



Av. des Arts 56, 4C • 1000 Brussels • Belgium

Web: <https://apell.info/>

Contact: apell@apell.info

Transparency Register: 765379449482-59

EU public procurement rules revision

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, among them mostly SMEs, some large companies, as well as public administrations, research institutions, and individuals throughout Europe.

Open Source 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. 90% of business software projects are based on Open Source¹, Open Source components are present in 70-90% of software globally², and more than 65% of businesses contribute to Open Source³.

APELL welcomes the revision of public procurement rules and recommends that the Commission make use of the framework to **shift investments** in ICT procurement to Open Source. Only **Open Source guarantees independent control over and insight into our digital infrastructure**, including the possibility to modify and adapt it, without being locked in to a single vendor.

More so than the introduction of EU preference, the revision of EU public procurement rules is an opportunity to contribute to broader policy goals, notably the **strategic goal of promoting and realising digital sovereignty** in the EU, and **increasing the EU's competitiveness, economic sovereignty, and innovation power**. Only Open Source fulfils all digital sovereignty criteria, including in the case of foreign merger or acquisition of a vendor.

We understand the goals of increasing digital sovereignty to encompass:

- agency, adaptability, and control over the design of a solution used, as well as vendor independence,
- the ability to independently and confidently verify compliance with EU rules and laws established under the rule of law, and their enforcement,
- self-determination and agency when using technology,

1 Butler et al., Considerations and challenges for the adoption of open source components in software-intensive businesses, *Journal of Systems and Software*, 186 (2022) (<https://www.sciencedirect.com/science/article/pii/S0164121221002442>)

2 Nagle et al., Census II of Free and Open Source Software – Application Libraries, *Linux Foundation, Harvard Laboratory for Innovation Science (LISH) and Open Source Security Foundation (OpenSSF)*, 80 (2022) (<https://www.linuxfoundation.org/research/census-ii-of-free-and-open-source-software-application-libraries>)

3 Blind et al., Estimating the GDP effect of Open Source Software and its complementarities with R&D and patents: evidence and policy implications, *The Journal of Technology Transfer*, 49 (2024) (<https://link.springer.com/article/10.1007/s10961-023-09993-x>)

- the use of solutions based on transparency, trust, oversight, and accountability,
- economic and environmental sustainability of public procurement through, among others, cost sharing by way of joint development and reuse effects, as well as
- strengthening the competitiveness and innovation power of the EU.

In responding to this public consultation, we concentrate on the ICT sector that we represent, specifically the producers, service providers, and users of Open Source solutions (including Open Source software, hardware, services, as well as technologies like Open Source Artificial Intelligence).

1. Prioritising broader policy goals through public procurement

With regard to the ICT sector, the revision of EU procurement rules has the potential to contribute to broader policy goals, such as in particular **increasing fair competition for businesses, increasing capacity and capability** among the producers and users of ICT technology, in particular Open Source, and to **strengthen the innovative power and global competitiveness of the EU** in the field of digital technology, creating agency and strengthening digital sovereignty.

Whereas specific sectoral policy options are considered in the public consultation, we urge the Commission not to postpone and potentially lose the momentum that the public procurement reform now has when it comes to realising policy goals. Instead, the option of making **sector-specific elements** such as model contract and technical specification templates part of an Annex to the legislation should be given priority.

2. Buyer networks, joint procurement, sharing, and re-use

With reference to the recommendations made in our submission to the public procurement directives evaluation in February 2025⁴, especially the further **recommendations for joint procurement, sharing and re-use** of solutions, and encouraging **contributions to up-stream Open Source projects**, the **creation of buyer networks** can facilitate the exchange of information and allow procurement authorities to identify Open Source alternatives that may be less known than incumbent products and services.

3. Open Source Programme Offices

In the same context, we recommend the Commission and Member States **establish Open Source Programme Offices (OSPOs)** across Europe. OSPOs are a proven institutional tool to manage, govern and extract strategic value from Open Source. They provide an interface through which institutions manage Open Source strategically, ensuring re-use, contributing back up-stream, and engaging with communities and ecosystems.

The establishment of OSPOs in Member States, at regional and city level, and across **strategic sectors such as energy, finance, healthcare, and manufacturing** facilitate a structured engagement with Open Source. OSPOs enable the management of risk, reduce lock-in,

⁴ APELL's submission to the evaluation of the public procurement directives, submitted 27 February 2025: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14427-Public-procurement-directives-evaluation/F3522562_en and <https://apell.info/2025/02/20/apell-submission-public-procurement-directives-evaluation/>

and capture innovation at lower cost. For more detail, please refer to APELL's recommendations submitted to the 'AI Continent' initiative⁵.

4. Non-price criteria for Open Source procurement

With reference to our submission to the public procurement directives evaluation in February 2025, **procurement needs to prioritise criteria other than price**. In particular, procurement and award criteria need to take into account a vendor's experience, reliability, and contribution to the overall health of the upstream Open Source project.

Experience shows that in bids for Open Source-based solutions, third-party providers try to outbid experienced providers on price, making use of the technology development in the upstream project, while not themselves contributing to its development and maintenance.

Procurers therefore need to be able to take into account whether a supplier is familiar and experienced with the supply-chain and Open Source ecosystem, and has demonstrable contributions to the concerned projects.

This is in the interest of the **long-term sustainability of public investment**, and the **quality and reliability of the digital public infrastructure** that Open Source constitutes.

5. Open Source strengthens digital sovereignty more than EU preference

Full Digital sovereignty can only be achieved with Open Source, as it offers full agency to users, in particular with regard to the design and adaptability of solutions, and protects users in merger or acquisition scenarios.

Only Open Source guarantees digital sovereignty and the possibility to switch service providers, continuing the use, maintenance, and development of a chosen solution – even in case of foreign acquisition of a provider.

The **procurement of Open Source by default** strengthens digital sovereignty, and the EU's innovative power and global competitiveness. In order to leverage the full potential of Open Source, Europe must become an Open Source hub, promoting a strong and efficient Open Source industry. The revision of the public procurement rules can make a decisive contribution in that direction.

6. Open Source by default for critical infrastructure and defence

In particular in the area of critical infrastructure, defence, and in other sectors that rely on ICT as critical component, the procurement of digitally sovereign Open Source solutions should be required.

We consider it urgent that the EU and the Member States take swift and decisive action to shift from Closed-Source solutions to Open Source to fulfil digital sovereignty goals and recommend to make Open Source the default in procurement by 2035.

5 APELL's submission to the public consultation on the Cloud and AI Development Act: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14628-AI-Continent-new-cloud-and-AI-development-act/F3571855_en and <https://apell.info/2025/07/07/100-percent-open-source-by-2035/>

7. International cooperation – an achievement worth protecting

The total value of collaborative development of Open Source solutions is estimated at \$8.8 trillion⁶. This success of international collaboration is an asset worth protecting. The EU benefits enormously from the international expertise that flows into Open Source solutions and products in a transparent, traceable, and reproducible manner.

The introduction of EU preference risks not only working to the detriment of international trade relations, and opens up the possibility for retaliation, but could damage business relations that in particular the European ICT sector has already built.

Legislators should pay particular attention to protecting the Open Source ecosystem and, in particular, assess proportionality against this backdrop.

On behalf of

APELL – Association Professionnelle Européenne du Logiciel Libre ASBL

Sebastian Raible – sebastian.raible@apell.info

Director EU Government Affairs

⁶ Hoffmann, Manuel and Nagle, Frank and Zhou, Yanuo, The Value of Open Source Software (January 1, 2024). Harvard Business School Strategy Unit Working Paper No. 24-038, Available at SSRN: <https://ssrn.com/abstract=4693148> or <http://dx.doi.org/10.2139/ssrn.4693148>

APELL

Association Professionnelle
Européenne du Logiciel Libre

The European Open Source
Software Business Association

APELL (Association Professionnelle Européenne du Logiciel Libre ASBL) 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 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.

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