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Public procurement directives evaluation

Feedback by APELL – The European Open Source Software Business Association

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APELL – The European Open Source Software Business Association and its members represent hundreds of Open Source businesses with a collective turnover in the order of several tens of billions of euros each year, as well as public administrations, research institutions, and individuals throughout Europe.

Open Source technology is based on **granting the freedoms to use, study, share, and improve** technology based on it. These freedoms are granted by way of an Open Source licence.

Public authorities benefit from procuring Open Source as it allows for them to switch service providers over time as required, and avoids them being locked-in to a single vendor. It contributes to the **technological sovereignty goals of reducing dependencies, and increasing control and insight** into technology used (see *Procurement must contribute to tech sovereignty goals*). Beyond that, investments into Open Source technology benefit society and businesses in Europe, as they contribute back to technology that forms the **basis for 90% of business software projects** (see *Encourage contributions up-stream*).

APELL recommends that **in all IT procurement, Open Source be the default**, that joint procurement be further encouraged (see *Foster joint procurement*), and that it also inform the IT practices of public authorities themselves by making sharing the default (see *Make sharing the default*).

1. General recommendations for the procurement of Open Source

Whereas with proprietary business models, the original producer is party to each licence sold, Open Source is usually procured by way of contracts for the **commercial support, operation, customisation** of the product, as well as other services, while the product itself is distributed independently, on the basis of its Open Source licence.

In the case of Open Source software, development is organised around the software, often referred to as “projects” or “communities”, contributing collaboratively to the software. While projects and communities choose different ways of self-organisation, many will mainly receive development contributions from Open Source businesses.

Public administrations benefit significantly from choosing Open Source in their procurement, as the Open Source principles **promote the collaboration across companies and across borders**. Crucially, administrations procuring Open Source solutions can **switch service providers** over time as required, and **avoid being locked-in** to a single technology vendor. This ensures the **long-term sustainability of public investment**.

Experience shows however, that in bids for solutions based on Open Source, third party providers will try to outbid experienced providers on price, making use of the freely distributed product, while not, or only insufficiently, investing into the development and maintenance of the

Open Source project up-stream. Consequently, such providers will not contribute to the collaborative development and maintenance of the project, and may even rely on support from the up-stream project to implement feature requests, or provide security fixes.

Therefore, public procurement needs to take into account whether a chosen supplier is experienced and reliable, and contributes to the overall health of the Open Source project up-stream. Failing to take these factors into account puts IT security at risk and can ultimately lead to IT projects failing. This can then be falsely attributed to the circumstance that Open Source was procured, rather than the fact that an inexperienced or unqualified vendor was awarded.

Recommendations

In particular **awarding projects on price alone is not in the long-term interest of public authorities** and additional aspects must be included in award and selection criteria, including sustainability, familiarity and experience with the supply-chain and Open Source ecosystem, as well as a demonstrable contribution to the health of the Open Source projects involved in a procured solution.

2. Further recommendations

Procurement must contribute to tech sovereignty goals

Technological sovereignty means a reduction of dependency on digital incumbents, and an increase of control over and insight into the technology that is the infrastructure of society and market. Open Source gives the freedom to use, study, share, and improve the technology and as such **accomplishes the sovereignty goals**.

Public procurement is a significant driver of investment, and can play an important role in giving visibility for the chosen solutions and vendors. In doing so, it contributes to the goals of increasing technological sovereignty, supports businesses and capacity building in Europe.

Foster joint procurement

Public Procurement in EU Member States should maximise its effectiveness in the public procurement of software and services. By **joining forces**, governments, public administrations, and entities acting on behalf of them **enhance their bargaining powers** and increase the **effectivity of investments**. Open Source software and services based on Open Source improve the ability of public authorities to switch providers subsequently.

Small Member States, as well as individual regions, cities and municipalities benefit particularly from joint procurement.

Make sharing the default

Administrations work very differently between the levels of government, depending on the regions they are active in, and the procedures they have to follow. Yet there is very little knowledge sharing between different authorities, and in particular between Member States. Procuring in particular software solutions as Open Source and making them available for re-use on the basis of Open Source licences **allows for other authorities to identify overlaps and possible synergies**.

Making sharing the default in particular in IT procurement has the potential to increase external visibility, to drive innovation, and to leverage the benefits of more internal knowledge.

Encourage contributions up-stream

During the use of Open Source in the IT systems of public administrations, one of the important tasks of providers is the improvement and customisation of components and systems. When public administrations use Open Source as components in their IT systems, or where they use solutions entirely Open Source, such improvements and customisations have the potential of greatly **improving the overall quality, security, and reliability of the Open Source** components used. The Open Source ecosystem is an open infrastructure that our society and businesses rely on. According to research, around **90% of business software projects** are based on Open Source¹.

Procurement rules should therefore allow for selection criteria that favour providers that can contribute improvements and customisations back up-stream. Award and selection criteria should therefore encompass a provider's familiarity and experience with the supply-chain and Open Source ecosystem, as well as a demonstrable contribution to the health of the Open Source projects involved in a procured solution.

Conclusion

A reform of the Public Procurement Directive should be undertaken and should allow for public administrations to design eligibility and award criteria so that priority is given to providers that contribute to the health of the Open Source projects chosen. This is also in the interest of long-term sustainable investment through public procurement.

Procurement rules should be updated to contribute to the goals of increasing technological sovereignty. They should make public investment more effective through joint procurement, exploring and leveraging synergies through more transparency and open sharing of procured solutions.

Recommended resources

Open Source Business Alliance: Selection Criteria for the Sustainable Procurement of Open Source Software, 11 February 2025 – <https://osb-alliance.de/english/selection-criteria-for-the-sustainable-procurement-of-open-source-software-press-release>

On behalf of

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¹ Butler, S.; Gamalielsson, J.; Lundell, B.; Brax, C.; Mattsson, A.; Gustavsson, T.; Feist, J.; Kvarnström, B.; Lönroth, E., "Considerations and challenges for the adoption of open source components in software-intensive businesses", 2022 – <https://www.sciencedirect.com/science/article/pii/S0164121221002442>

About APELL:

APELL (Association Professionnelle Européenne du Logiciel Libre) is Europe's Open Source Software Business Association. Founded in 2020 to bring national Open Source Software organisations together into a European network to provide them with peer support and collective marketing, as well as capacity building and policy support for public affairs, both nationally and on the EU-level.

APELL aims to increase opportunities for the members of the Association's member organisations, and to increase value and advancement for the ultimate customers in both the public and the private sectors. At the same time, we see a real need to bring the Open Source perspective into the discussions on the shaping of Europe's digital future.

We support the digitisation of the economy and society — but it matters how we digitise. APELL promotes a sovereign, inclusive, ethical digital market. In order to achieve this, Europe's digital future should be based on Open.

APELL and its members represent hundreds of Open Source businesses with a collective turnover in the order of several tens of billions of euros each year, as well as public administrations, research institutions, and individuals throughout Europe.

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