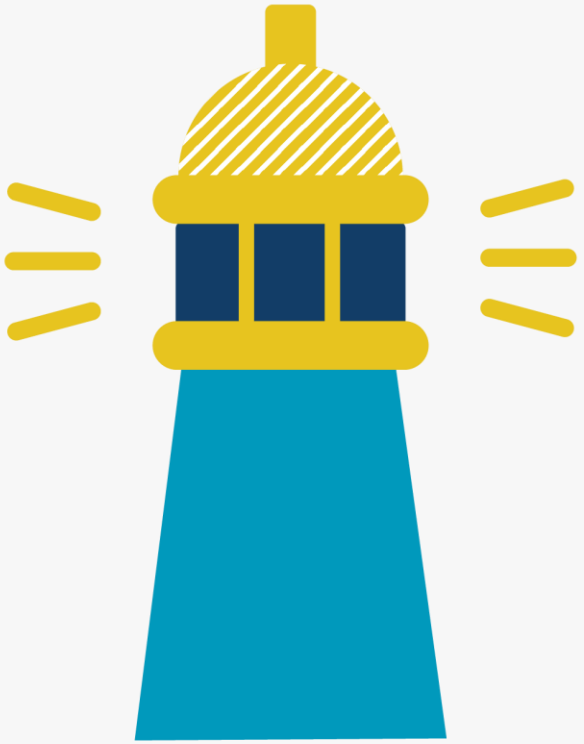
How would you record the check and the approach for financial correction?

Public procurement
Exercise

Group work: prepare a recommendation to the managing authority / control body

Timing: 5 minutes discusión, 5 minutes report back per group

Do not assume that the facts already provided are enough to decide the rate for financial correction.



Evidence tips
What would change your assessment?

A. The Notice

Was this a standard PIN, or was it intended to be a call for competition? Which procedure was used?

B. Advertising

Which newspapers / platforms?

Dates, reach, links, duration and access to documents?

C. Supplier

How did each supplier learn about the tender? Were any directly invited or excluded?

D. Tender outcome

How many bids were submitted? Were they compliant and genuinely competitive? Any complaints?

E. Equal treatment

Did all suppliers receive the same information, deadline and opportunity to ask questions?

F. Programme rules

Which version of the PEACEPLUS Programme Manual and correction framework applies?

Group work
Decission path

- **Check the process:** Identify the procedure and verify the PIN's content.
- **Check Article 48 (2):** Could this PIN lawfully serve as a call for competition in this procedure, and were all conditions met?
- **Check programme rules:** Review the applicable progrmme manual and national rules.
- **Assess competition:** Examine reach, access, bids, equal treatment and any lost opportunity.
- **Document and decide:** Record the breach (if confirmed), impact, applicable correction basis and rationale

Suggested Analysis

1. Compliance

A PIN is not automatically a Contract Notice. Article 49 sets the normal route for calling for competition. Article 48(2) provides a limited exception that must be checked against the procedure and the PIN's content

2. Programme requirements

The Programme Manual identifies failure to publish an OJEU Contract Notice for an above threshold contract as a potential procurement error.

Suggested Analysis

3. Evidence of competition

Eight requests and a Romanian supplier suggest some reach beyond the local market. They do not prove that the required publication step was met, nor that all interested suppliers had a fair chance to compete

4. Corrective measures

Do not automatically assume either zero impact or the maximum correction. Apply the relevant programme correction framework and document the nature, seriousness and actual/potential impact of the breach.

Reccommended Actions

- Check the route and **identify the procedure** and verify the **PIN's content**
- Request the complete **procurement file** and the exact **TED PIN record**
- Confirm the **procurement procedure** and assess whether **Article 48(2) could apply**
- Collect **evidence of national advertising**, document access, deadlines, supplier enquiries and bids received
- Check **equal treatment**, **any complaints**, and whether potential bidders may have been **deterred or excluded**

Reccommended Actions

- Record the **compliance findings** and assess the **applicable rate for financial correction** strictly under the applicable programme framework.
- Keep the Romanian supplier's interest as **evidence relevant to competition and impact;** not as an excuse for missing publication.

Avoid a conclusion on the rate for financial correction until the relevant facts and rules have been verified.

Reccommended Solutions (1)

- PIN does not, in itself, satisfy the OJEU publication requirement for an above threshold contract
- Under Article 49 of Directive 2014/24/EU, the Contract Notice is the normal means of calling for competition
- A PIN can only operate as a call for competition in the specific circumstances foreseen in Article 48(2), and the conditions of that provision would need to be checked.

Reccommended Solutions (2)

- **INTERREG "Euros Sin Fronteras“ programme manual** states that for above threshold tenders both the Contract Notice and Contract Award Notice must be published in the OJEU, and specifically identifies **failure to publish the Contract Notice as a potential procurement error.**
- **Although the tender was advertised nationally,** eight suppliers requested the tender documents and one of those suppliers was based in Romania is relevant evidence.

Reccommended Solutions (3)

Ask the project for the complete evidence of the advertising:

- how the eight suppliers became aware of the opportunity,
- how many submitted tenders,
- whether any suppliers were excluded from participating,
- the length of the tender period and whether all potential tenderers received the same information, and had equal access to the procurement documents.

Reccommended Solutions (4)

- **Assess the infringement and its actual financial impact** and then **determine the appropriate rate for financial correction**

- However, I would not use the Romanian supplier's participation as **evidence that the OJEU Contract Notice requirement was fulfilled**

- I would use it as **evidence relevant to the assessment of the impact of the breach and the proportionality of the correction.**

Bottom line

Possible position would be:

- PIN ≠ Contract Notice

  PIN + national advertising ≠ automatic compliance
- Romanian supplier ≠ cure of the missing Contract Notice
- However, national advertising + 8 interested suppliers + cross-border interest = potentially strong mitigating evidence when assessing the actual impact and proportionality of the correction.

Take away
Procurement irregularity

PIN ≠ Contract Notice

Unless the specific legal exception applies and its conditions are met.

Interest ≠ compliance

Supplier interest may help assess practical impact, not cure a publication breach

Evidence before correction

Establish the facts, apply the programme rules, document the reasoning.

Q&A

Interreg public procurement exercise

Procurement
Contract modifications

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Can this contract, be modified?

A practical example on Article 72, Directive 2014/24/EU



Public procurement
References

Relevant EU rules, national legislation and programme requirements

- Directive 2014/24/EU: Directive - 2014/24 - EN - EUR-Lex

Public procurement
Case study

A contact that keeps growing (1)

An Interreg project competitively procured a services contract for 400,000 EUR to develop a programme monitoring and reporting system.

Eight months into implementation, the beneficiary asks the same contractor to:

- add two new reporting modules and extra data migration,
- extend delivery by four months, and
- increase the price by 20% (80,000 EUR).

Public procurement
Case study

A contact that keeps growing (2)

The beneficiary says new reporting needs emerged during implementation.

The original tender documents contain a clause saying the scope and timeline “may be adjusted if required”.

No formal amendment has been signed, but emails show both parties agreed that the extra work would be delivered.

Public procurement
Case study

A contact that keeps growing (3)

Original contract

Above threshold
EUR 400,000
services

Proposed change

+ EUR 80,000 (20%)
wider scope

+4 months

Control concern

Vague review clause, alleged unforeseen need, and informal agreement

Public procurement
Group work

Prepare a recommendation to the managing authority / control body

1. Legal aspects

Article 72, if any, could justify the change?

2. Conditions

Is the need genuinely unforeseeable?

Is the overall nature changed?

Public procurement
Exercise

Group work: prepare a recommendation to the managing authority / control body

3. Evidence

What documents and facts must be verified before reaching a conclusion?

4. Follow up

Can work continue?
Is a new procurement needed?
What should be recorded and assessed?

Public procurement
Exercise

Group work: prepare a recommendation to the managing authority / control body

Timing: 5 minutes discusión, 3 minutes report back per group



Evidence tips (1)
What would you check?

A. Review clause

Must be clear, precise and unequivocal, defining scope, nature and conditions;

A generic “may be adjusted” clause is unlikely to be enough;

B. Unforeseeable need

A diligent contracting authority must not reasonably have been able to foresee the circumstances;

Overall nature must remain unchanged;

C. Additional services

Must be necessary; changing contractor must not be feasible for technical/economic reasons and must cause significant inconvenience or substantial duplication of costs.;
50% ceiling.

Evidence tips (2)
What would you check?

D. Low value contract

For services, below both the EU threshold and 10% of original value.

Here, 80,000 EUR is 20%, so this route does not apply.

E. Substantial change

Could the change have affected competition?

Does it favour the contractor economically or considerably extend the scope?

C. Form is not decisive

Emails and conduct may evidence a modification even without a signed amendment.

Key points: the 10% / 15% rule is not a general permission to modify; the conditions of Article 72 must be met.

Recommended
Solutions to the case (1)

- Do not accept the vague clause as sufficient without checking the original procurement documents: “may be adjusted if required” does not clearly define scope, nature and conditions.
- The 20% increase exceeds the Directive’s 10% low-value route for services (and the EU-threshold condition must also be met).
- The “unforeseeable circumstances” route is not established merely because needs emerged later. Request evidence showing what changed, why a diligent authority could not foresee it, and why the overall nature of the contract remains unchanged.

Recommended
Solutions to the case (2)

- For additional services, test necessity, technical/economic feasibility of changing contractor, significant inconvenience or duplication of costs, the 50% ceiling and publication requirements.
- Assess whether the added modules and data migration would have attracted other bidders or changed competition, scope or economic balance. If substantial and no Article 72 exception applies, a new procurement is normally required.
- The absence of a signed amendment does not settle the issue: emails may show that the parties have already modified the contract.

Recommended Actions (1)

- Revise the procurement dossier: original notice/tender documents, contract, clause wording, change request, emails, cost breakdown, timeline and technical rationale.
- Document the modification: if relied on Article 72, if the conditions for cumulative changes and publication requirements are met.

Recommended Actions (2)

- Asess the financial impact; if non-compliant, assess the nature and gravity of the breach and the applicable programme and national framework for financial corrections;
- Do not assume a rate for financial correction without checking it;
- Record a reasoned audit trail, consider whether a new procurement is needed.

Bottom line
Contract changes

1. What is legal route

Review clause, additional services, unforeseeable circumstances, low-value or non-substantial modification?

2. Are the conditions met?

Scope, competition, economic balance, value limits, cumulative changes and publication.

3. Can be prove it?

Objective evidence, clear reasoning and a complete audit trail.

Q&A