



# ARTICLE

## ECONOMIC AND ADMINISTRATIVE SIMPLIFICATION BILL: WHAT'S NEW IN PUBLIC PROCUREMENT?

Public Law and Public Procurement Law | 23/05/24 | Vincent Brenot Hélène Billery



The government has recently unveiled its new simplification action plan for businesses, entitled 'Let's Simplify!'. It is the result of a public consultation and has been developed in collaboration with key economic stakeholders. This plan aims to streamline daily operations and activities for businesses, in order to gain their trust and encourage them to generate wealth.

The plan features approximately fifty measures detailed in the French Economic and Administrative Simplification Bill (the "SVE Bill") and several upcoming decrees.

- **The SVE Bill**

The SVE Bill is based on three core principles:

- significantly reducing the burden of administrative processes and procedures;
- changing the paradigm in the relationship between the government and businesses;
- streamlining standards.

Furthermore, the third section of the bill specifically aims to make public procurement more accessible to all businesses. This is achieved through two key measures.

### **Enhancing the Digitalization of Public Procurement**

The bill sets a 2028 deadline for public entities – excluding local authorities, their public institutions, and their groupings, as well as social security organizations – to adopt the 'Place' platform for managing and awarding their public procurement contracts. While other purchasers, particularly local authorities, will have the option to use this platform, they will not be required to do so.

### **Unifying and Expediting Public Procurement Litigation**

Currently, public procurement litigation is split, with 85% handled by administrative courts and the remaining 15% by judicial courts. The judicial courts oversee cases involving public procurement contracts signed by private entities that are governed by the French Public Procurement Code, such as SNCF, subsidiaries of public institutions, and private social security organizations. A notable disparity between the two jurisdictions lies in the rules applicable to appeals. Specifically, appeals that challenge the validity of contracts are not permitted in the judicial courts.

To streamline public procurement litigation, a proposal has been made to grant administrative courts jurisdiction over all contracts executed under the French Public Procurement Code, thereby classifying these by law as administrative contracts. However, two types of contracts would be exempt from this classification:

- Contracts covered by Part II, Book V of the French Public Procurement Code (i.e. 'other public contracts' such as in-house contracts, public contracts executed under international rules and regulations, related to the security or the protection of essential interests of the State, financial services, and certain defense and security contracts), and
- Concession contracts covered by Part III, Book II of the same Code (i.e. the 'other concession contracts' referred to in Article L3212-4 of the French Public Procurement Code).

In its assessment of the bill, the *Conseil d'État* has determined that there are no legal barriers to implementing this measure. The *Conseil d'État* also notes that it will be the responsibility of case law to further define the implementation procedures for the general principles of public procurement. This includes detailing the purchaser's authority for unilateral modifications and termination of contracts, as well as clarifying the theory of unforeseeability.



This measure would specifically allow for the extension of the right to challenge the validity of contracts to those entered by private parties under the French Public Procurement Code. Additionally, it would expedite the pre-contractual summary proceedings for these contracts

- **Measures Covered by Implementing Decrees**

Alongside the measures set out in the SVE Bill, the 'Let's Simplify!' action plan includes the following public procurement measures, that will be enacted through decrees:

**Simplifying the Application Process for Public Contracts**

Starting in 2026, the goal is to streamline the application process by enabling every company to apply for public contracts using just its SIRET number.

**Improving Payment Terms for Public Purchasers**

It is being considered to:

- Increase transparency regarding payment timelines through the open data publication of payment timelines for local authorities with populations over 3,500;
- Raise awareness among public purchasers about the importance of reducing payment timelines and the necessity of paying late payment interest;
- Make the calculation of payment timelines more reliable.

**Enhancing Conditions for Public Procurement Performance**

This would involve :

- Increasing the advance payment to 30% for very small businesses and SMEs in works contracts managed by local authorities and public institutions with operating budgets exceeding €60 million;
- Reducing the retention amounts withheld by principals in respect of guarantees for the benefit of craftsmen from 5% to 3%.

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The impact of these proposals is somewhat constrained. The latitude for French public authorities to simplify public procurement rules is limited, largely because French public procurement law primarily stems from the transposition of European directives.

Nonetheless, this bill represents a continued effort to simplify administrative processes and procedures, a critical focus for public authorities. This effort follows in the footsteps of significant legislation such as Law no. 2019-486 of 22 May 2019 on the growth and transformation of businesses and Law no. 2020-1525 of 7 December 2020 on accelerating and simplifying public action. Since 2014, administrative simplification has been a consistent government goal, leading to numerous proposals with varying degrees of success.

The bill is scheduled for review by the French Senate on 3 June 2024.

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