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EurEau Recommendations on the Public Procurement Act: Inclusion of the Wastewater Treatment Sector under the Utilities Procurement Regime

A regulatory intervention that better reflects the wastewater sector realities



Key messages

The EU legal framework on public procurement is key for the water services sector to effectively and efficiently implement their investments as well as to procure the goods and services needed for their operations.

The proposal for a Public Procurement Act designates the application of the utilities procurement regime to drinking water services. Wastewater services are only included if the entity concerned also carries out drinking water activities at the same time.

Consequently, an entity operating exclusively in the wastewater treatment sector is bound by the so-called classic procurement rules.

The fact that both drinking water and wastewater services share similar characteristics yet the sectors are governed by different procurement regimes, is an inconsistency that is difficult to justify.

EurEau calls for a unified set of public procurement rules for the water sector as a whole.

Article 14 should, therefore, be amended in order to recognise wastewater treatment as an autonomous utility activity.

The proposed regulatory intervention would better reflect the sector's characteristics, organisational models, and operational realities, and lead to substantial improvements in implementing procurement procedures, without undermining competition.

1. Introduction

The EU public procurement framework plays a crucial role in enabling water services to deliver investments efficiently and effectively as well as to procure the goods and services needed for their operations – an essential condition for meeting our shared commitments under the European Water Resilience Strategy as well as the Union's competitiveness ambitions.

The European water services sector serving more than 550 million citizens and businesses faces a substantial investment gap, estimated at several hundreds of billions of euros across the EU[1]. Public procurement is crucial for water service operators to bridge this gap.

[1] The European Water Resilience Strategy identifies an investment gap of €23 billion per year only for achieving compliance under the existing water legislation. Similarly, the OECD's 2020 report estimates that the EU27 will require an additional €255 billion in cumulative expenditure for water supply and sanitation by 2030.

Currently, total investments in the EU water services sector[2] average €36.6 billion annually[3], the overwhelming majority of which is subject to EU public procurement rules, representing around 1.5% of total EU expenditure on public procurement.

2. A unified procurement regime for the water services sector

EurEau welcomes the continued recognition that procurement rules should reflect the specific characteristics of the water sector. However, the proposal for a Public Procurement Act[4] recognises the specific characteristics for **drinking water supply services only**.

Article 14 of the proposed Regulation defines water as a utility sector (along with electricity, gas, transport etc.) to which **procurement rules for utilities** apply. However, **Article 14(1)** establishes the water sector by referring to **drinking water operations only**. As per **Article 14(2)**, the application of procurement rules for utilities can be extended to **wastewater treatment operations**, but only in cases where contracting entities awarding such contracts "pursue an activity referred to in Article 14(1)" at the same time.

The effect is that **wastewater activities are not established clearly as an autonomous utility activity**. Consequently, an entity operating exclusively in the wastewater treatment sector is bound by the so-called **classic procurement rules**. This is illogical.

This has been the case already under the current EU public procurement framework. However, evidence indicates that the application of the 'Classic Procurement Directive' (2014/24/EU) has created disproportionate burdens for wastewater treatment operators, particularly when compared to other utility sectors, which share similar structural characteristics.

It is in this context that EurEau calls for a **unified set of public procurement rules** under the utilities procurement regime for the water services sector as whole, including both drinking water and wastewater treatment sectors. To substantiate our request, we present the following justifications.

3. Article 14 does not reflect the reality of the water services sector's diverse organisational models within Member States and EU-wide

The proposed Article 14 in the draft Public Procurement Act largely follows the structure of Article 10 of Directive 2014/25/EU, the so-called 'Utilities Procurement Directive'.

The existing approach has its historical basis in **an integrated conception of the water sector**. Both the current Directive 2014/25/EU and the proposed Public Procurement Act recognise that entities operating drinking water networks may also carry out activities

[2] Including new infrastructure, development, replacements, reconstructions.
[3] EurEau. 2026. Europe's Water in Figures report.
[4] Proposal for a Public Procurement Act, COM(2026) 590, published on 9 September 2026.

related to hydraulic engineering, irrigation, land drainage, and the disposal and treatment of sewage (wastewater).

This approach is understandable where drinking water and wastewater services are provided by the same entity. However, the organisation of water services is subject to subsidiarity and is a competence of Member States. The EU acquis is neutral regarding the institutional and management models Member States chose for organising their water services sector. This means that **drinking water and wastewater services may be organised through separate legal entities**, including separate companies within the same overall group[5].

The application of **the procurement regime should, therefore, reflect the subsidiarity principle in the organisation of water services at national level** and should not depend on whether a Member State has chosen to organise these closely related public services within a single legal entity or across several separate entities.

4. Procurement rules should reflect water services' characteristics

From a structural perspective, **the wastewater treatment sector shares the defining characteristics of other utility sectors** and especially of the drinking water sector, covered by the **utilities procurement regime**:

- it is a network industry, i.e. it involves the use of a physical, extensive network infrastructure (like pipelines, electricity grids, railway lines etc.)
- it operates as a natural monopoly
- it is characterised by an asset-intensive infrastructure, with long-term investment cycles, and high levels of technical complexity
- the services are provided within defined geographical areas, normally on an exclusive basis
- it constitutes an essential public service and can be designated as critical infrastructure.

The fact that these characteristics pertain to both drinking water and wastewater services yet the sectors are governed by different procurement regimes, is an inconsistency that is difficult to justify. A wastewater utility procuring pumps, pipes, treatment equipment, construction works, engineering services, IT systems or maintenance services is therefore operating under conditions which are materially different from those applying to a classic contracting authority purchasing goods or services on the market. **The utility procurement regime is designed precisely to take account of such sector-specific characteristics**.

[5] For an overview of the organisational characteristics and management models of water services across Member States, see EurEau's Governance of Water Services in Europe report.

5. Extending the utilities regime would benefit many wastewater operators

Amending Article 14 in order to recognise wastewater as an autonomous utility activity would:

Improve legal clarity

Wastewater utilities face lengthy and complex procedures, not only during the tendering phase but also in determining which legal framework applies, especially in cases of multi-utility operators as contracting authorities, whose subsidiaries provide drinking water supply and wastewater treatment services as separate legal entities (limited liability companies). A unified framework would eliminate the need for such assessments, thereby accelerating the preparation and launch of procurement procedures.

Ensure the rules applied are consistent with the characteristics of the wastewater sector

The distinction between drinking water and wastewater is difficult to justify from a procurement perspective, as both involve essential network infrastructure and long-term investment in assets normally not exposed to market competition. Wastewater utilities procuring equipment, construction, engineering, IT or maintenance services operate under conditions different from classic contracting authorities. The utilities procurement regime is designed precisely to reflect these sector-specific conditions.

Have no impacts on competition and market participation

Transferring wastewater operators under the utilities procurement regime would not reduce competitive pressure. The wastewater sector is characterised by a limited number of specialised suppliers, and utilities typically engage with the same pool of contractors. In such a context, the application of procedures under the classic procurement regime does not generate additional competition.

6. Proposals for amendment

Proposal for a Regulation of the European Parliament and of the Council on public contracts and concessions (Public Procurement Act) COM(2026) 590 final	
Commission proposal	*EurEau amendment*
Article 14(1)	
In relation to water, this Regulation applies to the following activities: (a) the provision or operation of fixed	In relation to water, this Regulation applies to the following activities: (a) the provision or operation of fixed

networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water; (b) the supply of drinking water to the networks referred to in point (a).	networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water; (b) the supply of drinking water to the networks referred to in point (a); ***(c) the provision or operation of fixed networks intended to provide a service to the public in connection with the collection or transport of urban wastewater, and the disposal or treatment of urban wastewater.***
Article 14(2)	
This Regulation shall also apply to contracts awarded by contracting entities which pursue an activity referred to in paragraph 1 and which are connected with one of the following activities: (a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations; (b) the disposal or treatment of sewage.	This Regulation shall also apply to contracts awarded by contracting entities which pursue an activity referred to in paragraph 1 and which are connected with one of the following activities: ~~***(a)***~~ hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations~~***.;***~~ ~~***(b) the disposal or treatment of sewage.***~~

About EurEau

EurEau is the European Water Services Association, representing 38 national organisations from 33 countries and the public and private water services they bring together.

We work with EU institutions and international organisations to shape policies that protect water quality, strengthen resilience and ensure sustainable, affordable water services for more than 500 million Europeans.

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