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Copenhagen, January 25<sup>th</sup> 2026

## **Response from the Danish Public Transport Authorities to the public consultation of the evaluation of the Public Procurement Directives**

### **Abstract and key message from the Danish PTAs**

The President of the European Commission has announced, that the intention with the revision of the public procurement directives is to enable preference to be given to European products in public procurement for certain strategic sectors and to modernise and simplify procurement rules. The Danish Public Transport Authorities (“PTAs” in the following) support those objectives. However, if this revision is not carried out right taking the practical reality into account, the PTAs, which carries out tenders for more than 1 billion Euros annually, are concerned, that the result can be excessive administrative burdens for the Danish Public Transport Operators (“PTOs” in the following) and PTAs. Done the wrong way, it will lead to more expensive but lower quality buses, which most likely will translate into lower service to the users, a less competitive market and delay the transition to zero emission buses.

We encourage the Commission to use this evaluation to correct the misconception that the use of “price” as an award criterion leads to lower quality, and to safeguard contracting authorities’ the right to plan and conduct tender procedures, including the right to choose between “price” and “best price-quality ratio” as award criterions. We further encourage the Commission to establish a clearer hierarchy between general public procurement legislation and sectoral legislation, ensuring that the rights laid down in the Public Procurement Directives cannot be overridden by sectoral legislation in the event of a conflict, at least with regard to the fundamental principles governing public tenders. We also urge the Commission to simplify the growing number of procedural requirements put upon contracting authorities when procuring, and to support both contracting authorities and economic operators with a clear overview of the obligations that tenders must fulfil.

We encourage the Commission to follow the advice from the Draghi report and use this evaluation to simplify and reduce burdens. Simplification is particularly needed if the revision, as intended, results in legal requirements to buy more products “made in the EU”. There needs to be a strong commitment to make it easy for the contracting parties to determine whether a product or a component is “made in the EU”. The existing regime for deciding whether a bus or a component is “made in the EU” is extremely complicated and burdensome, and in practice impossible to carry out for an average PTA and PTO. In regard to simplification we stress, that demanding more digitalization or new digital tools does not necessarily make it easier for either contracting authorities or economic operators i.e Eforms and the ESPD are both long and written in an academic language complicating bidding especially for SME’s with restricted resources.

Finally, we want to draw attention to the strict and timely procedural requirements following Regulation (EU) 2022/2560 on foreign subsidies distorting the internal market (“Foreign Subsidies Regulation” in the following) and encourage the Commission to avoid such measures which extends the procurement process and the deadlines as this is very burdensome for both the contracting authorities and economic operators.

### **Introduction and general remarks**

The PTAs represent the six regional Danish public transport authorities responsible for operating all scheduled bus services, local railways, demand-responsive transport for citizens with disabilities and flexible public transport services in sparsely populated areas. In Denmark, almost all bus services and demand-responsive transport are operated by private companies on behalf of the PTAs through public tenders. As public buyers, the PTAs are responsible for the procurement of public transport services and are therefore subject to public procurement law. Tendering is a core task for the PTAs.

In this memo we will comment on the most important themes in the consultation, describe the problems and provide examples as well as suggest alternative solutions if relevant. We generally do not find multiple choice questionnaires the best tool for impact assessments, as they only allow answers to the questions in the questionnaire, and sometimes forget important topics. This questionnaire is no different, e.g. not allowing for free text regarding “BPQR”-requirements. Therefore, we have chosen to reply via this letter as a supplement to the questionnaire.

The PTAs welcome the evaluation of the Public Procurement Directives and support the Commission’s objective of modernizing and simplifying the public procurement framework, including enabling preferences for European products and contributing to added value, such as supporting the green transition. However, this must be done in a way that does not increase the burdens or limit the competition in the market. It must be respected that the main purpose of a public procurement procedure is to allow the contracting authority to find the economic operator (tenderer) that can deliver the best product or service of the wanted quality. It would be a misunderstanding to believe that public procurement rules can solve all kinds of different political objectives.

In recent years we have experienced a significant increase in new requirements stemming from EU legislation, typically sectoral legislation, which has made tender procedures more burdensome and complex for both operators and PTAs. Most of this sectoral legislation pursues objectives unrelated to public procurement, and we believe that their impact on procurement procedures was not intended.

The uncertainty as to whether sectoral legislation introduces new requirement-related obligations has made it increasingly difficult to maintain an overview of applicable rules and to ensure compliance. We have also experienced sectoral legislation that conflicts with fundamental rules laid down in the Utility Directive. Most recently, sectoral legislation has removed contracting authorities’ option to use “price” as award criterion in procurement procedures for zero-emission urban busses, likely due to the misconception that “best price-quality ratio” always results in higher quality than “price” alone.

We acknowledge, that in certain situations, particularly when procuring goods or services previously unknown to the contracting authorities, the “best price-quality ratio” may be an appropriate award criterion.

However, in situations such as ours (i.e. the Danish Transportation sector), where the market, the products and services and the expected relation between price and quality are well known, this has not proven to be the case. Our experience is that the use of “best price-quality ratio” increases the administrative burden for both PTAs and PTOs without resulting in higher quality. Objectives such as improved environmental performance or security of supply can just as easily or better be achieved through clear technical specifications. The PTAs are a strong example of this approach, having taken a leading role in the green transition, with expectations that 90% of the Danish bus fleet will be zero-emission by 2030.

The objective of favoring European products is already supported by Directive [2014/25/EU](#) (the Utilities Directive), Article 85, which allows contracting authorities to give preference to tenders offering products originating in the EU. Expanding the option in art. 85 to also cover Public Service Contracts would be an easy option. The percentage added to products from outside the EU could for example be raised to 5%.

Regardless of whether a preference or obligation to buy products made in the EU is introduced it is crucial that it is done in a way that does not impose new or excessive burdens on the PTOs or PTAs.

### **CALL FOR EVIDENCE - *detailed explanation of the challenges experienced by the Danish PTAs***

#### **Increasing sectoral legislation affecting public procurement**

Sectoral legislation increasingly affects public procurement in ways that are often unrelated to the subject matter of the legislation itself and are frequently embedded within other provisions. When changes are introduced through regulations, the time available to incorporate them into ongoing tender procedures can be very limited.

This makes it extremely challenging for contracting authorities to maintain an overview of applicable requirements, particularly given the growing volume of legislation and the lack of clarity as to where relevant procurement obligations are introduced.

Non-compliance with procurement rules may have severe consequences, including procedural challenges and financial penalties.

#### **The need for a clear hierarchy**

There is a need to establish a clearer hierarchy between sectoral legislation and general public procurement law. In particular, it should be considered whether it is appropriate for sectoral legislation to alter fundamental rules and principles of public procurement, or whether certain core elements of the Public Procurement Directives should take precedence.

Simplification should not mean introducing further restrictions upon the PTAs. On the contrary simplification and harmonisation of public procurement processes across the EU lies within assuring that all legislation is gathered altogether in the public procurement directives, focusing on main principles/processes.

When sectoral legislation can change the basis of the procurement rules, it becomes difficult for the PTA to plan a good and thorough procurement process following the necessary objectives.

A recent example is Regulation (EU) 2019/1242 on strengthening CO<sub>2</sub> emission performance standards for new heavy-duty vehicles article 3e (1) (as introduced with Regulation (EU) 2024/1610 article 1(4) amending Regulation (EU) 2019/1242) (“Heavy-duty Vehicles Regulation” in the following). Article 3e (1) of this regulation mandates the use of the “best price–quality ratio” as the award criterion, thereby depriving contracting authorities of the option to award contracts based solely on “price” as permitted under Article 82(2) of the Utilities Directive.

When subject to both the Heavy-duty Vehicles Regulation and the Foreign Subsidies Regulation (in which the latter may add at best an additional 20 working days to the process, and in the worst case up to 110 working days (more than 6 months) for the EU Commission’s initial – and potentially in depth – assessment of the tenderers notifications/declarations), tender planning becomes very difficult. This is likely to result in more complex and burdensome tender procedures and ultimately higher prices, without achieving higher quality than could be secured through technical specifications. To our knowledge, these procurement-related consequences were not discussed during the legislative process, neither in the Council nor in the European Parliament.

We therefore encourage the EU to consider granting precedence to the fundamental principles and rules of the Public Procurement Directives over sectoral legislation and to reflect this explicitly in future revisions of the directives.

In Denmark, it is a well-established principle that contracting authorities are entitled to organize and conduct tender procedures as they deem appropriate, within the applicable legal framework—this includes the choice of award criterion.

### **Written statements are insufficient as guarantees**

Although it may appear prudent to include supply chain resilience and spare parts availability as award criteria (as suggested in Heavy-duty Vehicles Regulation article 3e (2)), this approach would require written statements from all economic operators participating in the tender process. Contracting authorities would then have to exercise discretion when evaluating these statements in order to determine the number of points awarded. A well-written statement, however, offers no guarantee of subsequent delivery.

### **Technical specifications are easier to monitor**

Monitoring performance levels and enforcing sanctions is significantly easier when requirements are defined through technical specifications, as the expected performance is clearly set out.

Furthermore, a weighting of between 15 and 40% of the award criteria (as stipulated in Heavy-duty Vehicles Regulation article 3e (3)) is not proportional to the share of the total contract value presented by the buses themselves and, even more so, by components such as spare parts. In the latest procurement procedure of the largest PTA in Denmark, Movia (A24) the award criteria were included, but it has not had an effect on country of origin of the buses.

### **Digitalizing does not equal simplification.**

We have yet to see EU digitalised solutions that actually simplify procedures. The forms are very long and complex, written in highly academic language, and require completion of numerous steps. Moreover, both PTAs and PTOs must re-enter the same data when tendering sub-agreements.

One of the PTAs has for example recently experienced PTO's missing an application deadline (pre-qualification) due to a missing "tick".

Simplification should lead to a harmonization of the rules applicable to contracting authorities and contracting entities, however not at the expense of the contracting authority's freedom of choice of procedure etc. and the rules that today provide flexibility to contracting authorities (e.g. negotiation).

Simplification should be fewer rules and freedom of choice within a given set of rules.

### **Misconception that price-only award criteria lead to lower quality**

There is a misconception amongst some politicians and civil servants that tenders using the "best price-quality ratio" as the award criteria result in higher quality than the tenders awarded solely on the basis of price. This is not the experience of the PTAs. On the contrary, Movia, conducted a study a few years ago – after many years of awarding contracts using "best price-quality ratio" – which concluded that tenders awarded on the basis of "price" alone proved to be the most efficient and well-functioning for both operators and PTAs.

The use of the "best price-quality ratio" as an award criterion inevitably involves a degree of discretion and often requires significantly more resources during the procurement process. This entails a risk that the PTO who is the most skilled at writing offers – but not necessarily the best at delivering - will be awarded the most points for quality. Also, the award process is more complicated and takes longer time. Moreover, it makes it more difficult for PTAs to monitor the contract during its term and carry out changes within the legal framework for example when subsequent contract changes become necessary (Utility Directive, Article 89(4)), which – given the long contract durations typically used by PTAs – is likely to occur.

The “right” level of quality can, at least in certain sectors – such as the procurement of public transport services and buses required to perform those services – be achieved through well-defined technical specifications in combination with the award criteria price. The PTAs have experienced bidders strategically offering high quality levels accompanied by correspondingly high prices. Where the offered quality exceeds the “desired” or “appropriate” level, the contract ultimately becomes more expensive than necessary.

In addition, some contractors fail to deliver the promised quality, and even where contracts include penalties and other enforcement mechanisms, these rarely compensate for the higher price paid.

In a recent Opinion from the Advocate General in case C-769/23 (point 57) an example of a disincentive that runs counter to the objective pursued by the relevant directives of opening up public contracts to the broadest possible competition and, in particular, enabling small and medium-sized undertakings to access public procurement procedures.

#### **Avoid measures that prolong the award process**

A further concern relates to measures that significantly prolong the award process. While we recognize the need for certain control mechanisms, these measures introduce uncertainty and vulnerability for contracting authorities when planning tender procedures. PTAs are already experiencing longer mobilization periods for suppliers due to general market conditions and additional EU regulatory requirements.

A recent example is Foreign Subsidies Regulation, which may extend procurement procedures by more than six months in the most severe cases.

Rather than shifting this risk to contracting authorities and bidders during the tender process, we encourage the EU to consider establishing a “positive list” allowing contracting authorities to exclude suppliers known to benefit from foreign subsidies that distort the internal market.

#### **Reflections on “Made in EU”**

We understand the ambition to make Europe self-sufficient and enable preference given to European products. However, this must be done in a gradual and balanced way – and without imposing new and extensive burdens on PTAs and PTOs.

The current status with zero-emission bus manufacturing and -supply is that several European manufacturers have sales and -production halts, challenges with product range, extreme delays on deliveries and issues with quality and thus issues with getting the operators trust. On the contrary there is a general satisfaction with Chinese manufacturers. Thus, the revision of the procurement directives must ensure that European manufacturers will be motivated to enhance their performance and to invest in raising the production capacity and product quality.

Otherwise, the PTAs and PTOs are left with an inferior product at a higher cost, at the detriment of the competition in the market, the public transport sector and the passengers. If the European manufacturers are to be given preference it should come with financial support but also with obligations regarding availability, delivery times, quality etc.

The PTAs wish to highlight the risk that objectives favoring European products may conflict with the goal of accelerating the green transition in public transport. This concern is based on recent tenders requiring zero-emission buses. A survey conducted among bus operators working for the largest Danish PTA Movia in the last quarter of 2024 showed that three out of nine European manufacturers of zero-emission buses were not accepting new orders.

A fourth manufacturer faced severe delivery delays, while another struggled with significant quality issues. Bus operators reported limited confidence in two European manufacturers, while the remaining two-faced challenges related to product range and pricing.

By contrast, the survey indicated full satisfaction with deliveries and reliability for two out of three Chinese manufacturers, while the third experienced quality issues.

A PTO expressed at a meeting in early summer 2025, that they would only choose European buses if it was mandatory – the mistake of doing that again they would leave to the competition. The comment was based on their experience in a contract where they based their offer on European buses. The result was substantial delay in the agreed delivery time.

While we understand the intention behind favoring European products, it is important to recognize that, given the current delivery capacity of European manufacturers, the deployment of zero-emission buses in Denmark would not have been possible without Chinese suppliers. Denmark expects 90% of its bus fleet to be zero-emission by 2030, and this situation is likely mirrored in other EU Member States.

This is not due to a preference for Chinese products, but rather to the delayed transition of European manufacturers towards low- and zero-emission vehicle production. Prioritizing European products through procurement procedures may therefore delay the green transition in our sector and shift higher costs onto public transport users. A more effective approach may be to subsidize the transition of the European automotive industry more broadly, thereby distributing the costs across a wider base.

### **Controlling the origin of a product is extremely burdensome and must be made easier**

As a final but very important reflection, if the EU wishes to promote products originating in the EU, it will place a massive administrative burden on the PTOs to document the country of origin which most likely will reflect in prices as well as it will place a massive administrative burden on the PTAs to verify the documentation. The local and regional public transport authorities would have no capability of evaluating and validating bidder compliance with “made in EU” requirements.

To illustrate this, we have in the appendix attached a response from the European Commission from September 2025 to the Danish PTA Movia, who asked the Commission to clarify the understanding of article 3e in the regulation for CO2 emission performance standards for new heavy-duty vehicles regarding the definition of “made in the EU”. The reply can be seen in Appendix 1. The PTO must be able to determine were a product “underwent its last, substantial, economically justified processing or working in an undertaking equipped for that purpose, resulting in the manufacture of a new products or representing an important stage of manufacture”. This applies to “parts originating in the country of manufacture has to led to an increase in value, representing at least 45% of the ex-works price of the product”.

An electric bus consists of several parts and components. In a globalized economy each of these can have origin in different countries. The table below comes from a Danish PTA and illustrates the difficulty defining the origin of buses and the corporate structure under which a manufacture may be organised.

**Table 1: Uncertainty in defining the country of origin of buses**

	Component production (including batteries)	Assembly plant	Parent company's country of registration	Parent company's ownership outside the EU	Seller in Denmark	Approximately China-free	Unambiguously European
Chinese producer 1	China	EU (Hungary)	China	100% China	Yes	No	No
European producer 1	China	China	Netherlands	5% China 20% Taiwan	(Yes)	No	No
European producer 2	EU (Germany)	EU (Poland) Turkey	Germany	15% Qatar	Yes	Yes	No
European producer 3	EU (Germany) Turkey	EU (Germany, France)	Germany	20% China 5% Kuwait	Yes	No	No
European producer 4	China EU (Sweden)	China	Germany	15% Qatar	(Yes)	No	No
European producer 5	China EU (Poland)	EU (Poland)	Spanien	10% USA	(Yes)	No	No
European producer 6	China	EU (Netherlands, Belgium)	Netherlands	0%	No	No	No
European producer 7	China	Egypt EU (Sweden)	Sweden	20% China	No	No	No
Chinese producer 2	China	China	China	100% China	Yes	No	No
Chinese producer 3	China	China	China	100% China	Yes	No	No



An authorized, objective third party certification could be a supporting tool. It could be an authorized list from the Commission defining which companies it would be OK to buy from.

Kind regards,

Lone Rasmussen

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Danish Public Transport Authorities

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## **APPENDIX 1**

### **Response from the European Commission regarding the definition of “Made in the EU” September 2025**

Fra: SALONI Jan <[jan.saloni@ec.europa.eu](mailto:jan.saloni@ec.europa.eu)>

Sendt: 20. september 2025 16:35

Til: Sarah Maria Friis Steine <[SFS@MOVIATRAFIK.DK](mailto:SFS@MOVIATRAFIK.DK)>

Cc: Tine Thiberg <[THI@MOVIATRAFIK.DK](mailto:THI@MOVIATRAFIK.DK)>; Victor Hug <[vih@moviatrafik.dk](mailto:vih@moviatrafik.dk)>; ve\_grow.d.2 (GROW) <[grow-d2@ec.europa.eu](mailto:grow-d2@ec.europa.eu)>

Emne: RE: Regarding the scope of Regulation (EU) 2019/1242 - Ares(2025)7905309

[RE: Regarding the scope of Regulation \(EU\) 2019/1242 - Ares\(2025\)7905309](#) (Please use this link only if you are an Ares user – Svp, utilisez ce lien exclusivement si vous êtes un(e) utilisateur d’Ares)

Dear Sarah Maria Friis Steine,

Please find below a reply we gave to an earlier received question on how to apply Article 3e(a) or Regulation (EU) 2019/1242 (Heavy-Duty Vehicles). I hope it also replies to your questions, but please let me know if it is not the case.

Kind regards,

Jan Saloni

*Team Leader, Public procurement policy – Legal Framework*

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### **REPLY:**

Firstly, it is important to note that the referred technical specification/award criterion (*‘the proportion of the products of tenders originating in third countries’*) is only one of the five listed in Article 3e of Regulation 2019/1242, from which the contracting authority must choose two, at least one of which shall relate to the tender’s contribution to the security of supply.

Secondly, it is fully up to the contracting authority or entity to decide whether to apply it as a technical specification or an award criterion, if it selects this option among the five (next to at least one more).

If the contracting authority/entity decides to use this requirement/criterion, it must follow the rules of origin set in the Regulation (EU) No 952/2013 (if need be, please refer to the guidance on non-preferential rules of origin - [https://taxation-customs.ec.europa.eu/customs-4/international-affairs/origin-goods/non-preferential-rules-origin\\_en](https://taxation-customs.ec.europa.eu/customs-4/international-affairs/origin-goods/non-preferential-rules-origin_en)). According to these rules, for a product the production of which involves more than one country the origin is:

- Where it underwent its last, substantial, economically justified processing or working in an undertaking equipped for that purpose, resulting in the manufacture of a new products or representing an important stage of manufacture (Article 60 of the Union Customs Code (Regulation (EU) No 952/2013). In the case of buses (HS 8702 - Motor vehicles for the transport of  $\geq 10$  persons, incl. driver (see Chapter 87 of the Schedules of customs duties in Commission Implementing Regulation (EU) 2024/2522; [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_202402522](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202402522))), it means that the last transformation and incorporation (going beyond a mere assembly and a “Minimal operation” mentioned in Art 34 of the UCC-DA (Commission Delegated Regulation (EU) 2015/2446)) of parts originating in the country of manufacture has to led to an increase in value, representing at least 45% of the ex-works price of the product.
- If the last transformation of the product was not substantial (the value below 45%), in line with the Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 the origin of the final product is where the major portion of the materials originated.

Given the above, a public buyer may, for example, establish a technical requirement like:

- A certain specific (above zero) percentage of offered electric busses must not originate in third countries that are not parties to the GPA, and that have not concluded a free trade agreement, covering public procurement including for purchase in question, with the Union, i.e.:
  - produced or last substantially transformed in the EU country or a single country to which EU opened it procurement market for buses (i.e., transformation, incorporation and parts originating in these countries represent at least 45% of the ex-works price of the product); the tenderer provides a statement in this regard e.g. indicating the place of the above processing or working (for EU origin); or a copy of a customs declaration it made, with any accompanying documents if relevant, especially decisions of competent authorities concerning content of the declaration, if any (for non-EU origin), or
  - the last transformation of the bus was not substantial, and the major portion of materials originates from EU or a single country to which EU opened it procurement market for buses; the tenderer provided, as relevant, a statement in this regard or a statement and a copy of custom declaration(s).

or an award criterion mechanism like:

- Pre-announced proportion of award criteria points for origin (that would weight 15 to 40 % in calculation of the overall score) is given according to a percentage of offered buses that originate in a country that is party to the GPA or that has concluded a free trade agreement, covering public procurement purchase in question, with the Union.