



Danish Energy Agency

Article 7 – EED

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Agenda

- Overview of the article
- The Danish approach
- Discussion



Public Procurement – different entities not an easy task



DANISH COMPETITION AND CONSUMER AUTHORITY

- Public Procurement rules (2014/23/EU, 2014/24/EU and 2014/25/EU)
- Process rules – how to procure?



Ministry of Environment and Gender Equality

- ESPR



Ministry of Social Affairs and Housing

- Building- and renovation rules



Danish Energy Agency

- EED
- What to procure (material)
- Some specific process rules (formal)
- Part of ESPR

Intention of national regulation:

- Shall comply with EED and administrable for DEA and the procurers.

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General Exceptions (Technical Feasibility) art. 7 (1) and annex IV

How does this article comply to annex IV?

- Danish position: If not technically feasible, annex IV will not be obligated to follow.
- The general obligation in Article 7(1) of Directive (EU) 2023/1791 does not apply if it is not technically feasible.
- The condition of feasibility applies to all public procurement contracts regardless of which of the Directives on public procurement the contract falls under.



Art. 7 (1).

Member States shall ensure that contracting authorities and contracting entities, when concluding public contracts and concessions with a value equal to or greater than the thresholds laid down in Article 8 of Directive 2014/23/EU, Article 4 of Directive 2014/24/EU and Article 15 of Directive 2014/25/EU, purchase only products, services buildings and works with high energy-efficiency performance in accordance with the requirements referred to in Annex IV to this Directive, unless it is not technically feasible



How should we interpret
technically feasible from
art. 7(1)?



Exeptions art. 7(1) Technically feasible

How should we interpret technically feasible art. 7(1)?

- No universal or “one-size-fits-all” solution
- Without economic limits, *almost everything* is technically feasible - but should not be the case.

How far can site-specific constraints be taken in to account when procuring a building?

- Danish position: If no suitable NZEB building exists in the required area, buying or renting one is not feasible, regardless of Annex IV, f).

How to document technical infeasibility?

- Describe technical limits, site constraints, or system incompatibilities.
- State the conclusion in procurement or tender documents.
- The full assessment can be provided to the agency if requested (e.g. for control).

Product, tires and service providers

- Can it be used in aliment with the product instruction? Can the product be used at the specific site? The same for annex IV, e) in regards to the service provider.

Conformity

- Assessment, contract

Exceptions art. 7(1)

Thresholds

Equal to or greater than the thresholds in the public procurement directives



Thresholds for buildings:

- Not a part of public procurement
- Thresholds for buying buildings is set in DK at the high threshold for building and civil engineering work.
- Threshold for renting buildings is to be decided. Properly the same threshold as for buying buildings.



Thresholds for framework contract and dynamic procurement systems:

- Only for the specific order.
- Not legal to split order to with intent to evasion of obligations.
- Calculation of energy savings can be calculated with significant uncertainties

Expected Energy savings

Art. 7(5)

- Energy savings shall be published in the tender.
- Freedom to base on calculations on various and simple methods.

Energy service providers

Art. 7(3)

- Obligation to assessment, not bound by the assessment.
- Freedom to base on calculations on various and simple methods.



Green public procurement criteria Art. 7(5) and annex IV, c)

Overlapping rules & redundancy

- A union general criteria will be legally binding regardless of annex IV, c)
- In Danish legislation a general criteria will be legally binding by the specific criteria's.

Article 7

Public procurement

1. Member States shall ensure that contracting authorities and contracting entities, when concluding public contracts and concessions with a value equal to or greater than the thresholds laid down in Article 8 of Directive 2014/23/EU, Article 4 of Directive 2014/24/EU and Article 15 of Directive 2014/25/EU, purchase only products, services buildings and works with high energy-efficiency performance in accordance with the requirements referred to in Annex IV to this Directive, unless it is not technically feasible.

Member States shall also ensure that in concluding the public contracts and concessions with a value equal to or greater than the thresholds referred to in the first subparagraph, contracting authorities and contracting entities apply the energy efficiency first principle in accordance with Article 3, including for those public contracts and concessions for which no specific requirements are provided for in Annex IV.

2. The obligations referred to in paragraph 1 of this Article shall not apply if they undermine public security or impede the response to public health emergencies. The obligations referred to in paragraph 1 of this Article shall apply to the contracts of the armed forces only to the extent that their application does not cause any conflict with the nature and primary aim of the activities of the armed forces. The obligations shall not apply to contracts for the supply of military equipment as defined in Directive 2009/81/EC of the European Parliament and of the Council ⁽²⁹⁾.

3. Notwithstanding Article 29(4), Member States shall ensure that contracting authorities and contracting entities assess the feasibility of concluding long-term energy performance contracts that provide long-term energy savings when procuring service contracts with significant energy content.

4. Without prejudice to paragraph 1 of this Article, when purchasing a product package fully covered by a delegated act adopted under Regulation (EU) 2017/1369, Member States may require that the aggregate energy efficiency take priority over the energy efficiency of individual products within that package, by purchasing the product package that complies with the criterion of belonging to the highest available energy efficiency class.

5. Member States may require that contracting authorities and contracting entities, when concluding contracts as referred to in paragraph 1 of this Article, take into account, where appropriate, wider sustainability, social, environmental and circular economy aspects in procurement practices with a view to achieving the Union's decarbonisation and zero pollution objectives. Where appropriate, and in accordance with Annex IV, Member States shall require contracting authorities and contracting entities to take into account Union green public procurement criteria or available equivalent national criteria.

To ensure transparency in the application of energy efficiency requirements in the procurement process, Member States shall ensure that contracting authorities and contracting entities make publicly available information on the energy efficiency impact of contracts with a value equal to or greater than the thresholds laid down in Article 8 of Directive 2014/23/EU, Article 4 of Directive 2014/24/EU and Article 15 of Directive 2014/25/EU, and Commission Regulation (EU) 2017/1369, in the following manner:

ANNEX IV

ENERGY EFFICIENCY REQUIREMENTS FOR PUBLIC PROCUREMENT

In award procedures for public contracts and concessions, contracting authorities and contracting entities that purchase products, services, buildings and works, shall:

- where a product is covered by a delegated act adopted under Regulation (EU) 2017/1369, Directive 2010/30/EU or by a related Commission implementing act, purchase only the products that comply with the criterion laid down in Article 7(2) of that Regulation;
- where a product not covered under point (a) is covered by an implementing measure under Directive 2009/125/EC, purchase only products that comply with energy efficiency benchmarks specified in that implementing measure;
- where a product or a service is covered by the Union green public procurement criteria or available equivalent national criteria, with relevance to energy efficiency of the product or service, make best efforts to purchase only products and services that respect at least the technical specifications set at 'core' level in the relevant Union green public procurement criteria or available equivalent national criteria including among others for data centres, server rooms and cloud services, road lighting and traffic signals, computers, monitors tablets and smartphones;
- purchase only tyres that comply with the criterion of having the highest fuel energy efficiency class, as defined in Regulation (EU) 2020/740, which shall not prevent public bodies from purchasing tyres with the highest wet grip class or external rolling noise class where justified by safety or public health reasons;
- require in their tenders for service contracts that service providers use, for the purposes of providing the services in question, only products that comply with points (a), (b) and (d), when providing the services in question. This requirement shall apply only to new products purchased by service providers partially or wholly for the purpose of providing the service in question;
- purchase, or make new rental agreements for, buildings that comply at least with nearly zero-energy level, without prejudice to Article 6 of this Directive, unless the purpose of the purchase is:
 - to undertake deep renovation or demolition;
 - in the case of public bodies, to re-sell the building without using it for the public body's own purposes; or
 - to preserve it as a building officially protected as part of a designated environment, or because of its special architectural or historic merit.

Compliance with the requirements laid down in point (f) of this Annex shall be verified by means of the energy performance certificates referred to in Article 11 of Directive 2010/31/EU.

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Energy Efficiency First Principle

- Obligation to assessment, not bound to procure the most energy efficient solution.
- The public procurer can show compliance by text in the tender, or other documents.
- Denmark has published a guide for article 3. It can be used for assessment.

Which threshold should be used: Art. 3 or 7?

- Danish position: procurement thresholds by art. 7.

Annex IV

Products and tires:

Annex IV a), b) & d):



- Conformity:
 - Eprel-screenshot

Service provider:



- Conformity:
 - The public procurer can in the contract state this and state that service provider shall comply to annex IV, a), b) and d), for new products used or partially used in providing the service

Buildings:

Annex IV f):



- Deep renovation (EPBD art. 2)
 - When buying or renting a building late in 2029, it is not possible to renovate up NZEB by 2030.
 - When shall a building be ZEB?

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Thank you for listening

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