

# The Future of Public Procurement: Round-table discussions on the European Court of Auditors' special report 28/2023

EIPA's latest 'EIPA in Conversation With' event, held on February 27, delved deep into the ramifications of the European Court of Auditors' special report 28/2023, shedding light on critical issues plaguing public procurement practices within the EU. The event was joined by Helga Berger and Friedemann Zippel, both members of the European Court of Auditors, Pedro Telles of the Copenhagen Business School, Albert Sanchez-Graells of the University of Bristol Law School and Merete Clausen of the European Commission (pre-recorded). The online discussion attracted over 200 people from different organisations in both the public and private sectors.

## Background: the ECA's report

The event was centred around the recently published special report 28/2023 by the European Court of Auditors (ECA), on public procurement in the EU. In it, the Court makes quite a severe, wide-ranging critique of the state of competition for public procurements in the EU and its perceived lack of achievement of the 2014 reform objectives during the period from 2011 to 2021.

The report assesses the level of competition for public procurement in the EU's single market over the decade of 2011-2021 and the actions taken by the Commission and member states to identify and address obstacles to competitive tendering, in the interest of obtaining the best value for money.

The four recommendations that the Commission has accepted from the report are:

1. To clarify and prioritise public procurement objectives;
2. To improve the shortcomings of data collection;
3. To improve the monitoring tools to allow better analysis (e.g. ESG indicators);
4. To analyse root causes for weak competition at the national and regional level and put forward measures to overcome the main obstacles to competitive and attractive public procurement.

The report's main findings and recommendations can be found in our experts' blog [here](#).

We simply cannot afford to lose another decade making public procurement more attract attractive for companies. Fostering competition is crucial to get best value for public money and create opportunities for companies to come into business with public authorities." - Helga Berger, European Court of Auditors

## Stance of the European Commission

In response to critical inquiries regarding the European Court of Auditors' report on public procurement, the European Commission provided insights reflecting both the complexities of the current landscape and the Commission's commitment to fostering meaningful reform.



- **Acknowledgement of Significance:** The Commission acknowledged the report's timeliness and significance, underscoring shared objectives with the Court to enhance procurement performance and impact.
- **Cautionary Stance on Recommendations:** While affirming alignment with several of the report's recommendations, the Commission cautioned against viewing them as singular solutions to multifaceted challenges.
- **Commitment to Action:** In navigating discussions with member states and stakeholders, the Commission pledged to explore combined actions aimed at bolstering administrative capacity and streamlining procurement processes.
- **Concrete Measures in Motion:** The Commission outlined concrete measures already in motion to implement recommendations, including:
  - Strategic dialogues with member states
  - Establishment of a public procurement buyers platform
  - Ongoing enforcement efforts
- **Flexibility on EU-wide Action Plan:** In addressing inquiries regarding the potential for an EU-wide action plan, the Commission clarified its willingness to consider such initiatives, emphasising a

focus on substantive actions over procedural formalities.

- **Focus on Streamlining and Collaboration:** Recognising the complex interplay between regulatory frameworks, administrative burdens, and market dynamics, the Commission underscored the importance of:
  - Streamlining processes
  - Sharing best practices
  - Fostering broader political ownership

#### Arguments from the European Court of Auditors

The insights shared by Helga Berger and Friedemann Zippel from the European Court of Auditors illuminate the significance of the report's findings and underscore the imperative for concerted action at both the EU and Member State levels. The ECA emphasised:



- The pivotal role of auditors not just in identifying problems but also in **catalysing change through recommendations** and robust follow-up mechanisms.
- The **importance of engaging with member states** to drive meaningful change.
- A growing recognition of the **need for enhanced competitiveness** in the EU.

- The need to **refocus attention on public procurement performance**, which had waned in recent years. The ECA stressed the fundamental importance of the report in placing procurement back on the Commission's agenda and outlined the basic expectations laid out in the recommendations.

The real impact and success of this report is that we once again brought public procurement performance on the Commission's agenda" - Friedemann Zippel, European Court of Auditors

Together, their perspectives underscore the urgency and potential for meaningful reform in public procurement, signalling a collective commitment to driving change and improving performance across the EU.

#### Academic perspective

Associate Professor and Expert in Public Procurement Regulation Pedro Telles and Professor of Economic Law Albert Sanchez-Graells provided insightful analyses and recommendations, shedding light on critical aspects that demand attention and action.

- **Strategic Objectives in Public Procurement:** Digitalisation, sustainability, and innovation are highlighted as intricately linked objectives.
- **Feasibility Concerns:** Doubts about implementing sweeping changes by the suggested deadline due to the complexity of legislative processes and Member State compliance.
- **Critique on Proposed Data Reforms:** The transformative potential within existing frameworks is questioned and

there is caution against viewing them as a panacea.

- **Role of Member States:** Member States play a pivotal role in effecting substantive change and the limitations of expecting procurement simplification solely through Commission intervention were highlighted.
- **Nature of Issues:** Issues predate recent global upheavals, representing entrenched structural challenges rather than transient disruptions.
- **Concerns about Legal Frameworks:** The adequacy of existing legal frameworks in addressing underlying competitive deficits.
- **Caution Against Incremental Reforms:** We should not be placing undue faith in incremental reforms, suggesting that the Commission's proposed trajectory towards increased complexity could exacerbate market distortions.
- **View on Data Enhancements and Strategic Objectives:** Holistic reevaluation of procurement paradigms is needed.

#### Overall recommendations

- Both academics express the thoroughness of the report in identifying systemic shortcomings within the current procurement landscape
- A nuanced understanding of the Commission's stance is needed
- We should be wary of assuming blanket acceptance of proposed reforms.

Together, these academic perspectives underscore the urgency of reimagining public procurement within the EU. Their nuanced analyses call for a recalibration of reform efforts,

recognising the interplay between legal frameworks, strategic objectives, and market dynamics.

**Stay in touch**

We were pleased to host and act as moderator during the discussions on this timely topic. The speakers of this debate will be connecting with us in the future to rejoin the discussion at a later stage. In the meantime, please have a look at the recording of the full event below: