



EUROPEAN COMMISSION
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Single Market for Public Administrations
Procurement Legislation and Enforcement

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Office for Public Procurement
Legislative Division
Ružová dolina 10, P.O. BOX 98
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Dear

You requested our opinion on the delimitation of the scopes of the Directive 2014/24/EU and Directive 2009/81/EC in regard of security procurement, in light of the on-going legislative changes of the Slovak public procurement law¹.

You ask, in particular, if it would be in line with the EU rules to add to the Slovak Public Procurement Act, which transposes the Defence and Security Procurement Directive 2009/81/EC, provisions extending its scope to "*sensitive information on critical infrastructure*". This should be considered in light of the fact that "*critical infrastructure*" is defined by another act in a broad manner and may include, among others, services in public interest and information systems.

You are aware that the scopes of Directives 2014/24/EU and Directive 2009/81/EC (classical, and, defence and security procurement Directives) are mutually exclusive and do not allow flexibility nor leave room for discretionally decisions. Furthermore, the (defence and security procurement) Directive 2009/81/EC provides more flexibility and more options of specific exclusions. Thus, purchases falling into the scope of (classical) Directive 2014/24/EU must not be procured following Directive 2009/81/EC, since it would mean that the right public procurement rules would not be appropriately applied to them.

The Directive 2009/81/EC defines its scope as referring to contracts awarded in the fields of defence and security for sensitive supplies, works or services (Article 2 letters (b)-(d)). The scope of the Directive cannot be artificially extended. Please note that the provisions of the (classical) Directive 2014/24/EC provide the tools to deal with procurements related to sensitive information, including release from obligation of using electronic communication (Article 22 point 1, fourth paragraph).

¹ Only the Court of Justice is competent to give a legally binding interpretation of EU law.

Following your request, please note that we have no objections against disclosing this reply to third parties.

Yours sincerely,

Contact: