PUBLIC PROCUREMENT – A NEW WAY FORWARD
Editorial to the Special Issue

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1. INTRODUCTION

On 11 November 2025, the University of Zagreb Faculty of Law, together with the Croatian State Commission for the Supervision of Public Procurement Procedures (Državna komisija za kontrolu postupaka javne nabave – DKOM), hosted the international conference *Public Procurement – A New Way Forward*.[1] The questions put to the speakers were: what works and what does not? Which of the goals pursued by the EU public procurement Directives have been achieved, and where does room for improvement exist? Over four panels – remedies, access of third-country operators to the EU procurement market, green and socially responsible procurement, and data, digitalisation and artificial intelligence – fourteen speakers from academia and practice offered their thoughts on the current framework and their suggestions for the one to come.

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1 *Public Procurement – A New Way Forward*, international conference organised by the University of Zagreb Faculty of Law and the Croatian State Commission for the Supervision of Public Procurement Procedures (DKOM), Zagreb, 11 November 2025. The conference programme, the summary of the speakers' conclusions and their presentation slides are available at https://ppnwf.pravo.hr/conference-conclusions-and-slides (14 July 2026).

Less than a month before the conference, on 14 October 2025, the European Commission published its long-awaited evaluation of the 2014 public procurement directives[2], and on 3 November 2025 it opened a public consultation on their revision, which ran until 26 January 2026.[3] On the very day the conference was held in Zagreb, the evaluation was presented to the European Parliament's Committee on the Internal Market and Consumer Protection. The Commission's Work Programme for 2026 subsequently confirmed that a comprehensive legislative proposal – announced as a "Public Procurement Act" – would follow in 2026.[4]

This special issue of the Collected Papers of the Zagreb Law Faculty brings together a selection of the full papers presented at the conference. This editorial offers a rundown of the conference and of the conclusions reached by its speakers. It then turns to the four papers published in this issue. It closes with some reflections on what to expect of the revision now under way.

2. A FRAMEWORK UNDER REVISION

The framework under revision is the 2014 legislative package: Directive 2014/24/EU[5], Directive 2014/25/EU[6], and Directive 2014/23/EU[7]. Presented at the time as a generational modernisation, the package promised simplification

[2] European Commission, Evaluation of the public procurement directives, Commission Staff Working Document, 14 October 2025.

[3] European Commission, public consultation on the revision of the EU public procurement framework, 3 November 2025 – 26 January 2026, https://public-buyers-community.ec.europa.eu/revision-public-procurement-directives (14 July 2026).

[4] European Commission, Commission Work Programme 2026, announcing the "Public Procurement Act" with a foreseen adoption date in the second quarter of 2026; see also European Parliament, Legislative Train Schedule, "Public Procurement Act", https://www.europarl.europa.eu/legislative-train/theme-a-new-plan-for-europe-s-sustainable-prosperity-and-competitiveness/file-public-procurement-act (14 July 2026).

[5] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, pp. 65–242.

[6] Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94, 28.3.2014, pp. 243–374.

[7] Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.3.2014, pp. 1–64.

and flexibility, easier access for SMEs, a shift to electronic procurement and the "strategic" use of public purchasing power for environmental, social and innovation objectives.

A decade later, the assessments are sobering. The European Court of Auditors found that competition for public contracts had, if anything, declined in the ten years to 2021, with single-bid procedures rising markedly and direct cross-border procurement stagnating.[8] The Letta report identified procurement as an area where the single market remains incomplete[9], while the Draghi report saw it as an underused instrument of competitiveness and industrial policy.[10] The Commission's own evaluation established the directives have delivered on transparency, but only partially on efficiency and competition.

What was talked about for a long time was finally confirmed on 9 September 2026 – the Commission decided to propose a public procurement regulation.[11] This is the most consequential change since the first procurement directives of the 1970s: uniform, directly applicable rules in place of five decades of national transposition. Whether such a shift is desirable, and what it would achieve, was debated at the conference – especially by Pedro Telles in his presentation and the paper in this issue.

Equally significant is what the revision does not cover – the Remedies Directive.[12] As the opening panel of the conference made clear, that exclusion is problematic as reforming one while not reforming the other risks creating procedural friction.

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[8] European Court of Auditors, Special Report 28/2023: *Public procurement in the EU – Less competition for contracts awarded for works, goods and services in the 10 years up to 2021*, https://www.eca.europa.eu/en/publications?ref=sr-2023-28 (14 July 2026).

[9] Letta, E., *Much More Than a Market – Speed, Security, Solidarity*, Report to the European Council, https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf (14 July 2026).

[10] Draghi, M., *The Future of European Competitiveness*, Report to the European Commission, https://commission.europa.eu/topics/competitiveness/draghi-report_en#paragraph_47059 (14 July 2026).

[11] European Commission, Proposal for a Regulation of the European Parliament and of the Council on public contracts and concessions (Public Procurement Act), COM(2026) 590 final, 2026/0265 (COD) (9 September 2026).

[12] Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, OJ L 395, 30.12.1989; Council Directive 92/13/EEC of 25 February 1992, OJ L 76, 23.3.1992; both as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, OJ L 335, 20.12.2007.

3. THE CONFERENCE PANELS[13]

3.1. A look ahead: remedies

Carina Risvig Hamer opened the remedies panel by asking what makes a remedies system effective. Looking at the mechanisms of the Remedies Directives – standing, time limits, interim measures, automatic suspension, ineffectiveness and damages – she highlighted the uneveness across Member States. Direct awards remain the biggest problem, but misclassified in-house arrangements, underestimated values, excessive modifications – are equally dangerous. Her central point was that the ongoing review explicitly excludes the Remedies Directives, yet the long-standing gaps identified in past evaluations make that exclusion hard to justify.

François Lichère's main question was whether damages could become a new paradigm of procurement enforcement. Article 2 of the Remedies Directive has always required Member States to make damages available, yet the case law of the Court of Justice remained scarce until the 2024 *Ingsteel* judgment recognised compensation for loss of opportunity.[14] Lichère nonetheless tempered expectations: damages litigation is long, its outcomes uncertain, and disappointed competitors often unmotivated to sue.

Bojana Todorović concentrated on civil society. Drawing on examples from South Eastern Europe, she showed how large infrastructure projects, weak oversight and the manipulation of procurement procedures produce environmental and social risks – and how economic operators frequently lack any incentive to challenge such practices. Her proposal, developed in her paper in this issue, is to rethink *locus standi*; civil society must be allowed to act as a sustainability watchdog.

Michael Frühmann mentioned that Member States operate under essentially the same framework, yet remedies specificities vary significantly. The system "works", more or less, but appeal fees and extensive written exchanges create obstacles to access to justice in some Member States. His proposals: *ex officio* review by public authorities (a "procurement state attorney"), harmonised damages rules in the light of *Ingsteel*, a rethink of fee structures, and indicative maximum procedural lenghts – while acknowledging that any deep reform would require Member States to accept politically sensitive limits on their procedural autonomy.

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[13] The account in this section is based on the conclusions and slides published on the conference website (fn. 1).

[14] Case C-547/22 *INGSTEEL*, judgment of 6 June 2024, ECLI:EU:C:2024:478.

3.2. Reciprocity or protectionism: public procurement and international trade

The second panel examined how trade policy, foreign subsidies and the case law of the Court of Justice are reshaping access to EU procurement markets. Christopher Yukins opened with tariffs: while the WTO Government Procurement Agreement generally prohibits discrimination in covered procurement, customs duties may nevertheless be applied strategically. In the United States, imported goods for federal procurement are normally subject to customs duties unless exemptions apply; the legislative debate on duty-free entry for defence procurement illustrates the problems between national security, reciprocity and rebuilding domestic industry.

Piotr Bogdanowicz talked about the problems with the *Kolin* and *Qingdao* judgments[15], in which the Court of Justice held that economic operators from third countries without an international agreement with the EU on procurement access cannot invoke the directives (or national legislation transposing the directives), and that their access falls within the Union's exclusive competence. He was critical of the judgments, but he also emphasized how quickly they have reshaped national law and case-law, taking Poland as an example. He also highlighted the Commission's guidance[16] stressing that access rules fall under exclusive EU competence, raising rule-of-law concerns where Member States legislate independently.

Désirée Klingler concluded the panel with the Foreign Subsidies Regulation.[17] She set out the notification thresholds, the Commission's review process and emerging enforcement practice. With retaliation and possible WTO litigation on the horizon, she concluded, the EU is increasingly using procurement as a strategic policy tool.

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[15] Case C-652/22 *Kolin Inşaat Turizm Sanayi ve Ticaret*, judgment of 22 October 2024, ECLI:EU:C:2024:910; Case C-266/22 *CRRC Qingdao Sifang*, judgment of 13 March 2025, ECLI:EU:C:2025:178.

[16] European Commission, guidance on the participation of third-country economic operators in EU public procurement (2025), clarifying that access of non-covered third-country operators falls within the exclusive competence of the Union under the common commercial policy.

[17] Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, OJ L 330, 23.12.2022, pp. 1–45.

3.3. Green and socially responsible: new approaches

Roberto Caranta opened this panel by talking about the shift in EU procurement law from a system focused on market opening and competition towards one that includes sustainability goals. The 2014 directives created opportunities for environmental and social criteria, but left wide discretion to contracting authorities and stuck to concepts like the "link to the subject matter". If the EU truly wants procurement to serve the European Green Deal sustainability choices should be shielded from overly rigid competition-based objections. He also noted that civil society litigation is emerging as an important enforcement tool.

Sarah Schoenmaekers concentrated on EU funding. While the directives rarely make sustainability mandatory, EU funds are increasingly used to steer contracting authorities towards greener and more responsible choices.[18] Through this funding system, the EU nudges national authorities towards sustainable practice even where the directives remain merely permissive.

Eva Ružić concluded the panel with socially responsible public procurement (SRPP). Soft-law instruments and the mandatory social clause of Article 18(2) of Directive 2014/24/EU offer important starting points, but implementation remains uneven. Croatia, she noted, reflects many of these challenges: digitalisation has progressed, but socially responsible procurement remains underdeveloped.

3.4. AI, data and modernisation

The final panel turned to digitalisation and data. Albert Sánchez-Graells opened by observing that, despite the EU's declared "full transition to e-procurement" in 2014, this is far from realised. Drawing on OECD insights, he urged the Union to move beyond scattered pilot projects towards a common vision. Only on that foundation can advanced digital technologies and artificial intelligence be deployed in a meaningful way.

Tünde Tátrai continued with the EU Public Procurement Data Space. Some trends are positive, but key indicators reveal weakness: frequent single-bid procedures and data quality problems. Her message was that the EU must fix its data gathering before taking any further steps.

[18] See Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), OJ L, 2024/2509, 26.9.2024.

Petra Ferk examined digital transformation, arguing that the current framework incentivises "electronic compliance" rather than real transformation. Without political will, investment and coherent EU-wide standards, she warned, Member States risk remaining stuck in partial digitalisation.

Pedro Telles closed the panel and the conference – and opened one of the most important questions of the 2014 Directives revision process – by asking whether directives are still fit for purpose. Despite decades of legislation, direct cross-border procurement levels have moved only from roughly 1–2% in the 1960s to 2–5% in the 2010s. Therefore, he proposed that procurement may be reaching aninflection point: a Regulation could be a better solution, though a poorly drafted one could worsen the problems we already have.

4. THE PAPERS IN THIS ISSUE (IN THE ORDER OF PRESENTATION AT THE CONFERENCE)

4.1. Ensuring the Sustainability of Public Procurement through the Availability of Legal Remedies to Representatives of Civil Society

In *Ensuring the Sustainability of Public Procurement through the Availability of Legal Remedies to Representatives of Civil Society*, Bojana Todorović argues for granting civil society organisations standing in procurement remedies as a means of strengthening the enforcement of sustainability requirements. The paper opens problematic examples form South Eastern Europe, which endanger transparency, competition and the efficacy of remedies.

Where oversight is manipulated, economic operators are often unable or uninterested in litigating, while traditional public enforcement models have shown serious limitations in practice. Civil society enforcement, motivated by public interest would complement the traditional models. The paper paves the way for a second study on the procedural issues of such standing, and is especially relevant given the exclusion of the Remedies Directives from the current revision.

4.2. Public Procurement with a Purpose: Understanding the Shift Towards Social Responsibility

Eva Ružić's *Public Procurement with a Purpose: Understanding the Shift Towards Social Responsibility* asks why socially responsible public procurement remains so unevenly applied across the Union despite a legal framework that increasingly enables the integration of social criteria. Her answer is that the limited reach of

SRPP cannot be attributed solely to shortcomings of applicable law; it reflects problems between the administrative science doctrines and welfare-state models that have historically shaped procurement. A formally uniform European framework therefore inevitably produces varied national outcomes.

The formal permissibility of social criteria is insufficient for their effective implementation. What lacks is clearer guidance, monitoring and enforcement mechanisms, reliable indicators of social impact, and stronger administrative capacities.

4.3. Digital Transformation of EU Public Procurement: Current Legislative Framework, State of Implementation and Future Directions

In *Digital Transformation of EU Public Procurement: Current Legislative Framework, State of Implementation and Future Directions*, Petra Ferk examines what she calls the paradox of digitalisation. Although electronic infrastructure has been introduced since 2014, transformation remains limited. Directive 2014/24/EU digitised existing procedures instead of redesigning them. The paper analyses EU digital legislation that increasingly shapes procurement, and the state of eForms and the Public Procurement Data Space. Ferk concludes that near-term change will be incremental – and that if a true digital-by-default, end-to-end system is not accomplished, contracting authorities will increasingly rely on external commercial solutions.

4.4. The Single Market and Home Bias: Have the EU Directives Opened Up Public Procurement?

Pedro Telles's *The Single Market and Home Bias: Have the EU Directives Opened Up Public Procurement?* shows that successive rounds of increasingly detailed legislation have failed to significantly increase direct cross-border procurement or reduce home bias: the share of contracts won directly by non-national economic operators has moved only from 1–2% in the 1960s to roughly 2–5% today.

The directives have evolved by adding complexity and administrative burden without significant change, and that approach may simply have reached its limits. Alternative legislative approaches deserve serious consideration – either shifting to a Regulation or reverting to general Treaty principles without secondary legislation. The paper is remarkably important today – as the Commission decided to propose a public procurement Regulation. We will soon see can a Regulation succeed where Directives have failed.

5. CONCLUDING REMARKS

The Commission's Public Procurement Act proposal is published, and the legislative negotiations – likely to stretch over several years – will have begun. It is our hope that the analyses collected here will inform those negotiations. Our sincere thanks go to the speakers and panellists, to the anonymous reviewers, to DKOM as co-organiser, to the editorial board of the Collected Papers of Zagreb Law Faculty, and above all to the authors. The "New Way Forward" for EU public procurement is now being mapped; we trust this issue will help readers critically evaluate the chosen direction.

