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Municipal Waste Europe welcomes the new EU rules preserving public authorities' freedom to organise public services and calls for legal certainty in applying them

On 9 September, the European Commission published a proposal for a **Public Contract and Concessions Regulation (2026/0265 (COD)** [1](also known as 'Public Procurement Act'), repealing and replacing three existing directives: the Public Procurement Directive (2014/24/EU), the Utilities Directive (2014/25/EU) and the Concessions Directive (2014/23/EU).

The proposed framework preserves flexible options for the organisation of public services, including public-public cooperation and in-house provision. This flexibility across different governance models is essential to enable local and regional authorities to fulfil their public service obligations in a manner that ensures high service quality, operational efficiency, democratic accountability and responsiveness to the needs of citizens.

This is particularly important in the field of municipal waste management, where services are intrinsically local and must be tailored to specific territorial, demographic, environmental, and social circumstances. Municipalities require the flexibility to choose to organise waste collection, sorting, recycling, treatment, and circular economy activities through in-house operators or public-public cooperation structures when these models best serve the public interest.

With a view to fostering a constructive discussion with EU policymakers, MWE would like to draw attention to the following **top 3 priorities for the municipal waste management sector** concerning the proposed **Public Contract and Concessions Regulation:**

Our top 3 priorities

1. **Freedom of local authorities to choose how waste services are organised**
2. **The added value of in-house provision and public-public cooperation**
3. **The 3 key principles: legal certainty, proportionate transparency and meaningful simplification**

[1] https://single-market-economy.ec.europa.eu/publications/proposal-regulation-public-contracts-and-concessions_en

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Our top 3 priorities

1. Freedom of local authorities to choose how waste services are organised

Maintaining flexible options for the organisation of public services (e.g. waste management), including public-public cooperation and in-house provision, allows local authorities to design tailor-made services that reflect local realities. Local authorities bear the legal responsibility for ensuring the proper management of municipal waste under national legal frameworks implementing the Waste Framework Directive. Waste management systems differ significantly between urban and rural areas, densely populated regions and remote communities, and therefore require governance arrangements adapted to local needs and policy objectives.

Local authorities must therefore remain free to choose how they organise waste management services: through tendering to private operators, cooperation within public-private partnerships (including those awarded by Member States to private companies subject to equivalent public interest obligations), their own public companies or cooperation with neighbouring municipalities. All of these models have equal dignity and deliver good results across Europe. The choice lies with the public authority, which is accountable to its residents for the quality and efficiency of the service. That freedom should mean the same in every Member State; a single Regulation should not become a starting point for new national restrictions on the organisational choices of local authorities. **We therefore call for the deletion of any wording which would make new additional national restrictions possible**. Existing national rules could remain in place, but the regulation would no longer invite new national restrictions.

This approach is also consistent with the European Parliament's own-initiative report[2], particularly paragraph 24, which safeguards public authorities' freedom to organise and provide public services, including through in-house provision and public-public cooperation.

2. The added value of in-house provision and public-public cooperation

The proposed Recital 38 states that cooperation between local and regional authorities does not entail risks of distorting competition with economic operators. While this recognition is welcome, the recital does not acknowledge the positive contribution these organisational models can make to local communities, the European autonomy and the achievement of the European strategic goals.

[2] https://www.europarl.europa.eu/doceo/document/TA-10-2025-0174_EN.pdf

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- **Direct democratic control and accountability**

Strong public oversight over management is the cornerstone for ensuring democratic control and accountability across all forms of public service delivery. Within this context, in-house provision and public-public cooperation represent a direct organisational way for public authorities to exercise such direct democratic control and accountability. Through these models, public authorities can directly steer decisions regarding service quality, investments, environmental standards, tariffs, and long-term infrastructure under the supervision of elected representatives who are directly answerable to citizens. This democratic proximity strengthens transparency, public trust, and legitimacy in the delivery of essential public services.

- **Effective cooperation and long-term investment for the Circular Economy**

Furthermore, public-public cooperation creates opportunities for municipalities to pool expertise, share infrastructure, achieve economies of scale, and jointly invest in innovative waste prevention, collection, sorting, recycling, other treatments and circular economy solutions. Such cooperation enables long-term planning and stable investment strategies strongly focused on public value, management efficiency and ambitious circular economy objectives.

- **Organisational flexibility supports EU environmental and climate objectives**

Preserving this organisational flexibility is also crucial to achieving the European Union's environmental and climate objectives. Municipal waste management requires sustained investment in collection infrastructure and awareness-raising strategies, sorting and recycling capacity, resource recovery (including CRMs), energy efficiency and decarbonisation. Public authorities must retain the freedom to choose governance models that best support these strategic objectives and deliver high-quality services for citizens.

3. The 3 key principles: legal certainty, proportionate transparency and meaningful simplification

Preserving in-house provisions and public-public cooperation as legitimate options only on paper is not sufficient: they must remain workable in practice. Municipal Waste Europe therefore recommends assessing the proposal, as well as the amendments that will be tabled by the EU co-legislators, against the following three key principles:

1) **Legal certainty**

Arrangements that public authorities have lawfully put in place, often for the lifetime of their infrastructure, must not be called into question by new wording or by evolving case law. Revenue that results directly from performing an entrusted public task should be treated as task performance, not as market activity. When waste is processed on behalf of municipalities, selling the energy and raw

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materials recovered from that activity is part of that public task, not a separate market activity. This revenue should therefore count towards the 80% threshold, not to the 20%. This should be further clarified in the operative text or in a recital.

2) **Proportionate transparency**

Openness about which authority has entrusted which task to which public operator is welcome. Nevertheless, transparency should not become an instrument for challenging lawful arrangements. The obligation to publish every contract awarded should therefore be limited to contracts above the EU thresholds and to the information needed to establish that the conditions of the exemption are met.

3) **Meaningful simplification for public buyers**

The reduction in administrative burden promised by the Regulation must also be realised for municipalities and their public operators, including through thresholds that are automatically indexed to inflation and streamlined procedures. The duration of the arrangements and frequency of procedures should also reflect the long investment cycles necessary for waste management infrastructure.

The proposed Regulation should therefore continue to recognise that local and regional authorities are entitled to determine how public services are organised and delivered under effective public control. Public-public cooperation and in-house provision are legitimate, efficient, and essential tools for ensuring resilient, sustainable, affordable, and democratically accountable municipal waste management services across Europe. **The current provisions (Recital (38) and Articles 80 - 85) in the draft proposal should therefore be maintained, clarified with targeted improvements that ensure legal certainty and secure their practical application, and not narrowed further. Municipal Waste Europe will contribute concrete suggestions on these points in the course of the legislative process**.

Municipal Waste Europe represents European public responsibility for municipal waste management. Our members are municipalities and public waste management companies that play a crucial role in providing this Service of General Interest and in delivering a circular economy in Europe. We support the waste hierarchy, resource efficiency and the exchange of good practices to develop environmentally sound and efficient waste management systems in Europe.
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