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URGENT ACTION REQUIRED TO AVOID GOING OFF THE RAILS: STEERING PUBLIC PROCUREMENT TOWARDS ECONOMIC SOVEREIGNTY

The Committee of Inquiry was created on the initiative of the Les Indépendants – République et Territoires (LIRT) group. During its **51 plenary hearings** and **three trips** in France and abroad, it **met with representatives of 134 organisations** embodying public procurement in all its diversity: local elected officials, government departments, experts, lawyers, economists, public procurement officers, economic actors and representatives of the public health sector. After four months of work, it has made **67 recommendations** aimed at better exploiting the potential of public procurement to serve European economic and digital sovereignty.

1. PUBLIC PROCUREMENT, A KEY DRIVER OF THE FRENCH ECONOMY: A POWERFUL LEVER WHOSE RESTRICTIONS NEED TO BE LIFTED

A. PUBLIC PROCUREMENT IS A FUNDAMENTAL PILLAR OF THE FRENCH ECONOMY DUE TO ITS ECONOMIC WEIGHT, PARTICULARLY LOCALLY

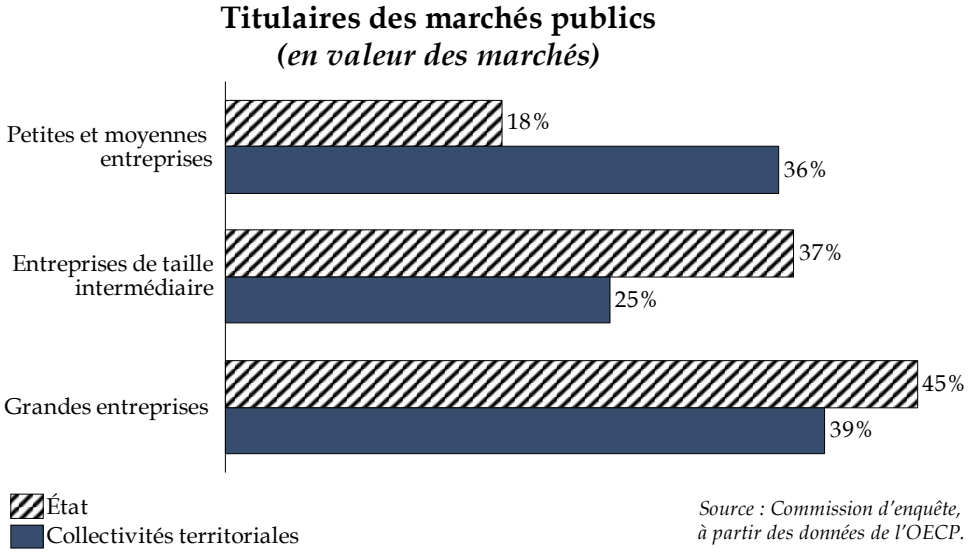
Measuring the exact economic impact of public procurement in France is complex, particularly as **a substantial proportion of public contracts are of low value and are not** accurately **recorded**.

Based solely on contracts worth €90,000 or more excluding VAT, **French public procurement** is estimated **to have represented €170 billion** in 2023, double the figure for 2014 when public contracts accounted for only €83 billion. According to the European Court of Auditors, **its weight in the French economy amounts to 14% of GDP, or €400 billion**.

According to the European Union, public procurement represents €400 billion a year in France.

Public procurement is driven mainly by local authorities which accounted for 80% of all public contracts in 2023, compared with only 8% for central government and 12% for public companies and network operators. A significant proportion of these contracts are actually awarded through central purchasing bodies. The largest of these, **the Union des Groupements d'Achats Publics (UGAP), accounts alone for nearly 3% of French public procurement** with orders worth €5.9 billion in 2024, up 6.2% from the previous year.

Although local authority public procurement is managed by elected officials and teams with far fewer resources than the central government, it has a greater impact on small and medium-sized enterprises than that of central government.



B. AN OLD LEGAL INSTRUMENT DESIGNED FOR THE NEEDS OF PUBLIC AUTHORITIES AND ENSHRINED IN A EUROPEAN FRAMEWORK

French public procurement law has developed gradually since 1833, and inspired the European legislation that now provides its framework.

Public procurement must comply with certain fundamental principles (equal treatment of candidates, non-discrimination and transparency of procedures) with the aim of ensuring the proper use of public funds.

The fundamental principles of public procurement law have constitutional value and are enshrined in law.

There are three types of procedures, depending on the estimated value of the procurement:

- negotiated procedures without publication or call for competition, for contracts worth less than €40,000 excluding VAT (€100,000 excluding VAT for works);
- adapted procedures, which are specific to France, for contracts above these amounts but below the European thresholds – between €143,000 excluding VAT and €5,538,000 excluding VAT depending on the contracting authority and the type of contract;
- formal procedures, in particular calls for tender, above these amounts.

C. A TANGLE OF RESPONSIBILITIES AMONG KEY PLAYERS IN PUBLIC PROCUREMENT

No administration can be described as "steering" public procurement policy at the national level:

- the State Procurement Directorate (DAE) is responsible solely for central government procurement policy (excluding defence and security procurement), while the Directorate-General for Healthcare Provision (DGOS) supports optimisation of hospital procurement, and there is no entity dedicated to procurement by local authorities;
- the Legal Affairs Directorate (DAJ) of the economic and financial ministries only develops official legal doctrine on public procurement, while acting as lead in renegotiation of the European directives on behalf of France;
- the General Commission for Sustainable Development (CGDD) simply monitors legislative provisions relating to sustainable procurement.

The investigations of the Committee of Inquiry showed that the government had failed to rise to the challenge in recent years when public procurement has been required to respond to emergencies or guarantee national and European sovereignty, whether to purchase masks during the pandemic, meet the objectives of the EGALIM Act, or protect public data against the giants of the digital sector.

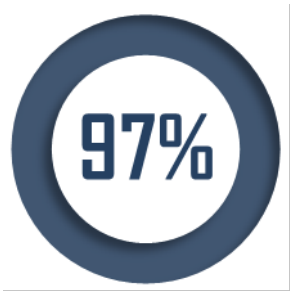
In view of these shortcomings, the Committee of Inquiry considers it essential to **give the Prime Minister responsibility** for the **management**, consistency and efficiency of public procurement in France and to **involve Parliament more closely** in its monitoring through an annual debate on the State's procurement policy **(Recommendations 4 and 6)**.

D. THE DIFFICULTIES OF LOCAL ELECTED OFFICIALS IGNORED FOR TOO LONG

The Committee of Inquiry wanted a more representative overview of the issues and challenges posed to local authorities by the substantial changes to the legal framework for procurement in recent years. It therefore gathered the views of local elected representatives on two visits to Vannes and Lille, where it met dozens of representatives from different levels of local government, and through a public consultation on the Senate's dedicated platform in April 2025, to which 1,179 participants responded, the majority of whom represented municipalities.

The consultation revealed **a clear desire to stabilise and simplify the regulations in force** in order to enable elected officials to make their contracts more secure and conduct procurement procedures more quickly, thereby serving the local economic ecosystem. Among the elected officials consulted:

fear criminal liability



seek to support local businesses in their public procurement

2. STATE FAILURES IN TRANSFORMING PUBLIC PROCUREMENT

A. ENVIRONMENTAL AND SOCIO-ECONOMIC TRANSITIONS: THE STATE IS NOT SETTING AN EXAMPLE

1. Mixed results of the measures already in force

With **central government procurement accounting for 23% of its total greenhouse gas emissions,** or 10 million tonnes of CO_2 equivalent each year, converting public procurement to a responsible model has become a priority in recent years for achieving a global ecological transition.

However, the environmental obligations introduced in public procurement law in recent years are not being implemented in full.

- In public catering, the requirements of the EGALIM Act were far from being met in 2023. For example, among catering services:

complied with the obligation to offer 50% sustainable, good-quality products

complied with the obligation to offer 20% of products from organic farming

As a result, the Committee of Inquiry recommends **transferring the deputy managers of middle and high schools, which today fall under the purview of the Ministry of Education, to the local authorities responsible** for them, in order to ensure more consistent management of their collective catering services **(Recommendation 8)**.

- A minority of contracting authorities comply with the targets for reuse, recycling or use of recycled goods set by the AGEC Act: **7%** of purchasers comply with the minimum requirements for textiles and **11%** for IT equipment.

The Committee of Inquiry is convinced of the merits of this shift towards more responsible public procurement, and considers that the embryonic implementation of this new legal framework is mainly the result of a failure of data-driven management. This has led to standards being defined without taking into account the initial practices of purchasers and, above all, to **a lack of support from the State for the smallest purchasing authorities**, thereby resulting in very uneven implementation of the new legal framework. It noted that the difficulties encountered by purchasers in changing their practices have been underestimated, leading to **incomplete and belated support measures**.

2. Incorporating environmental considerations into public procurement: the challenge of the Climate and Resilience Act

The mixed results of the environmental measures already in force highlight the challenge of complying with the measures set out in Article 35 of the Climate and Resilience Act of 22 August 2021, with which all contracting authorities must comply from 22 August 2026, by incorporating an environmental performance clause and an award criterion that takes the environmental performance characteristics of the tender into account in each contract, as well as socio-economic considerations for contracts exceeding European thresholds.

The Committee of Inquiry noted that **public purchasers are inadequately prepared for such a change in the legal framework**, and are very concerned about the administrative burden it will entail.

Consequently, in order to enable small contracting authorities, and particularly the smallest municipalities, to adhere to these new objectives, the Committee of Inquiry calls for **the rationalisation and improvement of the support tools** made available by the State, as some of the systems provided for by the law are not yet operational, in particular the Ecobalyse tool, which has a very limited scope. In the absence of truly effective support for contracting authorities, the Committee of Inquiry shares the fears expressed by the French Court of Auditors that "***purchasers (...)*** may ***be tempted to include criteria or clauses that have no real significance***".

In order to enhance the environmental and socio-economic sustainability of public procurement, the Committee of Inquiry therefore recommends:

- **better coordination**, under **a lead agency** designated by the Prime Minister, of the actions of the DAJ, DAE, CGDD, ADEME and local networks in developing tools and training to support the **transition of local public procurement policies** towards sustainable procurement **(Recommendation 11)**;
- that **the State finally make available** to public purchasers **tools for analysing the life-cycle costs** of goods in the main purchasing segments, as required by Article 36 of the Climate and Resilience Act **(Recommendation 12)**;
- that the State be given responsibility for conducting **quality surveys on the various socio-economic considerations** taken into account in public procurement, in particular the pooling of professional integration measures between public entities, **in order to improve the long-term integration** of beneficiaries **into employment (Recommendation 13)**.

B. INCOMPLETE PROFESSIONALISATION OF THE PROCUREMENT FUNCTION

Rapid changes to the legal framework for public procurement, the integration of new environmental, socio-economic and performance requirements for procurement, and the growing budgetary pressures on public purchasers have led to a move towards the professionalisation of the procurement function, although this is still incomplete. Long perceived as a purely administrative procedure, public procurement is now an integral part of public policy, requiring specific expertise.

The Committee of Inquiry found **significant disparities in the professionalisation of the purchasing function**. While the central government and the largest local authorities have been working since the 2000s to restructure their procurement function entirely, creating dedicated departments, recruiting professional buyers and developing a genuine procurement strategy, **smaller local authorities continue to face multiple challenges in developing their skills**: difficulties in recruiting staff, lack of training for employees, and insufficient purchasing volumes to justify professionalisation. As a sign of this gap, **less than 10% of mayors surveyed by the Senate in its consultation of local elected officials indicated that they had a professional buyer on their staff**.

To remedy this gap, the Committee of Inquiry calls for **better training for public procurement employees** through dedicated university programmes and greater use of **joint procurement procedures** which should also be simplified, particularly at the inter-municipal level **(Recommendations 14 and 15)**.

C. FAILINGS AND CONTRADICTIONS: THE STATE AT FAULT

During its work, the Committee of Inquiry noted **the State's persistent difficulties in supporting innovative French and European start-ups and SMEs in the context of public procurement, and in ensuring full protection of public data.**

1. The French national identity card: a missed opportunity for French innovation

The rollout of the new electronic national identity card (CNIe) in France was a major project combining high security requirements and technological innovation, but was carried out without turning to emerging French solutions that had nevertheless met with great success abroad.

For the design and manufacture of the CNIe, the Imprimerie Nationale (the French national printing office) called on external service providers capable of supplying cutting-edge technologies to ensure the security of the document. The work of the Committee of Inquiry highlighted **an alarming lack of commitment on its part to including innovative French technologies** in this context.

"*We were never consulted on the CNIe project, despite all the recommendations from the Ministry of the Interior*," said Cosimo Prete, CEO of CST.

The exclusion of certain innovative French companies from a project of this scale is a regrettable illustration of the reluctance of some contracting authorities to support SMEs and contribute to their development through public procurement.

2. The Health Data Hub: facing the contradictions of the State policy

Similarly, the Committee of Inquiry noted **considerable inertia on the part of the State with regard to issues of digital sovereignty and the protection of sensitive data in the context of public procurement**, as sadly illustrated by the case of the Health Data Hub, known as the *Plateforme des données de santé* (PDS).

The PDS was established in 2019 with the aim of promoting the use of health data for research, particularly in artificial intelligence, support for healthcare personnel, and healthcare system management. Given the highly sensitive nature of the data in question, as well as the government's policy of protecting and ensuring the sovereignty of sensitive public data, the decision to entrust hosting of this platform to the Azure cloud solution from Microsoft – a company subject to US extraterritorial laws that could lead to data leaks – rather than a sovereign host, was a clear error, if not a political mistake.

While the Ministry of Health stated that the cloud solution proposed by Microsoft was the only one that "met all the functional and health requirements", the documents provided to the Committee of Inquiry suggest that **this choice was in fact motivated more by time and cost considerations,** as Microsoft's solution could be purchased through UGAP and was therefore available immediately, while **according to these documents another French hosting solution appeared to meet the security requirements,** but had higher production costs and a five- to eight-month longer implementation timeframe. For the elected officials heard by the Committee of Inquiry, the decision to use Microsoft was clearly a choice made in order to meet a time constraint. The Committee of Inquiry, on the other hand, considers that **compliance with public procurement law, which requires that the most economically advantageous tender be selected, cannot depend on time constraints or political imperatives, especially when the solution that is chosen contravenes the stated objectives and demonstrates a lack of foresight.**

Furthermore, while Microsoft was only intended to be a temporary solution to get the project up and running quickly, **a situation of dependence** on its services has developed, as the strategy for reversing the platform's hosting has never been implemented. Six years after the launch of the PDS, only an interim solution is currently being considered to remedy the most glaring shortcomings in relation to the project's initial ambitions.

Although it was promised that the hosting solution would be reversible and Microsoft was only supposed to provide a temporary two-year service, migration to a sovereign hosting solution still seems a long way off.

The management of the Health Data Hub reflects **the government's inability to guarantee the protection and sovereignty of public data**. Despite the strengthening of the French data protection policy, the existence of an expert report recommending that hosting on Azure be discontinued, and recent statements by certain elected officials indicating their desire to see the platform migrate to a sovereign solution, **it is clear that any such migration, although required by law, still seems a long way off** and will involve far higher costs than those that would have been necessary to implement sovereign protection for the hosted data when the project was launched.

The Committee of Inquiry therefore calls for **hosting of the Health Data Hub to be transferred as soon as possible to a sovereign cloud solution** that is immune to extraterritorial legislation, in accordance with Article 31 of the SREN Act **(Recommendation 16)**.

3. THE NEED TO SET A CLEAR COURSE IN ORDER TO STEER PUBLIC PROCUREMENT POLICY TOWARDS ECONOMIC SOVEREIGNTY

A. THE ONGOING PROCESS TO REVISE EUROPEAN DIRECTIVES ON PUBLIC PROCUREMENT

Due to its impact on the functioning of the internal market, public procurement law is governed by **European directives** which are then transposed into French law.

At the European level, public procurement represents:

Due to its scale, public procurement is a **strategic lever** for EU industrial policy and competitiveness.

The 2014 Public Procurement Package currently in force consists of **three directives** that have been **severely criticised** by the European Court of Auditors, which pointed out in particular **that they had not achieved their objective** of simplifying and strengthening competition in public procurement procedures, and had even had the opposite effect.

As a result, and in view of the economic and strategic developments since 2014, which require the mobilisation of public procurement to support innovation, secure supplies and reduce technological dependence, **a revision of these directives was announced in the summer of 2024** by European Commission President Ursula von der Leyen, to be completed by 2027.

The **European Commission** has already conducted an online **consultation** open to all stakeholders, and is expected to continue its work during 2025, before proposing a draft reform by the end of 2026.

The **European Parliament**, meanwhile, through its Committee on the Internal Market and Consumer Protection (IMCO), has taken the initiative of drawing up a report to accompany this review. Its **initial outline favours a purely economic approach to public procurement**, however, in complete contradiction with the vision of the Committee of Inquiry. The Committee travelled to Brussels to meet with the European Commission and the Commissioner responsible for these matters, Stéphane Séjourné, Executive Vice-President for Prosperity and Industrial Strategy, to inform them of **the need to seize this opportunity to make public procurement a true public policy, at the European level, designed to support the ecological and socio-economic transitions and the economic, agricultural, industrial and digital sovereignty of the European Union.**

B. FOR A BROADER PRINCIPLE OF EUROPEAN PREFERENCE

In the context of the revision of the European directives, the Committee of Inquiry considers that emphasis should be placed on a **European preference**, inspired by the long-standing provisions in the United States set out in the Buy American Act*,* which impose a regime of national preference for federal procurement, except in cases where the price of the bid is unreasonable.

Without breaching its international commitments, the European Union should **show less naivety towards its partners** who close their public procurement markets to its companies while benefiting from the European market. The changing international context calls for public procurement to support European companies within the internal market. The European Commission has already taken a first defensive step in this direction with the 2022 International Procurement Instrument, and in its recent communications with regard to certain critical sectors.

According to the Committee of Inquiry, it is necessary to go further. The aim should not only be to ensure the resilience of the economy by securing local supply and responding to emergencies or crises, but above all **to adopt a cross-cutting approach with one rule applicable to all economic sectors throughout Europe,** in order to contribute to the structuring of sovereign supply chains.

European preference must be general and not limited to specific sectors.

It is also essential that France should defend **a food exception at the European level** as part of the revision of the public procurement directives, facilitating the use of local producers and developing short agricultural supply chains for the benefit of public catering.

The Committee of Inquiry calls for **the introduction** of a **general principle of European preference** in public procurement as part of the revision of the European directives on public procurement **(Recommendation 19)**.

It calls for the introduction of a **food exception** in public procurement law to facilitate the **use of local producers and short supply chains**, in particular for local authorities **(Recommendation 18)**.

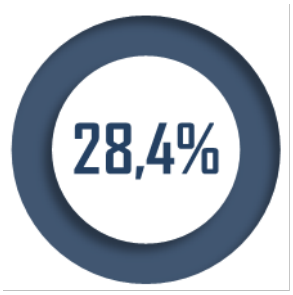
It calls for **parliamentary diplomacy** to help build a qualified majority for the adoption of an ambitious revision of the European public procurement directives **(Recommendation 17)**.

C. TOWARDS A EUROPEAN SMALL BUSINESS ACT

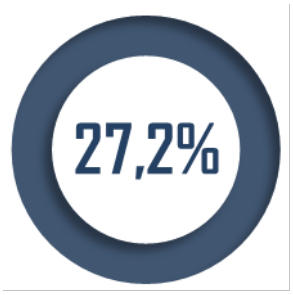
The revision of European public procurement rules should also be an opportunity to fulfil a long-standing but as yet unfulfilled commitment: to support **the development of small and medium-sized enterprises (SMEs)** by reserving a share of public contracts for them, as in the US Small Business Act (SBA).

The **US model** is an example to be followed: since 1953, it has reserved a share (by value) of federal public contracts for micro-enterprises and SMEs, and also allows them to be awarded contracts directly below certain thresholds.

Theoretical share of public contracts reserved for SMEs in the United States (by value)



Actual share of public contracts awarded to SMEs in the United States



Share of public contracts awarded to SMEs in France

Tools already exist to facilitate SME access to public procurement and have proven their effectiveness: allotment, temporary groupings of companies, and raising thresholds. However, many stakeholders consulted by the Committee of Inquiry, from local authority representatives to digital companies, consider it essential to go further and **transform public procurement into a tool for supporting the local economy and innovative companies**.

The Committee of Inquiry therefore calls for the introduction **of a European Small Business Act** as part of the revision of the European directives on public procurement. It should reserve **at least 30%** of the value of public contracts awarded by all contracting authorities for SMEs **(Recommendation 20)**.

This European Small Business Act should **reserve public contracts for supplies and services below the European thresholds for SMEs**, and also those below **€100,000 excluding VAT for works**, except in cases where an initial procedure has been unsuccessful **(Recommendation 21)**.

D. CHANGING MINDSET: GUARANTEEING EUROPEAN DIGITAL SOVEREIGNTY IN PUBLIC PROCUREMENT

1. Protecting public data from foreign capture attempts

In an extremely tense geopolitical context, **the dependence of France and Europe on foreign digital solutions**, particularly those from the United States, and the application of **US extraterritorial law** to companies providing data hosting services to French public authorities entail considerable risks.

The Foreign Intelligence Surveillance Act (FISA) and the Clarifying Lawful Overseas Use of Data (Cloud) Act allow the US government to require companies subject to US law to disclose the data they store, with the simple authorisation of a judge. China and India have also adopted similar legislation.

When asked by the Committee of Inquiry to guarantee that data of French citizens hosted by Microsoft would never be transferred to foreign authorities without the consent of the French authorities, Anton Carniaux, Director of Public and Legal Affairs at Microsoft France, replied: "*No, I cannot guarantee that*."

Microsoft France is unable to guarantee the sovereignty of the data of French citizens that it hosts.

This possibility raises concerns that **pressure** could be exerted on France and other EU Member States, either through malicious use of data obtained by a foreign government or through restrictions on access to digital solutions on which the European Union is now dependent.

Some European countries, such as Denmark, have therefore decided to phase out Microsoft solutions. **The French government's action in this area is clearly at odds with these announcements**.

Since 2021, the **"cloud-centred" doctrine** has required ministries deciding to use commercial cloud services for hosting sensitive data to choose a service with SecNumCloud security certification, delivered by the National Agency for the Security of Information Systems (ANSSI).

This requirement was recently given legislative force through Article 31 of the Law on securing and regulating the digital space (SREN) of 21 May 2024.

However, although very clear instructions have been given recently to local education authorities to halt the deployment of Microsoft and Google collaborative suites, **the Ministry of Education has recently awarded a major contract for the provision of Microsoft solutions to its departments and higher education establishments, with an estimated value of €75 million over four years.**

This contract was awarded without prior submission to the Interministerial Digital Directorate (DINUM) for approval, which has been a requirement since 2019 for implementing IT projects with a total estimated value of €9 million or more, including VAT. As with the PDS, the **conditions in which the market study was conducted prior to launching the procedure are contested** by sovereign digital players who feel they were not consulted.

Despite its requests, the Committee of Inquiry has received no evidence to suggest that such criticisms were unjustified, which is a further sign of the ambivalent relationship between the French digital sector and the State, and of the disconnect between what the State says and what it does.

> The Committee of Inquiry therefore considers it essential to **streamline management of the State's digital policy** by reaffirming the steering role of the Interministerial Digital Directorate under the authority of the Prime Minister, and by reminding State administrations of the mandatory nature of the "cloud-centred" doctrine **(Recommendation 29)**.

The Committee of Inquiry found that there was systematic denigration of European digital solutions within the State, which are wrongly considered to be expensive and to underperform.

To justify the choice of foreign solutions, the Ministry of National Education cited **financial reasons** and **questioned the ability of French** and European **players** to deliver a level of performance comparable to that of the American giants.

However, the National Gendarmerie has long since decided to migrate to open source solutions, unlike the National Police which has to bear several million euros of **substantial hidden costs** to migrate to Windows 11.

This **phenomenon is unfortunately perpetuated by large central purchasing bodies**, primarily UGAP. Through its multi-editor and cloud hosting service contracts – worth €860 million and €44 million in sales in 2024, respectively – the latter acts as a **simple intermediary between supply and demand** for foreign solutions, as admitted by its CEO, who acknowledged that it needs to advise its customers better on whether their suppliers might be subject to foreign extraterritorial law.

"*On sovereignty issues, I recognise that there are things we can do.* (...) *We need to provide more information about publishers, software and hosting conditions. We have some work to do.*" Edward Jossa, CEO of UGAP.

The Committee of Inquiry calls for **the lack of political leadership at UGAP** to be remedied in order to make it a tool for industrial and digital sovereignty, by **placing it under the supervision of the ministry responsible for industrial and digital sovereignty** and **limiting** its board members **to two successive terms of office (Recommendation 30)**.

The use of **foreign solutions operated by players immune** to US law, such as the Bleu "trusted cloud" promoted by Orange and Capgemini and currently undergoing SecNumCloud certification, is often presented as a compromise for public authorities.

However, **this would not be a viable solution**, as it would contribute to maintaining France's dependence on foreign solutions while exposing to the risk of having access to these technologies cut off by their American suppliers.

In such a context, in order to protect the data of French citizens more effectively in matters of public procurement, the Committee of Inquiry makes the following recommendations:

- ensure the implementation of Article 31 of the SREN Act as soon as possible, in accordance with the will of the legislator **(Recommendation 22)**;

- recognise the sensitive nature of all data produced or held by public entities (Recommendation 23);

- make it mandatory in all public contracts involving the hosting and processing of public data in the cloud to include a **clause stipulating that no foreign extraterritorial legislation may apply** and, in all public contracts for consultancy services, a **clause prohibiting the transfer of deliverables produced in the context of these services** to any third country, requiring **consultancy firms** working for the public sector **not to be subject to foreign extraterritorial law** (**Recommendations 24, 27 and 28)**;

- enforce **the mandatory selection of offers with SecNumCloud certification for hosting particularly sensitive public data**, preferably through **fully sovereign solutions (Recommendations 25 and 26)**;

- and **assign national central purchasing bodies**, and in particular UGAP, the **objective of supporting the structuring of French and European economic sectors**, particularly in the digital sector by disseminating sovereign software and cloud hosting solutions **(Recommendation 31)**.

2. Offer our start-ups development opportunities through public procurement to free us from foreign solutions

In France, **start-ups find it particularly difficult to access public procurement**, with only €1.75 billion allocated to them in 2022.

According to businesses, this situation stems in particular from **the fact that the structure of calls for tenders is ill-suited to the specific characteristics of start-ups**, and from the natural tendency of public procurement authorities to favour large groups, which are wrongly considered more reliable but are often less innovative.

In the digital sector, **buyers therefore too often turn to large foreign suppliers** and do not make sufficient use of legal instruments that would enable them to support French innovation, such as innovation partnerships and the "innovative procurement" scheme.

of public procurement went to start-ups in 2022 (in value)

Threshold for exemption from publication and competitive tendering for innovative procurement

However, **innovative start-ups say they are prepared to make the necessary investments to develop sovereign digital solutions**, provided they are guaranteed contracts in return.

The Committee of Inquiry therefore considers it necessary to:

- significantly raise the threshold for exemption from publication and competitive tendering for innovative procurement to between €143,000 and €443,000 excluding VAT, depending on the category of public purchaser **(Recommendation 32)**;

- clarify the legal definition of innovative procurement, which is vague and likely to give rise to litigation for public purchasers **(Recommendation 33)**;

- ease the constraints that may be imposed on companies bidding for a public contract by lowering the minimum turnover threshold and limiting the ability of public purchasers to impose conditions relating to their technical and operational capabilities **(Recommendations 34 and 35)**;

- and **strengthen financial support for our start-ups** by involving all public procurement stakeholders in the "*Je choisis la French Tech*" programme and encouraging buyers to commit to targets for purchasing from start-ups **(Recommendations 36 and 37)**.

E. SIMPLYFYING PUBLIC PROCUREMENT: FROM WORD TO ACTION

1. Freeing public purchasers from excessive standards

Today, **the extreme complexity of public procurement rules weighs heavily on public purchasers**, hindering their willingness to act. The Committee of Inquiry noted in particular:

- the tangle of procedures and publication rules creates complexity and legal uncertainty, as illustrated by the contradictions in administrative case law on the legal classification of negotiated contracts;

Apart from a few cases, the largest contracts are paradoxically the only ones that cannot be negotiated.

- restriction of the possibility of negotiation to very specific situations prevents SMEs from promoting their offers and purchasers from choosing the most competitive bid best suited to their needs;
- The extremely cumbersome process of verifying that tenderers comply with their legal and regulatory obligations, particularly in the areas of taxation and social security;
- And the headache caused by the obligation, in the event of default by the contract holder, to award a new contract using the same procedure as that followed for the initial contract.

Public purchasers should be able to negotiate all their contracts freely, in accordance with the fundamental principles of public procurement law.

A genuine simplification of public procurement law is therefore necessary. This could include the following:

- **abolish the adapted procedure**, which is not required by European law, and extend the scope of the negotiated procedure to the European thresholds **(Recommendation 38)**;

- **abolish the obligation to publish tender notices for formal procedure procurements in the Official Bulletin of Public Procurement Notices** (BOAMP) in addition to the Official Journal of the European Union (OJEU) **(Recommendation 40)**;

- authorise all contracting authorities to **make free use of the competitive procedure with negotiation** without having to justify their choice **(Recommendation 42)**;

- make a **"public procurement passport"** available to public purchasers via an online platform, certifying that tenderers for a contract comply with their legal and regulatory obligations **(Recommendation 43)**;

- and introduce the possibility of **replacing a defaulting contractor or lot holder through a simplified procedure**, without prior publication or competition **(Recommendation 45)**.

2. Removing obstacles that hinder businesses in benefitting from public procurement

The burdens and constraints imposed by public procurement law also weigh heavily on businesses and contribute to their mistrust of public procurement.

For example, **variants** (alternative tenders involving a change in the technical specifications from the basic solution described in the specifications) are prohibited in formal procedures, unless otherwise specified.

However, due to a lack of expertise or fear of litigation, public contracting authorities are reluctant to authorise them, even though they enable innovative companies to promote their products and broaden the scope of competition, which is in everyone's interest.

The **issue of late payment** is another source of concern for businesses, particularly micro-enterprises and SMEs, whose cash flow is fragile.

would have been transferred from the cash flow of large companies to micro-enterprises and SMEs if there had been no late payments in 2022

of referrals to the Business Ombudsman are related to late payments

In addition to delays linked to financial difficulties, which are often observed in the public healthcare sector, some buyers seek to delay the start of the payment period by various means.

The Committee of Inquiry therefore suggests the following:

- reverse the current regime for variants, authorising them in principle unless otherwise specified **(Recommendation 47)**;

- in return, allow public purchasers, whom the State needs to provide with reliable analysis tools, to **test the** proposed **variants** before adopting them **(Recommendation 46)**;

- enforce **automatic payment of interest** on late payments where when the delay is attributable to the public contracting authority **(Recommendation 49)**;

- inform all public purchasers of the **consequences of their late payments** on businesses and **require government departments to comply** with **statutory payment deadlines (Recommendation 50)**;

- **promote rating methods that do not distort the weighting between the criteria for evaluating tenders (Recommendation 52)**;

- make it mandatory to publish the method used to score tenders, which would enable companies to tailor their bids more effectively to the needs of purchasers, and evaluate the price criterion on the basis of prices excluding tax, so as to ensure fair treatment for all tenderers, whether they are subject to VAT or not **(Recommendations 53 and 54)**.

F. SECURE AND TRAIN PUBLIC PURCHASERS TO UNLEASH THEIR ENERGY

1. Disseminate good practices and enhance training for public purchasers

In France, **the public procurement sector has no shortage of good practices**, developed in particular at the local level, which would benefit from being at least identified and then disseminated throughout the ecosystem.

At the same time, despite recent efforts to professionalise the procurement function within both central and local government, training for elected officials remains optional, while the provision of such training in higher education remains embryonic.

As a result, **many public purchasers are forced to use a project management consultant** (AMO) to advise them on their purchases or the conduct of their works, which can lead to inefficiency and additional costs, reduce the autonomy of public purchasers, and **give rise to conflicts of interest**.

In view of this situation, the Committee of Inquiry considers that it would be advisable to:

- enhance the role of elected officials sitting on tender committees (CAOs) by providing them with compulsory training on the issues and regulations relating to public procurement **(Recommendation 57)**;

- provide stronger support for the development of university programmes dedicated to public procurement, taking into account sovereignty and sustainability **(Recommendation 58)**;

- establish a **mechanism for accrediting bodies providing project management consultancy to public entities**, in order to eliminate the risk of conflicts of interest in connection with such services provided to private companies **(Recommendation 60)**.

2. Restoring buyer confidence in public procurement

The **fear of criminal liability** associated with public procurement was raised frequently before the Committee of Inquiry.

In fact, the **offence of favouritism**, which is punishable by two years' imprisonment, a fine of €200,000 and a mandatory additional penalty of ineligibility, is characterised by an elected representative or public official committing an error in the application of public procurement law, even if the person concerned is acting in good faith.

"Fortunately, we don't think about criminal proceedings! Otherwise, we would resign." Joël Marivain, president of the Morbihan Association of Rural Mayors (AMR 56).

This has led to a **tendency towards risk aversion** which **excessively limits the flexibility** of public procurement, while helping to avoid many criminal prosecutions (only 211 convictions were handed down for a primary offence of favouritism committed by a public decision-maker between 2014 and 2023).

With no room for error, purchasers become risk-averse and less innovative, to the detriment of the public contracting authority.

As recommended in the report submitted to the Government in March 2025 by Christian Vigouroux, it is now desirable to strike a better balance between the necessity arising from an emergency situation and inexcusable infringements of the law by **excluding cases of ignorance of public procurement law from the scope of the offence of favouritism**:

- when they were intended to **achieve an overriding objective of general interest**;

- and when they **were not committed with the intention of granting an unjustified advantage (Recommendation 55)**.

G. ENSURING EFFECTIVE AND TRANSPARENT DATA-DRIVEN MANAGEMENT OF PUBLIC PROCUREMENT TO ACHIEVE ITS OBJECTIVES AND IMPROVE ITS MANAGEMENT

At a time when public procurement is increasingly called upon to play a strategic role in public policy, **the availability of comprehensive, centralised and usable data on public procurement appears to be a new imperative for improving its management and its economic, environmental and social performance**.

However, the information provided by the State on public procurement today can only be described as **incomplete**. Despite a reform due to be completed in 2025, the economic survey of public procurement carried out by the Economic Observatory for Public Procurement (OECP) remains partial. Until 2025, only contracts worth more than €90,000 excluding VAT had to be reported to the OECP. This threshold will be lowered to €40,000 excluding VAT from 2024 (for publication in 2025), and even €25,000 excluding VAT under certain reporting conditions, but it remains an obstacle to real-time knowledge of the characteristics of all public contracts, even though some contracting authorities have demonstrated that effective data-driven management of this public policy is a necessary objective and one that is achievable.

This is the case in **the Brittany region**, where the public procurement data observatory launched in 2022 **provides access to the performance of the region's contracts from the first euro** spent, offering buyers, businesses and citizens an overview of public procurement, particularly with regard to the environmental and socio-economic characteristics of these purchases, or their impact on the local ecosystem and businesses.

The Committee of Inquiry therefore considers that **the creation of a national, public and transparent statistical tool is a priority objective** for the performance of public procurement, and consequently recommends that **public procurement data be collected from the first euro spent** (while adjusting data reporting requirements according to the contract value) and that interoperability of buyer profiles be ensured, with automatic data reporting to the national open data portal (**Recommendations 61 and 63)**.

It also considers it essential to **develop tools to ensure the traceability of the value creation of public procurement**, not based solely on the nationality and legal registration of contract holders **(Recommendation 67)**.

It calls for **the data on public procurement held by the Economic Observatory for Public Procurement to be made public and easily accessible (Recommendation 65)**.

Finally, it calls for **the development of procurement planning among public actors and its publication** and requires the State and its operators to carry out procurement planning at least three years in advance **(Recommendation 66)**.

At its meeting on 8 July 2025, chaired by Simon Uzenat, Chairman, the Committee of Inquiry **unanimously adopted the report and recommendations** presented by Dany Wattebled, Rapporteur, and authorised their publication.

Simon Uzenat

Senator (SER)
for Morbihan
Chair

Dany Wattebled

Senator (LIRT)
for Nord
Rapporteur

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