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A position

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**on the ongoing evaluation procedure of the directives harmonizing the rules on
public procurement in the context of participation of local authorities in the
distributed energy generation and consumption organizations**

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To whom it may concern

As part of the ongoing evaluation procedure of the directives harmonizing the rules on public procurement, conducted by the Commission, referred to in the call for feedback published on the Commission's website (available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14427-Dyrektywy-w-sprawie-zamowien-publicznych-ocena_pl), we hereby submit a proposal for consideration of legislative amendments within the scope and for the reasons outlined below (hereinafter as the “**Proposal**”).

I. Executive summary

- 1. The Commission's proposals regarding review of the Public Procurement Framework are very welcome, as such revision is much needed in order to ensure realization of both competitiveness and sustainability goals within the European market.**
- 2. However, the scope of the Public Procurement Framework review overlooks the role of the local governments, in particular cities, as active participants of the energy market.**
- 3. Current Public Procurement Framework hinders the participation of the local authorities in the distributed energy generation and consumption organizations.**
- 4. Change of the public procurement rules could enable the local authorities to obtain affordable energy, thus lowering the price of public services provided by them to inhabitants, businesses and industries.**
- 5. Such change would also be in line with the goals and provisions of the directives regulating the energy market – Directive (EU) 2019/944 and Directive (EU) 2018/2001.**
- 6. It is proposed to exempt from the obligation to apply EU public procurement law those remunerated contracts between contracting authorities or contracting entities and private entities, which are concluded within the framework of, in connection with, or for the purpose of ensuring the efficient operation of institutions supporting the development of decentralized energy generation and consumption, such as energy clusters, energy cooperatives, or other types of energy communities, including citizen energy communities referred to in the Directive (EU) 2019/944 or renewable energy communities referred to in the Directive (EU) 2018/2001.**
- 7. If the adoption of the proposed exemption proves impossible, other improvements are also desirable, such as the establishment of a special procedure for concluding contracts between members of the aforementioned distributed energy generation and consumption organisations.**

II. Missing aspect of the Public Procurement Framework review

1. In January 2025, the Commission published *A Competitiveness Compass for the EU*, underlining the need to regain competitiveness and secure Europe's prosperity. Two goals of the Compass, which is to serve as a guideline for Commission's work in the next years, are **identifying policy changes needed for Europe to "shift to a higher gear"** (p. 3 of the Compass) and developing **new ways of working together to increase the speed and quality of decision-making**, simplify our frameworks and rules, and overcome fragmentation. The Compass announces a number of documents and tools to be developed by the Commission, including ones related to **decarbonization and competitiveness and to energy affordability**.
2. One of them is the *Clean Industrial Deal: A joint roadmap for competitiveness and decarbonization*, published in February 2025. **The Clean Industrial Deal touches upon the subject of public procurement**, in the context of its role in supporting sustainable and resilient industrial ecosystems, jobs and value creation in the EU. In particular, the Clean Industrial Deal announces the **revision of the Public Procurement Framework**, aimed at fostering sustainability, resilience and European preference criteria in EU public procurement for strategic sectors.
3. **While the above-mentioned documents raise valid points and set much needed goals for EU's public procurement regime reform, they overlook a significant aspect of public bodies engagement in the energy and sustainability- related activities.**
4. **Public actors, including in particular major European cities, are not merely receivers of energy-related goods and services procured on the basis of the public procurement framework. They aspire to be active participants of the energy market, pursuing ambitious sustainability goals, while securing affordable energy for themselves and members of local communities.** At the same time, **the energy-related activities** (both production and consumption) rarely take place in only one local government entity. Frequently, those activities **are carried out by different affiliates of the city**, characterized by different levels of independence in terms of legal standing and decision-making.
5. **While some of the municipal entities could produce vast amounts of relatively cheap energy, others could consume it, thus avoiding purchasing it on the market on commercial terms. The local authorities could also co-operate with private**

partners, who would like to support regional development of distributed energy consumption and production initiatives.

- 6. This could happen in the framework of citizen energy communities provided for in the Directive (EU) 2019/944 or renewable energy communities referred to in Directive (EU) 2018/2001, as well as other forms of distributed generation and consumption organization. Such solutions would be beneficial not only for the cities themselves, but also for their inhabitants, businesses and industries located in their territory.** The cost of energy constitutes a significant part of the price of services provided by the cities (ultimately paid by their end-consumer), such as public transportation, waste management, education or social services.
- 7. Obtaining such affordable energy is currently hindered by the Union's Public Procurement Framework rules.**

III. Proposal for inclusion of support for the distributed energy production and consumption in the review of the Public Procurement Framework

To address the above-mentioned deficiency of the Public Procurement Framework, we propose:

Exempting from the obligation to apply EU public procurement law those remunerated contracts between contracting authorities or contracting entities and private entities, which are concluded within the framework of, in connection with, or for the purpose of ensuring the efficient operation of institutions supporting the development of decentralized energy generation and consumption, such as energy clusters, energy cooperatives, or other types of energy communities, including citizen energy communities referred to in the Directive (EU) 2019/944 or renewable energy communities referred to in the Directive (EU) 2018/2001.

IV. Justification of the Proposal

1. Distributed energy generation and consumption plays a key role in achieving the European Union's climate and energy goals. Its promotion is one of the pillars of the EU's energy policy, supporting the transition to renewable energy sources and increasing the involvement of local communities in the generation, distribution, and management of energy.
2. EU regulations, including the Directive (EU) 2018/2001 and Directive (EU) 2019/944, have introduced the concept of energy communities as structures supporting the energy

transition. However, member states are also developing their own legal framework regarding distributed energy generation and consumption, tailored to their legal systems, that pursue similar goals.

3. Polish legal framework provides for the existence and operation of energy cooperatives and energy clusters. Although those institutions are not directly governed by EU law, they play an important role in implementing the Union's energy policy. Both types of organizations facilitate cooperation between local governments, businesses, households, and other entities in the area of local energy production, storage, and consumption. Their activities promote the decentralization of the energy system and contribute to enhancing energy security at the regional level.
4. In both Directives referred to above, the EU legislator recognises numerous benefits resulting from the development of distributed energy solutions. In particular, distributed energy production and consumption:
 - a) allows for more efficient use of local resources,
 - b) increases the stability of energy supply,
 - c) reduces transmission losses,
 - d) shortens energy transport distances, contributing to improved system efficiency.
5. Another aspect highlighted by the EU legislator is the positive impact of distributed energy on regional economic development. Activating local communities by creating jobs and generating additional income at the regional level is a significant added value of the energy transition. Described distributed generation and consumption mechanisms not only support the development of renewable energy sources, but also strengthen the energy independence of individual regions and increase their resilience to changes in energy prices on international markets. Participation in energy communities (and in other types of distributed energy production and consumption organizations) benefits the local community not only economically, but also socially and environmentally.
6. In the context of such objectives and assumptions regarding distributed energy consumption and generation, public institutions should play an important role by actively participating in both the financing and the organisation of this market segment. The optimal solution to achieve the objectives of sustainable development through the instruments provided for in the Directives 2018/2001 and 2019/944, as well as additional national regulations, is to implement these goals in synergy between private entrepreneurs (including SMEs) and public institutions.

7. However, considering that distributed energy initiatives are based on solutions which in terms of public procurement law should be qualified as the paid purchase of energy through contracts, the current involvement of public entities (having the status of contracting authorities or purchasing entities) in these initiatives requires the application of the provisions of Directives 2014/24/EU and 2014/25/EU concerning public procurement.
8. The obligation to apply public procurement regulations is a significant barrier to developing cooperation between public and private entities in areas where initiatives related to distributed energy are to be implemented.
9. Although EU public procurement law provides for certain flexible mechanisms for concluding contracts between related entities creating a single economic entity (such as in-house contracts or intra-group contracts), in most cases, these mechanisms prove impossible to apply in many initiatives related to distributed energy production and consumption.
10. This barrier is particularly troublesome in situations that are most desirable from the perspective of local and Union-wide climate goals. For example, establishing cooperation between public entities and private entrepreneurs within an energy community (or in the case of Poland – energy cooperative or energy cluster):
 - a) would optimize its operation in economic terms,
 - b) would allow the best achievement of climate goals,
 - c) but at the same time, is essentially impossible to implement due to public procurement regulations, which prevent freely concluding contracts for energy supply between members of the organization.
11. These obstacles currently prevent the use of either the procedure for negotiations without prior publication or even the EU rules on in-house procurement, which is impossible particularly due to the involvement of private capital in the energy community.
12. Therefore, considering the desire of public entities—especially local authorities—to take a more active role in the energy transition process, it is essential to remove the incompatibility between EU energy law provisions and Directives 2014/24/EU and 2014/25/EU.
13. The optimal solution would be the adoption of the proposed exemption. Nevertheless, other improvements are also desirable, such as the establishment of a special procedure for concluding contracts between members of the aforementioned distributed energy generation and consumption organisations.