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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on public contracts and concessions, repealing Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, and amending Regulations (EC) No 1370/2007, (EU) 2023/1542, (EU) 2024/1157, (EU) 2024/1252, (EU) 2024/1735, (EU) 2024/1781, (EU) 2024/2847, (EU) 2024/3110 and (EU) 2025/40, and Directives 2008/98/EC, (EU) 2019/882, (EU) 2022/2381, (EU) 2023/1791 and (EU) 2024/1760 (Public Procurement Act)

{SEC(2026) 590 final} - {SWD(2026) 590 final} - {SWD(2026) 591 final} - {SWD(2026) 592 final}

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This explanatory memorandum accompanies the proposal for a Regulation on Public Procurement, revising the Directive 2014/23/EU on the award of concession contracts, Directive 2014/24/EU on public procurement and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport, and postal services sectors and amending various sectoral acts with regard to provisions on public procurement therein.

Every day, across the European Union, public authorities award contracts for goods, services and works that shape the daily lives of citizens, whether it be the roads they travel on, the energy that powers their homes or the school buildings that shape their childrens' futures. With public procurement accounting for around 15% of the EU's GDP, public procurement is a powerful policy lever at the Union's disposal. For public buyers, it is the means to ensure efficient investments into public infrastructure and services. For citizens, it maximises value for taxpayers' money by ensuring that public funds are spent efficiently and effectively. For businesses, a well-designed procurement framework opens new opportunities, including across borders. For all, public procurement should be transparent, fair and open, to build and reinforce public trust.

The central role of public procurement has been forcefully underlined by Mario Draghi and Enrico Letta in their reports on the future of European competitiveness[1] and on the Single Market[2]. Both highlight procurement not only as a mechanism for public spending, but also as a strategic investment tool to strengthen the Union's clean industrial base, support innovation, advance the clean and digital transitions, and reinforce economic security and strategic autonomy. The Clean Industrial Deal[3] and the Competitiveness Compass[4] have similarly emphasised the responsibility of public buyers in translating strategic orientations into concrete purchasing decisions. In a geopolitical context marked by intensifying competition, supply-chain vulnerabilities and the exploitation of economic dependencies, the way public buyers spend money has become a matter of strategic relevance.

The European Court of Auditors[5] highlighted a number of shortcomings of the European procurement practice. It found that competition for public contracts had decreased over the past decade, that the participation of SMEs and cross-border bidders remained limited, and that single-bid procedures had become increasingly common. It is against this background that the Council, in its Conclusions of May 2024[6], invited the Commission to bring forward a comprehensive action plan to address the shortcomings in public procurement legislation and practice and to simplify the regulatory framework. The European Parliament adopted a resolution on public procurement[7] calling for a more strategic, simplified and competitive framework. The Committee of the Regions[8] and the European Economic and Social

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1 https://commission.europa.eu/topics/competitiveness/draghi-report_en.
2 consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf.
3 https://commission.europa.eu/topics/competitiveness/clean-industrial-deal_en.
4 https://commission.europa.eu/topics/competitiveness/competitiveness-compass_en.
5 2023 Special Report on public procurement in the EU https://www.eca.europa.eu/en/publications?ref=SR-2023-28.
6 consilium.europa.eu/en/press/press-releases/2024/05/24/council-adopts-conclusions-on-the-court-of-auditors-report-on-public-procurement/pdf/.
7 https://www.europarl.europa.eu/doceo/document/TA-10-2025-0174_EN.pdf.
8 https://data.europa.eu/doi/10.2863/0379789.

Committee[9] adopted opinions underlining the importance of public procurement as a driver of local development, social progress and industrial resilience.

The European Commission's in-depth evaluation of the 2014 Directives confirmed that today's public procurement rules know significant shortcomings. It found that their complexity and lack of flexibility creates significant legal uncertainty for both public buyers and economic operators. Price-only awards remain prevalent and the uptake of social, environmental and innovation requirements continue to be limited. Rules on market access for non-EU companies lack clarity and no longer respond effectively to today's geopolitical realities. Fragmented eProcurement systems prevent proper transparency and efficient monitoring and oversight and despite improvements in transparency, data gaps and quality issues at both EU and national level hamper effective governance, strategic decision-making and the prevention of corruption.

The proposal for a Public Procurement Act seeks to address these challenges.

Simplifying and increasing the flexibility and coherence of procurement rules

The proposal replaces the three 2014 Directives with a single, directly applicable Regulation. Consolidating the rules applicable to public contracts, utilities procurement and concessions into a single legal instrument removes the complexity and inconsistency resulting from the coexistence of separate legislative acts and divergent national transposition choices.

- Two new main procedures are proposed, both possible with or without selection criteria, and with or without negotiations: an **open procedure** where economic operators submit (first) tenders from the outset, and a dynamic procedure in which economic operators first join and are later on invited to tender or negotiate for individual procurement opportunities arising during the validity of the procedure. These two procedures are complemented by an innovation procedure for the development and acquisition of innovative solutions that the public buyers wishes to have developed by an economic operator to best meet its needs.
- **Market consultations** are clarified and encouraged as a standard preparatory tool.
- Selection criteria are limited to what is **necessary and proportionate**, excessive turnover requirements are curtailed, and unjustified demands for prior public-sector experience are restricted.

Procurement rules **continue to apply** to entities in water, energy, transport and postal services. In addition to specific exemptions, **utilities** may also be **exempt** where the relevant activity is directly exposed to competition on markets with unrestricted access.

To further simplify the overall legislative framework, the rules on **concessions** are incorporated in this Regulation. The revised procedural rules will apply both to public contracts and concessions, complemented by adapted rules for concessions where needed to take account of certain specific characteristics of concessions.

Increasing the uptake of strategic procurement

This Regulation establishes a **coherent architecture for integrating strategic policy objectives** into procurement design, award and contract performance. The proposal reinforces the quality dimension of award decisions. Contracts will as a rule be awarded on the basis of the best price-quality ratio, with minimum quality weighting requirements, including higher weighting for labour-intensive contracts.

[9] https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/review-european-public-procurement-legal-framework.

• On **environmental procurement**, the proposal provides clearer legal bases for the use of environmental requirements throughout the procurement cycle. It strengthens the contribution of procurement to circularity, recycled and refurbished content, waste recovery and energy efficiency, and creates a framework for mandatory green procurement requirements for certain product categories where divergent application of requirement risks creating market fragmentation.

• On **socially responsible procurement**, the proposal highlights a number of important societal objectives, including social inclusion, labour market integration, accessibility for persons with disabilities, improved working conditions, up-skilling and re-skilling of the workforce, gender equality and human rights in supply chains. It emphasises accessibility obligations for persons with disabilities and preserves targeted instruments such as reserved contracts and tailored rules for social, health and educational services.

• On **innovation procurement**, the new innovation procedure allows public buyers to formulate societal challenges rather than fixed technical specifications, assess proposals through a value assessment framework, test and validate approaches, and then procure the resulting solutions.

Improving EU economic security and strategic autonomy

The proposal responds to the growing geopolitical significance of public procurement.

• Public buyers are enabled, and in certain contexts required, to address risks related to **security and public safety interests of the Union or Member States**, linked to critical infrastructure, sensitive information, cybersecurity, harmful critical dependencies, supply disruption, and undue third-country influence.

• Without prejudice to acts covering specific products or services, new provisions on **resilience and security of supply** apply in particular to contracts involving essential or important entities and critical infrastructures.

• The proposal also modernises and clarifies the treatment of third-country participation, in full respect of the Union's international commitments:

• It clarifies the **distinction** between operators, and works, services or supplies that are **covered** by the Union's international procurement commitments and **those that are not** and establishes a common framework, supported by a Commission online tool (the Access2Markets web portal developed by the European Commission to assist businesses with international trade), to determine coverage. The Commission may **restrict such coverage** where a market access analysis establishes that a third country has failed to provide national treatment to Union operators contrary to its commitments, or where restriction is necessary to protect essential Union interests.

• Public buyers may apply **European preference requirements**, including by restricting participation, requiring minimum Union or covered origin, or granting evaluation preferences. Where the Union's strategic interests so require, the Commission may close specific procedures to non-covered operators, products or services.

This Regulation serves as a horizontal framework for European preference requirements and has been designed so as not to conflict with the body of Union legislation which are sector-specific, and which establish mechanisms for preference or restriction based on the origin of economic operators or the specific goods or services offered in the context of public procurement. This applies to rules that have already been adopted, such as Regulation (EU) 2024/2803 on the implementation of the Single European Sky, or more recent proposals such as the Industrial Accelerator Act (COM 2026/0068) which are currently in the legislative process. Therefore, the general rules of this Regulation apply unless the sector-specific act provides otherwise, including regarding the determination of origin.

Moreover, in order to avoid excessive fragmentation of the legislative framework and to ensure a coherent set of rules on public procurement, this Regulation also serves as a model and a basis for future Union legislative acts establishing preference mechanisms based on origin. This concerns compatibility with international agreements that include a public procurement dimension, the way in which the origin of economic operators, goods, services and works is defined. Any future European preference rules relating to public procurement should be based as a starting point on the rules regarding the actual preference requirements set out in this Regulation, and only adapted where necessary on account of the specific sectors they will cover.

Facilitating access to procurement information, data and digital tools

The evaluation of the current Directives found that the digital ecosystem for procurement remains fragmented, non-interoperable and insufficiently data driven. The proposal addresses this through a substantially more **integrated approach**.

- It establishes a **common digital ecosystem** based on an interoperability network, harmonised semantic standards and common specifications, enabling public buyers and economic operators using different eProcurement systems to communicate through interoperable digital services. A key innovation is the creation of an electronic eligibility service built around digital business credentials and digital company profiles, implementing the once-only principle.

- The proposal establishes **National Public Procurement Data Spaces** and a Union-level **Public Procurement Data Space**, designed to support structured access to procurement and contract lifecycle data. Publication obligations are expanded and rationalised across the full procurement lifecycle.

The effective operation of the system will require an update of the Common Procurement Vocabulary (CPV), established under Regulation (EC) No 213/2008.

Governance

The proposal strengthens governance, monitoring and professionalisation. Integrity governance is reinforced through measures addressing fraud, collusion, corruption, favouritism and conflicts of interest, ensuring that the simplification and strategic ambitions of this Regulation are matched by stronger implementation capacity on the ground.

- **Consistency with existing policy provisions in the policy area**

The Commission’s evaluation highlights the concerns regarding the fragmentation of public procurement rules within the EU legal framework. Contracting authorities and economic operators must currently comply with a multitude of overlapping and, in some cases, incoherent provisions across more than fifty sector-specific legal instruments. This a source of legal uncertainty, disproportionate administrative burdens, and procedural inefficiencies in the conduct of public procurement for both.

The Commission’s Communication ‘A Simpler, Clearer and Better Enforced EU Rulebook’[10] mandates a ‘regulatory deep cleaning’ of public procurement rules to eliminate redundancies, streamline procedures, and enhance legal clarity. The proposed Public Procurement Regulation therefore undertakes a comprehensive coherence exercise, focusing on consolidating into the Public Procurement Act sectoral rules relating to public procurement

[10] https://commission.europa.eu/publications/simpler-clearer-and-better-enforced-eu-rulebook_en.

procedural rules, horizontal requirements, and empowerment provisions, fully preserving the policy objectives of sectoral acts.

Exclusion grounds

Currently, **grounds for exclusion** from the participation in a procurement procedure of economic operators are fragmented across several sectoral acts, creating legal uncertainty and unequal treatment. The proposal consolidates these rules into a single, coherent framework by rationalising existing grounds for exclusion from the participation in a procurement procedure as follows:

• **7 mandatory exclusion grounds** from sectoral acts based on Title V of the TFEU that are linked to serious criminal offences, including human trafficking, corruption, and terrorism, and are intrinsic and inseparable elements of the acts in which they are laid down, are maintained in those acts, but mirrored as well in this Regulation.

• **2 exclusion grounds** originating from legal acts based on other legal bases are removed from those acts and reflected in this Regulation. This concerns the exclusion grounds so far enshrined the Shipments of Waste Regulation (Regulation (EU) 2024/1157), and the Eco-Design Regulation (Regulation (EU) 2024/1781), which are deleted from these acts. Rather than disappearing entirely, however, breaches of these instruments are absorbed into existing exclusion grounds in this Regulation.

Horizontal requirements

In addition to procedural rules, the current public procurement framework is further complicated by the **multiplication of horizontal requirements in legislation** on procurement decisions. To address this, the present proposal transfers relevant horizontal 'what to buy' provisions into dedicated chapters of the Act, structured around the Union's strategic procurement priorities (green, social, security, and resilience), streamlining where needed to ensure consistency in the application of these requirements.

Empowerments

Finally, five sectoral instruments contain separate and uncoordinated empowerments for establishing green public procurement requirements in certain areas. To remedy these inefficiencies, the present proposal repeals those sectoral empowerments for the adoption of procurement-related delegated or implementing acts, and replaces them with a single, horizontal empowerment allowing the Commission to make certain environmental requirements mandatory for public buyers under certain circumstances.

This proposal includes **targeted amendments** to the sectoral instruments concerned which are strictly necessary to achieve the proposal's objective of legal coherence. Further possible modifications of those sectoral instruments are **entirely outside the scope of the present proposal**. The need for any such modifications may be assessed, as appropriate, in the context of the review of each of the sectoral instruments concerned, in accordance with their respective review clauses and policy cycles. The Commission will **constructively engage** with the co-legislators to ensure that the legislative process on the present proposal fully preserves its essential object.

Beyond the existing acquis, several legislative initiatives currently under negotiation or pending publication also contain, or are expected to contain, public procurement-related provisions. This is the case, for example, of the proposal for a Cyber Security Act 2.0 (COM 2026/001), the proposal for a Cloud and AI Development Act (COM 2026/0138), the proposal for an Industrial Accelerator Act (2026/0068) and the proposal for a Chips Act 2.0 (COM 2026/0139). The coherence exercise carried out by the present proposal can only deliver its full added value if these ongoing initiatives are themselves aligned with the horizontal framework established by the Public Procurement Regulation, while maintaining sector-specific rules on *What* to buy in those acts The Commission has worked to ensure such coherence internally when preparing these texts and it is essential that the co-legislators also take into consideration the **need for coherence and consistency** with the Public Procurement Regulation. Particular attention should be paid to provisions relating to European preference requirements as divergent sectoral approaches would be especially detrimental to legal certainty, equal treatment of economic operators and proper functioning of the internal market. The Commission will engage constructively with the European Parliament and the Council throughout the negotiations of these parallel files.

- **Consistency with other Union policies**

The proposed Regulation also interacts with a distinct category of Union policies, which use **public procurement as a tool** to pursue specific objectives without, however, relying on or modifying the horizontal procurement framework. They establish autonomous regimes that operate alongside the general rules and respond to their own policy rationale.

The proposal does not interfere with the procurement regimes established in the **defence and security sectors**, which fall outside its scope and under Directive 2009/81/EC. It is without prejudice to Regulation (EU) 2025/1106 (SAFE) and Regulation (EU) 2023/2418 (EDIRPA) on cooperative defence procurement and leaves unaffected the joint procurement mechanisms under Regulation (EU) 2022/2371 and Council Regulation (EU) 2022/2372 on health crises. It is similarly consistent with the resilience-oriented obligations of Regulation (EU) 2024/2747 (IMERA).

Public procurement is increasingly used as a lever to **defend the Union's strategic interests** in its external economic relations and to ensure a level playing field for European economic operators. The European preference measures are fully compatible with the international framework to which the Union is a party, in particular the WTO Agreement on Government Procurement (GPA). The proposal operates without prejudice to Union trade policy instruments containing procurement-specific provisions, notably Regulation (EU) 2022/2560 on foreign subsidies, as well as measures under the Union's trade defence and restrictive measures toolbox, such as Regulation (EU) 2023/2675 (Anti-Coercion Instrument) and Council Regulation (EU) No 833/2014 concerning Russia. Regarding Regulation (EU) 2022/1031 on the International Procurement Instrument, Chapter 5 of the proposed Regulation explicitly incorporates, including through cross-references, the principles and concepts of this Regulation concerning the origin of economic operators and goods.

In parallel to this Regulation, the Commission is proposing a European Innovation Act which proposes a specific regime for the procurement of research and development services, meaning the procurement of fundamental research, industrial research and experimental development up to original development. Research and development service contracts, including pre-commercial procurement are thus excluded from the scope of this Regulation. Contrary to the specific regime proposed in the European Innovation Act, the Public Procurement Act also covers the purchase of the commercial end-product.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 114 Treaty on the Functioning of the European Union (“the Treaty”) is the appropriate legal basis for this initiative, as its primary objective is to establish a simpler and more efficient harmonised public procurement framework across the Member States, thereby improving the functioning of the internal market in line with Article 26 of the Treaty. While the initiative also touches upon matters related to the objectives pursued under Articles 173 and 207 TFEU, these aspects are clearly ancillary to its primary aim of harmonising public procurement rules and therefore do not justify reliance on those provisions as legal bases.

- **Subsidiarity (for non-exclusive competence)**

Under **Article 5 TEU**, the principle of subsidiarity is respected as it balances contracting authorities' discretion with harmonisation measures and elements necessary to achieve the objectives of this initiative, which cannot be sufficiently achieved by Member States alone.

Public procurement is a key component of the EU single market, enabling cross-border competition and broader access to markets for contracting authorities. However, fragmentation in implementation undermines its effectiveness as an internal market instrument. This calls for further EU-level action to ensure coherence and simplification and to fully unlock the potential of an EU-wide procurement market for businesses and contracting authorities alike.

In line with recent CJEU rulings[11], the treatment of third-country economic operators in public procurement falls **within the common commercial policy**, an exclusive competence of the Union, and can therefore be regulated only at EU level. Only the Union, and not the Member States acting individually, is competent to establish a coherent and uniform framework governing the participation of third-country bidders. Action at EU level is therefore both justified and necessary to ensure legal certainty and a level playing field across the internal market.

- **Proportionality**

The proposed revision respects the principle of proportionality, as set out in Article 5 TEU and follows what is adapted and necessary to achieve the objectives of **ensuring a more efficient, transparent and coherent EU public procurement framework**, completing the Union's strategic objectives.

The establishment of the EU digital ecosystem is necessary to **reduce fragmentation**, administrative burden and costs by mandating the interconnection of Member States' eProcurement systems into a single integrated EU public procurement marketplace, thereby also reducing compliance costs and facilitating cross-border participation and enhancing overall market efficiency.

The European preference provisions in sector-specific acts are necessary to **respond to the new geopolitical imperatives**, while fully respecting the Union's international commitments. They are designed in a proportionate manner so as not to impose disproportionate financial burdens on contracting authorities' budgets. They aim to limit administrative burden for public buyers, notably through implementation support and the use of digital tools within the procurement marketplace.

Determining at Union level the Best Price-Quality Ratio ("BPQR") as the standard award method with a "comply or explain" mechanism is necessary to achieve common social, environmental and innovation policy objectives of the Union. While the impact on fraud and irregularity risks depends on administrative capacity, several safeguards reduce such risks, notably the requirement that all quality criteria remain **linked to the subject-matter of the contract**, limiting potential distortions of competition.

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[11] Case C-652/22, Kolin İnşaat Turizm Sanayi ve Ticaret AŞ v State Commission for the Supervision of Public Procurement Procedures; Case C-266/22, CRRC Qingdao Sifang Co. Ltd and Astra Vagoane Călători SA v Autoritatea pentru Reformă Feroviară and Alstom Ferroviaria SpA.

- **Choice of the instrument**

The proposed regulatory changes address the **shortcomings identified in the evaluation** of the 2014 Directives by enhancing coherence and legal clarity through the merger of the three Directives into a single Regulation and the streamlining of the procedural architecture. This responds to persistent fragmentation and insufficient harmonisation across several EU instruments, which has increased complexity, legal uncertainty and compliance costs. By establishing a **directly applicable Regulation**, the framework creates a single set of rules at Union level, improving consistency of application, reducing fragmentation and avoiding divergent national implementation ("gold-plating"), while preserving necessary flexibility. In line with the European Council's "One Europe, One Market" mandate and the Letta Report's recommendation, this ensures greater legal certainty and a more level playing field across all Member States.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The evaluation aimed to assess the effects between 2016 and 2024 of the 2014 Directives on public procurement. The evaluation provided an evidence-based assessment of the effectiveness, efficiency, coherence and relevance of those Directives, and its findings informed both the drafting process and the accompanying Impact Assessment.

The evaluation established that the objective of creating greater legal clarity and certainty with respect to scope and coverage has not been achieved, and that the remaining objectives have been only partially achieved: namely the simplification, streamlining and increased flexibility of procurement procedures; the use of public procurement to support other policy objectives such as social, environmental and innovation policy; the opening of markets to greater cross-border competition and the facilitation of SME participation; and the strengthening of the governance framework to prevent irregularities. While confirming that all these objectives remain highly relevant today, the evaluation also found that the Directives are not fit for purpose to ensure economic security and to respond to supply chain disruptions and dependencies.

- **Stakeholder consultations**

In line with the Better Regulation Guidelines, the Commission conducted an ambitious and inclusive consultation process designed to gather reliable evidence from the full range of public procurement actors.

A combined call for evidence and public consultation ran from 3 November 2025 to 26 January 2026, generating 745 and 1 037 responses respectively, from business associations, companies, public authorities, trade unions, NGOs and citizens, overwhelmingly from EU and EEA countries. The open public consultation was structured around three thematic sections: efficiency and transparency, the balance between green, social, innovation and other objectives, and economic security and strategic autonomy.

These public consultations were complemented by dedicated engagement with Member States and experts through the Expert Group on Public Procurement (EXPP), the Expert Group on Electronic Public Procurement (EXEP) and the Stakeholder Expert Group on Public Procurement (SEGPP), as well as targeted hearings with social partners and NGOs. Particular attention was paid to the participation of SMEs, who were consulted specifically through the Network of SME Envoys and a dedicated SME panel gathering 108 responses.

- **Collection and use of expertise**

The results of these consultations, and in particular of the open public consultation, were carefully taken into consideration in the preparation of the proposal. Respondents broadly agreed on the need to move beyond the lowest-cost paradigm, increase procedural flexibility and reduce administrative burden through full digitalisation, while strong support (exceeding 80% across all EU and EEA respondent groups) was expressed for prioritising European goods and services in strategic sectors, notably through the expansion of non-price criteria and the introduction of "European preference" mechanisms. SMEs identified simplification, digitalisation and improved data availability as key priorities and pointed to the difficulties caused by divergent national implementation. Their input directly informed measures aimed at facilitating SME access.

- **Impact assessment**

In line with the Better Regulation Guidelines, this proposal is based on an impact assessment that analyses the problem and sub-problems related to revision of the Public Procurement Directives, in a global context of competitiveness challenges. The impact assessment identifies possible policy options to address problem-drivers and assesses their likely impacts. The impact assessment was structured to reflect the open public consultation, the call for evidence, and the various consultations.

The impact assessment initially received a negative opinion from the Regulatory Scrutiny Board on 17 April 2026. The Board cited several shortcomings that had to be addressed, including insufficient analysis of coherence between the intervention and the sectoral acts containing public procurement provisions, and inadequate assessment of the scale of problems related to environmental, social, and innovation objectives. The Regulatory Scrutiny Board also pointed out a need for better specifying and justifying the preferred policy options, particularly regarding how quality would be defined under BPQR procurement, and for better evaluating the costs, benefits, and proportionality of the preferred option, including its effects on competition and prices. Finally, the Board highlighted that the report lacked a thorough assessment of the combined impacts and unintended consequences of the preferred option, notably the risks of simultaneously introducing more negotiations and greater reliance on BPQR principles.

The above-mentioned points were addressed in a revised impact assessment submitted to the Board, which issued a positive opinion with reservations on 8 June 2026. The Board requested to provide further detail on the new open procedure with possible negotiations and on BPQR and its “comply or explain” approach, and more clarity on the cost-benefit analysis. These clarifications were provided.

The impact assessment is built around a set of 4 specific objectives that tackle the problem drivers identified. It sets out two or three policy options for each specific objective (Flexibility [FLX]; Environmental, Social and Innovation [ESI]; Buy European [BEU], and digital marketplace [MPL]).

- FLX – [FLX.1] Maintains the existing procurement architecture while introducing targeted flexibility, allowing the choice of procedure, permitting material corrections in tenders where they do not alter the procurement's substance, improving guidance on preliminary market consultations, and clarifying concepts such as "crisis" and concession risk. It also aligns rules across directives and cross-references exclusion grounds with sectoral legislation. [FLX.2] is merging the three existing directives into a single act and restructuring procedures into an open procedure with possible negotiation, a dynamic procedure, an innovation procedure, and contracts requiring only publication of public summary of result such as in emergencies. It also integrates exclusion grounds from existing sectorial acts and where possible deletes them from the sectoral acts. It promotes pre-procurement consultations, standardises negotiation phases with stronger transparency safeguards, and strengthens anti-fraud and traceability requirements while removing sectoral duplication.

- ESI – [ESI.1] incentivises quality-based procurement by making the Best Price-Quality Ratio the default award method under a "comply or explain" logic, with minimum quality weightings. It promotes ecolabels, life cycle costing and performance standards, frames innovation procurement, limits full subcontracting, and clarifies the link between working conditions and the contract subject-matter. [ESI.2] builds on this by integrating relevant horizontal provisions from other Union acts, harmonising definitions and centralising enabling provisions for delegated and implementing acts. [ESI.3] makes the BPQR with minimum quality weights compulsory with no opt-out, introduces binding Member State targets and reporting obligations, makes EU Ecolabel use mandatory where applicable, further restricts subcontracting chains, and integrates sector-specific requirements into the general framework.

- BEU – [BEU.1] would introduce a voluntary European preference by codifying existing CJEU case law and allowing contracting authorities to restrict participation to EU/EEA and other internationally covered economic operators or goods (GPA and relevant FTAs). It provides practical tools for verifying eligible countries and guidance on rules of origin. [BEU.2] offers a framework for coherent European preference in selected sectors in future acts, through a toolbox of mechanisms to public buyers, while standardising definitions, origin rules and documentation and integrating these tools into the EU digital procurement infrastructure. [BEU.3] makes European preference mandatory by requiring the exclusion of non-EU/EEA or non-covered third-country economic operators, subject only to limited safeguards such as lack of competition or excessive cost.

- MPL – [MPL.1] establishes a decentralised network of interconnected national eProcurement platforms linked through an EU interoperability layer. It introduces a digital business credential tool for verified company identity and eligibility data, a common procurement eligibility service, and a unified data management framework, strengthening transparency and anti-fraud capabilities through systematic data exchange, risk analysis tools and mandatory reporting. [MPL.2] instead replaces national systems with a single EU-level eProcurement platform for all procedures under the act, fully centralising procurement processes, data management, monitoring and compliance tools at Union level.

On the basis of the data that are available, the proposal is expected to deliver significant net cost savings, principally through the creation of the public procurement digital ecosystem. For economic operators, the new requirements entail recurring costs of EUR 477 million, which are more than offset by recurring savings of EUR 1 billion from the digital ecosystem and other simplifications. For contracting authorities, the new recurring costs amount to EUR 141 million, while the digital ecosystem yields annual savings of EUR 220 million. On a per procedure basis, the average contracting authority saves approximately 4.4 %, whereas the average economic operator saves around 8.9 %. Overall, the proposal therefore results in substantial net savings for both economic operators and contracting authorities.

- **Regulatory fitness and simplification**

The proposal simplifies the legal framework by replacing the three existing Directives with a single directly applicable Regulation. This reduces fragmentation, removes divergences resulting from national transposition, and provides a more coherent and accessible set of rules for public buyers and economic operators. It also streamlines the procedural framework by reducing the number of procedures and establishing more flexible and operational tools adapted to different purchasing needs.

The proposal is also the product of a comprehensive regulatory deep cleaning exercise. The consolidation into a single reference legislation, this Regulation, of provisions on exclusion grounds, horizontal "what to buy" provisions and empowerments for green public procurement that are currently scattered across sectoral legal acts will greatly simplify the application of these rules in practice and enhance their readability and legal certainty.

Further simplification is achieved through greater use of digital solutions and structured data, including interoperable digital tools, an electronic eligibility service based on the once-only principle, and harmonised publication and data requirements, reducing repetitive administrative formalities and improving efficiency. The proposal also reduces burdens for economic operators, in particular SMEs, by limiting disproportionate selection requirements and facilitating cross-border participation. At the same time, the proposal preserves the core guarantees of transparency, equal treatment, competition and accountability required by Union public procurement law.

- **Fundamental rights**

The proposal does not impact the Charter of Fundamental Rights

4. BUDGETARY IMPLICATIONS

The proposed initiative is expected to have a total financial implication for seven years of about EUR 163.5 million, including a yearly 2% inflation rate.[12] This budget covers around EUR 142.2 million for operational appropriations and about EUR 21.3 million for human resources. As stated in the LFDS, the annual breakdown foreseen is around EUR 22.0 million in 2028, EUR 22.4 million in 2029, EUR 22.9 million in 2030, EUR 23.3 million in 2031, EUR 23.8 million in 2032, EUR 24.3 million in 2032 and EUR 24.8 million in 2034.

The budget is expected to be financed under the Multiannual Financial Framework 2028-2034. The estimated budgetary impact does not pre-judge the next Multiannual Financial Framework. The source of financing and scope of Union financial commitment in the post-2027 period remain subject to the outcome of interinstitutional negotiations on the MFF 2028-2034 and thereafter shall be determined through the annual budgetary procedure.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

To ensure effective implementation, this Regulation provides for a phased approach for those elements that require technical development or institutional adaptation, notably the digital ecosystem including the electronic eligibility service, and the National Public Procurement Data Spaces and Public Procurement Data Space. The Commission will support implementation through delegated and implementing acts, guidance, technical specifications, standardisation work, and, where appropriate, operational tools and digital services.

Member States will be required to designate a national coordinating authority and to put in place the governance arrangements necessary to ensure effective coordination between the

[12] The difference in costs presented in the legislative financial statement and in the impact assessment arises because the legislative financial statement includes all costs, whereas the impact assessment accounts only for the additional costs introduced by the policy measures on top of the so-called business-as-usual costs. There are also slight differences in cost classification and presentation stemming from the requirements of the financial regulation.

authorities and bodies involved in the application of this Regulation. They will also be required to support the professionalisation of procurement, including through national strategies and appropriate support structures, and to ensure that the relevant actors have the capacity to apply the new framework effectively.

This Regulation establishes a reinforced monitoring framework based on structured procurement data. Each Member State will be required to establish or designate a National Public Procurement Data Space as the central national access point for procurement and contract lifecycle data. Those national data spaces will feed into a Union-level Public Procurement Data Space managed by the Commission. This will enable more systematic monitoring of procurement markets, strategic procurement outcomes, competition, cross-border participation, SME access, and risks affecting integrity, resilience and security of supply.

Member States will be required to establish an evidence-based framework to monitor the functioning of their public procurement systems and markets and to make the results of that monitoring publicly available at least once a year. Member States will report to the Commission on the results of those analyses and on measures taken or envisaged to address structural shortcomings where identified.

The Commission will continuously monitor the functioning of public procurement in the Union on the basis of the data available in the Public Procurement Data Space. It will provide, every three years, an analysis of the public procurement system across the Union.

In addition, this Regulation requires the Commission to carry out an evaluation seven years after its entry into force and every seven years thereafter.

- **Detailed explanation of the specific provisions of the proposal**

Part I sets out the general provisions on subject-matter, scope, in particular the relevant thresholds and the mechanisms for updating them, principles and definitions. This Regulation requires public buyers to treat Union and covered economic operators equally and without discrimination, act transparently and proportionately, and ensure the integrity of public procurement procedures. Public contracts must ensure best quality for money, avoid undue restrictions on competition, and aim at contributing to the achievement of the Union's broader policy objectives).

Part II defines relevant actors who participate in public procurement. Title I starts by defining the public buyers covered by the rules, then covers utilities, listing the sectors concerned and allowing exemptions where activities are directly exposed to competition and setting out the procedure for requesting an exemption from the Commission. Title II concerns economic operators, including groups, the use of third-party capacities, and subcontracting, with well-calibrated rules framing the use of this instrument to avoid abuses. This title furthermore sets out mandatory exclusion grounds, relating to serious offences such as corruption, fraud, terrorism, trafficking, environmental crime, and child exploitation, and optional exclusion grounds that relate to situations casting doubts on the reliability or integrity of the economic operator concerned. The provisions on selection criteria set out clear rules on the financial, technical and professional capacities of economic operators that public buyers can require, if they wish to use selection criteria in their procurement procedures.

Part III lays down rules on procedures. Title I deals with public procurement procedures and integrates provisions on planning, market consultations, choice of procedures, estimation of the contract value, and the conduct of negotiations, which are allowed in all procedures, with the appropriate safeguards for transparency and non-discrimination. The procedures include the open procedure, the dynamic procedure, the innovation procedure, and contracts requiring only publication of public summary of result such as in emergencies and crises.

Title II deals with the strategic design and execution of public procurement, streamlining the relevant definitions and provisions for taking into account considerations relating to the Union's broader policy objectives:

- Chapter 1 concerns green public procurement. It includes a definition of green public procurement and enshrines obligations relating to fostering the circular economy, resource efficiency, energy efficiency, and green public procurement requirements for certain products.

- Chapter 2 covers socially responsible public procurement, including accessibility, reserved contracts for organisations whose main aim is the social and professional integration of persons with disabilities or disadvantaged persons, and contracts for social, health and educational services.

- Chapter 3 concerns public procurement of innovation. It clarifies innovation objectives in public procurement, procurement of innovation, and intellectual property rights.

- Chapter 4 deals with security and resilience and clarifies how security considerations are to be considered in public procurement. It provides a non-exhaustive list of the security and public safety interests to be considered, and it regulates the termination of contracts and the exclusion of operators during contract implementation for security reasons. It also seeks to ensure compliance with cybersecurity requirements and defines resilience and security of supply for critical entities and infrastructures.

- Chapter 5 clarifies the concept of European preference by defining covered economic operators, goods, services and works: where they originate from a third country party to the WTO Government Procurement Agreement or from a third country that has concluded a bilateral or multilateral trade agreement with the Union. It sets out European preference requirements, including the possibility to restrict or reject certain economic operators and tenders. It also provides a framework for mandatory European preference in sector-specific EU legal acts, while laying down exceptions where public buyers may decide not to apply European preference.

Title III lays down horizontal provisions covering key aspects of the procurement process, including excluded and mixed contracts, among them defence and security contracts, but also various services not subject to procurement disciplines such as legal services, arbitration and conciliation services, employment contracts etc. This Regulation clarifies the important concept of subject-matter link and establishes clear provisions on technical specifications, including the use of standards and labels, and on award criteria, in particular the use of quality criteria through the BPQR. Title III further regulates other aspects of the conduct of procedures, including confidentiality, conflicts of interest, prior involvement of operators, deadlines, procurement documents, division into lots, abnormally low tenders, corrections and cancellations, and framework agreements. Finally, it addresses contract execution, including modification and termination of contracts, adjustment mechanisms, payments, and publication and documentation requirements.

Part IV regulates concessions, specifies exclusions, and lays down rules on preparation, design, and award procedures, including structured risk assessment. It also covers concession duration and contract management (such as modifications and termination).

Part V defines the framework for the digital ecosystem sustaining the implementation of this regulation. It creates interoperability rules for a secure public procurement data-exchange network. This enables electronic communication between public buyers and economic operators through different eProcurement service providers. It also sets obligations for the

Commission to help providers with the eligibility check (exclusion grounds, selection criteria, requirements of origin).

Part VI covers transparency and governance. The rules on data spaces (Title I) regulate the setting up and functions of national public procurement data spaces on the one hand, and on the other hand of the Public Procurement Data Space established by the Commission, a central repository of procurement information originating from all NPPDS for the monitoring of public procurement procedures and contracts at Union level. Title II sets out different governance tools and mechanisms allowing for regular monitoring of the procurement system to assess performance and support improvements; this includes the designation of a national coordinating authority to oversee and coordinate implementation; and appropriate measures to strengthen the professionalisation of public procurement as long term and strategic elements of public governance.

Part VII sets final provisions, determining the exercise of delegation and giving power to the Commission to adopt delegated acts. This Regulation repeals Directives 2014/23/EU, Directive 2014/24/EU, Directive 2014/25/EU, and amends the horizontal public procurement provisions included in Regulation (EU) 2014/1781, Regulation (EU) 2024/1735, Regulation (EU) 2023/1542, Regulation (EU) 2024/3110, Regulation (EU) 2025/40, Directive 2023/1791, Directive 2008/98/EC, Regulation (EU) 2024/1252, Directive 2019/882, Directive 2022/2381, Regulation (EU) 2024/2847, Directive (EU) 2024/1760, Regulation (EU) 2024/1157; it also amends Regulation 1370/2007. Finally, it sets a review target seven years after adoption and a deferred entry into application of two years.

2026/0265 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on public contracts and concessions, repealing Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, and amending Regulations (EC) No 1370/2007, (EU) 2023/1542, (EU) 2024/1157, (EU) 2024/1252, (EU) 2024/1735, (EU) 2024/1781, (EU) 2024/2847, (EU) 2024/3110 and (EU) 2025/40, and Directives 2008/98/EC, (EU) 2019/882, (EU) 2022/2381, (EU) 2023/1791 and (EU) 2024/1760 (Public Procurement Act)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The award of public contracts and concessions by or on behalf of Member States' authorities has to comply with the principles laid down in the Treaty on the Functioning of the European Union (the Treaty), and in particular the free movement of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. For procurement procedures for public contracts and concessions above a certain monetary value, it is necessary to establish harmonised rules for procurement procedures so as to eliminate obstacles to the functioning of the internal market and prevent the emergence of new ones in the form of regulatory divergences between Member States, including as regards the pursuit of strategic policy objectives. The evaluation of the current existing Directives 2014/23/EU[1], 2014/24/EU[2] and 2014/25/EU[3] of the Parliament and the Council of the 2014 Directives confirmed that today's public procurement rules know significant

[1] Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1, ELI: http://data.europa.eu/eli/dir/2014/23/oj).

[2] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65, ELI: http://data.europa.eu/eli/dir/2014/24/oj).

[3] Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243, ELI: http://data.europa.eu/eli/dir/2014/25/oj).

shortcomings. It found that their complexity and lack of flexibility creates significant legal uncertainty for both public buyers and economic operators. Price-only awards remain prevalent and the uptake of social, environmental and innovation requirements continue to be limited. Rules on market access for non-EU companies lack clarity and no longer respond effectively to today's geopolitical realities. Fragmented eProcurement systems prevent proper transparency and efficient monitoring and oversight and despite improvements in transparency, data gaps and quality issues at both EU and national level hamper effective governance, strategic decision-making and the prevention of corruption. This Regulation seeks to address these challenges and is expected to ensure that public procurement is further opened to competition and will at the same time serve as a tool for efficient public investments in line with the EU's broader policy objectives. Obligations under other Union legislation continue to apply and remain unaffected.

(2) This Regulation is to lay down rules for procurement procedures for public contracts and concessions above certain thresholds. As regards contracts that are not covered by this Regulation, Member States remain free to regulate the award of such contracts subject to ensuring respect of any applicable Union legislation, including Treaty principles in case of cross-border interest. This Regulation establishes procedural rules for awarding the contracts and concessions covered, as well as the procurement related aspects of the planning and the execution of those contracts, sets out how to take into account broader policy objectives and establishes a framework for a common digital ecosystem to be used in their planning, award and implementation of as well as mechanisms and requirements to ensure efficiency and accountability of public purchasing. By contrast, this Regulation should not regulate the overall administrative environment in which those public procurement procedures take place. Hence, national rules on the functioning and organisation of public administration in general, in particular those relating to budgetary and financial controls, and to decision-making structures inside public administration, remain unaffected. National civil law and general rules on contractual relationships, which form part of the broader national legal framework in which the rules laid down in this Regulation will operate, also remain unaffected.

(3) It should be recalled that nothing in this Regulation obliges Member States to contract out or externalise the provision of services that they wish to provide themselves or to organise by means other than public contracts within the meaning of this Regulation. The provision of services based on laws, regulations or employment contracts should not be covered. In some Member States, this might be the case for certain administrative and government services such as executive and legislative services, the provision of certain services to the community, such as foreign affairs services or justice services or compulsory social security services.

(4) This Regulation should not affect the social security legislation of the Member States, nor should it deal with the liberalisation of services of general economic interest, reserved to public or private entities, or with the privatisation of public entities providing services. Member States are free to organise the provision of compulsory social services or of other services either as services of general economic interest or as non-economic services of general interest or as a mixture thereof. Non-economic services of general interest should not fall within the scope of this Regulation.

(5) Council Decision 94/800/EC[4] approved among other things, the conclusion of the World Trade Organization Agreement on Government Procurement (the 'GPA') on behalf of the Union. The GPA establishes a multilateral framework of balanced rights and obligations relating to public contracts with a view to achieving the liberalisation and expansion of world trade. For contracts covered by Annexes 1, 2, 4 and 5 and the General Notes to the Union's Appendix I to the GPA, as well as by other relevant international agreements by which the Union is bound, public buyers should, in order to comply with the obligations under those agreements apply this Regulation to economic operators of third countries that are Parties to the agreements. All new elements introduced in this Regulation have been designed with a view to ensuring full alignment with the Union's obligations under the GPA.

(6) The thresholds established by this Regulation should serve to determine the contracts and concessions to which the full set of Union procurement rules applies. Those thresholds should continue to reflect the Union's international commitments under the GPA, while ensuring legal certainty, and administrative practicability. In order to ensure consistency with the Union's international obligations under the GPA, the thresholds applicable to public procurement should be aligned with those expressed in Special Drawing Rights (SDRs) as defined by the International Monetary Fund, and therefore should be periodically revised, based on the average value of the euro against SDR. Apart from those periodic mathematical adjustments, the Commission will explore with GPA partners the question of an increase in the thresholds set in the GPA.

(7) In order to ensure the proper functioning of the Union's internal market in public procurement, public procurement should be guided by the principle of best quality for public money, thereby serving the objective of efficient public spending and investment, and public buyers should treat economic operators that originates from the Union, a third-country that is party to the GPA or a third-party that has concluded a bilateral or multilateral trade agreement with the Union, under the conditions laid down in that agreement, equally and without discrimination, acting in a transparent and proportionate manner. Public buyers should also take appropriate measures to safeguard the integrity, impartiality and fairness of the procurement process, and should not design their procurement to exclude it from the scope of this Regulation or to unduly restrict competition. Respect for these principles is essential to guarantee effective competition, lift and prevent barriers to market access and help ensure efficient public investments.

(8) Public procurement constitutes a key instrument for advancing the Union's strategic policy objectives. It is necessary to regulate the strategic use of public procurement to avoid that diverging practices by public buyers throughout the Union create obstacles to the internal market. Public procurement procedures should be guided by the Union policy objectives, including strengthening the competitiveness of the internal market, supporting innovation and the clean industrial base, achieving climate and environmental targets, a fair and inclusive society, in particular fair working conditions, including as fostered by social dialogue, and enhancing the Union's safety, security, resilience and economic security, including through strategic independence. Taking into account the diversity of national systems and respecting the autonomy of

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[4] Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1, ELI: http://data.europa.eu/eli/dec/1994/800/oj).

social partners, public buyers can use socially responsible public procurement to support high-quality jobs and social fairness, including through acknowledging the role of collective bargaining.

(9) It is appropriate to maintain rules on procurement by entities operating in the utility sectors of water, energy, including gas, understood as natural gas or any other gas, transport and postal services, since national authorities continue to be able to steer the behaviour of those entities and/or the existence of special or exclusive rights. Contracting entities should be exempted from this Regulation when the activities they carry out are directly exposed to competition on markets to which access is not restricted. Whether a given sector, or parts thereof, is directly exposed to competition should be assessed in respect of the specific area in which the activity, or the parts thereof concerned, are carried out. The so-called ‘relevant geographical market’ is either the territory of a Member State or parts of it. The notion of ‘relevant geographical market’ should be based on similar criteria set out in other Union legislation.

(10) Direct exposure to competition should be assessed by the Commission upon request of a Member State or a contracting entity. In order to render easily accessible, the procedure for establishing that this Regulation does not apply to a certain activity, it should be clarified that an exemption decision can already be taken in the preparatory phase before the actual submission of a formal request, in situations where the information already available to the Commission allows it to conclude that the conditions for exempting the activity are met. Furthermore, to facilitate the Commission’s assessment in the formal phase, it is preferable that requests for exemption are accompanied by, or incorporate, a reasoned and substantiated recent position on the competitive situation in the sector concerned, adopted by an independent national authority that is competent in relation to the activity concerned or for the application of competition rules, or both. Where the circumstances which are the basis of an implementing act establishing that this Regulation does not apply to a certain activity substantially change, such implementing act may be modified corrected or revoked.

(11) To enhance access to business opportunities in public procurement and increase competition for the award of contracts, the participation of groups of economic operators should be further facilitated. This is of particular importance for micro, small and medium-sized enterprises (SMEs), which often face difficulties in accessing larger procurement opportunities. Therefore, the rules governing economic operators participating jointly in a procurement procedure should be clear and simple, while ensuring that only requirements that are necessary and proportionate for the proper performance of the contract are imposed.

(12) Subcontracting parts of a contract remains a practical and powerful tool of collaboration between economic operators. The rules for subcontracting set out in this Regulation should preserve contractual freedom and facilitate access for SMEs, enabling them to participate effectively in public procurement and related supply chains. Subcontracting the entirety of a contract should however not be allowed under this Regulation, in particular in order to avoid that subcontracting is misused especially in sectors which may be more vulnerable to labour exploitation owing to cost pressures and complex subcontracting chains. To ensure better transparency of subcontracting, public buyers should require tenderers to indicate any intended share of subcontracting and any proposed subcontractors. Where provided for by national law, public buyers should be able to require the main contractor, after award and

before performance, to inform them of the tasks to be subcontracted and of the identity of the subcontractors beyond the cases provided for under this Regulation. The rules for subcontracting in this Regulation leave unaffected the existing rules in the field of employment and social protection applicable at Union and national level, in particular as regards the duties, responsibilities and liability of employers throughout the subcontracting chain.

(13) Economic operators should be excluded from participation in procedures where they have been convicted by final judgment for certain serious offences. So-called self-cleaning measures should not be permitted for mandatory exclusions, while for optional exclusions, which are related to the reliability of the economic operators, they should be able to rebut the existence of the exclusion ground, which preserves their rights to be heard, or demonstrate their reliability by means of self-cleaning measures. In that context, due account should be taken of any cooperation with the investigating authorities aimed at clarifying the relevant facts and circumstances. For example, in cases involving violations of competition rules, such cooperation may take the form of participation in a leniency programme or settlement procedure before the Commission or a national competition authority. In particular, the granting of immunity from fines under a leniency programme should, in principle, constitute strong evidence demonstrating the reliability of the economic operator despite the existence of the exclusion ground. Member States should not add other grounds for exclusion based on criteria relating to professional situation of the tenderer.

(14) Selection criteria should remain limited to what is necessary to ensure that the economic operator has the technical, professional, legal and financial capacity to perform the contract, so as to ensure the widest possible access to public procurement, in particular for SMEs. Public buyers should not require prior experience in public contracts as such, unless this is strictly justified by the complexity of the contract or the nature of the subject-matter concerned, and should also avoid excessive financial requirements which can unnecessarily exclude SMEs and newer market entrants from procurement opportunities.

(15) In order to simplify and modernise the verification of the eligibility of economic operators in public procurement procedures, the electronic eligibility service should constitute the principal means of proof for the absence of exclusion grounds, compliance with selection criteria and, where relevant, fulfilment of origin-related requirements. The digital business credential tool used in this context should enable the retrieval of structured evidence from relevant national and Union databases, which should be interconnected to the electronic eligibility service to allow for the use of automated verifications, where possible. Where verifications are based on personal data, national and Union law should include suitable safeguards to mitigate the risks to individuals, including rules on who can access and view the data as well as the limitation of access only to such data as is necessary to access within the scope of this Regulation. Individuals should also have the possibility to review the outcome of the verification before it is provided to the public buyer.

(16) Public buyers should be encouraged to carry out market consultations before launching procurement procedures in order to improve their understanding of available market solutions, of the maturity and structure of supply markets, and of potential strategic or operational constraints.

(17) Negotiations can enable public buyers to improve the quality, efficiency and overall value of the procured solution, especially where the subject-matter requires adaptation

to operational needs or the balancing of strategic considerations. The possibility to negotiate solutions with a successive reduction of the number of economic operators in the procedure aims at achieving broad access to competition with the possibility for the public buyer to refine solutions and contractual terms through negotiation where that is conducive to achieving best quality for money. At the same time, it is necessary to clarify that the conduct of negotiations should remain subject to safeguards ensuring equal treatment, proportionality and the protection of commercially sensitive information. Therefore, negotiations should only concern non-essential characteristics of the works, services and supplies to be purchased; and public buyers should clearly indicate all non-negotiable elements which, in turn should include the essential conditions of the contract that are determinative for economic operators' decision to participate in the procedure.

(18) A new simple and flexible open procedure should be established, which allows any interested economic operator to express interest and submit a tender, and where the use of negotiations and of selection criteria remaining optional for the public buyer. The open procedure should ensure that public buyers can decide not to apply selection criteria where not needed to ensure good procurement outcomes, thereby lifting one of the major burdens for SME participation in public procurement.

(19) A new dynamic procedure should be established to provide public buyers with an easy-to use, quick and agile tool to procure from a pre-constituted supplier base, through reaching out, ahead of the individual contracts to be awarded, to all interested economic operators available to perform the contract throughout its validity. Negotiations and the use of selection criteria should be optional for public buyers, as in the open procedure. Economic operators should be able to express their interest in a simple and straight-forward way, simply by sharing their eligibility profile with the public buyer through the electronic eligibility service. In view of the potentially large number of economic operators interested in dynamic procedures, and in order to ensure administrative efficiency and to guarantee fairness, public buyers should be able, where the number of interested suppliers exceeds a certain level, to invite only a limited number of suppliers. Selection of economic operators invited to tender or to negotiate should take place by means of a random indiscriminate algorithmic determination or, in cases where admission to the procedure in the first place is done on the basis of selection criteria, either without further selection, or on the basis of objective, non-discriminatory criteria indicated in the competition public summary.

(20) Public authorities are increasingly confronted with complex societal challenges that require innovative and collaborative approaches extending beyond traditional procurement practices. Public buyers should be allowed to co-create innovative solutions that address public needs more effectively, through a competitive procedure in which economic operators are invited to develop solutions based on societal challenges identified by the public buyer. The development of those solutions should take place in different phases, including market consultation, selection of innovative solution proposals, testing and validation, and assessment of the proposals, and commercial purchase of the solution which public buyers should be allowed to purchase directly from the same economic operator.

(21) This procedure allows public buyers to purchase a yet-to-be developed solution, covering within the same procedure the research and development of that solution as well as all steps leading up to and including the commercial purchase. The innovation procedure covers the full cycle of innovation procurement, possibly from very early stages of research, the subject-matter of the procurement being the purchase of the yet

to-be-developed solution. It is therefore markedly different from R&D services procurement, which include pre-commercial procurement, whose subject-matter is not the purchase of the final solution but of research and development services. Unlike the innovation procedure, R&D services procurement therefore does not include the commercial deployment of the yet to-be developed end product. Research and development services, including pre-commercial procurement, are regulated in the [European Innovation Act], and they should be excluded from the scope of this Regulation to avoid overlaps. This exclusion of research and development service contracts covers research and development service contracts as such and does not extend to the research and development elements that are part of the new innovation procedure.

(22) The award of public contracts without prior competition should remain strictly exceptional and justifiable only where competition is objectively impossible or manifestly inappropriate and where additional flexibility is not used to circumvent the general principles of transparency, equal treatment and sound competition. In situations of emergency, crisis or serious cross-border threats, public buyers may need to procure rapidly in order to ensure continuity of essential services, respond to urgent public needs, or safeguard public health and safety. Public buyers should therefore be allowed to have recourse to a simplified direct procurement mechanism, without prejudice to other Union instruments governing joint procurement or crisis response.

(23) Article 11 of the Treaty requires that environmental protection requirements be integrated into the elaboration and implementation of Union policies and activities. Union policies should therefore be developed with a view to promoting, in particular, the objectives of climate change mitigation and adaptation including emission reductions, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems. Green public procurement should also contribute to the development of lead markets for sustainable bio-based products and solutions, in line with the Bioeconomy Strategy. It is necessary to clarify how public buyers can contribute to such objectives, whilst ensuring that they obtain the best quality for money and any conditions remain linked to the subject-matter of the contract. Horizontal environmental sustainability requirements that have been previously provided for in sectoral legislation, in particular on energy efficiency and the transition to a more circular economy, should be established as requirements for green public procurement in this Regulation, while preserving the core substance of the requirements that have been previously provided for in the sectoral legislation. To reduce administrative burden and facilitate the use of Green Public Procurement, public buyers should be able to use existing environmental requirements and criteria developed at Union level, such as the technical screening criteria set out in Regulation (EU) 2020/852 or EU Green Public Procurement voluntary criteria developed by the Commission.

(24) In view of the crucial role of resilient food systems in ensuring food security and protecting public health, this Regulation recognises the importance of economic, climate, environmental and social sustainability considerations in the procurement of food. These food-specific considerations may include, to the extent that they are linked to the subject matter of the contract, fairness and transparency in food supply chains, organic production methods, quality schemes, nutritional value and health effects, freshness and seasonality, organisation of food supply chains or animal welfare. This can play an important role in bringing consumers, particularly in settings such as

schools and hospitals, closer to sustainable food production. Given its very limited cross-border dimension, procurement of services related to food distribution such as canteen services, catering services, school meal services, restaurant services and meals-on-wheels services is subject to a direct award procedure under which public buyers have wide leeway to take into account and accommodate food-specific considerations.

(25) For certain products or product families, for which Union legislation establishes environmental requirements, and contains empowerments for the Commission to enshrine specific rules for public buyers in this regard, it is appropriate to consolidate these empowerments in this Regulation, which should therefore provide for a horizontal empowerment covering the products in question. Following the logic of the sectoral legislation, this empowerment should allow the Commission to set specific requirements for green public procurement for the products covered where necessary to avoid fragmentation of the internal market and foster the demand for certain products. This empowerment should enable the Commission to adopt delegated acts where necessary to maintain fully the substance of provisions previously enshrined in sectoral legislation, like energy efficiency of tyres.

(26) To facilitate and enable public buyers to take social considerations into account, where relevant to the subject-matter of the contract and in compliance with the principles governing public procurement, this Regulation brings together, in a dedicated social chapter, EU social objectives of a horizontal nature. These objectives include social inclusion, high-quality jobs and decent working conditions, accessibility for persons with disabilities, gender equality and non-discrimination, training, the promotion of the social economy, as referred to in Council Recommendation C/2023/1344[5], and effective human rights protection in relevant supply chains. It is to be stressed that the Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. Accessibility requirements should continue to be of a mandatory nature for the public procurement of goods, services and works intended for use by natural persons.

(27) By using public purchasing power for the fast market uptake and expansion of innovative solutions, public authorities can help bridge the innovation gap and facilitate the transition from a limited first production for testing and validation to commercialisation. Such an approach can contribute to increased productivity, improve market access for SMEs such as innovative startups and scaleups.

(28) In construction, which accounts for roughly 30 % of the value of public contracts awarded, innovation is supported through the use of Building Information Modelling (BIM) as a standard approach in public procurement and project delivery. Using open BIM digital technologies reduces project risks and enables more efficient design and construction processes, while continuously increasing impact on sustainability objectives. Accordingly, public buyers should in principle use it for the implementation of high-value contracts.

(29) Security and public safety risks may arise in a wide range of procurement procedures, including outside defence and sensitive security sectors in the strict sense. Public buyers should be aware of, assess and address such risks in the design and conduct of procurement procedures and in performance of contracts.

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[5] Council Recommendation of 27 November 2023 on developing social economy framework conditions (OJ C, C/2023/1344, 29.11.2023, p. 1, ELI: http://data.europa.eu/eli/C/2023/1344/oj).

(30) Public procurement in sectors critical to the functioning of society and the Union economy including energy, transport, health, digital infrastructure, water, food and agriculture and financial market infrastructure, can create or compound strategic vulnerabilities where supply chains are concentrated, opaque, or excessively dependent on a limited number of operators or third-country sources. Where a public contract is intended to be performed by a critical entity, in these sectors, public buyers should, where relevant, include in their public contracts measures relating to security of supply and resilience, without prejudice to applicable sectorial Union legislation.

(31) This Regulation is without prejudice to the application of State aid and competition rules, in particular Articles 101, 102 and 107 of the Treaty on the Functioning of the European Union. The measures provided for in this Regulation should not be used to restrict or distort competition in a manner contrary to the Treaty on the Functioning of the European Union.

(32) The Union has concluded international agreements that provide for access to its public procurement markets to third-country economic operators and goods, services or works, in particular the GPA and a number of free trade agreements with procurement commitments. The existence of market access granted depends on the type of procurement procedure, the nature of the public buyer, the subject-matter of the contract, the applicable thresholds, and the specific carve-outs or horizontal exemptions negotiated in each agreement. To give effect to this graduated and procedure-specific coverage, this Regulation introduces the concepts of 'covered economic operator' and 'covered goods, services or works', which are determined separately for each procurement procedure on the basis of the Union's international commitments applicable to each individual procurement. The Commission should be empowered to adopt delegated acts on this matter, in accordance with the relevant international agreements, where warranted for the reasons laid down in this Regulation. Where candidate countries have concluded an agreement with the Union providing for access to public procurement, economic operators, goods, services and works originating from those countries should be regarded as 'covered economic operators' and 'covered goods, services or works' for the purposes of this Regulation, in accordance with the terms and conditions set out in the relevant agreement. This approach reflects the perspective of enlargement and the gradual integration of candidate countries into the Union's internal market, and is intended to support closer economic integration, encourage regulatory alignment, and strengthen the application of the Union's rules and standards in its immediate neighbourhood.

(33) In line with the case law of the Court of Justice of the European Union, in particular its judgments in Case C-652/22 (Kolin)[6] and Case C-266/22 (Qingdao)[7], the rights and principles derived from Union public procurement law do not extend to economic operators, goods, services or works originating in third countries that are not covered by such international commitments. The same principle should apply also to goods, including components of products procured, services or works originating in such countries. Building on this principle, this Regulation enables public buyers to apply European preference requirements, in line with the Union’s international obligations.

(34) The Commission should be empowered to close specific procurements to non-covered economic operators or non-covered goods, services or works on the condition that such closure is in the interest of the Union. The interest of the Union to close certain

[6] Case C-652/22, Kolin Inşaat Turizm Sanayi ve Ticaret, EU:C:2025:178.
[7] Case C-266/22, CRRC Qingdao Sifang and Others, EU:C:2024:910.

procurements should be assessed based on an appreciation of all relevant interests taken as a whole, in particular economic, geopolitical and societal interests of the Union, its Member States and its citizens. The relevance of such Union interest is illustrated by sectors such as railways and shipbuilding which, as manufacturing sectors of a dual-use nature, rely on infrastructure, mobile assets and information and communication technology (ICT) and traffic management systems that must be resilient and are critical to military mobility, security, and the Union's strategic autonomy objectives. Their strategic importance has been underlined by recent Union initiatives including the EU Economic Security Strategy, the EU High-Speed Rail Plan, and the EU Maritime Industrial Strategy. The Joint Communication on strengthening EU economic security also emphasised the risks related to involvement of high-risk entities in sensitive sectors and supply chains.

(35) Clear and uniform rules on the determination of origin are necessary to ensure the effective and consistent application of international coverage and European preference provisions across all procurement procedures. This Regulation should therefore establish rules of origin for the application of the European Preference requirements set out herein. Where Union legislation applicable to specific sectors introduces European preference requirements, those rules should prevail as lex specialis. This is the case, in particular, for critical medicinal products, where Article [18(2)] of Regulation (EU) …/… [reference to be added after adoption of c.f. COM(2025)102final] establishes mandatory rules for favouring the suppliers of critical medicinal products and their active substances manufactured in the Union, which exhaustively regulates the application of European preference with regard to the critical medicinal products falling within its scope. At the same time, where the sectoral legislation does not provide the modalities for the application of those requirements, public buyers should rely on the horizontal rules set out in this Regulation.

(36) Certain contracts and the concessions awarded for the provision of public service transport within the scope of Regulation (EC) No 1370/2007[8] are excluded from the scope of this Regulation. However, the provisions of Chapter 4 on "Security and Resilience" and Chapter 5 on "European Preference" of this Regulation should be applicable to all contracts and concessions subject to Regulation (EC) No 1370/2007 in order to ensure a coherence regarding the application of those provisions to all contracts and concessions whether or not are subject to the provisions of public procurement established by this Regulation. Therefore Regulation (EC) No 1370/2007 should be amended accordingly.

(37) Horizontal rules applicable to all procurement procedures under this Regulation should build on well-known concepts from Directives 2014/23/EU, 2014/24/EU and 2014/25/EU of the Parliament and the Council, and the case-law by the Court of Justice of the European Union, modernising and clarifying them where needed, to better achieve the objectives set out in this Regulation, including in particular the integrity and non-discriminatory competitiveness of the procurement procedure.

(38) The existing exclusions from scope for certain types of contracts awarded by public buyers to legal persons controlled by them or within public-public cooperation arrangements should be maintained. As the contracts referred to in these two

[8] Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1, ELI: http://data.europa.eu/eli/reg/2007/1370/oj).

exclusions are out of the scope of this Regulation, Member States remain free to enshrine stricter rules or open these contracts to competition in their national law. Cooperation exclusively between local and regional authorities, as it is less likely to entail risks of distorting competition with economic operators, should be excluded from the scope of this Regulation under less stringent conditions. Finally, the existing possibility for contracting entities to rely on established structural links with affiliated undertakings or joint ventures to perform specific activities should also be maintained.

(39) Excessively detailed specifications often contribute to unnecessarily reducing the participation of economic operators and hamper innovation. In order to facilitate competitive procurement markets, the specifications defining the characteristics of the works, supplies or services that are subject of the procurement should, as a general rule be drafted in terms of functional requirements. Variants should be used more in public procurement procedures in view that they can contribute to enhancing competition and fostering innovative and cost-effective solutions. By allowing economic operators to propose alternative approaches, public buyers could benefit from a wider range of tenders better tailored to their needs. Such approach could also benefit SMEs, enabling them to put forward flexible, innovative or more specialised solutions that may differ from standard specifications and better reflect their specific expertise or business models.

(40) In order to ensure non-discriminatory access to procurement it is of crucial importance that any criteria and conditions applied in procurement procedures remain directly or indirectly linked to the subject-matter of the contract, relating to the material substance of the goods, services and works procured, or, without relating to the material substance, directly impacting those goods, services and works. As the notion of subject-matter link has been subject to prejudicial diverging interpretations, the notion should be clarified in this Regulation. Examples of considerations that are linked to the subject-matter of a given contract could include that the manufacturing of the purchased products did not involve toxic chemicals, the purchased services are provided using energy-efficient machines or energy-efficient production methods, the product concerned is of fair-trade origin, including the requirement to pay a minimum price and price premium to producers, fair wages are ensured for workers involved in the execution of the contract in question. The condition of a direct or indirect link to the subject-matter of the contract excludes criteria and conditions relating to general corporate policy.

(41) Labels are valuable means of proof that help public buyers to integrate environmental, social, or other strategic considerations in public procurement. Public buyers that wish to purchase products, services or works with specific environmental, social or other characteristics should be able to refer to particular labels provided that their requirements are linked to the subject-matter of the contract and compliant with certain label quality requirements. When public buyers decide to request an ecolabel, they should request life cycle, third-party verified ecolabel with a high level of ambition and, when EU Ecolabel criteria have been adopted for a product, a service or work, they should require in the first place the EU Ecolabel, which is the official EU voluntary scheme for environmental excellence of goods and services.

(42) To make public spending a more efficient investment tool in line with the Union's strategic policy objectives, greater emphasis should be placed on long-term public benefit rather than focusing only on the lowest upfront cost. Putting quality at the centre of public purchasing will allow public buyers to acquire works, supplies and services that provide better guarantees for meeting their needs in a longer term

perspective, at the same time serving overall societal objectives. Therefore, public contracts should, as a general rule, be awarded on the basis of the best price-quality ratio, allowing public buyers to compare tenders not only on price, but also on quality criteria linked to the subject-matter of the contract, including environmental, social, innovation, European preference, security and resilience aspects where relevant, as well as life-cycle costing. The evaluation of such award criteria should be framed with sufficient safeguards for the fairness of the evaluation process, such as separating price and quality assessments and securing the "four eyes principle", but could also include other measures such as conducting individual evaluations prior to collective deliberation, maintaining a documented audit trail and publication of all scoring justifications for high-value contracts. A minimum weighting of 30%, and 50% for by their nature labour-intensive contracts whereby the 50% should include significant social considerations, should therefore be provided for quality criteria in the award phase, while allowing public buyers to derogate from this requirement, where the quality of the procured works, supplies or services can be sufficiently ensured through specifications, conditions for performance of contracts, or a combination of any of those instruments with award criteria.

(43) SMEs play a crucial role in the Union's economy. Therefore, procurement procedures should be designed in a proportionate manner, avoiding unnecessary administrative and financial burdens, to facilitate the access of SMEs to public procurement, including as single direct contractors or as members of groups of economic operators. Conducting procurement through the new digital ecosystem is expected to significantly reduce procedural and administrative barriers for SMEs, including documentation and registration requirements. The division of contracts into meaningful lots remains one of the main tools to facilitate participation of SMEs in public procurement and diversify the supplier base. Therefore, public buyers should actively consider division into lots as part of the procurement design process. In view of the existence of stricter national regimes in a number of Member States which Member States should be able to maintain, Member States should be allowed to impose stricter rules of division into lots. Prompt payment, including through the supply chain further contribute to securing and strengthening the financial standing of SMEs, as do advance payments which should therefore be encouraged.

(44) To ensure sound procurement procedures which yield best quality for money, public buyers should reject tenders where abnormally low prices cannot be properly explained. The circumstances under which tenders appear abnormally low and which conditions tenderers can refer to explain their prices and price elements should be clarified.

(45) It is also necessary to have clearer rules regarding certain aspects related to the contract execution phase, including payments, due to its close link with the procurement procedure itself. It should be clarified how public buyers can apply adjustment mechanisms during the performance of contracts, and how contracts can be modified, particularly in unforeseen circumstances. A clear and transparent adjustment mechanism should be introduced to enable public buyers to modify contract terms in a predictable and proportionate manner. The provisions on modifications of contract should be streamlined to allow for better application in situations justifying a modification without new competitive procedure. Robust safeguards are required to ensure that any substantial modification of the contract, in particular to the scope and content of the mutual rights and obligations of the parties, is subject to adequate justification, where appropriate, prior publication and potential review to combat

potential misuse. Where modifications exceed 50% of the initial estimated value of the contract, there is an increased risk that such modification would alter the economic balance of the contract, such modifications should therefore be subject to increased transparency obligations.

(46) Rules should be laid down to ensure traceability of decisions taken throughout the procurement procedures. Documentation of the individual procurement procedure remains key to validate the proper application of this Regulation. It should be automated to the extent possible in the electronic procurement platforms. Transparency of procurement opportunities is the cornerstone of ensuring equal access of all economic operators throughout the Union to procurement Union-wide. Proper publication of such opportunities should therefore be guaranteed through rules on the information to be published. To allow for a data-focused approach, general categories of information should be provided in this Regulation. Categories of information are grouped, allowing the establishment of a comprehensive view from procurement planning to contract completion, yielding collections of relevant data points, instead of a more static paper-based focus on forms, supporting the lowering of administrative burdens. Publication deadlines and modalities, including at national level, should also be laid down in this Regulation.

(47) Concessions and public contracts share the same core objective of enabling public buyers to meet public needs through works or services. They differ primarily in their remuneration structures rather than their essential purpose. Given their similarities, including their reliance on competitive selection procedures, the pursuit of horizontal policy objectives and the potential use of public assets, it is appropriate to harmonize their legal frameworks to the extent possible, to enhance clarity, reduce complexity, and ensure consistent implementation of Union priorities. This approach, supported by flexible procedural rules, provides clearer guidance for public buyers while maintaining necessary distinctions.

(48) In order to address the conceptual uncertainties arising from the definition of concessions under Directive 2014/23/EU, and to distinguish it from other types of contracts such as land-leases agreements, it is necessary to clarify the definition of concession and the concept of operating risk, which constitutes the determining criterion for the qualification of a contract as a concession. The definitional elements set out in this Regulation should be understood as remaining limited to defining the scope of this Regulation, without impacting definitions of operating risks for purposes of other policy areas. The new definition should focus directly on the concessionaire's exposure to uncertain economic outcomes that may affect the recovery of investments and operating costs under normal market conditions, rather than relying on rigid overly prescriptive categories of risk. This approach ensures that factors such as demand, supply, availability, lifecycle, or performance risks are not treated as standalone legal criteria but are instead regarded as illustration of the underlying economic exposure that characterises the transfer of operating risk. Regulatory mechanism under which operators are remunerated pursuant to statutory or regulated tariffs that fully compensate for their investment and operating costs, thereby eliminating genuine operating risk, do not constitute concessions within the meaning of this Regulation. Regulatory measures whose principal purpose is to grant financial support, or other incentives should not, as such, be considered concessions merely because they are allocated through a competitive procedure and impose certain requirements on beneficiaries. Rights of way relating to the construction and operation

of fixed lines or networks should also not be considered concessions where they do not entail an obligation of supply or an acquisition of services by the public authority.

(49) To ensure effective management of concessions from preparation to implementation, this Regulation introduces structured contract management elements, including prior risk assessment to verify that real and economically meaningful operating risk is transferred to the concessionaire. This prior structured risk assessment should identify the principal categories of risk and determine, on the basis of objective elements, the allocation of those risks between the parties. For those purposes regard should be had to the parties' respective ability to control or influence the occurrence or consequences of the relevant risks, without thereby relieving the concessionaire of exposure to potential losses, even where the public buyer bears part of the risk or where the overall exposure to potential losses is limited. The duration of concessions should be proportionate not only to the time required for the concessionaire to recoup investments but also to foreseeable sectoral developments, such as technological, environmental, climatic, or societal changes, that could affect the concession's performance. Excessively long durations may increase the need for substantial modifications, thereby undermining the initial risk allocation and competitive conditions. Contracts should enable adaptation to evolving requirements relating to sustainability, technological advancement, security, innovation, and resilience, ensuring concessions remain fit for purpose throughout their lifecycle.

(50) The rules on modifications of concessions have proven difficult to apply in practice. This Regulation, while retaining the existing framework's exceptions to modification prohibitions, therefore introduces clearer limits better reflecting concessions' economic realities, namely requiring the economic balance to be preserved and forbidding changes to essential competitive elements. For enhanced transparency on contract modification this Regulation introduces an ex-ante publication obligation for major modifications (exceeding 50%) that should acts as a safeguard against abuses.

(51) eProcurement service providers, whether public or private, play an important role in public procurement in facilitating secure electronic communication. It is therefore necessary to lay down place certain requirements on them, to ensure the functioning of the interoperable exchange of information as well as the resilience of the interoperability network. To provide easy access to cross-border procurement procedures for economic operators, the Commission should establish and operate an eProcurement platform that contains the basic functions necessary for the access to and the conduct of procurement procedures.

(52) To improve cross-border access to procurement procedures, a European standard for procurement procedures should be established which allows economic operators to submit electronic communication such as tenders to public buyers that are using other services. Additionally, a European standard for procurement details should also be requested to be developed by a European standardisation organisation. It should also be clarified that the electronic communication directly within the eProcurement platform chosen by the public buyer remains permitted where it complies with the rules for electronic communication.

(53) An important element of the simplification of procurement procedures is to lower the administrative burden contained in the check of the eligibility of the economic operator. To this end, the Commission should set up an electronic eligibility service, which provides information from the up-to-date digital business credential tool of the economic operator as well as any consortium member or subcontractor participating in

the individual procurement procedure. Through the connection from the tool to national databases, public buyers may receive current information on the eligibility of the economic operator.

(54) Procurement-related data, including contract data, has many important uses and purposes: it can provide indications on the functioning of the internal market and help with the detection of fraud, corruption, collusion and misconduct. Where there is more flexibility provided for public buyers in the conduct of procurement procedures, it is important to have better quality of data overall to improve monitoring. Member States should therefore set up National Public Procurement Data Spaces. While the access to procurement data is highly relevant, it is not necessary to require the duplication of data in different sources, as that comes with increased costs without discernible benefit. That is why the national data spaces should provide access to data, including data which may be stored in other databases, only storing or retrieving information when necessary. When there are pre-existing procurement databases, they should form the basis of national public procurement data spaces. The Public Procurement Data Space was set up by the Commission to contain and share information about public procurement and should receive procurement information from the National Public Procurement Data Spaces.

(55) eProcurement platforms constitute critical infrastructure underpinning public procurement across the Union. The information processed through such systems is of a highly sensitive nature. The concentration of such data within platforms that are subject to third-country ownership, control, or undue influence poses significant risks to the security and public safety interests of the Union or one or more of its Member States. Such risks include unauthorised access to sensitive procurement data, interference with the integrity or availability of procurement platforms, exposure to cyberattacks or espionage facilitated by foreign state actors, and the potential exploitation of procurement information for economic or strategic purposes adverse to the Union. Ensuring that eProcurement service providers as well as National Public Procurement Data Spaces remain free from ownership structures or control arrangements that bear risks of undue interference is therefore essential to safeguarding the security and resilience of public procurement infrastructure.

(56) The effectiveness of this Regulation depends not only on clear rules but also on strong governance arrangements at national level. Member States should therefore ensure structured and evidence-based monitoring frameworks for the functioning of their procurement systems, based on the data available in their National Public Procurement Data Spaces, in order to identify shortcomings, assess performance and competition, detect systemic risks and evaluate progress towards the objectives of this Regulation. Such monitoring should support the continuous improvement of national procurement systems and should cover, inter alia, barriers to competition and market access, including for SMEs, vulnerabilities to corruption and fraud, supply-chain dependencies, and the uptake of sustainability, innovation and digitalisation. The results of that monitoring should be made public on a regular basis and should feed into periodic reporting to the Commission.

(57) Member States should also designate a national coordinating authority to ensure effective coordination among the relevant national authorities, facilitate cooperation and the exchange of information between those authorities and act as a single contact point for the Commission, the competent authorities of other Member States and relevant stakeholders.

(58) Professionalisation is a key factor in ensuring effective, efficient and integrity-based public procurement. It requires a long-term and strategic approach to develop and maintain the skills and competencies of public buyers throughout the whole public procurement cycle. The national strategy should provide a coherent framework for setting priorities, coordinating measures, monitoring progress and adapting professionalisation efforts over time. Professionalisation measures should take into account the different needs of public buyers at each level of governance, with particular attention to those with limited administrative capacity. Such measures should also facilitate the participation of economic operators, in particular SMEs, and support other actors contributing to the functioning of the public procurement system. Appropriate support structures, such as competence centres, training bodies, advisory services or helpdesks, play an important role in strengthening the professionalisation of public buyers and improving the overall performance of the public procurement system.

(59) Fraud, favouritism, collusion, corruption and conflicts of interest continue to pose significant risks to the integrity and effectiveness of public procurement. Therefore, in order to avoid any distortion of competition and ensure equal treatment of all economic operators, including in the contract implementation. Public buyers should be required to take appropriate, proportionate and effective measures to prevent, identify and remedy such risks throughout the preparation, award and execution of contracts. Member States should support those efforts through appropriate tools, including data-based risk analysis instruments such as Arachne+ which is the Commission's corporate data-mining and risk-scoring tool designed to help detect and prevent fraud, conflicts of interest, and irregularities affecting the EU budget. The new digital ecosystem for procurement in the Union aims at ensuring transparency and accountability, thereby contributing to diminishing risks to the integrity of the procedures.

(60) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of a number of non-essential elements of this Regulation: amending the public procurement thresholds every two years to account for variations in SDR equivalences, imposing environmental requirements for procurement of certain products, amending the list of Union legislation introducing product or technology sustainability requirements, where necessary following the adoption on new relevant Union legal acts, amending the threshold for the use of BIM in public procurement, adopting mandatory specifications and other public procurement criteria where those elements address identified security and public safety interests of the Union, or where strategic dependencies or risks are identified, amending the definition of covered economic operators, goods, services or works, or supplementing this Regulation by requiring public buyers to apply any of the voluntary restrictive measures set out in this Regulation, amending or extending the required procurement information, designating or establishing the interoperability network, and setting up the rules for the management of the electronic eligibility system and designating the digital business credential tool and the related network. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[9]. In particular, to ensure equal participation in the preparation of

[9] OJ L 123, 12.05.2016, p. 1, http://data.europa.eu/eli/agree_interinstit/2016/512/oj.

delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts

(61) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for the adoption of decisions regarding the competition levels in certain markets and the feasibility of exempting certain types of public buyers from public procurement rules; to specify what type of specific information should be contained in each public summary and to establish the connection of public summaries and the sequencing of specific information contained in multiple public summaries, as well as related requirements for public buyers and eProcurement service providers to reuse information; the implementation arrangements for the interoperability network, the electronic eligibility service and the data exchange; to establish common specifications covering requirements for the semantic data model of the procurement procedures; and, to determine the procurement information that should be made available to the National Public Procurement Data Space (NPPDS) and Public Procurement Data Space (PPDS), its designation as publicly available, the publication terms such as the date of publication for not initially publicly available information, and the source of the technical validation requirements. Those powers should be exercised in accordance with Regulation (EU) No 182/2011[10] of the European Parliament and of the Council.

(62) Since the objective of this Regulation, namely the harmonisation of rules for public procurement procedures, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(63) This Regulation undertakes a regulatory deep cleaning, consolidating relevant rules on public procurement from sectoral legislation into a single reference legislation, this Regulation. It provides a general framework for public procurement rules of more than sector-specific relevance, and will thereby greatly simplify the application of these rules in practice. In order to delete and integrate into this Regulation relevant rules on public procurement which apply regardless of the type of product concerned, it is therefore necessary to amend Regulations (EU) 2023/1542[11], (EU) 2024/1157[12], (EU) 2024/1252[13], (EU) 2024/1735[14], (EU) 2024/1781[15], (EU) 2024/2847[16], (EU)

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10 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: http://data.europa.eu/eli/reg/2011/182/oj).

11 Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC (OJ L 191, 28.7.2023, p. 1, ELI: http://data.europa.eu/eli/reg/2023/1542/2025-07-31).

12 Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006 (OJ L, 2024/1157, 30.4.2024, ELI: http://data.europa.eu/eli/reg/2024/1157/oj).

13 Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 (OJ L, 2024/1252, 3.5.2024, ELI: http://data.europa.eu/eli/reg/2024/1252/oj).

2024/3110[17] and (EU) 2025/40[18], and Directives 2008/98/EC[19], (EU) 2019/882[20], (EU) 2022/2381[21], (EU) 2023/1791[22] and (EU) 2024/1760[23]. Regulation (EC) No 1370/2007 should be amended, in order to make applicable for that Regulation the rules provided for in this Regulation on security, security of supply and European preference.

(64) Directives 2014/23/EU, 2014/24/EU and 2014/25/EU should be repealed.

(65) In view of the scale and novelty of the reforms introduced by this Regulation, including the establishment of a common digital ecosystem and data spaces, the strengthening of strategic procurement rules, and the new governance and monitoring requirements, the application of this Regulation should be deferred by two years.

(66) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725[24] and delivered its opinion on [INSERT],

HAVE ADOPTED THIS REGULATION:

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[14] Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem and amending Regulation (OJ L, 2024/1735, 28.6.2024, ELI: http://data.europa.eu/eli/reg/2024/1735/oj).

[15] Regulation (EU) 2024/1781 of the European Parliament and of the Council of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products, amending Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and repealing Directive 2009/125/EC (OJ L, 2024/1781, 28.6.2024, ELI: http://data.europa.eu/eli/reg/2024/1781/oj).

[16] Regulation (EU) 2024/2847 of the European Parliament and of the Council of 23 October 2024 on horizontal cybersecurity requirements for products with digital elements and amending Regulations (EU) No 168/2013 and (EU) 2019/1020 and Directive (EU) 2020/1828 (Cyber Resilience Act) (OJ L, 2024/2847, 20.11.2024, ELI: http://data.europa.eu/eli/reg/2024/2847/oj).

[17] Regulation (EU) 2024/3110 of the European Parliament and of the Council of 27 November 2024 laying down harmonised rules for the marketing of construction products and repealing Regulation (EU) No 305/2011 (OJ L, 2024/3110, 18.12.2024, ELI: http://data.europa.eu/eli/reg/2024/3110/oj).

[18] Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem and amending Regulation (EU) 2018/1724 (OJ L, 2024/1735, 28.6.2024, ELI: http://data.europa.eu/eli/reg/2024/1735/oj).

[19] Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3, ELI: http://data.europa.eu/eli/dir/2008/98/oj).

[20] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65, ELI: http://data.europa.eu/eli/dir/2014/24/oj).

[21] Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures (OJ L 315, 7.12.2022, p. 44, ELI: http://data.europa.eu/eli/dir/2022/2381/oj).

[22] Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast) (OJ L 231, 20.9.2023, p. 1, ELI: http://data.europa.eu/eli/dir/2023/1791/oj).

[23] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, (OJ L, 2024/1760, 5.7.2024, ELI: http://data.europa.eu/eli/dir/2024/1760/oj).

[24] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj).

Part I
General provisions

Title I
Subject-matter and scope

Article 1

Subject-matter and scope

1. This Regulation establishes rules on public contracts for works, supplies or services and concessions for works or services procured by one or more public buyers from one or more economic operators, the value of which is equal to or greater than the thresholds established in Article 2.

2. This Regulation lays down the procedural rules that apply to the award of public contracts and concessions as well as the procurement-related aspects of the planning and the execution of such contracts and concessions, sets out strategic objectives to be taken into account and establishes a framework for a common digital ecosystem to be used in their planning, award and implementation as well as mechanisms to ensure efficiency and accountability of public procurement.

3. This Regulation does not regulate matters pertaining to general administrative or contract law in the Member States beyond the matters referred to in paragraphs 1 and 2. It does not affect the way in which the Member States organise their public administration, including financial and budgetary control of public spending, or the organisation of their social security systems.

4. The application of this Regulation is subject to Article 346 of the Treaty. This Regulation does not preclude the adoption or enforcement of national measures necessary for the protection of Member States' national security in accordance with the Treaty.

5. This Regulation does not affect the freedom of Member States under Article 4 of the Treaty to establish, in conformity with Union law, services of general economic interest, and how those services are organised and financed, provided that they are in compliance with State aid rules, and the specific obligations to which they are subject. Furthermore, this Regulation does not affect any decision of public authorities as to whether, how and to what extent they wish to perform public functions themselves pursuant to Article 14 of the Treaty and Protocol No. 26 of the Treaty.

6. Agreements, decisions or other legal instruments that organise the transfer of powers and responsibilities for the performance of public tasks between public buyers and that do not provide for remuneration to be given for contractual performance are considered to be a matter of internal organisation of the Member State concerned and, as such, are not affected in any way by this Regulation.

Article 2

Thresholds

1. This Regulation applies to public contracts and concessions with a value net of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:

(a) EUR 5 404 000 for public works contracts and for concessions;

(b) EUR 140 000 for public supply contracts and public service contracts awarded by the central government authorities listed in Annex I;

(c) EUR 216 000 for public supply contracts and public service contracts awarded by sub-central contracting authorities;

(d) EUR 432 000 for public supply contracts and public service contracts awarded by contracting entities operating in the sectors covered by Part II, Title I, Chapter 2;

(e) EUR 750 000 for contracts for social, health and educational services awarded pursuant to Article 58.

2. The Commission is empowered to adopt delegated acts in accordance with Article 141, or, in cases of urgency, with Article 142, amending the thresholds set out in paragraph 1 of this Article in accordance with the conditions set out in Article 3.

Article 3

Revision of thresholds

1. Every two years from … [OP please insert the date = the last day of the month of August after the date of entry into force of this Regulation], the Commission shall verify that the thresholds set out in Article 2(1) correspond to the thresholds established in the World Trade Organization Agreement on Government Procurement (GPA) and shall, where necessary, revise those thresholds in accordance with this Article.

2. The Commission shall revise the thresholds set out in Article 2 in accordance with the calculation method set out in the GPA. The Commission shall calculate the value of these thresholds on the basis of the average daily value of the euro in terms of the special drawing rights (SDRs), over a 24-month period terminating on 31 August preceding the revision with effect from 1 January. The value of the revised thresholds shall, where necessary, be rounded down to the nearest thousand euros to ensure that the thresholds in force provided for by the GPA, expressed in SDRs, are observed.

3. From 1 January 202X [OP please insert year after the year of entry into force of this Regulation], and every two years thereafter, the Commission shall determine the values, in the national currencies of the Member States whose currency is not the euro, of the thresholds set out in Article 2 of this Regulation.

4. In accordance with the calculation method set out in the GPA, the Commission shall determine the values referred to in paragraph 3 on the basis of the average daily values of those currencies corresponding to the applicable threshold expressed in euros over the 24-month period terminating on 31 August preceding the revision with effect from 1 January of the following year.

5. The Commission shall publish the revised thresholds, and their corresponding values in the national currencies of the Member States whose currency is not the euro, in the Official Journal of the European Union at the beginning of the month of November following their revision.

6. Where it is necessary to revise the thresholds set out in Article 3 and where imperative grounds of urgency prevent the use of the procedure laid down in Article 141 and therefore imperative grounds of urgency so require, the procedure referred to in Article 142 shall apply to delegated acts adopted pursuant to Article 2(2).

Title II
Principles, policy objectives and definitions

Article 4

Principles of procurement

1. Procurement shall be guided by the principle of best quality for public money, thereby serving the objective of efficient public spending and investment.

2. Public buyers shall treat economic operators originating from the Union and economic operators which are covered economic operators in accordance with Article 70(1) equally and without discrimination, giving full effect to the free movement of persons, goods and services and the freedom of establishment in the Union's internal market. They shall act in a transparent and proportionate manner.

3. Public buyers shall take appropriate measures to ensure the integrity of the procurement process and to prevent circumstances that may compromise its impartiality and fairness.

   Public buyers shall not design their procurement in such a way as to exclude it from the scope of this Regulation or to unduly restrict competition.

4. Public buyers shall take appropriate measures to ensure that, in the performance of public contracts, economic operators comply with applicable obligations relating to the policy objectives set out in Article 5, including applicable obligations in the fields of environmental, social and labour law as established by Union law, national law, collective agreements, or by the international environmental, social and labour law conventions listed in Annex II.

Article 5

Policy objectives

Public procurement shall be guided by the strategic policy objectives of the Union, in particular:

(a) boosting the Union’s competitiveness through a thriving internal market, advancing innovation and reinforcing the Union’s manufacturing and clean industrial base;

(b) the achievement of environmental and climate objectives of the Union;

(c) the pursuit of social justice, fair working conditions and an inclusive society, including as fostered by social dialogue;

(d) the Union's safety, security, resilience and economic security, including through strategic independence.

Article 6

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) ‘classified information’ means any information or material, regardless of the form, nature or mode of transmission thereof, to which a certain level of security classification or protection has been attributed, and which, in the interests of national security and in accordance with the laws, regulations or administrative provisions in force in the Member State concerned, requires protection against any misappropriation, destruction, removal, disclosure, loss or access by any unauthorised individual, or any other type of compromise;

(2) ‘day’ means calendar day;

(3) ‘digital business credential tool’ means a digital tool allowing for the verification, exchange and storage of evidence related to the exclusion grounds, selection criteria, origin and other requirements set out pursuant to this Regulation in the procurement procedure and available through the tool;

(4) ‘economic operator’ means any natural or legal person, or public entity or group of such persons and/or entities, such as joint ventures, consortia or other including any temporary associations without legal personality, which offers the execution of a work or works, the supply of products or the provision of services on the market;

(5) ‘eligibility profile’ means a compiled document generated by the electronic eligibility service referred to in Article 133 which contains information about the economic operator, including information regarding its compliance with exclusion grounds, selection criteria and origin;

(6) ‘eProcurement platform’ means a digital tool which allows for the electronic communication between public buyers and economic operators through the interoperability network;

(7) ‘eProcurement service provider’ means an economic operator that provides an eProcurement platform;

(8) ‘functional requirement’ means a requirement that describes the performance, desired function, capability, outcome or result that works, products or services are intended to achieve, without referring to specific technical means, design, or methods by which those functions or outcomes are achieved;

(9) ‘harmonised standard’ means a harmonised standard as defined in Article 2, point (1)(c), of Regulation (EU) No 1025/2012[25];

[25] Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12, ELI: http://data.europa.eu/eli/reg/2012/1025/oj).

(10) ‘labour-intensive contract’ means a contract with a subject-matter for which the cost of labour normally accounts for at least 50 % of the total contract value;

(11) ‘life-cycle’ means all possible consecutive or interlinked stages, or both, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product, works or services, from the acquisition of raw materials or the generation of resources, to disposal, clearance and end of service or use;

(12) ‘micro, small or medium-sized enterprise’ (SME) means a micro, small or medium-sized enterprise as defined in the Annex to Commission Recommendation 2003/361/EC[26];

(13) ‘pre-commercial procurement’ means the procurement of research and development services that involves risk-benefit sharing under market conditions and competitive development in phases;

(14) ‘procurement detail’ means any information produced or referred to by the public buyer to describe elements of the procurement before the award, including public summaries, technical specifications, the draft contract, templates for the presentation of information by economic operators, information on generally applicable obligations and any additional information;

(15) ‘procurement information’ means any data provided by the public buyer covering the full procurement life cycle including before and after the award of the contract;

(16) ‘procurement of research and development services’ (‘R&D procurement’) means the procurement of fundamental research, industrial research and experimental development up to original development. Original development of a first product, service or work may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the product, service or work concerned is suitable for production or supply in quantity to acceptable quality standards, but shall not include quantity production or supply to establish commercial viability or to recover research and development costs. R&D procurement may include obtaining the ownership of prototypes or first products, services or works that are developed at the public buyer’s request in the course of and for a particular research and development services procurement contract, but shall not include the commercial deployment of end-products, services or works.

(17) ‘public buyer’ means a contracting authority in accordance with Article 7 or a contracting entity in accordance with Article 8;

(18) ‘public contract’ means a contract, for pecuniary interest, concluded in writing between one or more economic operators and one or more public buyers and having as its object the execution of works, the supply of products or the provision of services;

(19) ‘public service contracts’ means a public contract having as its object the provision of services other than those referred to in point (22);

(20) ‘public summary’ means an overview of the procurement at a given time published by the public buyer;

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26 Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document number C (2003) 1422), (OJ L 124, 20.5.2003, p. 36, ELI: http://data.europa.eu/eli/reco/2003/361/oj)

(21) ‘public supply contract’ means a public contract having as its object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. Products may be new, used, refurbished, remanufactured and product-as-service. A public supply contract may include, as an incidental matter, siting and installation operations;

(22) ‘public works contract’ means a public contract having as its object one of the following:

(a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex V;

(b) the execution, or both the design and execution, of a work;

(c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;

(23) ‘societal challenge’ means a development or situation that has implications for the effective and efficient delivery of public tasks, impacting the functioning of the public buyer or buyers concerned, or the persons who rely on those services;

(24) ‘innovative solution proposal’ means a proposal from an economic operator outlining their innovative approach to address a societal challenge, including the risks involved, the potential impact and benefits, and their vision for developing, testing and implementing the innovative solution in cooperation with the public buyer;

(25) ‘subcontractor’ means an economic operator that acquires through contractual means the responsibility to perform a part of the public contract – excluding the mere provision of goods or parts that are necessary for the provision of a work or service – from an economic operator that has been awarded such public contract;

(26) ‘subject-matter of the contract’ means the works, services or supplies that the public buyer intends to acquire through the procurement with a view to meeting its needs;

(27) ‘work’ means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function.

Part II
Relevant actors

Title I
Public buyers

Chapter 1
Identification of public buyers

Article 7

Contracting authorities

1. For the purpose of this Regulation, contracting authorities shall be the central government authorities, sub-central government authorities, bodies governed by public law, or associations formed by one or more such contracting authorities, irrespective of whether the procurement procedure is conducted by one or more specific administrative units within them.

2. For the purposes of this Regulation, central government authorities shall be the authorities listed in Annex I and, in so far as corrections or amendments have been made at national level, those authorities' successor entities.

   Where corrections or amendments are made at national level, Member States shall notify the Commission thereof within three months.

3. Sub-central government authorities shall mean any of the following:

   (a) State, regional or local authorities other than those listed in Annex I;

   (b) central purchasing bodies who are not themselves central government authorities;

   (c) bodies governed by public law as described in paragraph 4.

4. For the purpose of this Regulation, bodies governed by public law shall be bodies that meet all the following conditions:

   (a) they have the specific purpose of meeting needs in the general interest, and not having an industrial or commercial character;

   (b) they have legal personality;

   (c) they are financed, for more than 50 % by the State, regional or local authorities, or by other bodies governed by public law; or are subject to the management and supervision by those authorities or bodies; or have an administrative, managerial or supervisory board where more than half of their members are appointed by the State, regional or local authorities or by other bodies governed by public law.

5. The Commission is empowered to adopt delegated acts in accordance with Article 141 to amend Annex I by updating the list of central government authorities based on the notifications received from Member States pursuant to paragraph 2 of this Article.

Article 8

Contracting entities

1. For the purpose of this Regulation, contracting entities shall be contracting authorities, public undertakings, and entities that operate on the basis of special or exclusive rights, and which carry out one or more of the activities referred to in Articles 12 to 18 or any combination thereof, unless the activity is directly exposed to competition on markets to which access is not restricted within the meaning of Article 19.

2. A public undertaking shall be any undertaking over which one or more contracting authorities may exercise, directly or indirectly, a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.

   Contracting authorities shall be presumed to exercise a dominant influence in any of the following cases in which they, directly or indirectly:

   (a) hold the majority of the undertaking's subscribed capital;

   (b) control the majority of the votes attaching to shares issued by the undertaking;

   (c) can appoint more than half of the undertaking's administrative, management or supervisory body.

3. For the purpose of this Regulation, special or exclusive rights shall be rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of the activities referred to in Articles 12 to 18 to one or more entities, and which substantially affects the ability of other entities to carry out such activity.

   Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute special or exclusive rights within the meaning of the first subparagraph.

   The procedures referred to in the second subparagraph shall include, but are not limited to:

   (a) procurement procedures with a prior call for competition in conformity with Directive 2009/81/EC[27] or a public summary of competition pursuant to this Regulation;

   (b) procedures pursuant to other legal acts of the Union that ensure adequate prior transparency for granting authorisations on the basis of objective criteria, including but not limited to the procedures under the Union legal acts listed in Annex III.

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[27] Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76, ELI: http://data.europa.eu/eli/dir/2009/81/oj).

Article 9

Central purchasing bodies

1. Public buyers may organise their procurement activities through the creation and use of central purchasing bodies in accordance with the rules set out in this Article.

2. For the purpose of this Regulation, central purchasing bodies shall be any public buyer carrying out the following activities:

   (a) acting as a wholesaler by buying and re-selling solutions purchased on the market for public buyers;

   (b) acting as an intermediary by publishing summaries and awarding contracts for public buyers;

   Central purchasing bodies may also, in addition to the activities set out above, carry out or take part in joint procurement activities, or provide ancillary purchasing support services to public buyers, including technical assistance, technical infrastructure or advice.

3. Public buyers shall indicate in the public summaries pursuant to Article 110 when they are acting as a central purchasing body.

4. Any public buyer may acquire solutions from or through any central purchasing body established in the Union without applying the procedures laid down in this Regulation for the provision of the services of the central purchasing body.

5. A public buyer acquiring a solution from or through a central purchasing body, which for that solution was obliged to and has applied this Regulation, shall be deemed to comply with this Regulation in respect of the procurement for that solution.

6. A public buyer acquiring a solution from or through a Union institution, body, office or agency which carries out joint procurement, acts on behalf of the Member States or acts as a central purchasing body pursuant to Regulation (EU, Euratom) 2024/2509[28] or other Union legal acts other than this Regulation which provide for carrying out joint procurement or acting on behalf of the Member States or as central purchasing body, shall be deemed to comply with this Regulation in respect of the procurement for that solution.

Article 10

Joint procurement

1. Two or more public buyers, including those from different Member States, may act jointly in the award of certain specific public contracts.

2. The joint procurement procedure shall be regulated by an agreement between the parties, determining, among other things:

[28] Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), OJ L, 2024/2509, 26.9.2024, ELI: http://data.europa.eu/eli/reg/2024/2509/oj).

(a) the respective responsibilities of the concerned parties, the responsibility for the management of the joint procedure, the distribution of the works, supplies or services to be jointly procured or rights to be transferred; and

(b) where the public buyers are from different Member States, the legal system governing the procedure and, consequently, the legislation applicable to disputes, the competent review body and applicable jurisdiction, and the law governing the resulting public contracts.

The allocation of responsibilities and the applicable national law shall be referred to in the procurement detail for the jointly procured public contracts.

3. This Article is without prejudice to Articles 9(6) and 69(3), point (f), of this Regulation and Article 168(2) and (3) of Regulation (EU, Euratom) 2024/2509 or other Union legal acts.

Chapter 2
Activities in the field of utilities

SECTION 1
COVERED ACTIVITIES

Article 11

Common provisions

1. For the purposes of Articles 12, 13 and 14, ‘supply’ shall include generation or production, wholesale and retail sale.

2. The production of gas in the form of extraction shall fall within the scope of Article 18.

Article 12

Gas and heat

1. In relation to gas and heat, this Regulation applies to the following activities:

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;

(b) the supply of gas or heat to the networks referred to in point (a).

2. The supply by a contracting entity other than a contracting authority of gas or heat to fixed networks which provide a service to the public shall not constitute a relevant activity within the meaning of paragraph 1 of this Article where both of the following conditions are met:

(a) the production of gas or heat by that contracting entity is the unavoidable consequence of carrying out activities other than those referred to in paragraph 1 of this Article or in Articles 13, 14 or 15;

(b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the contracting entity's turnover on the basis of the average for the three years preceding the one in which the supply is made.

Article 13

Electricity

1. In relation to electricity, this Regulation applies to the following activities:

   (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;

   (b) the supply of electricity to the networks referred to in point (a).

2. The supply by a contracting entity other than a contracting authority of electricity to fixed networks which provide a service to the public shall not be considered to be a relevant activity within the meaning of paragraph 1 of this Article where both of the following conditions are met:

   (a) the production of electricity by that contracting entity takes place because its own consumption is necessary for carrying out activities other than those referred to in paragraph 1 of this Article or in Articles 12, 14 or 15;

   (b) the supply to the public network depends only on that contracting entity's own consumption and has not exceeded 30 % of that contracting entity's total production of energy, on the basis of the average for the three years preceding the one in which the supply is made.

Article 14

Water

1. In relation to water, this Regulation applies to the following activities:

   (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water;

   (b) the supply of drinking water to the networks referred to in point (a).

2. This Regulation shall also apply to contracts awarded by contracting entities which pursue an activity referred to in paragraph 1 and which are connected with one of the following activities:

   (a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations;

   (b) the disposal or treatment of sewage.

3. The supply by a contracting entity other than a contracting authority of drinking water to fixed networks which provide a service to the public shall not be considered to be a relevant activity within the meaning of paragraph 1 of this Article where both of the following conditions are met:

(a) the production of drinking water by that contracting entity takes place because its consumption by that contracting entity is necessary for carrying out an activity other than those referred to in Articles 14 to 17;

(b) the supply to the public network depends only on that contracting entity's own consumption and has not exceeded 30 % of that contracting entity's total production of drinking water, on the basis of the average for the three years preceding the one in which the supply is made.

Article 15

Transport Services

1. This Regulation applies to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

2. As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

Article 16

Ports and airports

This Regulation applies to the exploitation of a geographical area for the purpose of providing airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

Article 17

Postal services

1. This Regulation applies to activities relating to the provision of the following services:

   (a) postal services;

   (b) services other than postal services, on condition that such services are provided by an entity which also provides postal services as defined in paragraph 2, point (b), of this Article and provided that the conditions set out in Article 19 are not satisfied in respect of those services.

2. For the purpose of this Article and without prejudice to Directive 97/67/EC[29] of the European Parliament and of the Council:

   (a) 'postal item' means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance, books, catalogues, newspapers, periodicals and

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[29] Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14, ELI: http://data.europa.eu/eli/dir/1997/67/oj).

postal packages containing merchandise with or without commercial value, irrespective of weight;

(b) ‘postal services’ means services consisting of the clearance, sorting, routing and delivery of postal items, including services falling both within and outside the scope of the universal service obligation provided for in Article 3 of Directive 97/67/EC;

(c) ‘services other than postal services’ means services provided in the following areas:

(i) mail service management services both preceding and subsequent to despatch, including mailroom management services;

(ii) services concerning postal items not included in point (a), such as direct mail bearing no address.

Article 18

Energy sources extraction and exploration

This Regulation applies to the exploitation of a geographical area for the purpose of:

(a) extracting oil or gas;

(b) exploring for, or extracting, coal or other solid fuels.

SECTION 2
EXEMPTING PARTICULAR UTILITY ACTIVITIES

Article 19

Activities directly exposed to competition

1. This Regulation does not apply to contracts for the pursuit of activities listed in Articles 12 to 18, with regard to a given geographical area if the activity is directly exposed to competition on markets to which access is not restricted in that geographical area, where that is established by an implementing act adopted pursuant to Article 20(4).

2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the provisions on competition of the Treaty, and without prejudice to the application of competition law to the situation subject to the decision. Those criteria may include the following:

(a) the characteristics of the products or services concerned;

(b) the existence of alternative products or services considered to be substitutable on the supply side or demand side;

(c) the prices; and

(d) the actual or potential presence of more than one supplier of the products or provider of the services in question on the relevant market.

The activity concerned may form part of a larger sector or be exercised only in certain parts of the territory of the Union, including certain parts of Member States.

3. The geographical area on the basis of which direct exposure to competition is assessed shall consist of an area in which the undertakings concerned are involved in the supply of and demand for products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, the conditions of competition are appreciably different in those areas. That assessment shall primarily take into account appreciable differences in the undertakings' market shares and the existence of market entry barriers or consumer preferences. It shall also take into account factors such as the nature and characteristics of the products or services concerned and any substantial price differences between the area concerned and neighbouring areas. The territorial scope of the area on the basis of which exposure to competition is assessed shall be limited to the territory of the Member State.

4. For the purposes of paragraph 1, access to a market is deemed not to be restricted if the Member State has implemented and applied the Union legal acts listed in Annex IV. Otherwise, it shall be established that access to the market in question is free in law and in fact.

Article 20

Exemption procedure

1. Where a Member State or a contracting entity considers that a given activity is directly exposed to competition on markets to which access is not restricted, it may submit to the Commission, as a preparatory step to a possible formal exemption request, a preliminary question on the applicability of Article 19 pursuant to paragraph 2 of this Article, or, directly, a formal exemption request pursuant to paragraph 3 of this Article, to establish that the activity in question is not covered by this Regulation.

2. During the optional preparatory phase following the submission of a preliminary question, the Commission, in a spirit of loyal cooperation, shall carry out an initial assessment of the conditions set out in Article 19. Such assessment shall be based on all information relevant to that activity already in the possession of or available to the Commission. To complement the information already in its possession, the Commission may request additional information from the contracting entity or Member State concerned, or any other party competent in relation to the activity and market concerned. The Commission may invite the contracting entity, Member State and other concerned parties to further written or oral exchanges to explore whether the conditions for granting an exemption are met, including as regards clarification of missing facts, data or reasoning.

The Commission shall provide a reply to the preliminary assessment question within 180 calendar days after the submission. If the information collected in assessing the preliminary question is sufficient to conclude that the conditions set out in Article 19 are met, the Commission shall end the preparatory phase, waive the submission of a formal exemption request and adopt an implementing act declaring that the relevant activity was exempted pursuant to paragraph 4 of this Article.

The Member State or contracting entity concerned may submit a formal request at any time before the end of the period referred to in the second subparagraph.

If the information collected in assessing the preliminary question is not sufficient to conclude that the conditions set out in Article 19 are met, the Commission shall inform the Member State or the contracting entity concerned, after which the Member State or the contracting entity may decide to submit a formal exemption request pursuant to paragraph 3 of this Article.

3. Following the submission of a formal exemption request, either directly or following an inconclusive, negative or partially negative outcome of the preparatory phase, the Commission shall carry out a full assessment of the conditions set out in Article 19. The formal exemption request shall include all relevant facts, and in particular information on any law, regulation, administrative provision or agreement concerning compliance with these conditions. It may include a position adopted by an independent national authority that is competent in relation to the activity concerned. Form, content and other details of the exemption request shall follow the requirements in the implementing act based on paragraph 10 of this Article.

4. Following its assessment of the information submitted, the Commission shall, by means of implementing acts adopted within the periods set out in the second subparagraph of this paragraph, establish whether an activity is directly exposed to competition on the basis of the criteria set out in Article 19. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 143(2).

The activity shall cease to be subject to this Regulation when:

(a) the Commission has adopted an implementing act establishing that the activity is directly exposed to competition within the period provided for in point (b);

(b) the Commission has not adopted the implementing act within the following periods:

(i) in case the exemption request is not accompanied by a position adopted by an independent national authority:

(1) 90 days;

(2) 120 days where the Commission exceptionally informs the contracting entity and Member State concerned that the degree of complexity of the request for exemption requires more time to analyse the competitive situation on the relevant market or activity;

(ii) in case the exemption request is accompanied by a position adopted by an independent national authority:

(1) 60 days;

(2) exceptionally 80 days, where the Commission informs the contracting entity and Member State concerned that the degree of complexity of the request for exemption requires more time to analyse the competitive situation on the relevant market or activity.

Those deadlines shall commence on the first working day following the date on which the Commission receives the exemption request or, where the information to be supplied with the exemption request is incomplete, on the working day following the receipt of the complete information.

The periods set out in point (b) may be extended by the Commission with the agreement of the Member State or of the contracting entity concerned.

The Commission may request from the Member State or the contracting entity concerned or the independent national authority or any other competent national authority information that it considers necessary to carry out its assessment, including related additional information or clarifications to information already provided. The periods set out in point (b) shall be suspended until the receipt of the complete and correct information.

5. After the submission of an exemption request, the Member State or the contracting entity concerned may, with the Commission's agreement, substantially modify its exemption request, in particular as regards the activities or the geographical areas concerned. In such case, a new period for the adoption of the implementing act shall apply, which is to be calculated in accordance with paragraph 4, point (b), unless a shorter period is agreed on by the Commission and the Member State or contracting entity concerned.

6. If, in the context of an exemption request, the Commission issues a request for information to the Member State or the contracting entity concerned which remains unanswered for 180 days, the exemption request shall be deemed to be withdrawn.

7. Where an activity in a given Member State is already the subject of a procedure under paragraphs 1 and 5, further exemption requests concerning the same activity in the same Member State before the expiry of the period opened in respect of the first exemption request shall not be considered as new procedures but shall be treated in the context and period of the first exemption request.

8. The Commission may, ex officio, carry out a new analysis of the conditions for granting an exemption, including following information from a third party, or in case of a formal request from a Member State.

9. Information on the applicability of Article 19(1) to covered activities for a given market and activity shall be made available by the Commission, including the fact of the submission of an exemption request, the applicable periods for its assessment and any prolongations or suspensions thereof. The Commission shall also publish information on preliminary questions and new analyses carried out pursuant to paragraph 8.

10. The Commission is empowered to adopt implementing acts establishing detailed rules for the application of paragraphs 1 to 9, including at least rules relating to:

(a) implementing provisions concerning the form, content and other details of preliminary questions and exemption requests pursuant to paragraphs 1 and 3;

(b) publication pursuant to paragraph 9.

That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 143(2).

Title II
Economic operators

Chapter 1
General provisions

Article 21

Economic operators

1. Public buyers shall not require economic operators to have a specific legal form in order to participate in the procurement procedure.

2. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant supplies, works or services, shall not be rejected solely on the ground that, under the law of the Member State in which the contract is to be awarded, the economic operator would have been required to be either a natural or legal person.

3. Public buyers may, in the case of services, works or siting and installation operations, require legal persons to indicate before the start of the execution of the tasks concerned, the names and relevant qualifications of the staff responsible for the performance of the contract in question.

Article 22

Groups of economic operators

1. Public buyers shall not set out selection criteria pursuant to Article 27 for groups of economic operators that differ from those for other economic operators, unless otherwise laid down in this Article.

   A group of economic operators shall be deemed to fulfil a selection criterion where:

   (a) one economic operator in the group possesses the necessary technical and professional ability or economic and financial standing; or

   (b) where such ability or standing can be established by combining the relevant technical and professional ability or economic and financial standing from two or several members of the group, unless such combination would not achieve the same level of ability or standing.

2. When justified by the nature of the contract and in accordance with the principle of proportionality, public buyers may:

   (a) derogate from paragraph 1, second subparagraph, point (a) or (b), for selection criteria relevant for certain critical tasks;

   (b) require that certain critical tasks be performed directly by the member of the group that fulfils the selection criterion relevant for that task.

   Public buyers shall identify the critical tasks and related, requirements, clearly indicating them and their justification in the procurement detail.

3. Conditions for the performance of the contract by groups of economic operators may be permitted to differ from those imposed on other economic operators only where justified by objective reasons, which are proportionate and clearly indicated in the procurement detail.

4. Without prejudice to Member States' competence to organise their social security systems, public buyers shall not require a group of economic operators to assume a specific legal form, including once they have been awarded the contract.

5. Public buyers shall give particular consideration not to create unjustified or disproportionate barriers related to the size of the economic operators participating in a group, in particular for SMEs.

Article 23

Reliance on the capacity of other entities

1. With regard to selection criteria set by the public buyer pursuant to Article 27, economic operators may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them or of their legal form.

2. The public buyer shall verify whether the entities, whose capacity the economic operator intends to rely on regarding one or more selection criteria fulfil the relevant selection criteria and whether there are grounds for their exclusion. The public buyer shall require that the economic operator replace an entity which does not meet a relevant selection criterion, or in respect of which there are mandatory grounds for exclusion. The public buyer may require that the economic operator substitute an entity in respect of which there are optional grounds for exclusion.

3. Public buyers may request in the procurement detail that the economic operator proves that it will have the relevant resources of the entity it intends to rely on at its disposal throughout the period of execution of the contract, for example by a statement to that effect by those entities.

4. Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the public buyer may require that the economic operator and those entities be jointly liable to the public buyer for the execution of the contract.

5. Where an economic operator relies on the capacities of other entities to prove technical and professional ability, the public buyer may require in the procurement detail that such other entity will perform the works or services for which these capacities are required.

Article 24

Subcontracting

1. Parts of the public contract may be subcontracted. A contract awarded to an economic operator shall not be subcontracted in its entirety, nor be further subcontracted in its entirety.

2. Public buyers shall require economic operators to indicate in their tender any share of the contract that they envisage to subcontract to third parties, and any proposed subcontractors.

They may require the main contractor to inform them after the award of the contract and before the start of the contract performance of the tasks and activities it intends to subcontract. They may also require information about the identity of any subcontractors.

Public buyers shall require the main contractor to provide the information referred to in the second subparagraph in the following cases:

(a) public works contracts;

(b) services to be provided at a facility under the direct oversight of the public buyer;

(c) contracts identified as presenting or including a risk for security or public safety set out in Article 66;

(d) contracts making use of the European preference requirements referred to in Article 73.

The public buyer shall require the main contractor to notify the public buyer as soon as possible of any changes to the information provided pursuant to the third subparagraph during the course of the contract.

3. The public buyer shall require the economic operator to replace a subcontractor in respect of which there are mandatory grounds for exclusion pursuant to Article 25. The public buyer may require the economic operator to replace a subcontractor in respect of which there are optional grounds for exclusion under Article 26.

4. Where the public buyer has made use of any of the European preference requirements referred to in Article 73 or has included security measures in accordance with Article 66, the economic operator may introduce or replace a subcontractor only provided that the subcontractor complies with the European preference requirements or security measures established by the public buyer.

5. When justified by the nature of the contract and in accordance with the principle of proportionality, public buyers may require that certain critical tasks be performed directly by the main contractor. Public buyers shall identify the critical tasks and related requirements, clearly indicating them and their justification in the procurement detail.

6. Subcontracting under the provisions in this Article is without prejudice to the main contractor's liability.

7. Observance of the obligations referred to in Article 4(4) by subcontractors is ensured through appropriate action by the competent national authorities acting within the scope of their responsibility and remit. Member States may adopt or retain additional proportionate measures limiting subcontracting where they have identified a duly substantiated higher risk of non-compliance with social and labour law obligations.

Chapter 2
Exclusion grounds and selection criteria

Article 25

Mandatory exclusions

1. Public buyers shall at any time during the procedure exclude an economic operator, including individual members of a group of economic operators, from participation in a procurement procedure where that economic operator, or a key person in the functioning of a legal person as defined in the second subparagraph, has been the subject, in any Member State, of a conviction by final judgment for any of the offences listed in this subparagraph, or, regarding Member States not bound by the relevant Union legal act, offences as laid down in equivalent national legislation:

(a) participation in a criminal organisation, as defined in Article 1, point 1, of Council Framework Decision 2008/841/JHA[30];

(b) corruption offences, within the meaning of Directive (EU) 2026/1021[31];

(c) fraud affecting the Union's financial interests within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests and criminal offences referred to in Articles 3, 4 and 5 of Directive (EU) 2017/1371[32];

(d) terrorist offences and offences related to a terrorist group, as well as offences related to terrorist activities, as referred to in Articles 3 to 12 of Directive (EU) 2017/541[33];

(e) money laundering withing the meaning of Article 3 of Directive (EU) 2018/1673[34];

(f) trafficking in human beings within the meaning of Article 2 of Directive (EU) 2011/36[35];

(g) criminal offences concerning the employment of illegally staying third-country nationals, as referred to in Articles 2, 3 and 9 of Directive 2009/52/EC[36];

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30 Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42, ELI: http://data.europa.eu/eli/dec_framw/2008/841/oj).

31 Directive (EU) 2026/1021 of the European Parliament and of the Council of 29 April 2026 on combatting corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council (OJ L, 2026/1021, 11.5.2026, ELI: http://data.europa.eu/eli/dir/2026/1021/oj).

32 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29, ELI: http://data.europa.eu/eli/dir/2017/1371/oj).

33 Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6, ELI: http://data.europa.eu/eli/dir/2017/541/oj).

34 Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22, ELI: http://data.europa.eu/eli/dir/2018/1673/oj).

35 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1, ELI: http://data.europa.eu/eli/dir/2011/36/oj).

(h) environmental criminal offences as referred to in Articles 3 and 4 of Directive (EU) 2024/1203[37];

(i) criminal offences concerning the violation of Union restrictive measures as referred to in Articles 3 and 4 of Directive (EU) 2024/1226[38];

(j) fraudulent use of non-cash payment instruments as referred to in Articles 3 to 8 of Directive 2019/713/EU[39];

(k) offences in the area of sexual abuse and sexual exploitation of children as referred to in Articles 3 to 9 of Directive (EU) 2011/93[40].

A key person in the functioning of a legal person means a person having a leading position within the legal person, based on any of the following:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person;

(c) an authority to exercise control within the legal person.

2. The exclusion grounds set out in this Article shall apply for five years from the date of the delivery of the final judgment, except where the period of exclusion has been set by the final judgment, meaning that no exclusion decision shall be taken after the expiry of the periods referred to in this sentence.

3. Public buyers shall at any time during the procedure exclude an economic operator from participation in a procurement procedure when it becomes aware that the economic operator or contractor is in breach of its obligations relating to the payment of taxes or social security contributions and this has been established by final judicial or administrative decision, except if by that moment in time, the economic operator has concluded a binding arrangement on paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

Public buyers may derogate from the mandatory exclusion provided for in subparagraph 1 where an exclusion would be clearly disproportionate, in particular where only minor amounts are unpaid.

4. Public buyers may decide to derogate from the mandatory exclusion provided for in this Article on an exceptional basis, for overriding reasons relating to the public interest such as public health or protection of the environment Any decision to

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36 Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC (OJ L, 2024/1203, 30.4.2024, ELI: http://data.europa.eu/eli/dir/2024/1203/oj).

37 Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC (OJ L, 2024/1203, 30.4.2024, ELI: http://data.europa.eu/eli/dir/2024/1203/oj).

38 Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673 (OJ L, 2024/1226, 29.4.2024, ELI: http://data.europa.eu/eli/dir/2024/1226/oj).

39 Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA (OJ L 123, 10.5.2019, p. 18, ELI: http://data.europa.eu/eli/dir/2019/713/oj).

40 Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1, ELI: http://data.europa.eu/eli/dir/2011/93/oj.

derogate and the justification therefore shall be documented in the individual documentation pursuant to Article 109.

Article 26

Optional exclusion grounds

1. Public buyers may at any time during the procedure exclude an economic operator, including individual members of groups of economic operators, from participation in a procurement procedure, where:

(a) the public buyer can demonstrate by any appropriate means that the economic operator has breached applicable obligations under relevant Union legislation, as referred to in Article 4(4);

(b) the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings or a comparable situation;

(c) the public buyer can demonstrate by appropriate means grave professional misconduct by the economic operator, which renders its integrity or reliability questionable;

(d) the public buyer has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;

(e) the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, which led to early termination of that prior contract, damages or other comparable sanctions by the public buyer;

(f) the economic operator, in the context of the concerned procedure, has been found accountable of serious misrepresentation with regard to the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or has otherwise undertaken to unduly obtain advantages in the public procurement procedure;

(g) the public buyer can demonstrate by any appropriate means including but not limited to classified information or non-publicly disclosable assessments provided by competent national authorities, that the economic operator does not possess sufficient reliability to exclude risks to the security and public safety interests of the Union or of one or more Member States;

(h) the economic operator has benefitted from foreign subsidies distorting the internal market, established by an implementing act adopted by the Commission pursuant to Article 31 (2) of Regulation (EU) 2022/2560[41], in the three years preceding the public procurement procedure, and the public buyer has sufficiently plausible indications to conclude that the foreign subsidies concerned are likely to have an impact on the tender of the economic operator.

2. Any economic operator subject to an exclusion pursuant to paragraph 1 may provide evidence to rebut the existence of the exclusion ground or to demonstrate that it has

[41] Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (OJ L 330, 23.12.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/2560/oj).

taken sufficient measures to demonstrate its reliability despite the existence of the exclusion ground.

For this purpose, the economic operator shall, in particular, prove that it has

(a) paid or undertaken to pay compensation in respect of any damage caused by the misconduct;

(b) clarified the facts and circumstances in a comprehensive manner by actively cooperating with the investigating authorities; and

(c) taken concrete technical, organisational and personnel measures that are appropriate to prevent further misconduct.

If the public buyer considers the evidence provided as sufficient, the economic operator concerned shall not be excluded from the procurement procedure.

The measures taken by the economic operators shall be evaluated taking into account the gravity and particular circumstances of the misconduct. In assessing the measures taken by the economic operator public buyers shall take into account the nature, extent and timing of the cooperation with the relevant investigating authorities.

Where the measures are considered to be insufficient, the economic operator shall receive a statement of the reasons thereto.

An economic operator which has been excluded by final judgment in any Member State from participating in procurement procedures shall not be entitled to make use of the possibility provided for under this paragraph during the period of exclusion resulting from that judgment.

Member States may designate a national authority competent to evaluate the evidence and decide whether it is sufficient for the purposes of this paragraph. Public buyers shall rely on a positive decision of the national competent authority for the purpose of their procurement procedures.

3. Where no measures as specified in paragraph 2 are taken and where the period of exclusion has not been set by final judgment, public buyers may exclude economic operators pursuant to this Article during a period of five years from the date of the conduct giving rise to exclusion or, in the case of continued or repeated acts, the date on which the conduct ceases, but not after that maximum period.

4. Where a public buyer excludes an economic operator on the basis of paragraph 1, point (h), it shall inform the Commission thereof.

Article 27

Selection criteria

1. Where public buyers decide to make use of selection criteria, they shall lay down such criteria in accordance with the conditions in this Article.

2. Selection criteria shall only relate to:

(a) technical and professional ability within the meaning of paragraphs 4, 5 and 6;

(b) legal, economic and financial standing within the meaning of paragraph 7.

3. Public buyers shall limit any requirements to those that are appropriate to ensure that an economic operator has the legal, economic and financial capacities and the

technical and professional abilities to perform the contract to be awarded. All requirements shall be related and proportionate to the complexity of and the risks associated with the subject-matter of the contract.

4. When justified by the subject-matter of the contract, public buyers may require economic operators to be enrolled in one of the professional or trade registers established in the country where the economic operator conducts its main activity.

In procurement procedures for services, insofar as economic operators are required to hold a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the public buyer may require them to prove that they hold such authorisation or membership.

Certified registration on official lists by the competent bodies or a certificate issued by the certification body shall constitute a presumption of compliance with regard to the requirements set out pursuant to this paragraph.

5. Any references to qualifications or qualification levels included in selection criteria shall mention the European Qualifications Framework levels set out in Annex II to Council Recommendation of 22 May 2017[42].

6. Public buyers may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard.

Unless justified due to the complexity of the contract or the nature of the subject-matter, public buyers shall not require prior experience in public contracts as a condition for participation in the procurement procedure.

A public buyer may assume that an economic operator does not possess the required professional abilities where:

(a) the public buyer has established by appropriate means that the economic operator has conflicting interests which may negatively affect the performance of the contract; or

(b) the public buyer has been made aware by appropriate means that the economic operator presents a security concern for a Member State or the Union as a whole.

7. Public buyers may require economic operators to satisfy any of the following criteria:

(a) to have an appropriate minimum yearly overall turnover;

(b) to have an appropriate minimum turnover in the area covered by the contract;

(c) to provide information on their annual accounts, including on the ratios between assets and liabilities;

(d) to have an appropriate level of professional indemnity insurance.

The minimum turnovers referred to in the first subparagraph shall not exceed 50 % of the estimated annual contract value, except in duly justified cases such as relating to the special risks attached to the nature of the works, services or supplies.

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[42] Council recommendation of 22 May 2017 on the European Qualifications Framework for lifelong learning and repealing the recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning (OJ C 189, 15.6.2017, p.15).

The public buyer shall indicate the main reasons for such a requirement in the procurement detail.

Information from the annual accounts may be taken into consideration only where the public buyer has specified the methods and criteria for such consideration in the procurement detail. Such methods and criteria shall be transparent, objective and non-discriminatory.

8. Information that can be determined from existing national databases established by a public body, or from the registration on official lists or certifications shall not be questioned without sufficient justification.

Chapter 3
Means of proof of eligibility and database access

Article 28

Means of proof of the eligibility of economic operators

1. Public buyers shall require economic operators to use the electronic eligibility service established pursuant to Article 133 as the means of proof for the following:

   (a) absence of exclusion grounds pursuant to Articles 25 and 26;

   (b) compliance with selection criteria pursuant to Article 27.

   Where the economic operator relies on the capacities of other entities pursuant to Article 23 or proposes to make use of subcontractors in the execution of the contract pursuant to Article 24, the economic operator shall also provide the information referred to in the first subparagraph for those entities through the electronic eligibility service.

2. Where the electronic eligibility service provides for an automated verification of the existence of an exclusion ground or compliance with a selection criterion, public buyers shall use that verification for their decision on eligibility.

3. Economic operators shall use the digital business credential tool as provided for in Article 133. Where an economic operator does not have access to that tool or where the relevant evidence is not available through that tool, the economic operator shall declare, through the electronic eligibility service, whether it complies with the requirements set out for exclusion grounds and the selection criteria and whether it would be able to submit the required evidence (self-declaration).

   In that case, the public buyer may, at any time during the procedure, require evidence that is not available through the electronic eligibility service where it is necessary for the assessment of the public buyer’s requirements.

4. Economic operators shall indicate their country of origin, in accordance with Article 74, in the electronic eligibility service referred to in Article 133.

   If required for applying requirements under Article 73(2), economic operators shall indicate the country of origin of the goods that compose their tender, incorporating it, where applicable, into the digital product passport of the goods pursuant to Regulation (EU) 2024/1781.

   Where public buyers conduct a procurement procedure by applying one or more measures set out in Part III, Title II, Chapter 5, they may, at any time during the public procurement procedure, request the economic operator to supplement, clarify or complete information or documentation related to the verification of the origin of the economic operator, or the goods, services or works offered, provided that such requests comply with the principles of equal treatment and transparency.

Where the economic operator fails to provide the information or documentation referred to in the third subparagraph, without reasonable explanation, and thereby prevents the verification of the origin by a public buyer or makes such verification practically impossible or very difficult, the economic operator, or the tender it has submitted, may be excluded from participating in the public procurement procedure concerned.

Article 29

Connection of databases to the electronic eligibility service

1. Member States shall, by 15 June 2029, provide free of charge access for the digital business credential tool pursuant to Article 133 to the national databases in which:

   (a) final judgements for the offences referred to in Article 25(1) are recorded, in particular to the national criminal registers for legal and those for natural persons;

   (b) information on key persons pursuant to Article 25(1), second subparagraph, is recorded, in particular in the national professional or trade registers;

   (c) evidence regarding the outstanding payment of taxes or social security contributions pursuant to Article 25(2) is recorded, in particular in the national professional or trade registers and in taxation databases and social security databases;

   (d) evidence regarding bankruptcy, insolvency and restructuring pursuant to Article 25(4) point (b), is recorded, in particular in the national professional or trade registers and the national registers of bankruptcy, insolvency and reorganisations, including court registers;

   (e) evidence regarding the compliance with selection criteria set pursuant to Article 27 of this Regulation and for the assessment of origin pursuant to Article 74 of this Regulation is stored, in particular in national professional or trade registers and the beneficial ownership registers established pursuant to Article 12 of Directive (EU) 2024/1640;

   (f) any other structured evidence relevant within the scope of this Regulation is recorded, such as labels, specifications including security requirements or means of proof for product requirements pursuant to Article 92.

2. Access pursuant to paragraph 1 shall, where possible, be provided in such a manner that the electronic eligibility service may automate the verification as set out in Article 28(2). An automated verification shall in particular be provided for national criminal registers, taxation databases and social security databases, as well as national registers of bankruptcy, insolvency and reorganisations. Such verification shall be subject to suitable measures to safeguard the rights of freedoms of data subjects pursuant Articles 10 and 22 of Regulation (EU) 2016/679. The personal data shall only be used for the purpose of ensuring that the economic operator meets the requirements of this Regulation.

3. Member States shall inform the Commission of any newly established national databases capable of providing means of proof through use of the digital business credential tool and shall provide free of charge access for the digital business credential tool to such national databases.

Part III
Procedures for public contracts

Title I
Public procurement procedures

Chapter 1
Preliminary steps and general provisions

Article 30

Market consultations

1. Public buyers may conduct market consultations to prepare their procurement and gain market knowledge, including about the availability of, or potential of developing, innovative solutions.
2. Where public buyers conduct market consultations pursuant to paragraph 1 of this Article, they shall announce those consultations in accordance with Article 110.
3. During the market consultations, public buyers may seek or accept information and advice from the general public, independent experts, public authorities, market participants or other relevant parties. The information and advice may take the form of written or verbal exchanges, demonstration of prototypes, live demonstrations, or other suitable objective formats. Such information and advice may be used in the planning and conduct of the procurement procedures, respecting the principles of equal treatment, non-discrimination, fair competition and transparency.
4. The participation of an economic operator in a market consultation does not prejudge its eligibility for the procurement procedure.

Article 31

Choice of procedures

1. Public buyers may use the open procedure set out in Article 34 and the dynamic procedure set out in Article 36 irrespective of the type of works, supplies or services needed.
2. Public buyers may use the innovation procedure to address a societal challenge for which they have not identified an existing appropriate or desirable solution, which is to be developed by the successful tenderer(s) in the course of the innovation procedure.
3. Public buyers may use the special procedure described in Article 46 only in the specific cases and circumstances laid down in Articles 47 and 48.

Article 32

Estimation of the value of the contract

1. Public buyers intending to award a contract shall estimate the value of the contract based on the estimated costs of the solution that meets the needs of the public buyer. The estimation shall be based on the maximum amount to be spent on the satisfaction of the needs over the entire duration of the contract, whether awarded to one or more economic operators, including all forms of payments and benefits, such as:

(a) premiums, fees, commissions and interests;

(b) the total value of options or renewals, where the contract provides for the possibility of options or renewals.

2. Where public buyers conclude more than one successive contract to satisfy their need, the calculation of the estimated value shall be based on:

(a) the value of recurring contracts for the same type of purchase during the preceding 12 months or the buyer's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or estimated value of the solution to be procured over the following 12 months;

(b) the estimated value of recurring contracts for the same type of purchase during the 12 months following the initial contract or the public buyer's preceding fiscal year.

Article 33

Conduct of negotiations

1. Public buyers shall respect the principles of proportionality and equal treatment in the conduct of negotiations and shall ensure that in any given round of negotiations the number of solutions discussed allows for genuine competition. Public buyers shall ensure that any disclosure of information during negotiations does not affect the commercial interests of the economic operators taking part in such negotiations.

2. Without prejudice to other relevant Union legislation, public buyers may negotiate all non-essential characteristics of the works, supplies and services intended for purchase, which may include certain elements related, for instance to technical merit, quantity, delivery conditions and other commercial aspects, but does not include exclusion grounds, selection criteria and award criteria.

Public buyers shall clearly indicate in the public summary of competition the characteristics of the works, supplies and services that are not subject to negotiation. These indications shall be sufficiently precise and comprehensive to circumscribe the subject-matter of the contract and shall contain the essential conditions of the contract, on which economic operators would legitimately rely in order to take the decision whether to participate in the award procedure.

The negotiations shall not substantially alter the subject-matter of the contract.

3. Public buyers may conduct negotiations in one or more rounds. After each round, the economic operators participating in the negotiations shall be invited to submit a tender and public buyers may decide to reduce the number of participants based on the award criteria set pursuant to Article 98.

Public buyers shall inform economic operators when a new round of negotiations will start and whether or not they will be invited. Public buyers shall inform all tenderers, whose tenders have not been eliminated, of any changes to the specifications or changes to other parts of the procurement detail as a result of the negotiations.

Public buyers shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate. Economic operators may submit revised tenders depending on the outcome of the negotiations.

Where a public buyer has decided to conclude the negotiations and proceed to the award of the contract, it shall invite each of the remaining economic operators to submit a final tender.

Chapter 2
Open procedure

Article 34

Launch and conduct of the open procedure

1. In the open procedure, public buyers shall make their procurement needs known through a public summary of competition published pursuant to Article 110 setting out whether and which selection criteria apply, and whether they intend to negotiate.
2. Any interested economic operator may express its interest and submit a tender ('first tender') using the electronic eligibility service referred to in Article 133. The expression of interest shall be submitted together with a tender specifying in particular how the economic operator proposes to address the needs of the public buyer. The deadline for receiving expressions of interest with tenders shall be no less than 20 days from the publication of the public summary of competition.
3. Where a public buyer has indicated that it intends not to negotiate, it shall award the contract in accordance with Article 98 to one or more economic operators that are not in a situation of exclusion, and, where applicable, fulfil the selection criteria set pursuant to Article 27. The contract shall be awarded on the basis of the first tenders submitted pursuant to paragraph 2.
4. Where the public buyer has indicated that it intends to negotiate, it shall send an invitation to negotiate to all interested economic operators that are not in a situation of exclusion, and, where applicable, that fulfil the selection criteria set pursuant to Article 27.
5. Negotiations shall be carried out in accordance with Article 33. Where the public buyer has decided to conclude the negotiations and has invited each of the remaining economic operators to submit a final tender, the contract shall be awarded on the basis of those final tenders.
6. Public buyers may decide not to negotiate, despite having indicated their intention to do so, but instead proceed to award the contract on the basis of the first tenders, provided that they have reserved the possibility of doing so in the public summary of competition.

Article 35

Finalisation of the procedure and award of the contract

1. Public buyers shall award the contract to the tenderer or tenderers that have submitted the tender offering the best quality for money in accordance with Article 98.

2. Without prejudice to the standstill period established in Directives 89/665/EEC[43] and 92/13/EEC[44], the contract shall be concluded in accordance with the applicable law of the Member State of the public buyer.

Chapter 3
Dynamic procedure

Article 36

Dynamic procedure

Public buyers may use a dynamic procedure, in which only economic operators that have joined a given procedure are invited to express interest, submit a tender or participate in negotiations for individual contracts based on that procedure. Economic operators may request to join the procedure at any point during its validity.

Article 37

Launch and validity of the dynamic procedure

1. Public buyers conducting a dynamic procedure shall publish a public summary of competition on the launch of a dynamic procedure pursuant to Article 110, which shall indicate the duration of validity of the procedure, during which interested economic operators may request to join the procedure and during which acquisitions on the basis of the procedure may be made. The dynamic procedure shall remain open to all interested economic operators throughout its validity.

2. Public buyers may choose between conducting a dynamic procedure without selection criteria pursuant to Article 38 or a dynamic procedure with selection criteria pursuant to Article 39, and whether to negotiate in accordance with Article 33. The choices made shall be indicated the public summary of competition on the launch of a dynamic procedure.

3. Where public buyers intend to award an individual contract for the first time on the basis of the dynamic procedure, the invitation to express an interest in the specific contract shall take place not earlier than 25 days after the publication of the public summary of competition on the launch of a dynamic procedure.

Article 38

Conduct of the dynamic procedure without selection criteria

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[43] Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33, ELI: http://data.europa.eu/eli/dir/1989/665/oj).

[44] Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14, ELI: http://data.europa.eu/eli/dir/1992/13/oj).

1. Upon the publication of the public summary of competition, and until the validity of the procedure has expired, economic operators may join the procedure by sharing their profile with the public buyer trough the eligibility system established pursuant to Article 133. By sharing their profile, the economic operators declare that they are qualified to perform the contract.

2. Where public buyers intend to award individual contracts based on the dynamic procedure, they shall inform all economic operators that have until that point joined the procedure about the individual contract to be awarded, including the precise description, quantity and timing of the purchase in question. Public buyers shall invite all economic operators participating in the dynamic procedure to express their interest in the specific contract to be awarded, setting a reasonable time limit for expressions of interest.

3. After the expiry of the time limit referred to in paragraph 2, public buyers shall invite the economic operators that have expressed their interest in the specific contract to be awarded, either to submit a tender, or to submit a first tender followed by negotiations.

   Where the number of expressions of interest is more than five, the public buyer may, instead of inviting all economic operators that have expressed their interest, invite only five or certain more economic operators selected through the electronic eligibility service by means of random indiscriminate algorithmic determination, and shall inform through the eligibility system all those not invited.

4. Only economic operators that have submitted a tender shall be considered to be tenderers concerned within the meaning of Directives 89/665/EEC and 92/13/EEC.

Article 39

Conduct of the dynamic procedure with selection criteria

1. Upon the publication of the public summary of competition, and until the validity of the procedure has expired, economic operators may request to join the procedure, by sharing their profile with the public buyer trough the eligibility system established pursuant to Article 133. By sharing their profile, the economic operators declare that they are qualified to perform the contract.

2. The public buyer shall admit economic operators to the procedure on the basis of the selection criteria indicated in the public summary of competition.

3. Where public buyers intend to award individual contracts based on the dynamic procedure, they shall inform all economic operators that have until that point been selected for joining the procedure about the individual contract to be awarded, including the precise description, quantity and timing of the purchase in question. Public buyers shall invite all economic operators participating in the dynamic procedure to express their interest in the specific contract to be awarded, setting a reasonable time limit for expressions of interest.

4. After the expiry of the time limit referred to in paragraph 3, public buyers shall invite all economic operators that have expressed their interest in the specific contract to be awarded either to submit a tender, or to submit a first tender followed by negotiations.

By way of derogation from the first subparagraph, public buyers may decide to only invite a subset of the economic operators having expressed their interest in the specific contract to be awarded, on the basis of objective and non-discriminatory criteria or rules, provided that they have indicated these in the public summary of competition on the launch of the dynamic procedure.

Article 40

Finalisation of the procedure and award of the contract

1. Public buyers shall evaluate the final tenders in accordance with Article 98 and establish a ranking of all economic operators that have submitted a final tender. Public buyers shall award the contract to one or more economic operators that are not in a situation of exclusion. The results of this evaluation, including the ranking, shall be disclosed to the tenderers.

2. Public buyers shall, for every contract signed under a dynamic procedure, publish a public summary of result pursuant to Article 110.

Chapter 4
Innovation procedure

Article 41

Design and conduct of the innovation procedure

1. Public buyers may use the innovation procedure as set out in this Chapter to address a societal challenge.

2. The innovation procedure shall be conducted according to the following phases:

   (a) determination of the societal challenge and design of the value assessment framework;

   (b) launch of the procedure;

   (c) the selection of innovative solution proposals;

   (d) testing, validation and assessment of innovative solution proposals;

   (e) the award of the public contract.

3. Public buyers shall determine the societal challenge to which they need an innovative solution proposal and define a value assessment framework that will be used during the course of the procedure for the assessment of the added value of the innovative solution proposal addressing the societal challenge. The value assessment framework shall use performance indicators to measure how much the proposed innovative solution proposal contributes to addressing the societal challenge in an objective and measurable way. It shall include a score system and indicate the minimum scores needed for innovative solution proposals to proceed to the different phases of the innovation procedure.

4. Elements of the value assessment framework may refer in particular to:

   (a) enhanced user and process value, such as feedback gathered from citizens during the testing and validation of the innovative solution proposal;

(b) key performance indicators pertaining to increase efficiency or lower nuisance in the performance of public services, improved sustainability performance, improved health protection, reduced environmental impacts or increased security and resilience, such as safer cybersecurity systems;

(c) cost savings for the public buyer as compared with traditional or previously applied solutions.

Article 42

Launch of the innovation procedure

1. Before the launch of an innovation procedure, public buyers shall conduct a market consultation according to Article 30 which shall last at least two months, unless a shorter duration is justified given the specificities of the contract.

2. The public buyer shall make the following information available in the market consultation:

(a) a preliminary description of the societal challenge;

(b) a preliminary value assessment framework;

(c) an invitation for feedback and dialogue.

3. Upon the closure of the market consultation, public buyers shall, on the basis of the feedback received, prepare and launch the innovation procedure with a public summary of competition in accordance with Article 110.

The public buyer shall indicate in the procurement detail:

(a) the final description of the societal challenge;

(b) the minimum functional requirements that the innovative solution proposals need to meet;

(c) the final value assessment framework;

(d) any cash or in-kind contributions that the public buyer intends or may make available during the phases of the procedure,

(e) the expected procurement volumes;

(f) draft outlines for the contracts for testing, validation and assessment and for deployment of the innovative solution proposal, indicating topics for negotiation on deployment,

(g) information regarding the allocation of intellectual property rights arising in accordance with Article 64(4).

4. Any economic operator may submit an innovative solution proposal in response to a public summary of competition together with any information necessary for the selection of innovative solution proposals.

Article 43

Selection of innovative solution proposals

1. For the selection of innovative solution proposals, the public buyer shall perform an eligibility assessment in two phases.

2. In the first phase, the public buyer shall:

(a) verify the absence of any exclusion applicable to the economic operator and, where the public buyer choses to use selection criteria, proof of selection criteria;

(b) confirm that the innovative solution proposal submitted by the economic operator complies with the minimum functional requirements pursuant to Article 42(3), point (b).

3. In the second phase, the innovative solution proposals of economic operators that have passed the assessment pursuant to paragraph 2 of this Article, shall be selected according to the criteria of the value assessment framework and the evaluation score referred to in Article 42(3), point (c), based on:

(a) a positive evaluation of the innovation potential of the proposal, as well as its innovation capacity to address the societal challenge; and

(b) a positive evaluation of the feasibility and scalability of the proposal.

The second phase may be conducted by an interview with the economic operator, or by way of written exchanges with the economic operator.

4. Where the innovative solution proposal submitted by an economic operator attains at least the minimum total score for overall positive evaluation, that economic operator shall proceed to the next phase of the procurement procedure. The public buyer may limit the number of economic operators to proceed if it indicates such number in the procurement detail; in that case, the economic operators with the highest scores shall proceed.

Article 44

Testing, validation and assessment of innovative solution proposals

1. The public buyer shall invite economic operators found eligible pursuant to Article 43 to the testing, validation and assessment phase.

2. The duration of this phase shall not exceed two years from the date of selection of the innovative solution proposals, unless duly justified.

3. It shall consist of a structured and systematic process conducted by or on behalf of the public buyer based on the value assessment framework with the purpose of an overall assessment of the proposal, which shall include, where relevant:

(a) assessing the technical, operational, and functional feasibility of the innovative solution proposal in addressing the specified societal challenge;

(b) verifying compliance of the innovative solution proposal with the minimum functional requirements and applicable regulatory frameworks;

(c) evaluating the added value of the innovative proposal in a real-world or simulated environment;

(d) identifying any risks, limitations, or areas for improvement prior to full-scale implementation or procurement of the innovative solution proposal.

It may include laboratory testing, field trials, pilot deployments, user feedback collection, and comparative analysis.

4. Where Union legislation provides a framework for the assessment of the suitability of the innovative solution proposal to address the societal challenge, the public buyer shall rely on that assessment.

5. Any payments for each defined milestone of the testing, validation and assessment phase shall be upfront.

6. During this phase, economic operators may adjust and enhance their proposals with the objective of securing compliance with minimum functional requirements and increasing the added value of their proposal.

7. The public buyer shall make a final assessment of the improved proposal on compliance with minimum functional requirements and its added value pursuant to the value assessment framework and minimum scores.

8. The final assessment, indicating a positive or negative decision to proceed to the phase of awarding the public contract, shall be published as the public summary of result for the testing, validation and assessment phase.

Article 45

Award of the public contract for deployment of the innovative solution proposal

1. The public buyer shall send an invitation to negotiate to each economic operator that has received a positive decision to proceed pursuant Article 44(8).

2. In addition to the provisions in Article 33, the public buyer shall indicate the structure of the negotiations and shall determine how the negotiation is finalised, including a clear exit strategy for ending the procedure without award by determining objective criteria in which case negotiations are considered to have failed.

3. The description of the societal challenge, the minimum functional requirements and the value assessment framework shall not be subject to negotiation.

4. The negotiation shall focus on deployment of the innovative solution proposal and may include, but is not limited to:

   (a) scope of commercial supply;

   (b) rights to exploit in wider markets;

   (c) pricing and final procurement volumes, not exceeding the volumes announced pursuant to Article 42(3), point (e);

   (d) future upgrades, maintenance and service conditions of the innovative solution proposal;

   (e) allocation of technical and commercial risks in deployment of the innovative solution proposal.

5. In case of a successful negotiation with an economic operator, the public buyer shall award the public contract for deployment of the solution proposal directly to that economic operator or, in the case of several successful solutions, to those economic

operators. Awards may take place for up to five years after publication of the positive decision pursuant Article 44(8).

Chapter 5
Special procedures and tools

Article 46

Contracts requiring only publication of public summary of result

1. In the specific cases and circumstances laid down in Articles 47 and 48, public buyers may use a special procedure to award a public contract by requesting a solution directly from one or more economic operators without the need for a competitive process or prior publication of information on the tender. This request may take the form of an invitation to negotiate, a request to submit a tender, or a request to deliver the solution against invoice. Public buyers shall publish a public summary of result pursuant to Article 110.

2. The award of these contracts shall follow the principles of non-discrimination, equal treatment and transparency, taking due account of the specific needs and circumstances of the public buyers in the specific cases and circumstances described in Article 47 and 48.

Article 47

Conditions for the use of contracts with publication of a public summary of result only

Public buyers may use the procedure described in Article 46 in any of the following situations, in compliance with the Union's international commitments:

(a) the solution needed can be supplied only by a particular economic operator and no reasonable alternative or substitute exists for any of the following reasons:

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

(ii) competition is absent for technical reasons that cannot be attributed to the design of a prior procurement procedure or an artificial narrowing down of the parameters of the procurement;

(iii) the protection of exclusive rights, including intellectual property rights;

(iv) where the opening up of the contract to competition could negatively affect essential national security interests of the Union or the Member State of the public buyer and there is no possibility of applying less intrusive measures.

(b) in the case of public supply contracts that concern:

(i) additional deliveries during not more than two years by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would entail disproportionate costs or technical difficulties for the public buyer;

(ii) for supplies quoted and purchased on a commodity market;

(iii) for the purchase of supplies or services on particularly advantageous terms that only arise in the very short term in the case of unusual disposals such as those arising from winding down or insolvency proceedings.

(c) in the case of public service contracts that concern:

(i) administrative social, educational, healthcare and cultural service contracts under Common Procurement Vocabulary (CPV) codes 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3 [Fashion shows organisation services], 79956000-0 [Fair and exhibition organisation services], 92100000-2 [Motion picture and video services], 92200000-3 [Radio and television services], 92400000-5 [News-agency services];

(ii) Hotel and restaurant services under CPVs 55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service] 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services 55510000-8 Canteen services, 55511000-5 Canteen and other restricted clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal service.

Article 48

Emergency and crisis

1. Public buyers may make use of the procedure described in Article 46, where, for reasons of extreme urgency not attributable to the public buyer, the time limits for the procedures in this Regulation cannot be complied with.

2. Without prejudice to any joint procurement activities organised by the Union institutions, bodies, offices and agencies where an emergency mode has been activated pursuant Regulation (EU) 2024/2747[45], the emergency framework has been activated pursuant Council Regulation (EU) 2022/2372[46], serious cross-border threats to health pursuant to Regulation (EU) 2022/2371[47] exist, or the Commission has declared a crisis or a state of emergency, the condition set out in paragraph 1 shall be deemed to be fulfilled for the type of solutions concerned and for as long as the state of emergency or the serious cross-border threat exist.

45 Regulation (EU) 2024/2747 of the European Parliament and of the Council of 9 October 2024 establishing a framework of measures related to an internal market emergency and to the resilience of the internal market and amending Council Regulation (EC) No 2679/98 (Internal Market Emergency and Resilience Act) (OJ L, 2024/2747, 8.11.2024, ELI: http://data.europa.eu/eli/reg/2024/2747/oj).

46 Council Regulation (EU) 2022/2372 of 24 October 2022 on a framework of measures for ensuring the supply of crisis-relevant medical countermeasures in the event of a public health emergency at Union level (OJ L 314, 6.12.2022, p. 64, ELI: http://data.europa.eu/eli/reg/2022/2372/oj).

47 Regulation (EU) 2022/2371 of the European Parliament and of the Council of 23 November 2022 on serious cross-border threats to health and repealing Decision No 1082/2013/EU (OJ L 314, 6.12.2022, p. 26, ELI: http://data.europa.eu/eli/reg/2022/2371/oj).

Article 49

Qualification list for contracting entities

1. Contracting entities may establish and operate a qualification list. They may award individual contracts based on it.

2. Contracting entities shall publish a public summary of competition pursuant to Article 110 on the existence of the qualification list. They shall ensure that economic operators are at all times able to request to be admitted to the list during its duration indicated in the public summary of competition.

3. Contracting entities shall establish objective rules and criteria for admission of economic operators in the qualification list, and objective criteria and rules for the management of the qualification list, covering matters such as admission, periodic updating of the qualifications, if any, and the duration. They may divide the qualification list into different categories according to the subject-matter of individual contracts based on the qualification list.

4. Rules and criteria for admission to the qualification list shall include the exclusion criteria pursuant to Article 25 and may relate to exclusion criteria pursuant to Article 26, selection criteria pursuant to Article 27 and specifications pursuant to Article 88. Contracting entities shall apply the rules on means of proof in Articles 28, 91 and 92, respectively. Contracting entities shall ensure that the provisions of Title II of this Part are applied for admission to the list and for the award of individual contracts, as applicable.

5. Contracting entities awarding contracts based on a qualification list shall invite economic operators admitted to the qualification list or to the relevant categories thereof to submit a tender. Contracting entities may conduct negotiations pursuant to Article 33 followed by an award pursuant to Article 98, or award the contract without negotiations pursuant to Article 98. They shall publish a public summary of result pursuant to Article 110 regarding each individual contract awarded.

6. The process of admission to the qualification list, and of awarding individual contracts based on the system may be carried out in several successive stages.

7. Any charges that are billed in connection with qualification or with updating or conserving an already obtained qualification shall be proportionate to the generated costs.

Title II
Strategic design and execution of public procurement

Chapter 1
Green public procurement

Article 50

Green public procurement

1. When procuring products, services and works, public buyers may take environmental and climate-related considerations into account with a view to preventing, reducing

or otherwise mitigating adverse environmental and climate-related impacts or pursuing positive environmental and climate-related impacts throughout their life-cycle, as compared to alternative products, services and works with the same primary function ('green public procurement').

2. The environmental considerations referred to in paragraph 1 shall support the achievement of the environmental and climate-related objectives as referred to in Article 5, including the following:

(a) climate change mitigation, including emission reductions;

(b) climate resilience and adaptation;

(c) the sustainable use and protection of water and marine resources;

(d) the transition to a circular economy, including through bioeconomy;

(e) pollution prevention and control;

(f) the protection and restoration of biodiversity and ecosystems.

3. Public buyers may take such environmental and climate-related considerations into account as appropriate in specifications, award criteria, contract performance clauses, or selection criteria, in compliance with the principles set in Article 4 and if they are linked to the subject-matter of the contract pursuant to Article 90.

4. Mere compliance with general minimum environmental obligations established by Union law, national law or the international conventions listed in Annex II shall not by itself be considered 'green public procurement' for the purpose of this Regulation.

By contrast, public procurement integrating specific public procurement environmental criteria or requirements set under this Regulation or other relevant Union legislation shall be considered 'green public procurement' within the meaning of paragraph 1.

Article 51

Circular economy and resource efficiency

Public buyers may establish specifications, selection criteria, award criteria or conditions for the performance of contracts that, in line with the objective of a high level of environmental protection, promote circularity and resource efficiency throughout the life-cycle of works, products and services. Such requirements or criteria may, where appropriate, relate to durability, reparability, upgradeability, reuse, refurbishment, remanufacturing recycled content, the use of secondary raw materials, waste prevention, preparation for reuse or the procurement of refurbished, remanufactured or previously used products. Public buyers may also consider circular business models, including product-as-a-service, leasing, sharing or rental solutions, rather than the purchase of new products.

Article 52

Energy efficiency

1. Public buyers shall, when purchasing goods, services or works purchase only products, services and works with a high energy efficiency performance, unless this is not technically feasible. To that end they shall:

(a) where a product is covered by a delegated act adopted under Regulation (EU) 2017/1369[48], Directive 2010/30/EU[49] or by a related Commission implementing act, purchase only products that comply with the criterion laid down in Article 7(2) of Regulation (EU) 2017/1369;

(b) where a product not covered under point (a) is covered by an implementing measure under Directive 2009/125/EC[50], purchase only products that comply with energy efficiency benchmarks specified in an implementing measure under Directive 2009/125/EC;

(c) 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) and (b) 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;

(d) where they purchase, or make new rental agreements for, buildings, ensure that such building shall, where available comply at least with the technical screening criteria on the substantial contribution to climate change mitigation provided in the Commission Delegated Regulation (EU) 2021/2139[51], Annex I, section 7.7 ('Acquisition and Ownership of Buildings'), unless the purpose of the purchase is:

(i) to undertake deep renovation or demolition;

(ii) to preserve it as a building officially protected as part of a designated environment, or because of its special architectural or historic merit.

Article 85(1), point (d), shall not apply to the obligations set out in the first subparagraph, point (d).

2. When the purchase concerns product package fully covered by a delegated act adopted under Regulation (EU) 2017/1369, public buyers may require that the aggregate energy efficiency of the product package takes precedence over the energy efficiency of the individual products within that package, by purchasing the product package that complies with the criterion of belonging to the highest available energy efficiency class.

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48 Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1, ELI: http://data.europa.eu/eli/reg/2017/1369/oj).

49 Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (recast) (OJ L 153, 18.6.2010, p. 1, ELI: http://data.europa.eu/eli/dir/2010/30/oj).

50 Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast) (OJ L 285, 31.10.2009, p. 10, ELI: http://data.europa.eu/eli/dir/2009/125/oj).

51 Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (OJ L 442, 9.12.2021, p. 1, ELI: http://data.europa.eu/eli/reg_del/2021/2139/oj).

Article 53

Food procurement

1. For the purposes of pursuing objectives set in Articles 50(2) and Article 55(2), public buyers may also take considerations related to the quality and sustainability of food into account when procuring food, as appropriate, in specifications, award criteria or conditions for the performance of contracts, to the extent that they are related to the subject-matter of the contract.

2. The food-specific considerations referred to in paragraph 1 may relate, in particular, to the following:

   (a) fairness and transparency in food supply chains requirements and conditions, in particular a fair renumeration of the farmers involved in the production of procured food;

   (b) the organisation of the food supply chain;

   (c) requirements or conditions on organic production methods, quality schemes such as geographical indications, and other production methods;

   (d) nutritional value and health effects, freshness and seasonality of food criteria;

   (e) animal welfare requirements.

Article 54

Requirements for green public procurement for certain products

1. When purchasing products, product families or technologies subject to the Union legal acts listed in Annex VII, public buyers shall require in specifications, award criteria or conditions for the performance of contracts such environmental characteristics as they consider appropriate for the procurement in question, in light of the objective of ensuring a high level of environmental protection in the Union, the need for a swift transition to a climate neutral economy and the principles of equal treatment, non-discrimination and proportionality. Those environmental characteristics shall be expressed in terms of the classes or levels of performance, thresholds, environmental aspects or environmental sustainability requirements that are laid down in the relevant legal acts listed in Annex VII.

2. Where diverging requirements of environmental characteristics create a real risk of fragmentation of the internal market or in the presence of a need to foster the demand for products referred to in the Union legal acts listed in Annex VII, the Commission is empowered to adopt delegated acts in accordance with Article 141 to supplement this Regulation by specifying the environmental characteristics referred to in paragraph 1 that public buyers shall require in specifications, award criteria or conditions for the performance of contracts in relation to products, product families or technologies subject to the Union legal acts listed in Annex VII.

   When adopting delegated acts pursuant to the first subparagraph, the Commission shall set the requirements at a high level, taking into account:

   (a) the value and volume of public contracts awarded for the products, product families or technologies in question, or for services or works using them for the activities constituting the subject-matter of the contract;

(b) the need to ensure sufficient demand for more environmentally sustainable and low carbon products or technologies;

(c) the economic feasibility for public buyers to buy more environmentally sustainable products or technologies, without incurring disproportionate costs, and the availability of such products or technologies on the market;

(d) the effects of the requirements on competition.

3. Public buyers may decide not to require the characteristics specified in delegated acts adopted pursuant to paragraph 2 where:

(a) a product or technology can only be supplied by a specific economic operator and no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the public procurement procedure; or

(b) the application of the delegated act would oblige the public buyer to acquire equipment having disproportionate costs or would result in technical incompatibility in operation and maintenance.

4. Where new Union legal acts setting environmental sustainability and climate-related requirements for the placing on the market of products or technologies in the Union are adopted, the Commission is empowered to adopt delegated acts in accordance with Article 141 to amend Annex VII by updating the list of Union legal acts referred to in that Annex.

Chapter 2
Socially responsible public procurement

Article 55

Socially responsible public procurement

1. Public buyers may take social considerations into account when procuring supplies, services and works with a view to achieving positive social outcomes or preventing or mitigating adverse social impacts through the life-cycle of supplies, services and works (‘socially responsible public procurement’).

2. The social considerations referred to in paragraph 1 shall pursue the social objectives of the Union, notably those referred to in Article 5, which may include the following:

(a) social inclusion and labour market integration of persons with disabilities and disadvantaged persons involved in the performance of a given public contract;

(b) high-quality jobs including through acknowledging the role of collective bargaining, taking into account the diversity of national systems and respecting the autonomy of social partners, and improvement of working conditions, for workers performing a given public contract and, in particular, for vulnerable categories of workers;

(c) accessibility for persons with disabilities and design for all approaches, beyond the legal requirements set out in Article 56 of this Regulation;

(d) training, upskilling and reskilling of workers performing a given public contract;

(e) gender equality and non-discrimination measures for workers performing a given public contract;

(f) promotion of the social economy and, where applicable, social and affordable housing;

(g) effective human rights protection across the supply chains relevant to the procurement in question.

3. Public buyers may take such social considerations into account as appropriate through criteria or requirements in specifications, award criteria, conditions for the performance of contracts, or, where relevant to the subject-matter, selection criteria, provided that they are linked to the subject-matter of the contract pursuant to Article 90, and comply with the principles of transparency, non-discrimination and proportionality.

4. The mere compliance with applicable labour and social law obligations established by Union law, national law, collective agreements or by the international social and labour law conventions listed in Annex II, shall not by itself be considered socially responsible public procurement.

Article 56

Accessibility

1. For all procurement of goods, services and works which are intended for use by natural persons, whether the general public or staff of the public buyer, public buyers shall, except in duly justified cases, require their accessibility for persons with disabilities, and take account of design for all approaches. To that effect, public buyers shall include appropriate accessibility requirements in the specifications or conditions for the performance of contracts.

2. For the products and services referred to in Article 2 of Directive (EU) 2019/882, public buyers shall establish specifications, as far as accessibility criteria for persons with disabilities or design for all users are concerned, by reference to Annex I to that Directive.

Article 57

Reserved contracts

1. Public buyers may reserve the participation in procedures for the award of public contracts, including for specific lots thereof, to organisations whose main aim is the social and professional integration of persons with disabilities or disadvantaged persons, provided that at least 30 % of the employees of those organisations or programmes are workers with disabilities or with disadvantages, including providing for such contracts to be performed in the context of supported employment contracts or sheltered employment programmes, provided that the labour rights of the persons with disabilities or with disadvantages are safeguarded.

2. Public buyers may reserve the participation in procedures for the award of public service contracts forming part of the social welfare system which are covered by the CPV codes listed in Annex VI, including for specific lots thereof, to organisations which fulfil all of the following conditions:

(a) the organisation is legally recognised as non-profit under national law of the Member State where the organisation was established;

(b) the organisation has as its main purpose the delivery of a public welfare service of general interest;

(c) the organisation's decisions are not guided by purely commercial considerations, and any surplus generated from the performance of the contract is reinvested in delivering the public welfare services of general interest for which it is constituted.

Article 58

Contracts for social, health and educational services

1. For public contracts having as subject-matter any of the services listed in Annex VI, public buyers may award contracts in accordance with the procedures provided for in national law, provided that the nature of the services makes it necessary for the public buyers to take into account the specificities of the services in question, and that the principles of transparency and equal treatment as well as the obligations in paragraph 2 are respected.

2. Public buyers awarding contracts pursuant to paragraph 1 of this Article shall take into account, through appropriate requirements in specifications, award criteria or conditions for the performance of contracts, the need to ensure the quality, continuity, accessibility for people with disabilities, affordability, availability and comprehensiveness of the services, and the involvement and empowerment of users, including disadvantaged and vulnerable persons, in order to safeguard their specific personal medical or social needs. In awarding such contracts, public buyers shall also take into account the need to ensure respect for the right to self-determination of persons with disabilities, as laid down in Article 19 of the United Nations Convention on the Rights of Persons with Disabilities.

3. Where a public buyer awards a contract pursuant to this Article, it shall publish a public summary of result pursuant to Article 110(4) of this Regulation no later than 20 days after the award.

Chapter 3
Public procurement of innovation

Article 59

Innovation objectives in public procurement

Public buyers may take innovation objectives into consideration when procuring supplies, works or services that comprise, without being limited to, any or several of the following objectives:

(a) promoting the market deployment of the results from research and innovation within the Union and to encourage the participation of start-ups, scale-ups and SMEs in innovation in public procurement, thereby supporting the diffusion of innovation and the growth of innovative enterprises;

(b) fostering the growth of lead markets in Union strategic sectors, by encouraging the development and procurement of innovative solutions that contribute to environmental sustainability, social inclusion and sustainability, health protection, digital transformation and technological advancement including interoperability of and open-source solutions for digital systems and elements of public services;

(c) improving the cost-effectiveness of the public buyer's purchases compared with existing or conventional alternatives, while maintaining or enhancing the quality, quantity, or impact of the solutions.

Article 60

Public procurement of innovation

1. Public buyers shall classify their procurement as public procurement of innovation in the public summary of competition where the procurement has as its objective the purchase of an innovative solution. An innovative solution has one or more new characteristics that deliver better performance or added value compared with alternative solutions which are available on a large-scale commercial basis on the relevant market.

New characteristics of an innovative solution may include new or improved combinations of existing characteristics and new or improved ways of using existing characteristics, such as using existing characteristics in a new sector or a new context.

2. In any event, public buyers shall classify their purchases in public summaries as public procurement of innovation in both of the following cases:

(a) the award of a contract for a solution that was successfully developed in an innovation procedure pursuant to Article 45;

(b) the award of a contract in an open procedure pursuant to Articles 34 and 35, where a public buyer intends to purchase a solution after a pre-commercial procurement as defined in Article 6, point (13).

Article 61

Techniques to pursue innovation objectives in public procurement

1. In order to pursue innovation objectives, public buyers may prepare and design any procurement procedure using one or more of the following techniques:

(a) seek, analyse and implement advice aimed at identifying the availability of innovative solutions in the market consultations;

(b) consider the purchase of open-source solutions or solutions with open-source elements;

(c) use only functional requirements and or, where that is not feasible, allow explicitly for variants;

(d) limit the selection criteria to what is strictly necessary and proportionate to the risks of the public contract and the capacities needed to perform it, and, where appropriate, without requirements on turnover and past performance;

(e) require a concept for innovation of the supplies, works or services as a qualitative award criterion, including the feasibility and scalability of that concept or its impact on the green, social or digital objectives set for the procurement;

(f) designate one or more specific lots for innovation and provide clear, precise and unambiguous conditions for any additional purchases based on the contract awarded in that lot, if the solution proves successful;

(g) combine multiple phases of a public works contract such as design, construction, operation, and maintenance into a single integrated contract;

(h) aggregate demand of innovative solutions and to allow for task distribution of testing and validation among public buyers;

(i) allow for experimentation, testing, validation, development, enhancement and reinvestment in the procurement procedure or contract implementation.

2. The techniques referred to in paragraph 1 may, as appropriate to the technique and the type of solution concerned, take the form of specifications, selection criteria, quality considerations when applying the best price-quality ratio method, or conditions for the performance of contracts.

Article 62

Specification of intellectual property rights

1. For all procedures subject to this Regulation, the public buyer shall specify to its best effort in the procurement detail the intellectual property rights that it considers relevant for the execution of the public contract.

2. The information shall be sufficiently clear and precise to enable economic operators to assess their obligations relating thereto, determine the scope of the rights to be granted or transferred, and prepare their tenders accordingly.

3. The estimation of the value of the contract pursuant to Article 32 shall take into account the value of the distribution of intellectual property rights as relevant.

Article 63

Granting licences

1. The economic operator shall grant to the public buyer appropriate, sufficient and non-exclusive licences to the extent and for the period necessary to enable it to use, receive, operate, maintain or otherwise benefit from the services, deliverables or other contractual outputs provided in the performance of the public contract.

The licences referred to in the first subparagraph shall cover both the following rights:

(a) any pre-existing intellectual property rights owned by, or licensed to, the economic operator;

(b) any intellectual property rights arising in the performance of the public contract.

2. Licences pursuant to paragraph 1 shall permit the public buyer, either directly or through contractors or service providers acting on its behalf, to use, reproduce, execute, display, adapt, configure, integrate, maintain, repair, support, upgrade and otherwise exploit such rights and the related deliverables to the extent necessary to ensure the continued use of the supplies, services or works for their intended purpose and the proper performance of the public contract.

Article 64

Limits to transfer of ownership

1. Any pre-existing intellectual property, including software components, models, methods, platforms, or systems owned or controlled by the economic operator prior to or independently of the procurement shall remain the property of the economic operator and shall not be subject to ownership transfer obligations to the public buyer.

2. By way of derogation from paragraph 1, public buyers may require the ownership transfer of pre-existing intellectual property rights that are necessary for the performance, operation, and maintenance of the solutions, in particular in cases of critical infrastructure and where this is included in the procurement detail in a proportionate, transparent and non-discriminatory manner without distorting competition.

3. For intellectual property rights arising in connection with the performance of a public contract, public buyers shall specify, where relevant, the allocation of those rights between the public buyer and the economic operator in the procurement detail.

4. By way of derogation from paragraph 3 of this Article for public contracts subject to an innovation procedure pursuant to Articles 41 to 45, economic operators shall retain ownership of the intellectual property rights arising during the innovation procedure or in the performance of the respective public contract, unless justified by overriding reasons of the public interest clearly stated in the procurement detail. Such overriding reasons of public interest may relate inter alia to the need to prevent technological lock-in, or to protect the security or critical public services of the public buyer, a Member State or the Union, in particular as regards critical infrastructure.

Article 65

Building information modelling

1. For the execution of public works contracts with an estimated value equal to or greater than EUR 25 000 000, public buyers shall require the use of building information modelling in the execution of the public works contracts.

2. ‘Building Information Modelling’ means the methodologies of collaborative digital processes using open, interoperable formats with the purpose of creating, managing and sharing structured information about a public works contract throughout its lifecycle.

3. By way of derogation from paragraph 1, public buyers may do any of the following:

(a) request the use of Building Information Modelling only from certain contractors, or in certain lots, where such requirements would otherwise impose a disproportionate burden on the economic operators concerned and fully covering the project in Building Information Modelling is not necessary; or

(b) not request the use of Building Information Modelling or only request its use for certain parts of the solution or from certain contractors, where such requirements would otherwise present a risk for security or public safety.

4. The Commission is empowered to adopt delegated acts in accordance with Article 141 in order to amend this Regulation to lower the threshold set out in paragraph 1 where justified by an increased market uptake of Building Information Modelling.

Chapter 4
Security and resilience

Article 66

Security considerations in public procurement

1. Public buyers shall take appropriate measures, in addition to measures required or imposed by virtue of other Union legislation, where relevant, at any stage of the procurement procedure, from planning and market consultation to contract award and execution, to ensure the protection of the security and public safety interests of the Union or one or more Member States for any public procurement procedure identified as presenting or including a risk for security or public safety. This Chapter is without prejudice to other requirements under relevant Union legislation.

2. Security and public safety interests of the Union or a Member State relevant for a given contract may include, but are not limited to, the following:

(a) protection of critical infrastructure, strategic dual-use infrastructure, identified by Member States in accordance with [Article 33 of the Military Mobility Regulation], especially for those located on a military mobility corridor, critical supply chains, critical technologies or essential services, resilience against physical, cyber, or hybrid threats, and prevention across and protection against risks of any disruption including due to harmful strategic dependencies on third-country suppliers,

(b) prevention of espionage, sabotage or technology leakage;

(c) crisis preparedness, including business continuity and contingency planning for disruptions in case of natural disasters or geopolitical instability, pandemics or cyberattacks;

(d) the prevention of other harmful interference, including third-country and third-country state-controlled influence;

(e) the cybersecurity of systems, networks, and data processed;

(f) the protection of classified information, sensitive data, research, or intellectual property from unauthorised access or transfer;

(g) ensuring public health, including crisis-prepared and self-sufficient health services; or

(h) resilience to climate-related disruptions.

3. Risks for security or public safety in a public contract may arise in particular from:

(a) the subject-matter of the contract, such as:

(i) sensitivity of the assets involved or to be developed in its implementation;

(ii) access to and handling of sensitive data;

(iii) critical dependency or risk of critical dependency on a limited number of third-country suppliers, goods, services or technologies;

(iv) risks associated with access to critical infrastructure, strategic dual-use infrastructure identified by Member States in accordance with [Article 33 of the Military Mobility Regulation], research facilities, IT systems, or critical materials;

(v) dual-use nature of the technologies, works, goods or services procured;

(vi) the nature of the public interests attached to it and the potential consequences of a malfunction or malperformance, such as harm to public safety, national security, economic stability, health security or fundamental rights;

(b) the characteristics of economic operators, such as:

(i) ownership, control, or financing structure bearing risks of undue interference or influence over it;

(ii) security track record, including past breaches, non-compliance with security standards, or exclusion from other procurement procedures on security grounds;

(iii) capacity to meet applicable security clearance, personnel vetting, or information security requirements;

(iv) exposure to third-country legislation that may compel disclosure of sensitive information or interference with contract performance.

4. Public buyers shall, to the extent possible specify in the procurement detail in a clear, sufficiently detailed manner appropriate measures that are proportionate to the risks referred to in paragraph 3 and non-discriminatory. Such measures may be implemented, in particular through:

(a) specifications, such as mandatory security standards, certifications, personnel vetting or security clearance obligations, or risk management and assurance requirements;

(b) award criteria, such as evaluating bidders' security management systems, security compliance standards, incident response capabilities, supply chain security;

(c) conditions for the performance of contracts, such as enabling security oversight of suppliers through audits, inspections, or documentation reviews and implementation of corrective measures in case of breaches, including provisions on subcontracting, ownership change notification, and the protection of classified or sensitive information;

(d) selection criteria, where justified, such as possessing security clearances or otherwise requiring bidders to establish that they do not present risks for security or public safety pursuant to point (b) of paragraph 3. This shall be without prejudice to Article 26;

(e) by derogation from Article 34(2), invite to submit a tender in the procedure referred to in Article 34 only those economic operators who meet specific objective and non-discriminatory security-related requirements, provided that the public buyer has indicated its intention to do so, and the security-related requirements it intends to apply, in the public summary of competition for the procurement in question.

Public buyers may also indicate in the procurement detail which security measures they intend to implement where risks for security or public safety arise during the procurement procedure.

5. Public buyers shall at any time during the procedure exclude an economic operator from participation in a procurement procedure where the operator has been identified as a high-risk supplier pursuant to Regulation (EU) XXXX/XXX [CSA2 proposal] in relation to the provision of ICT components or components that include ICT components to be used in key ICT assets as identified in accordance with Article […] of that Regulation.

6. Where there is evidence that disparities in measures affect the functioning of the internal market, the Commission is empowered to adopt delegated acts in accordance with Article 141 in order to supplement this Regulation by establishing mandatory technical specifications, selection criteria, award criteria or contract performance clauses, for specific categories of goods, services or works where such elements address an identified specific security and public safety interest of the Union.

Article 67

Security measures during contract implementation

1. Without prejudice to contract law of the Member States, the public buyer may terminate a contract in whole or in part where it determines that the contractor has failed to comply with measures or obligations aiming at preventing or mitigating risks for security or public safety, or a risk for security or public safety has materialised or is likely to materialise. Under the same conditions, they may exclude certain economic operators during contract implementation.

2. Termination and exclusion pursuant to this Article shall be proportionate in relation to the risk for security or public safety. Before terminating a contract or excluding an economic operator, the public buyer shall conduct a written assessment. The public buyer shall take into account in particular:

(a) the severity of the risk for security or public safety;

(b) the impact of termination on the delivery of public services;

(c) alternative mitigation measures such as contractual amendments or enhanced monitoring.

3. Unless justified by the severity of the risks involved, the imminence of the threat or where notification may aggravate the risk, the public buyer shall notify the contractor in writing of its intent to terminate or exclude, specifying:

(a) the grounds for termination or exclusion;

(b) the facts and evidence supporting the decision, with the exception of classified information;

(c) the proposed date of termination or exclusion.

4. The contractor shall have an appropriate time, determined by the public buyer, which shall not be shorter than at least ten calendar days, to submit observations on the grounds for termination or exclusion and propose remedial actions. The public buyer may shorten the deadline in case of emergency.

5. The contractor shall cooperate with the public buyer to secure or transfer data, documents, or assets related to the contract and ensure continuity of critical services until the termination takes effect.

Article 68

Cybersecurity

1. Where products with digital elements fall within the scope of Regulation (EU) 2024/2847, Member States shall ensure that compliance with the essential cybersecurity requirements set out in Annex I to that Regulation, including the manufacturers' ability to handle vulnerabilities effectively are taken into consideration in the procurement process.

2. This Regulation shall not prevent Member States from subjecting products with digital elements to additional cybersecurity requirements for the procurement or use of those products for specific purposes, including where those products are procured or used for national security or defence purposes, provided that such requirements are consistent with Member States' obligations laid down in Union law and that they are necessary and proportionate for the achievement of those purposes.

3. Without prejudice to paragraph 1, and without prejudice to Directive (EU) 2022/2555[52] where applicable, public buyers may specify in the procurement detail requirements relating to cybersecurity for the works, supplies or services procured. To that end, they may include specifications, selection criteria, award criteria or conditions for the performance of contracts. Such requirements shall be linked to the subject-matter of the contract and comply with the principles of transparency, non-discrimination and proportionality.

Article 69

Resilience and security of supply for critical entities or infrastructures

1. Where a public contract is intended to be performed by a public buyer that has been identified by the competent Member State as a critical entity in accordance with

[52] Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive) (OJ L 333, 27.12.2022, p. 80, ELI: http://data.europa.eu/eli/dir/2022/2555/oj).

Article 6 of Directive (EU) 2022/2557[53], the public buyer shall, where relevant, include in the procurement detail requirements relating to security of supply, economic, physical and geopolitical resilience, as well as transparency and sustainability of the supply chains for the works, supplies or services procured. Where appropriate, such requirements shall be based on the risks identified through the obligation for risk assessment under Article 12 of Directive (EU) 2022/2557.

2. Requirements referred to in paragraph 1 may be set out in specifications, selection criteria, award criteria or conditions for the performance of contracts, shall be linked to the subject-matter of the contract and comply with the principles of transparency, non-discrimination and proportionality.

3. Public buyers may, inter alia, require that the tender contains, or that the contract provides for, one or more of the following elements:

(a) diversification of the supply chain, including recourse to a multi-source approach, geographic diversification of production, or limitation of dependency on a single third country or single economic operator from a third country;

(b) security of supply and continuity, including:

(i) certification or documentation demonstrating that the organisation and location of the tenderer's supply chain will allow it to comply with the security-of-supply requirements set out in the contract documents;

(ii) a commitment to ensure that possible changes in the supply chain during the execution of the contract will not adversely affect compliance with those requirements;

(iii) stockpiling obligations within the Union;

(iv) business continuity and disaster recovery plans;

(v) commitment from the tenderer to provide, according to terms and conditions to be agreed, the specific means necessary for the continued production or provision of spare parts, components, assemblies, software updates or testing equipment in the event that it is no longer able to ensure the supply itself;

(c) crisis preparedness and surge capacity, including:

(i) a commitment from the tenderer to establish and/or maintain the capacity required, including upscaling capabilities, to meet additional needs of the public buyer as a result of a crisis, according to terms and conditions to be agreed;

(ii) crisis preparedness plans, mandatory training of management and key personnel, and incident notification to the public buyer;

(d) supply chain transparency and traceability where proportionate to the importance of the contract and the risks involved, including the quality of supply chain management and contingency plans provided by the tenderers;

[53] Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC (OJ L 333, 27.12.2022, p. 164, ELI: http://data.europa.eu/eli/dir/2022/2557/oj).

(e) obligation for the service providers to indicate any potential double-booking of capability or services to all concerned public buyers, prior to accepting conflicting orders;

(f) flexible participation clause, allowing other public buyers to join as contracting parties without changing the material or quantitative scope of the contract.

4. The Commission is empowered to adopt delegated acts in accordance with Article 141 establishing mandatory specifications, selection criteria, award criteria or conditions for the performance of contracts relating to resilience, security of supply, and supply chain transparency, for specific categories of works, supplies or services where a critical dependency, a systemic risk or a critical-infrastructure dimension has been identified.

5. This Article is without prejudice to security of supply requirements under relevant Union legislation, in particular to the requirements under Regulation (EU) 2019/1242[54] and Regulation (EU) 2024/1735.

Chapter 5
European preference

Article 70

Covered economic operators, goods, services or works

1. An economic operator shall be considered ‘covered’ for the purposes of this Regulation when it has its origin pursuant to Article 74(1) in:

(a) a third country that is party to the GPA, provided that the procurement in question falls within the scope of the Union's commitments under that agreement, taking into account the applicable Annexes;

(b) a third country that has concluded a bilateral or multilateral trade agreement with the Union, under the conditions laid down in that agreement, provided that the procurement in question falls within the scope of the Union’s public procurement commitments in that agreement;

(c) a third country that has concluded with the Union an agreement establishing a customs union, under the conditions laid down in that agreement, provided that the procurement in question falls within the scope of the Union’s public procurement commitments in that agreement.

2. Goods, services or works shall be considered ‘covered’ for the purposes of this Regulation when they have their origin pursuant to Article 74(2), (3) and (4) in:

(a) a third country that is party to the GPA, provided that the procurement in question falls within the scope of the Union's commitments under that agreement, taking into account the applicable Annexes;

(b) a third country that has concluded a bilateral or multilateral trade agreement with the Union, under the conditions laid down in that agreement, provided that

[54] Regulation (EU) 2019/1242 of the European Parliament and of the Council of 20 June 2019 setting CO2 emission performance standards for new heavy-duty vehicles and amending Regulations (EC) No 595/2009 and (EU) 2018/956 of the European Parliament and of the Council and Council Directive 96/53/EC (OJ L 198, 25.7.2019, p. 202, ELI: http://data.europa.eu/eli/reg/2019/1242/oj).

the procurement in question falls within the scope of the Union's public procurement commitments in that agreement;

(c) a third country that has concluded with the Union an agreement establishing a customs union, under the conditions laid down in that agreement, provided that the procurement in question falls within the scope of the Union's public procurement commitments in that agreement.

Article 71

Determining the scope of coverage for third-country covered economic operators, goods, services or works

1. The Commission shall establish and make available free of charge a publicly accessible online tool, which sets out, in a comprehensive and up-to-date manner, the Union's public procurement commitments in international agreements referred to in Article 70.

2. Public buyers shall determine, for the purposes of a given procurement procedure, which economic operators, goods, services and works are covered in accordance with Article 70, on the basis of the applicable international agreements as reflected in the online tool referred to in paragraph 1 for the parameters entered, including the public buyer concerned, the subject-matter and the estimated value of the contract in relation to the applicable thresholds.

3. The Commission shall keep the online tool updated to reflect fully and at any given time the Union's commitments in the field of public procurement, including:

(a) Union acts, in particular Commission decisions to exclude in whole or in part, a third country's economic operators, goods, services or works from public procurement procedures in the Union, in accordance with the applicable EU legislation;

(b) Union measures with regard to covered economic operators, goods, services or works, in accordance with Article 72.

(c) Union measures with regard to non-covered economic operators, goods, services or works, in accordance with Article 75.

Article 72

Restrictions on covered economic operators, goods, services or works

1. The Commission is empowered to adopt delegated acts in accordance with Article 141 to amend Article 70 by establishing that covered economic operators from certain third countries, and/or all or certain covered goods, services, or works from certain third countries, shall not be considered as covered where:

(a) the Commission has established, on the basis of a factual market access analysis, that their country of origin has failed to provide national treatment related to Union economic operators, goods, services or works contrary to its commitments on public procurement in an international agreement with the Union;

(b) such exclusion is justified to avoid dependencies or any other developments that may threaten the security of supply in the Union of the relevant goods or services; or

(c) such restriction is justified under any other exception under the applicable agreement, in particular relating to the protection of economic security interests.

2. Member States and interested parties may submit to the Commission at any time indications of the existence of one of the situations referred to in paragraph 1.

Article 73

European preference requirements

1. Public buyers may:

(a) restrict participation only to economic operators and subcontractors originating in the Union and those that are covered, or, in the case of groups of economic operators, or any other form of joint participation, to groups which are either composed solely of Union or covered economic operators or to groups where the majority, but not all members of the group are Union or covered economic operators;

(b) reject a tender in the course of a procedure where it is not submitted by Union or covered economic operators or groups, including their subcontractors, thereof as referred to in point (a).

2. Public buyers may do one or more of the following:

(a) require that the goods, services and works offered originate in the Union or be covered goods, services or works, either fully, or to a certain degree, or for specific components that participate in the competitive relationship with the procured goods, services or works;

(b) solely for the purposes of evaluation and ranking of tenders in the award phase without affecting the price payable under the contract, apply a percentage reduction to the price of the tender or the allocation of additional award points, where:

(i) the tender is submitted only by Union or covered economic operators and subcontractors or, in the case of groups of economic operators, or any other form of joint participation, to groups composed solely of such operators or to groups where most, but not all members of the group are Union or covered economic operators; or

(ii) the tender contains a higher proportion of Union or covered goods, services or works, in comparison with the other submitted tenders;

(c) reject a tender where the value of Union or covered goods, services or works contained in the tender is below 50 % of the total estimated value of the tender.

3. The measures referred to in paragraph 2 may only be applied if they have been clearly stated by the public buyer in the competition public summary. The competition public summary shall specify the goods, services or works required to be of Union or covered origin, well as the percentage of reduction or award points

allocation, together with the corresponding value that the public buyer will apply for the evaluation and ranking of tenders in the award phase.

4. Public buyers shall notify the national coordinating authority designated pursuant to Article 138 of any indications of circumvention of measures taken pursuant to this Article. The national coordinating authority shall inform the Commission of any systemic flaws identified on the basis of theses notifications.

Article 74

Origin

1. The origin of economic operators or subcontractors shall be determined in accordance with Article 3(1) of Regulation (EU) 2022/1031[55].
2. The origin of goods shall be determined in accordance with Title II, Chapter 2, Section 1 of Regulation (EU) No 952/2013[56].
3. The origin of services shall be determined on the basis of the origin of the economic operator or subcontractor providing the service.
4. The overall origin of works shall be determined pursuant to the origin of the economic operator, or subcontractor, providing it. For the European preference requirements, buyers may determine separately the origin of the goods used as part of the works pursuant to paragraph 2.

Article 75

Union restrictions for third-country non-covered economic operators, goods, services and works

The Commission is empowered to adopt delegated acts, in accordance with Article 141, to amend Article 73 to require public buyers to apply any of the European preference requirements set out in Article 73 in relation to economic operators, and subcontractors, goods services and works that are not covered in accordance with Article 70 where this is in the interest of the Union.

Article 76

Exceptions

Public buyers may decide not to apply European preference requirements, including those in the delegated acts adopted pursuant to Article 75, where:

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55 Regulation (EU) 2022/1031 of the European Parliament and of the Council of 23 June 2022 on the access of third-country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI) (OJ L 173, 30.6.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/1031/oj).

56 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (OJ L 269, 10.10.2013, p. 1, ELI: http://data.europa.eu/eli/reg/2013/952/oj).

(a) the contracts in question are governed by Article 48;

(b) the required products or services cannot be supplied by a Union or covered economic operator, and no reasonable alternative or substitute exists;

(c) no suitable tenders or requests to participate have been submitted, including in response to a similar public procurement procedure launched by the same public buyer in the two years preceding the launch of the planned new procurement procedure; or

(d) the application of such European preference requirements would entail that a public buyer would have to acquire goods, services or works at disproportionate costs.

Article 77

European preference in sectoral Union legislation

Where Union legislation contains provisions, restricting or setting conditions for participation in public procurement procedures or giving preference depending on the origin of economic operators, goods, services or works, the rules set out in this Chapter shall apply, unless regulated otherwise in the Union legislation in question.

Title III
Horizontal provisions

Chapter 1
Excluded and mixed contracts

Article 78

Defence and security contracts

1. This Regulation does not apply to public contracts the subject-matter of which falls within the scope of Directive 2009/81/EC, including contracts below the threshold set out in Article 8 of that Directive and contracts to which that Directive does not apply pursuant to Article 12 or 13 thereof.

2. This Regulation does not apply to public contracts not exempted in accordance with paragraph 1, to the extent that the protection of the essential security interests of a Member State cannot be guaranteed by less intrusive measures, in particular the measures set out in Title II, Chapter 4 of this Part, or requirements aimed at protecting the confidential nature of information, which the public buyer makes available in a contract award procedure as provided for in this Regulation.

3. Furthermore, in conformity with Article 346(1), point (a), of the Treaty, this Regulation does not apply to public contracts that are not otherwise exempted pursuant to paragraph 1 of this Article to the extent that the application of this Regulation would oblige a Member State to supply information the disclosure of which it considers contrary to its essential security interests.

4. Where the procurement and performance of the public contract are declared to be secret or must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in a Member State, this

Regulation does not apply provided that the Member State has determined that the essential security interests concerned cannot be guaranteed by less intrusive measures, such as those referred to in paragraph 2.

Article 79

R&D procurement excluded

This Regulation does not apply to procurement for public contracts exclusively containing research and development services as defined in Article 6, point (16).

The first sentence does not apply to procurement for public contracts containing , in addition to research and development services as defined in Article 6, point (16), other elements falling within the scope of this Regulation, in particular where testing and validation is part of the innovation procedure pursuant to Title I, Chapter 4 of this Part, or where research and development is integrated as an innovation technique in public procurement falling within the scope of this Regulation pursuant to Article 61.

Article 80

Contracts awarded to controlled entities

1. This Regulation does not apply to public contracts awarded by public buyers to a legal person governed by private or public law, provided that all of the following conditions are fulfilled at the time of the award:
   (a) the public buyer exercises control over the legal person concerned which is similar to that which it exercises over its own departments meaning it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person; such control may also be exercised by another legal person, which is itself controlled in the same way by the public buyer;
   (b) more than 80 % of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling public buyer or by other legal persons controlled by that public buyer; and
   (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.
2. Paragraph 1 also applies where a controlled legal person which is a public buyer awards a contract to its controlling public buyer, or to another legal person controlled by the same public buyer, provided that there is no direct private capital participation in the legal person being awarded the public contract.
3. This Regulation does not apply where a public buyer, which does not exercise over a legal person governed by private or public law control within the meaning of paragraph 1, awards a public contract to that legal person where all of the following conditions are fulfilled at the time of the award:
   (a) the public buyer exercises jointly with other public buyers a control over that legal person which is similar to that which they exercise over their own departments, meaning:

(i) the decision-making bodies of the controlled legal person are composed of representatives of all participating public buyers whereas individual representatives may represent several or all of the participating public buyers;

(ii) those public buyers are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;

(iii) the controlled legal person does not pursue any interests which are contrary to those of the controlling public buyers;

(b) more than 80 % of the activities of that legal person are carried out in their performance of tasks entrusted to it by the controlling public buyers or by other legal persons controlled by the same public buyers; and

(c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

4. For the percentage of activities referred to in paragraph 1, first subparagraph, point (b), and paragraph 3, first subparagraph, point (b), the average total turnover, or, where turnover does not appropriately reflect the volume of activities carried out, another objective and verifiable quantitative indicator of those activities such as costs incurred or overall income obtained, for the three years preceding the award of the contract shall be taken into consideration.

Where, by reason of the date on which the relevant legal person or public buyer was created or commenced activities or by reason of a reorganisation of its activities, the turnover, or alternative activity based measures such as costs, are either not available for the preceding three years or no longer relevant, it shall be sufficient to show that the measurement of activity is credible, particularly by means of business projections.

5. Member States may maintain or adopt stricter national provisions on the contracts excluded pursuant to this Article.

6. The exclusions in this Article shall not apply if the public contract shall be subcontracted in its entirety without a procurement procedure.

Article 81

Public-public cooperation

1. This Regulation does not apply to contracts concluded exclusively between two or more contracting authorities, including where they carry out activities pursuant to Article 12 to 18, provided that, at the time of the award:

(a) the resulting contract establishes or implements a cooperative relationship between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;

(b) the implementation of such cooperation is governed solely by considerations relating to the public interest;

(c) the participating contracting authorities perform on the open market less than 20 % of the activities concerned by the cooperation.

2. A cooperative relationship pursuant to paragraph 1, point (a), may cover all types of activities in any legal form or temporary structure or agreement but requires genuine collaboration by all parties through effective contributions which may be identical or complimentary or different in size or nature but shall not be limited to cost-sharing.

3. Article 80(4) shall apply in relation to the percentage of activities referred to in paragraph 1, point (c) of this Article.

4. The exclusion in this Article shall not apply if the solutions provided based on the resulting contract shall be subcontracted in their entirety without a procurement procedure.

Article 82

Local and regional administrative cooperation

1. This Regulation does not apply where regional or local authorities entrust each other with the performance of tasks incumbent on them, or use each other's own resources for that purpose, including in exchange for remuneration only, provided that they perform the task by own resources. For the purposes of this Article, own resources do not include goods not yet acquired or services that are being provided to one of the participating local or regional authorities by economic operators or legal persons entrusted pursuant to Article 80(1), (2) and (3).

2. For the purpose of this Article, 'regional authorities' includes authorities listed non-exhaustively in NUTS 1 and NUTS 2, as referred to in Regulation (EC) No 1059/2003[57], while 'local authorities' includes all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to in that Regulation.

Article 83

Contracts awarded to affiliated undertakings

1. This Regulation does not apply where contracting entities award a public contract by either of the following:

   (a) by a contracting entity to an affiliated undertaking;

   (b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities described in Article 12 to 18, to an undertaking which is affiliated with one of those contracting entities.

2. Paragraph 1 shall apply provided that at least 80 % of the average total turnover of the affiliated undertaking over the preceding three years derives from the provision of services, supplies or works to the contracting entity or other undertakings with which it is affiliated. Where, by reason of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it shall be sufficient for that undertaking to show that the turnover is credible, in particular by means of business projections.

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57 Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1, ELI: http://data.europa.eu/eli/reg/2003/1059/oj).

Where more than one undertaking affiliated with the contracting entity with which they form a corporate group provides the same or similar services, supplies or works, the percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

3. For the purposes of this Article, 'affiliated undertaking' means any undertaking which meets either of the following requirements:

(a) the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements set out in Directive 2013/34/EU[58];

(b) in the case of entities, which are not subject to Directive 2013/34/EU, any undertakings that satisfy one of the following conditions:

(i) they are directly or indirectly, subject to a dominant influence by the contracting entity;

(ii) they exercise a dominant influence over the contracting entity;

(iii) together with the contracting entity, they are subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

4. For the purposes of this Article, 'dominant influence' shall have the same meaning as that set out in Article 8(2).

The Commission may request evidence which demonstrates that the relationship between the undertaking to which the contract is awarded and the contracting entity complies with the requirements set out in paragraphs 1, 2 and 3.

Article 84

Contracts awarded in a joint venture

1. This Regulation does not apply to public contracts awarded by:

(a) a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities described in Article 12 to 18, to one of those contracting entities, provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture provides that the contracting entities, which form it, will be part thereof for at least the same period;

(b) a contracting entity which forms part of a joint venture referred to in point (a) to that joint venture.

2. The Commission may request evidence which demonstrates that the relationship between the joint venture to which the contracts are awarded and the contracting entity complies with the requirements set out in paragraphs 1.

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58 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19, ELI: http://data.europa.eu/eli/dir/2013/34/oj).

Article 85

Other excluded public contracts

1. This Regulation does not apply to:

(a) public service contracts awarded by a public buyer to another public buyer or to an association of public buyers on the basis of an exclusive right which they enjoy pursuant to a law, regulation, or published administrative provision which is compatible with the Treaty;

(b) public contracts for the principal purpose of permitting the public buyers to provide or exploit public electronic communications networks or to provide to the public one or more electronic communications services; for the purposes of this Article, 'public electronic communications network' and 'electronic communications service' shall have the same meaning as in Directive 2018/1972[59];

(c) public contracts which have to be organised in accordance with procurement procedures other than those laid down in this Regulation where such procedures have been established:

(i) by an international agreement in accordance with the Treaties and concern a common project implementation which requires common purchasing;

(ii) by an international organisation, or

(iii) by an international financing institution fully financing a concerned project; where the concerned project is co-financed for the most part by such institution, the parties shall agree which procurement rules shall be applicable;

(d) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;

(e) the acquisition, development, production or co-production of programme material intended for media services within the meaning of Regulation (EU) 2024/1083[60];

(f) legal services which require authority to practice law, such as litigation or formal representation in court proceedings or are related to the exercise of public office, including document certification and authentication services which must be provided by notaries;

(g) arbitration and conciliation services;

(h) financial services in connection with the provision of investment services or the performance of investment activities within the meaning of Directive 2014/65/EU[61] and Regulation (EU) No 600/2014[62], the administration of

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59 Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (OJ L 321, 17.12.2018, p. 36, ELI: http://data.europa.eu/eli/dir/2018/1972/oj).

60 Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act) (OJ L, 2024/1083, 17.4.2024, ELI: http://data.europa.eu/eli/reg/2024/1083/oj).

61 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349, ELI: http://data.europa.eu/eli/dir/2014/65/oj).

benchmarks within the meaning of Regulation (EU) 2016/1011[63], central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;

(i) valuation services referred to in Articles 36 and 74 of Directive 2014/59/EU[64];

(j) grants, financing, investments or loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;

(k) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 except patient transport ambulance services;

(l) political campaign services covered by CPV codes 79341400-0, 92111230-3 and 92111240-6, when awarded by a political party in the context of an election campaign;

(m) employment contracts;

(n) contracts for public passenger services by rail or metro within the meaning of Regulation (EC) No 1370/2007.

2. In addition to the provisions of paragraph 1, this Regulation does not apply to the following contracts which concern activities in the field of utilities pursuant to Part II, Title I, Chapter 2:

(a) contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities relating to drinking water referred to in Article 14;

(b) contracts awarded by contracting entities themselves being active in the energy sector by being engaged in an activity referred to in Article 12(1), 13(1) or 18 for the supply of energy or of fuels for the production of energy;

(c) contracts awarded by contracting entities for the purposes of resale or lease to third parties provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity;

(d) contracts awarded by contracting entities for purposes other than the pursuit of their activities as described in Article 12 to 18 or for the pursuit of such activities in a third country in conditions not involving the physical use of a

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62 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84, ELI: http://data.europa.eu/eli/reg/2014/600/oj).

63 Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/1011/oj).

64 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190, ELI: http://data.europa.eu/eli/dir/2014/59/oj).

network or geographical area within the Union and to design contests organised for such purposes.

Article 86

Mixed procurement involving defence or security aspects

1. This Article applies to mixed contracts which have as their subject-matter procurement covered by this Regulation as well as procurement covered by Article 346 of the Treaty or Directive 2009/81/EC.
2. Where the different parts of a given public contract are objectively separable, public buyers may choose to award separate contracts for the separate parts or to award a single contract.
3. Where public buyers choose to award separate contracts for separate parts, the decision regarding the applicable legal regime to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.
4. Where public buyers choose to award a single contract, the following criteria shall apply to determine the applicable legal regime:
   (a) where part of a given contract is covered by Article 346 of the Treaty, the contract may be awarded without applying this Regulation, provided that the award of a single contract is justified for objective reasons;
   (b) where part of a given contract is covered by Directive 2009/81/EC the contract may be awarded in accordance with that Directive, provided that the award of a single contract is justified for objective reasons, subject to the thresholds and exclusions for which that Directive provides.
5. The decision to award a single contract shall not, however, be taken for the purpose of excluding contracts from the application of either this Regulation or Directive 2009/81/EC.
6. Paragraph 2, third subparagraph, point (a) applies to mixed contracts to which both point (a) and point (b) of that subparagraph could otherwise apply.
7. Where the different parts of a given contract are objectively not separable, the contract may be awarded without applying this Regulation where it includes elements to which Article 346 of the Treaty applies; otherwise it may be awarded in accordance with Directive 2009/81/EC.

Article 87

Other mixed contracts

1. Contracts which have as their subject-matter two or more types of procurement, namely works, services or supplies, or which partially pursue an activity in the field of utilities pursuant to Part II, Title I, Chapter 2, shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.
2. In the case of mixed contracts consisting partly of social, health and educational services within the meaning of Article 58 and partly of other services, or in the case of mixed contracts consisting partly of such services and partly of supplies, the main

subject shall be determined in accordance with which of the estimated values of the respective services or supplies is the highest.

3. This Regulation applies to contracts which have as their subject-matter procurement covered by this Regulation as well as procurement not covered by this Regulation, irrespective of the main subject-matter or of the value of the parts that would otherwise fall under a different legal regime, unless otherwise provided in Article 86.

Chapter 2
Subject-matter of the contract and means of proof

Article 88

Specifications

1. Public buyers shall, as part of the procurement detail, set out specifications defining the characteristics of the works, supplies or services that are subject of the procurement. Specifications shall be set out in objective, clear and measurable terms, and formulated in a way that allows interested economic operators to identify the subject-matter of the contract and public buyers to assess alignment of tenders with the specifications.

2. The characteristics referred to in paragraph 1 of this Article, may, provided that they are linked to the subject-matter of the contract pursuant to Article 90, relate to methods or specific processes of production or to strategic aspects as set out in Title II of this Part.

3. The specifications shall describe the characteristics of the solution to be procured in terms of functional requirements. 'Functional requirement' means a requirement that describes the performance, desired function, capability, outcome or result that a work, product or service must achieve, without referring to specific technical means, design, or methods by which functions or outcomes are to be achieved.

4. Public buyers may derogate from paragraph 3, where standards are mandatory by Union law or where characteristics cannot be sufficiently or appropriately described in functional requirements. In the latter case, public buyers may formulate requirements in specifications in particular by technical prescriptions of the works or definitions of the characteristics of the supplies or services, or in any of the following ways by reference to, in order of preference:

   (a) harmonised standards, as well as standards and standardisation deliverables the references of which have been published for the purpose of this paragraph, in the *Official Journal of the European Union* or by any other means as provided in accordance with Union legislation and common specifications, understood as a technical specification other than a standard and adopted by the Commission, and the conformity with which provides for a presumption of conformity with the requirements set out in the relevant Union legislation;

   (b) to European standards as defined in Article 2 of Regulation (EU) No 1025/2012, including national standards transposing European standards;

   (c) European Assessment Documents;

   (d) international standards;

(e) other standardisation deliverables established by a European standardisation organisation as defined in Regulation (EU) No 1025/2012;

(f) in the absence of all the ways referred to in points (a) to (e), specifications may be formulated by reference to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent'.

5. Specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by one specific economic operator, or to trademarks, patents, types or a specific origin or production, having the effect of favouring or eliminating certain undertakings or products.

6. The reference referred to in paragraph 5 shall only be allowed on an exceptional basis, where a minimum level of precision pursuant to paragraphs 1, 2 and 3 is otherwise not possible. Such reference shall be accompanied by the words 'or equivalent'.

This paragraph shall apply without prejudice to European preference requirements in this Regulation or other Union legislation.

Where a public buyer uses the option of referring to the standards or specifications referred to in paragraph 4, it shall not reject a tender on the grounds that the solutions offered do not comply with the standards or specifications, to which it has referred, as long as the tenderer proves in its tender that the solutions proposed satisfy the requirements in a manner equivalent to the requirements defined in the specifications. The tender may provide the proof by any appropriate means, including the means of proof referred to in Article 92.

Article 89

Variants

1. Where public buyers do not formulate specifications solely in the form of functional requirements pursuant to Article 88(3), they shall consider whether to allow variants.

For the purposes of this Regulation, 'variant' means a tender that partially deviates from specifications set out in the procurement detail offering an alternative solution to meet the public buyer's needs.

2. Public buyers shall indicate in the procurement detail whether or not they allow variants, and if not, the main reasons for that decision. Public buyers shall specify any minimum requirements that variants must satisfy, provided that they do not unnecessarily restrict the ability of economic operators to propose alternative solutions capable of meeting the buyer's needs and objectives. Variants shall be linked to the subject-matter of the contract pursuant to Article 90 and evaluated on the basis of the same award criteria as non-variant tenders.

Article 90

Link to the subject-matter

1. Selection criteria, award criteria, specifications, and the conditions for the performance of contracts shall be linked to the subject-matter of the contract.

Such a link shall be considered to subsist where the condition, requirement or criterion in question relates to the works, supplies or services to be provided under the contract at any stage of their life-cycle.

2. The link to the subject-matter may be either direct, that is to say the condition, requirement or criterion in question is intrinsically related to the material substance of the subject-matter of the contract, or indirect.

3. A condition, requirement or criterion shall be considered to be indirectly linked to the subject-matter of the contract, where, without being part of the material substance of the works, services or supplies in question, it specifically impacts those works, services or supplies as regards their preparation, production or any other stage of their life-cycle to the extent covered by the contract, including the working conditions of the workers involved in any of those stages of the life-cycle and responsible sourcing and supply chain transparency for the product subject to the procurement in question.

Article 91

Labels

1. Where public buyers intend to purchase solutions with specific environmental, social or other characteristics, they may, in the specifications, the award criteria or the conditions for the performance of contracts, require a specific label as proof that the works, services and products correspond to the required characteristics, provided that all of the following conditions are fulfilled:

(a) the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the solutions that are the subject-matter of the contract;

(b) the label requirements are based on objectively verifiable and non-discriminatory criteria;

(c) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;

(d) the labels are accessible to all interested parties;

(e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

In addition to the conditions set out in the first subparagraph and without prejudice to requirements set out in other Union legislation, where public buyers require an ecolabel, the ecolabel shall be the EU Ecolabel, provided that the works, products or services in question are covered by EU Ecolabel criteria adopted pursuant to Regulation (EC) No 66/2010[65]. In the absence of EU Ecolabel criteria for the purchased works, products or services, the required ecolabel shall be a third party-

[65] Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1, ELI: http://data.europa.eu/eli/reg/2010/66/oj).

verified ecolabel based on a life-cycle perspective compliant with the first subparagraph.

Where public buyers do not require the works, services and products to meet all the label requirements set out in the first and second subparagraphs, they shall indicate which label requirements are to be met.

2. Public buyers that require a specific label shall accept all other equivalent labels that confirm that the works, products or services meet the required characteristics.

3. Where an economic operator demonstrates that it had no possibility of obtaining the specific label indicated by the public buyer or an equivalent label referred to in paragraph 2 within the relevant time limits for reasons beyond its control, the public buyer shall accept other appropriate means of proof, which may include a technical dossier from the manufacturer, provided that the economic operator concerned proves that the work, service or supply to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the public buyer.

Where a label fulfils the conditions set out in paragraph 1, points (b), (c), (d) and (e), but also sets out requirements not linked to the subject-matter of the contract, public buyers shall not require the economic operator to provide the label but may define the specifications by reference to those of the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of that subject-matter.

Article 92

Means of proof for product requirements

1. Public buyers may require that economic operators provide a declaration of conformity or a declaration of performance and conformity of a product through the digital product passport pursuant to Regulation (EU) 2024/1781 or, where this does not yet exist, other equivalent electronic means as means of proof of conformity or compliance with requirements or criteria set out in the specifications, the award criteria or the conditions for the performance of contracts.

2. Public buyers may require a test report from a notified body, a technical assessment body, a conformity assessment body or a certificate issued by such a body as means of proof of conformity with the requirements or criteria set out in the specifications, the award criteria or the conditions for the performance of contracts.

Where public buyers require the submission of certificates drawn up by a specific notified body, a technical assessment body or conformity assessment body, certificates from other equivalent notified bodies, technical assessment bodies or conformity assessment bodies shall also be accepted by the public buyers, including those established in other Member States than the one of the public buyer.

For the purpose of this paragraph, a conformity assessment body shall be a body that performs conformity assessment activities including calibration, testing, certification and inspection accredited in accordance with Regulation (EC) No 765/2008[66] of the European Parliament and of the Council.

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[66] Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and

3. Public buyers may accept other appropriate means of proof instead of those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned had no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned and provided that the economic operator concerned thereby proves that the works, supplies or services provided by it meet the requirements or criteria set out in the specifications, the award criteria or the conditions for the performance of contracts. Economic operators may provide other appropriate means of proof only where the documents referred to in paragraph 1 are not required by other Union legislation.

Chapter 3
Conduct of the procedure

Article 93

Confidentiality

1. Public buyers shall not disclose information provided by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders, unless otherwise provided in this Regulation, or in the Union or national law to which the public buyer is subject, in particular legislation concerning access to information.

2. Public buyers may impose requirements on economic operators aimed at protecting the confidential nature of information which the public buyers make available throughout the procurement procedure or in contract implementation.

3. Where justified by security reasons, including but not limited to essential national security interests or the security of the Union, public buyers may

   (a) restrict the information that they provide to economic operators to certain stages of the procurement procedure; or

   (b) make the access to information conditional to having taken certain security measures, in particular having acquired security clearance in the Member State where the public contract is to be performed.

Article 94

Conflicts of interest

1. Public buyers shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures, including the design and preparation of the procedure and the staff involved, the drawing-up of the procurement detail, the selection of economic operators and the award of the contract.

   For the purposes of this Article, 'conflict of interest' includes any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a

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repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30, ELI: http://data.europa.eu/eli/reg/2008/765/oj).

personal interest in the outcome of the procurement procedure or conduct of the contract implementation, which may compromise the impartial and objective performance of their duties.

For the purpose of this paragraph 'personal interest' means any family, emotional, economic, political or other relevant shared interests with the candidates the tenderers or contractor including conflicting professional interests.

2. The rules referred to in paragraph 1 shall apply to conflicts of interest involving at least the following categories of persons:

(a) staff members of the public buyer, procurement service providers or staff members of other service providers who are involved in the conduct of the procurement procedure or may influence its outcome;

(b) the members of decision-making bodies of the public buyer, or of other bodies that influence the decision making of the public buyer, who may influence the outcome of the procurement procedure, without necessarily being involved in the conduct of that procedure.

3. The persons referred to in paragraph 2 are required to declare any conflicts of interest in relation to any of the economic operators participating in a procurement procedure, as soon as they become aware of such conflicts, in order to enable remedial action.

Public buyers may require that economic operators declare in their expression of interest, tender or at the beginning of negotiations the existence of any links with the persons referred to in point (b) of paragraph 2, which may place those persons in a situation of conflicts of interest, as well as conflicts of interest in relation to the subject-matter of the procurement procedure.

4. Without prejudice to Article 140(3), remedial measures shall primarily include the recusal of the persons referred to in paragraph 2 in question from involvement in the affected procurement procedure or the re-assignment of that person's duties and responsibilities.

Where conflicts of interest cannot be effectively remedied by other means, the economic operator concerned shall be excluded from the procedure only after it has been given the opportunity to prove that the situation of suspected conflicts of interest does not distort competition.

5. All conflicts of interest prevented, identified or declared and the remedial measures taken shall be documented pursuant to Article 109.

Article 95

Prior involvement in the preparation of the procurement procedure

1. Where an economic operator has been involved in the preparation of the procurement procedure, public buyers shall take any necessary measures to ensure that competition is not distorted by the participation of that economic operator.

Participation in a market consultation shall not be considered preparation of the procurement procedure within the meaning of this Article.

2. The measures referred to in paragraph 1 shall include making available relevant information exchanged or obtained by the participating economic operator during the

preparation of the procurement procedure to all interested economic operators, as well as setting appropriate time limits to ensure fair competition.

3. The economic operator concerned shall only be excluded from the procedure where there are no other means to ensure equal treatment and after it has been given the opportunity to prove that its prior involvement does not distort competition.

4. The measures shall be documented pursuant to Article 109.

Article 96

Setting time limits

1. When setting the time limits for expressions of interest or the receipt of tenders and without prejudice to the minimum and maximum time limits set out in Title I of this Part, public buyers shall take account of the nature and complexity of the contract, the necessity of on-site inspections, and the time required for drawing up tenders.

2. Public buyers shall extend time limits set for the receipt of tenders in case of additional information or significant changes. The length of the extension shall be proportionate to the relevance and complexity of the information or change.

Article 97

Availability of procurement detail

1. Public buyers shall ensure unrestricted, full direct and free of charge access by electronic means to the procurement detail from the date of publication of a public summary of competition until three years after the award of the contract.

2. Where for certain parts of the procurement detail such access referred to in paragraph 1 cannot be provided, public buyers may indicate in the public summary the other means by which those parts will be made available by other than electronic means.

3. Public buyers shall provide without undue delay to all economic operators all additional information relating to the specifications and any supporting procurement detail necessary for the submission of tenders provided that it has been requested in good time.

4. This Article is without prejudice to Article 93(3).

Article 98

Award criteria

1. Public buyers shall award the contract to the economic operator that offers the best quality for money.

   To that effect, public buyers shall evaluate the tenders received according to the best price-quality ratio method referred to in paragraph 2, and by applying award criteria with the minimum quality weighting in accordance with paragraph 4, except as provided for in paragraph 5.

2. To determine the best price-quality ratio, public buyers shall evaluate the tenders through a comparison of their price and quality, based on quality criteria linked to the

subject-matter of the contract. Costs can also be taken into account when determining the best price-quality ratio.

Quality criteria shall refer to any criteria used to assess the degree to which a tender proposes beneficial, efficient or sustainable outcomes in relation to the subject-matter of the contract.

The quality of the tender may, for instance, relate to the following aspects:

(a) technical merit, aesthetic and functional characteristics, accessibility, design for all users, and production methods;

(b) environmental and climate-related considerations referred to in Article 50, food-specific considerations referred to in Article 53 where relevant, social considerations referred to in Article 55, innovation objectives referred to in Article 59, security and public safety interests as set out in Article 66, resilience and security of supply requirements as set out in Article 69, or European preference requirements where a public buyer applies those requirements in the form of an allocation of award points pursuant to Article 73(2), point (b);

(c) quality of the staff assigned that can significantly impact the level of performance of the contract, such as the organisation, qualification and experience of the staff assigned to performing the contract;

(d) after-sales service and technical assistance, delivery conditions such as date at which or period during which the delivery is to take place or to be completed.

Public buyers may also establish a fixed price on the basis of which economic operators are to compete on quality criteria only.

3. Award criteria shall be non-discriminatory, proportionate, specific, objective and measurable; they shall be evaluated in a process containing sufficient safeguards against irregularities. They shall allow the public buyer to effectively compare the strengths and weaknesses of the offered goods, services and works, and shall not have the effect of conferring an unrestricted freedom of choice on the public buyer.

Public buyers shall specify, in the public summary of competition, the criteria and their relative weighting chosen to determine the best price-quality ratio.

4. The weight of quality criteria shall represent at least 30 % of total points awarded.

For contracts where the subject-matter is labour-intensive, the weight of quality criteria shall represent at least 50 % of total points awarded.

Where, pursuant to Article 99, public buyers apply life-cycle costing, the weight given to life-cycle costs shall be counted within the respective percentage share.

Where public buyers apply environmental criteria specific for public procurement set in Union legislation as referred to in Article 50(4), second subparagraph, including delegated acts adopted pursuant to Article 54, and where those requirements relate to award criteria, the weight given to such environmental considerations shall count within percentages indicated in this paragraph. Mere compliance with obligations not relating to award criteria shall not be an award criterion.

5. Public buyers may derogate from paragraph 1, second subparagraph, and from paragraph 4, where the quality of the product, service or works procured can be ensured in any of the following ways:

(a) specifications;

(b) where relevant, conditions for the performance of contracts;

(c) a combination of any of the following: quality-based award criteria, specifications and conditions for the performance of contracts.

Public buyers shall indicate in the public summary of competition which of the ways set out in the first subparagraph justifies that derogation.

Article 99

Life-cycle costing

1. Where public buyers apply life-cycle costing, this shall, to the extent relevant, cover parts or all of the following costs over the life-cycle of a product, service or works:

(a) costs borne by the public buyers or other parties for purchase of the solution, costs of use, consumption of energy and other resources, maintenance costs and end of life costs, such as collection and recycling costs, based on appropriate baselines and scenario assessments where appropriate;

(b) costs imputed to environmental and climate externalities linked to the product, service or works during its life-cycle, provided their monetary value can be determined and verified.

The costs referred to in the first subparagraph, point (b), may include the cost of emissions of greenhouse gases and of other pollutant emissions or other climate change mitigation costs.

2. Where public buyers assess the costs using a life-cycle costing approach they shall indicate in the procurement detail the data to be provided by the tenderers and the method which the public buyer is to use to determine the life-cycle costs on the basis of those data.

3. The methods used for assessment of costs imputed to environmental and climate externalities shall be accessible to all interested parties and based on objectively verifiable and non-discriminatory criteria. In particular where the method has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain economic operators.

Article 100

Division into lots

1. Public buyers shall consider whether to divide contracts into lots.

2. In assessing whether a contract should be divided into lots, public buyers shall take into account, where relevant, the potential contribution of such division to increasing participation of SMEs, reducing dependency on a single supplier, strengthening supply chain resilience and security of supply, and fostering innovation, as well as, on the other hand, the impact of such division on the efficiency of and risks related to the integrity of the procurement. Where division into lots is not mandatory pursuant to paragraph 6 and public buyers consider that such division is not appropriate, they shall indicate the main reasons thereof in the procurement detail or in the individual documentation pursuant to Article 109.

3. Where public buyers divide a contract into lots, they shall do so in a way that the scope, size, number and nature of lots are proportionate to the subject-matter and complexity of the contract.

4. Public buyers may award contracts for individual lots without applying the procedures provided for under this Regulation, provided that the estimated value net of VAT of the lot concerned is less than EUR 80 000 for supplies or services or EUR 1 million for works. However, the aggregate value of the lots thus awarded without applying this Regulation shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed provision of services has been divided.

5. Public buyers may limit the number of lots for which economic operators may submit tenders. They shall indicate that limit in the procurement detail.

6. Public buyers may limit the number of lots that may be awarded to a single tenderer. In such case, public buyers shall state the maximum number, and where applicable, the possible combinations of lots in the procurement detail. They shall also indicate in the procurement detail the objective and non-discriminatory criteria or rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.

7. Member States may provide that public buyers shall divide contracts into lots.

Article 101

Abnormally low tenders

1. Public buyers shall require tenderers to explain the price or price elements in the tender, including in relation to the quality of the tender, where these appear to be abnormally below any of the following:

   (a) the price or price elements of the other tender or tenders received in the procurement procedure;

   (b) the market price such as by the public buyer's estimation of contract value, in particular where it is based on market consultation, and including all costs such as the cost of labour and working conditions, materials and logistics and for complying with other contractual requirements as well as other life-cycle costing;

   (c) contract values in past procurement procedures with mostly identical subject-matter and conditions, in particular in past estimations, tenders or prices paid by the same public buyer or other public buyers.

   The public buyer may limit the requirement to explain the prices or price elements to the tenderer with the best placed tender in accordance with Article 98, or, where appropriate, to several of the tenderers with the best ranked tenders.

2. The explanations of the tenderer shall establish the economic viability of the price or price elements of the tender as not abnormally low over the duration of the contract. They shall account for the low level of price, including price elements and the relation to the quality of the tender and compliance with all obligations, and may include, in particular, the following:

(a) the economics of the manufacturing process, of the services provided or of the construction method or the technical solutions chosen;

(b) exceptionally favourable conditions, including state aid where such state aid is compatible with the internal market;

(c) whether the tenderer complies with all regulatory obligations and strategic requirements pursuant to Title II of this Part applicable to the contract.

3. Where the public buyer considers the explanations referred to in paragraph 2 to be satisfactory, it shall record its assessment in the individual documentation pursuant to Article 109.

4. Where the explanations referred to in paragraph 2 are not considered satisfactory, including after having asked for clarifications or additional information, the public buyer shall reject the tender from the procurement procedure.

Article 102

Corrections during procedures and cancellation

1. Before the deadline for each submission of tenders or each start of negotiations, public buyers may make corrections to the procurement detail without initiating a new procurement procedure or changing the public summary of competition provided that:

(a) the correction does not substantially alter the subject-matter of the procurement; and

(b) the correction is indicated clearly in an updated procurement detail made available to all economic operators concerned.

If the correction is done less than 24 hours before the deadline for submission of tenders, the deadline shall be extended by a minimum of two working days, or more where warranted due to the nature and complexity of the correction.

2. Where information or documentation submitted by economic operators is or appears to be incomplete or erroneous or where specific information or documentation are missing, public buyers may provide the economic operators concerned in a strictly non-discriminatory manner the opportunity to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit to remedy such deficiency. The first sentence only applies to a minor informality or irregularity of a tender or eligibility information where such remedy does not materially change the tender or eligibility information.

3. The public buyer shall cancel the procurement procedure if it identifies material errors in the procurement procedure that cannot be corrected by any other means and that are liable to distort competition.

4. The public buyer may, before the contract is signed, cancel the procurement procedure. In the case of contracts divided into lots or other forms of multiple sourcing procurement, the cancellation may be done partially. The decision shall be justified and brought to the attention of the tenderers as soon as possible.

Article 103

Framework agreements

1. Public buyers may conclude framework agreements pursuant to the procedures in Title I of this Part. The rules of this Regulation for public contracts shall apply *mutatis mutandis* to framework agreements unless otherwise provided for in this Article.

A ‘framework agreement’ means an agreement between one or more public buyers and one or more economic operators to establish the terms governing contracts that may be awarded during a given period.

2. The duration of a framework agreement shall not exceed the following:

(a) three years for framework agreements with one economic operator; or

(b) five years for framework agreements with several economic operators.

The maximum duration of the framework agreement may be set for a longer period in exceptional cases, where this is duly justified by the complexity or specialised nature of the procurement and the duration is not longer than what is strictly necessary in view of the circumstances of the procurement in question.

3. A public buyer shall indicate its intention to conclude a framework agreement through a public summary of competition. The public summary shall also include the duration and the maximum cumulative value or volumes of contracts expected to be concluded based on the framework agreement over its duration. The maximums may be adjusted in the public summary of result, provided that any adjustment is proportionate to the terms of the successful tender or tenders.

4. The procurement detail shall include the non-discriminatory and objective criteria that shall be used to conclude subsequent contracts based on the framework agreement. Where a framework agreement is concluded with more than one economic operator, the criteria shall either provide for the rules for reopening of competition between the economic operators party to the framework agreement or set out all the terms of how the contracts will be awarded and performed, or a combination thereof.

Public buyers shall publish a public summary of result pursuant to Article 110 on each contract concluded based on a framework agreement. Contracts based on a framework agreement shall not have a duration that exceeds the end of the duration of the framework agreement by more than 50 % of the duration of the framework agreement.

Chapter 4
Contract execution

Article 104

Conditions for the performance of contracts

1. Public buyers may lay down conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract in accordance with Article 90 and clearly indicated in the procurement detail.

2. Those conditions may, in addition to general contractual, technical, quality and economic aspects, such as price indexation, also include conditions related to strategic considerations, including:

(a) environmental considerations as defined in Article 50, such as the handling of waste, compliance with sustainability due diligence and reporting in the execution of the contract, or other requirements in a circular economy;

(b) employment considerations, such as fair working conditions of the workers employed in the execution of the contract, including remuneration as well as occupational health and safety at work;

(c) other social considerations as defined in Article 55, such as implementation of appropriate prevention and mitigation processes related to human rights impacts arising in the performance of the contract;

(d) innovation objectives as described in Article 59, such as to encourage continued improvement of the solution;

(e) security and public safety interests as described in Articles 66, or resilience and security of supply requirements as set out in Article 69, such as security clearance of the personnel, handling restrictions or continued observance and improvement of the supply chain.

Article 105

Adjustment mechanisms

1. Public buyers may include in the procurement detail clauses establishing mechanisms for the adjustment of the conditions of the contract throughout its duration, provided that those mechanisms:

(a) are objectively justified having regard to the nature of the contract;

(b) maintain the economic balance of the contract;

(c) the clauses are clear, precise and unequivocal.

2. The adjustment mechanisms referred to in paragraph 1 may, in particular, relate to:

(a) predefined rules for the adjustment of revenues, including variations linked to demand or usage levels;

(b) indexation mechanisms, including those linked to objective economic indicators, such as price indices, inflation rates or volatility of input costs such as for key materials;

(c) performance-based payment adjustments, linked to the achievement of qualitative or performance objectives relating to the supply of works or services.

3. Adjustments of a contract based on such clauses shall not be considered modifications pursuant to Article 106.

Article 106

Modifications of contracts during their term

1. Public buyers may modify awarded contracts or framework agreements during their term without a new procurement procedure provided that the modification is not substantial within the meaning of paragraph 3 or falls within one of the cases referred to in paragraph 4. Any such modification shall respond to objective needs arising during the performance of the contract, be limited to what is necessary and appropriate to ensure its performance and continuity and not alter the initial economic balance of the contract in favour of the contractor.

2. Modification, the value of which does not exceed 15 % of the value of the initial contract shall be considered non-substantial and may be made without a new procurement procedure, provided that the modification does not alter the initial economic balance of the contract.

   Where several successive modifications are made, the thresholds shall be assessed on the basis of the net cumulative value of the successive modifications.

3. A modification shall be considered substantial where it introduces terms which, had they been part of the original procurement procedure would have changed the condition of competition, or where it changes essential terms or conditions of the contract, such as the scope of the contract, the initial economic balance in favour of the contractor or the identity of the original contractor, in cases other than those referred to in paragraph 4, point (c).

4. Provided that they do not alter the initial economic balance of the contract in favour of the contractor, substantial modifications shall be permissible within the meaning of paragraph 1 only in the following cases:

   (a) where additional works, services, or supplies have become necessary during the performance of the contract, provided that a change of contractor is not technically or economically feasible, including due to the interdependence of the existing works or services or because it would result in substantial increase in costs;

   (b) where the modification is necessary due to circumstances which could not reasonably have been anticipated by a diligent public buyer at the time of the launch of the procedure, and which significantly affect the performance or feasibility of the contract, including:

   (i) substantial changes in the applicable regulatory or legal framework;

   (ii) significant technological developments;

   (iii) disruptions, emergencies or crises having a significant economic, societal or operational impact;

   (c) where the original contractor is replaced by another entity due to:

   (i) a merger, takeover, acquisition, insolvency or other corporate restructuring, another economic operator succeeds, wholly or partly, to the rights and obligations of the initial contractor, provided that the new entity fulfils the original qualitative selection criteria; that no other substantial modifications are made to the contract and that the replacement is not intended to circumvent the application of this Regulation; or

   (ii) the public buyer assuming the main contractor’s obligations towards its subcontractors where that possibly is provided for under national law.

5. Before modifying a contract, the public buyer shall establish, on the basis of objective and verifiable elements, that the conditions set out in paragraph 1 are satisfied. Public buyers shall maintain detailed written records of the essential elements of the modification, including its justification, its necessity or appropriateness, and its impact on the economic balance of the contract, in particular allocation of risks and economic advantages, in order to justify the decisions to modify the contract and to enable verification of compliance with this Article by competent supervisory, audit and review bodies.

6. Before any modification of a contract that exceeds 50 % of the initial estimated value of the contract, the public buyers shall publish a public summary of modification to that effect. That public summary shall contain the justification for the modification without a new procurement procedure and the information set out in Article 110. Successive modifications shall not be aimed at circumventing this Regulation.

   By way of derogation from the first subparagraph of this paragraph, the prior publication obligation does not apply where urgency resulting from an emergency determined in accordance with Article 48 does not allow for prior publication of the public summary of modification. In such case, public buyers shall publish a public summary of modification pursuant to paragraph 7 of this Article.

7. Where public buyers substantially modify a contract pursuant to paragraph 4 of this Article, and the modification does not exceed 50 % of the initial estimated contract value of the contract, they shall publish a public summary of modification containing the information set out in Article 110 within 20 days from the date on which the modification was made.

8. For the purpose of the calculation of the value referred to in the paragraphs 2, 6 and 7, the updated value shall be the reference value when the contract includes an indexation clause. If the contract does not include an indexation clause, the updated value shall be calculated taking into account the average inflation in the Member State of the public buyer.

9. Modifications of a contract shall not be used to remedy deficiencies of the contractor's performance that are not justified by circumstances beyond its control.

Article 107

Termination of contracts

Without prejudice to any other grounds for termination provided for in this Act or under applicable national law, public buyers shall terminate the contract where:

(a) the economic operator becomes subject of a final conviction for one of the grounds referred to in Article 25, except where the public buyer establishes that such termination is not warranted for reasons of overriding public interest and the final judgment does not preclude this;

(b) the contract or its modification should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and this Regulation that has been declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 of the Treaty.

Article 108

Payments

1. Without prejudice to their obligations under Directive 2011/7/EU[67] of the European Parliament and of the Council, public buyers shall ensure the timely payment of contractors and, where applicable, subcontractors.

2. As part of the conditions for the performance of the contract pursuant to Article 104, public buyers may provide that the contractors pass through the supply chain equivalent payment terms as laid down in the relevant provisions of Directive 2011/7/EU of the European Parliament and of the Council.

3. Member States shall provide, through the National Public Procurement Data Space (NPPDS), procurement information on payment status linked to each individual contract concerned pursuant to Article 134(4).

4. Member States shall make available procurement information on prompt payment compliance for each annual reporting period for each public buyer pursuant to Article 134(4).

5. In addition to Article 44(6), public buyers may provide for advance payments in the procurement detail, especially to encourage the participation of SMEs. Where the contract in question has particular relevance for the innovation considerations set out in Title II, Chapter 3 of this Part and unless justified by an overriding interest of the public buyer, public buyers shall provide for an appropriate advance payment to the contractor.

6. At the request of the subcontractor and where the nature of the contract so allows, the public buyer shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. Such measures may include appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement detail.

Chapter 5
Publication and documentation rules

Article 109

Individual documentation of procedures

1. Public buyers shall record, in the public buyer's eProcurement service and make available in the NPPDS pursuant to Article 134, the necessary documentation to justify decisions taken in all stages of the procurement procedure, in particular documentation on communications with economic operators, including in negotiations if any, and internal decisions for the preparation or correction of the procurement detail, including after negotiations if any, in selection of economic operators and award of the contract. The documentation shall be kept for a period of

[67] Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (recast) (OJ L 48, 23.2.2011, p. 1, ELI: http://data.europa.eu/eli/dir/2011/7/oj).

at least three years from the date of award of the contract, except where a longer period is required by applicable Union or national law.

2. Procurement information and procurement decisions shall be recorded and managed in a manner enabling their origin, evolution, justification and approval history to be identified throughout their lifecycle.

3. Public buyers shall include in their documentation any identified conflicts of interest, integrity breaches and significant risks for security or public safety affecting procurement procedures or contract implementation as well as mitigating measures taken.

Article 110

Publication information in public summaries

1. Public buyers shall publish information in accordance with Article 112 with all the following public summaries:

(a) consultation;

(b) competition;

(c) result;

(d) contract;

(e) modification;

(f) completion.

2. The publication of a public summary of consultation as referred to in Article 30, shall include all the following information:

(a) identification of the organisations relevant for the consultation; and

(b) purpose of the consultation including method, communication and submission terms;

(c) other necessary information regarding the consultation.

3. The publication of a public summary of competition as referred to in Articles 34, 37, 42, 49 and 103 shall include all the following information:

(a) identification of the organisations relevant for the procedure;

(b) purpose of the procedure including method, communication and submission terms;

(c) description of the procurement, including the nature, quantity or estimated quantity, and timing of purchases;

(d) duration of validity of the procedure;

(e) contract terms;

(f) if applicable, an indication on the strategic nature of the procurement, such as the fulfilment of environmental, social or innovation objectives, as well as the suitability of the procurement for SMEs;

(g) GPA coverage;

(h) other necessary information regarding competition.

4. The publication of a public summary of result as referred to in Articles 40, 44, 46, 49, 103 and 111 shall include the following information:

(a) identification of the organisations relevant for the procedure;

(b) purpose of the procedure;

(c) result of the procedure, including cancellation;

(d) for contracts awarded pursuant to Article 46: a justification for the decision of the public buyer to award the contract in accordance with that provision;

(e) for contracts awarded pursuant to Article 46: a description of the request as set out in the invitation to negotiate, the request to submit a tender or the request to deliver the solution against invoice;

(f) if applicable, an indication of the strategic nature of the procurement, such as the fulfilment of environmental, social or innovation objectives, as well as indication of SME participation;

(g) GPA coverage; and

(h) other necessary information regarding the result.

5. The publication of a public summary of contract of modification or of completion as set out in Articles 106, 111, and 125, shall include all the following information, as applicable:

(a) identification of the organisations relevant for the contract;

(b) purpose of the contract;

(c) any contract information published pursuant to this paragraph and changed by the modification;

(d) reasons for the modification;

(e) result of the contract including information on termination;

(f) other necessary information regarding the contract, modification or completion information.

6. The Commission is empowered to adopt delegated act in accordance with Article 141 to amend the information in each public summary referred to in paragraphs 2 to 6 of this Article in accordance with the implementation needs.

7. The Commission is empowered to adopt implementing acts further detailing the specific information which shall be contained in each public summary as described in paragraphs 2 to 6, establishing the connection of public summaries and the sequencing of specific information contained in multiple public summaries, and establishing requirements for public buyers to reuse information already provided in a public summary as well as requirements for eProcurement service providers to provide a corresponding reuse service. Those implementing acts shall be adopted in accordance with the advisory procedure referred in Article 143(2).

Article 111

Publication of public summary of result, of contract and of completion

1. Public buyers shall send the following procurement information pursuant to Article 110 no later than 20 days:

   (a) after the conclusion of a market consultation, the award decision in or the cancellation of a procurement procedure, or as referred to in Article 40, 44, 46, 49 and 103, public buyers shall send a public summary of result;

   (b) after the conclusion of a contract where the preceding procurement procedure was within the scope of this Regulation, public buyers shall send a public summary of contract;

   (c) after the completion of the performance of a contract where the preceding procurement procedure was within the scope of this Regulation, public buyers shall send a public summary of completion, including from the day of the respective event where an awarded contract was not concluded or where the contract execution was not terminated, including due to a termination pursuant to Articles 107 and 126 from the day of the respective event.

2. Certain information may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of a particular economic operator, public or private, might prejudice fair competition between economic operators. Such information shall at the same time however be provided to the NPPDS pursuant to Article 134 as not publicly available information.

3. Public buyers shall ensure the complete, correct and timely provision of procurement information to the NPPDS pursuant to Article 134.

Article 112

Form and manner of publication

1. The public summaries referred to in Article 110 including changes to information shall be sent by public buyers through the NPPDS to the Publications Office of the European Union and shall be published in the Supplement to the Official Journal of the European Union. no later than five days after it is received, unless the public buyer requests a later date of publication. The information shall be considered to be received by the Publications Office of the European Union only once it has been validated according to the technical validation requirements set up by the Union.

2. The Publications Office of the European Union shall ensure that the public summaries referred in Article 110 are made available:

   (a) as the sole authentic text in at least one of the official languages of the Union as provided by the public buyer; and

   (b) as non-authentic versions in the other official languages of the Union in addition to authentic text.

3. Public buyers shall be able to supply proof of the date on which their information was sent for publication.

4. The Publications Office of the European Union shall give the NPPDS confirmation of the receipt and of the publication of the public summaries sent, indicating the date of publication. Such confirmation shall be provided by the NPPDS to the public buyer and shall constitute proof of publication.

5. Public buyers may publish public summaries for public contracts that are not subject to the publication requirements laid down in this Regulation, provided that these are sent to the Publications Office of the European Union according to this Article.

6. The costs of the reception, validation and publication of the public summaries by the Publications Office of the European Union shall be borne by the Union.

7. The Commission is empowered to adopt implementing acts, specifying the details concerning the provision of public summaries to the Publications Office of the European Union and the source of the technical validation requirements referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 143(2).

Article 113

Publication at national level

1. The information referred to in Article 110 or the implementing act pursuant to Article 110(7) shall not be published at national level before the publication pursuant to Article 112. However, publication may in any event take place at the national level where public buyers have not been notified of the publication within 48 hours after confirmation of the receipt of the information in accordance with Article 112.

2. Information published at national level shall indicate the date when that the information was sent to the Publications Office of the European Union as well as the identifier of the information regarding a procurement procedure published pursuant to Article 112.

Part IV
Concessions

Title I
General provisions

Article 114

Scope

1. This Part applies to concessions for the execution of works and provision of services as defined in Article 115.

2. Unless otherwise provided for in this Part, all the provisions of this Regulation applicable to public contracts apply to concessions.

Article 115

Definition and characteristics of concessions

1. For the purposes of this Regulation, the following definition shall apply:

   (a) 'concession' means a contract for pecuniary interest, regardless of its formal designation, where one or more public buyers entrust the execution of works or the provision and management of services to one or more economic operators ('concessionaire') for benefit of users and that complies with the following conditions:

   (i) the remuneration of the concessionaire consists either solely in the right to exploit the works or services that are the subject of the contract or in that right together with payment by the public buyer; and

   (ii) it entails the transfer to the concessionaire of an operating risk in exploiting those works or services to which the public buyer would be exposed if it was to execute the works or perform the services itself.

   (b) The concession provides for legally enforceable obligations under which the public buyer determines the nature, scope and conditions for the execution of the works or the provision and management of services by establishing specific requirements to ensure that the concessionaire performs those tasks in pursuit of the objectives defined by that public buyer and complies with those requirements, throughout the duration of the concession.

   (c) The concession has as its subject-matter the performance of those works or services and shall not consist merely in the entitlement of all operators fulfilling certain conditions to perform a given task without any selectivity.

   Agreements the sole or predominant subject-matter of which is the granting of a right to occupy or exploit public domain or resources, including leases or other rights relating to public property, as well as rights of way or other permissions allowing the use of the public domain for infrastructure or network deployment, and in respect of which the public buyer establishes only general conditions of use without entrusting the performance of specific works or services, shall not constitute concessions within the meaning of this Regulation.

2. For the purpose of paragraph 1, 'operating risk' means the risk that the concessionaire will not recoup, under normal operating conditions, the investments made and the costs incurred in the execution of the works or the provision and management of the services which are the subject-matter of the concession, so that the concessionaire bears the risk of losses attached to the performance of the concession, such as risks linked to uncertainties affecting demand, revenues, operating costs, availability, technical and operational conditions or performance. The operating risk shall involve genuine exposure to the changing market conditions, and any potential estimated loss incurred by the concessionaire shall not be economically insignificant.

Article 116

Mixed concession contracts

1. In addition to Articles 86 and 87, the applicable legal regime for contracts containing elements of concessions and of other public contracts ('mixed concession contracts') shall be determined in accordance with paragraphs 2 and 3 of this Article.

2. Where the different parts of a mixed concession contract are objectively separable, but are not procured separately by the public buyer, the mixed concession contract shall be awarded in accordance with Part III.

3. Where the different parts of a mixed concession contract are objectively not separable, the applicable legal regime shall be determined on the basis of the main subject-matter of that contract.

Where such a contract contains elements of a services concession and of a supply contract, the main subject-matter of that contract shall be determined in accordance with the higher of the estimated values of the respective services or supplies.

Article 117

Excluded concessions

1. In addition to the exclusions provided for in Part III, Title II, Chapter 1, this Regulation does not apply to the following concessions:

(a) for air transport services based on the grant of an operating licence within the meaning of Regulation (EC) No 1008/2008[68] of the European Parliament and of the Council;

(b) for public passenger transport services within the meaning of Regulation (EC) No 1370/2007;

68 Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (OJ L 293, 31.10.2008, p. 3, ELI: http://data.europa.eu/eli/reg/2008/1008/oj).

(c) for provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water, or to supply drinking water to such networks;

(d) having one or both of the following subject-matters where they are connected with an activity referred to in point (c):

(i) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by those projects or installations for irrigation or drainage installations;

(ii) the disposal or treatment of sewage;

(e) for lottery services, which are covered by CPV code 92351100-7, awarded by a Member State to an economic operator on the basis of an exclusive right;

(f) awarded to an economic operator on the basis of an exclusive right which has been granted in accordance with the Treaty and Union legislation laying down common rules on access to the market applicable to the activities referred to in Annex III, unless that Union legislation does not provide for sector-specific transparency obligations, in which case Article 20 shall apply.

2. Where a Member State grants an exclusive right to an economic operator for the exercise of one of the activities referred to in Annex IV, it shall inform the Commission thereof within one month of granting that exclusive right.

Article 118

Threshold and estimation of the value of a concession

1. This Regulation applies to concessions with an estimated value equal to or greater than the threshold specified in Article 2(1), point (a).

2. The estimated value of a concession shall be the projected total turnover, net of VAT, that the concessionaire may generate over the maximum duration of the concession, as estimated by the public buyer, in consideration for the works and services that are the subject-matter of the concession, and for the supplies incidental to such works and services.

3. The estimated value of the concession shall be calculated using an objective method specified in the procurement detail. In calculating the estimated value of the concession, the public buyers shall, where applicable, take into account in particular:

(a) the value of any form of option and any extension of the duration of the concession;

(b) revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the public buyer;

(c) payments or any financial advantage in whatever form, granted by the public buyer or any other public authority to the concessionaire, including compensation for performance of a public service obligation and public investment subsidies;

(d) the value of grants or any other financial advantages, in whatever form, granted by third parties for the performance of the concession;

(e) revenue from the sale of any assets forming part of the concession;

(f) the value of all the supplies and services that are made available to the concessionaire by the public buyers, provided that they are necessary for the execution of the works or provision of the services;

(g) any prizes, payments, compensation or reimbursement granted to economic operators in connection with the procedure for the award of a concession.

Title II
Preparation, design and procedure

Article 119

Contractual obligations relating to public needs

1. Public buyers shall determine in the procurement detail mandatory conditions governing the performance of the concession, they deem necessary, having regard to the nature and subject-matter of the works or services concerned, including those aiming at ensuring the continuity, quality, accessibility, safety, and effectiveness of the works and services provided to users.

2. Where appropriate, the mandatory conditions governing the performance of the concession, referred to in paragraph 1 shall be established as clear, objective and measurable performance requirements, including indicators relating to the following:

   (a) the quality of service;

   (b) the availability and continuity of the service;

   (c) the efficiency and reliability;

   (d) the sustainability and resilience.

3. Where performance requirements are established in accordance with paragraph 2, the procurement detail shall enable effective monitoring of the performance and may in particular include the applicable key performance indicators, the methods for monitoring and verifying performance, and, where appropriate, the consequences of performance outcomes, including incentives or deductions.

Article 120

Structured risk assessment

1. Before initiating a procedure for the award of a concession, public buyers shall carry out an assessment of the main economic risks related to the performance of the concession, taking into account the nature, duration and economic characteristics of the works or services concerned.

   The assessment shall identify the principal categories of risks associated with the performance of the concession, distinguishing between, on the one hand, operating risks relating to the exploitation of the works or services and to exposure to market uncertainties, and, on the other hand, general contractual risks. The risk assessment shall determine, on the basis of objective elements, the allocation of those risks between the parties.

2. The procurement detail may provide for adjustment mechanisms in accordance with Article 125 intended to re-allocate or mitigate the risks between the parties where necessary, having regard to the nature of those risks. The existence of such mechanisms shall not, in itself, preclude the qualification of the contract as a concession, provided that the concessionaire continues to bear the operating risk inherent in the exploitation of the works and services.

Article 121

Parameters for assessing performance

1. Public buyers shall include in concession contracts provisions aimed at ensuring the long-term efficiency of the works or services, including by promoting environmental sustainability and technological innovation throughout the duration of the concession.

The provisions referred to in the first subparagraph shall be directly linked to the performance of the concession and may in particular include requirements relating to the contribution to the environmental and climate-related objectives pursuant to Article 50 or to promote technological development and innovation as well as the continued improvement of services.

2. Public buyers shall, where relevant, include in concession contracts provisions aimed at ensuring the security, resilience and continuity of the works or services throughout the duration of the concession.

Those provisions shall be directly linked to the performance of the concession and may in particular include requirements ensuring the continuity of essential services under conditions of disruption, obligations to manage risks affecting the security and operational resilience, and measures to protect critical infrastructure, systems or data, or cybersecurity safeguards.

3. Public buyers shall include in concession contracts provisions requiring concessionaires to maintain adequate records for five years from the date of the award and reporting mechanisms enabling the public buyer to monitor the performance and implementation of the concession, to verify compliance with contractual and legal obligations, and to enable verification of compliance by competent supervisory, audit and review bodies.

Those provisions may in particular relate to the completeness, accuracy and integrity of the records, periodic performance information, and the timely notification of incidents affecting the performance or compliance with legal, safety or environmental requirements.

4. Where the performance of the concession involves rights over assets, infrastructure or public property necessary for the operation of the concession, public buyers shall ensure that the contractual, property or occupancy, arrangements governing the transfer, return or takeover of those assets upon expiry or termination of the concession are clear, proportionate, non-discriminatory and are specified in the procurement detail. Those arrangements shall not create unjustified barriers to competition or unduly favour the incumbent concessionaire and shall ensure that the successor operator is able to continue the performance of the concession under effective and non-discriminatory conditions.

The procurement detail may in particular specify the conditions governing the use, transfer or return of the assets upon expiry or termination, including for any compensation payable, and conditions relating to the transfer or takeover of personnel.

Article 122

Duration of concessions

1. The duration of a concessions shall be limited to the period necessary for the concessionaire to recoup the investment made for operating the works or services, together with a return on invested capital under normal operating conditions, taking into account the investments required to achieve the specific contractual objectives.

2. The duration of a concession shall be determined having regard to the subject-matter of the concession and to the public interest in preserving competition and market access.

3. In determining the duration of a concession, the public buyer shall take into account:

   (a) the investments required for the performance of the concession, both initially and throughout the duration of the concession, including investment in infrastructure, equipment and intellectual property;

   (b) the operating and maintenance costs associated with the exploitation of the works or services;

   (c) the allocation of risks between the parties, provided that the duration of the concession does not result in the elimination of the operating risk born by the concessionaire;

   (d) the mandatory conditions governing the performance of the concession;

   (e) the expected revenues and the period reasonably necessary for the concessionaire to recover the investments and operating costs together with a reasonable return;

   (f) the need to ensure periodic exposure to competition.

   Where appropriate, the duration of the concession shall also take into account the expected technological, regulatory, and environmental lifecycle relevant to the subject-matter of the concession.

   The determination of the duration of the concession shall not result in a guarantee that the concessionaire will obtain a predetermined or minimum return on invested capital. A concession may be awarded for a duration shorter than that required for the recovery of investments, provided that any financial arrangements linked to that duration, including compensation or guarantees, do not eliminate or substantially reduce the operating risk borne by the concessionaire.

4. The public buyer may determine the duration of the concession in the procurement detail or may provide that the duration forms part of the tender.

5. Where the duration forms part of the tender, the procurement detail shall specify:

   (a) the method for determining the duration of the concession, including any minimum or maximum duration or permissible range;

(b) the rules governing the evaluation and verification of the duration proposed by tenderers, including the relationship between that duration and:

(i) the investments to be made;

(ii) the financial structure of the concession;

(iii) the allocation of risks;

(iv) the economic balance of the concession;

(c) the extent to which the proposed duration constitutes an award criterion.

6. The public buyer may include in the procurement detail provisions allowing for the potential adjustment, extension, reduction or contingent determination of the duration of the concession.

Any mechanism permitting the adjustment, extension, reduction, or contingent determination of the duration of the concession shall comply with the following requirements:

(a) be set out in a clear, precise, and unequivocal manner in the procurement detail;

(b) specify the conditions under which such adjustments may occur, the applicable methodology and the maximum duration of the concession, having regard to the factors referred to in the paragraph 3.

Any adjustment to the duration of the concession that is not provided for in the procurement detail or is not implemented in accordance with the methodology and conditions set out pursuant to the second subparagraph, point (b), shall constitute a modification of the concession and shall be subject to Article 125

Article 123

Procedures for the award of a concession

1. Public buyers shall award concessions in accordance with the procedures provided for in this Regulation.

2. The public summary of competition for the award of the concession pursuant to Article 34 shall, in addition, include a summary of the following information:

(a) the main components of the estimated value of the concession, including the estimated investment costs and operating revenues;

(b) the allocation of the key risks, including, where applicable, the demand, construction, and regulatory risks.

Title III
Management of concessions

Article 124

Adjustment mechanisms

1. Public buyers may include in the procurement detail clauses establishing mechanisms for the adjustment of the conditions of the concession throughout its duration, provided that those mechanisms:

   (a) are objectively justified having regard to the nature, duration and risk profile of the concession;

   (b) maintain the economic balance of the concession;

   (c) preserve the transfer of an operating risk to the concessionaire;

   (d) the clauses are clear, precise and unequivocal.

2. The adjustment mechanisms referred to in paragraph 1 may, in particular, relate to:

   (a) predefined rules for the adjustment of revenues, including variations linked to demand or usage levels;

   (b) indexation mechanisms, including those linked to objective economic indicators, such as price indices, inflation rates or volatility of input costs such as for key materials;

   (c) performance-based payment adjustments, linked to the achievement of qualitative or performance objectives relating to the supply of works or services;

3. Adjustments of a contract based on such clauses shall not be considered modifications pursuant to Article 125.

Article 125

Modifications of concessions during their term

1. Public buyers may modify concessions during their term without a new procurement procedure, provided that the modification is not substantial within the meaning of paragraph 3 or falls within one of the cases referred to in paragraph 4. Any such modifications shall respond to objective needs arising during the performance of the concession, be limited to what is necessary and appropriate to ensure its performance and continuity and does not alter the initial economic balance of the concession in favour of the concessionaire.

2. Modification, the value of which does not exceed 15 % of the value of the initial concession shall be considered non-substantial and may be made without a new procurement procedure, provided that the modification does not alter the initial economic balance of the concession.

   Where several successive modifications are made, the thresholds shall be assessed on the basis of the net cumulative value of the successive modifications.

3. A modification shall be considered substantial where it introduces terms which, had they been part of the original procurement procedure, would have changed the condition of competition, or where it changes essential terms or condition of the contract, such as the scope of the concession, , the contractual obligations laid down in accordance with Article 119, the initial economic balance in favour of the concessionaire, or the identity of the original concessionaire, in cases other than those referred to in paragraph 4, point (c).

4. Provided that they do not alter the initial economic balance of the concession in favour of the contractor, substantial modifications shall be permissible, within the meaning of paragraph 1, in the following cases:

(a) where additional works, services, or supplies become necessary during the performance of the concession, provided that a change of concessionaire is not technically or economically feasible, including due to the interdependence of the existing works or services or because it would result in substantial increase in costs;

(b) where the modification is necessary due to circumstances which could not reasonably have been anticipated by a diligent public buyer at the time of the launch of the procedure for the award of the concessions, and which significantly affect the performance or feasibility of the concession, including:

(i) substantial changes in the applicable regulatory or legal framework;

(ii) significant technological developments;

(iii) disruptions, emergencies or crises having a significant economic, societal or operational impact;

(c) where the original concessionaire is replaced by another entity due to:

(a) a merger, takeover, acquisition, insolvency or other corporate restructuring, where another economic operator succeeds, wholly or partly, to the rights and obligations of the initial concessionaire, provided that the new entity fulfils the original qualitative selection criteria; that no other substantial modifications are made to the concession and that the replacement is not intended to circumvent the application of this Regulation;

(b) the public buyer assuming the main concessionaire's obligations towards its subcontractors where that possibly is provided for under national law.

5. Before modifying a concession, the public buyer shall establish, on the basis of objective and verifiable elements, that the conditions set out in paragraph 1 are satisfied. Public buyers shall maintain detailed written records of the essential elements of the modification, including its justification, its necessity or appropriateness, and its impact on the economic balance of the contract, in particular on the allocation of economic advantages and operating risks under the concession, in order to justify the decisions to modify the concession and to enable verification of compliance with this Article by competent supervisory, audit and review bodies.

6. Before any modification of a concession that exceeds 50 % of the value of the initial concession, the public buyers shall publish a public summary of modification to that effect. That public summary shall contain the justification for the modification without a new procurement and the information set out in Article 110. Successive modifications shall not be aimed at circumventing this Regulation.

By way of derogation from the first subparagraph of this paragraph, the prior publication obligation does not apply where urgency resulting from an emergency determined in accordance with Article 48 does not allow for prior publication of the public summary of modification. In such a case, public buyers shall publish a public summary of modification in accordance with paragraph 7 of this Article.

7. Where public buyers substantially modify a concession under the conditions set out in paragraph 5, and the modification does not exceed 50 % of the value of the initial concession, they shall publish a public summary of modification containing the information set out in Article 110 within 20 days from the date on which the modification was made. Where several successive modifications are made that do not exceed 50 % of the value of the initial concession, this obligation shall apply to each modification. Consecutive modifications shall not be aimed at circumventing this Regulation.

8. Where the improper performance of the concession or the failure of the concessionaire to provide the works or services threatens the continuity of an essential service provided under the concession and defined in the concession document, the public buyers may adopt or require strictly necessary temporary measures to ensure the uninterrupted provision of that service. The public buyers shall ensure that those measures are limited to what is objectively necessary to maintain the continuity of the essential service, are proportionate to the seriousness of the disruption, and do not result in a modification of the economic balance of the concession or in a transfer of operating risk from the concessionaire to the public buyers, except to the extent strictly necessary to ensure the temporary continuation of the essential service.

9. For the purpose of the calculation of the value referred to in paragraphs 2, 6 and 7 the updated value shall be the reference value when the contract includes an indexation clause. If the contract does not include an indexation clause, the updated value shall be calculated taking into account the average inflation in the Member State of the public buyer.

10. Modifications of a concession contract shall not be used to remedy deficiencies in the performance of the concessionaire that are not justified by circumstances beyond its control, except under condition laid down in paragraph 8.

Article 126

Termination of concessions

1. In addition to Article 107, public buyers may terminate a concession contract before its expiry, where provided for under Union or national law and where such termination is justified by overriding reasons of public interest.

2. Any termination pursuant to paragraph 1 shall:

   (a) comply with the principles of proportionality and equal treatment;

   (b) be duly reasoned and based on objective and verifiable grounds;

   (c) be exercised only where the objective pursued cannot reasonably be achieved by less restrictive measures, including by modifying the concession in accordance with this Regulation.

3. In the event of termination under this Article, the concessionaire shall be entitled to appropriate compensation.

4. The justification for the termination and the compensation shall be duly documented and made available for verification by competent supervisory, audit and review bodies for a minimum of five years.

Part V
Digital ecosystem

Title I
Digital tools

Chapter 1
Electronic communication and interoperability

Article 127

Electronic communication

1. Public buyers shall use electronic communication tools in all their exchanges with the economic operator in the procurement procedure. They shall use only generally available and non-discriminatory tools, and their communication shall be in conformity with the harmonised standard for procurement detail pursuant to Article 129(1) point (b).

2. Notwithstanding paragraph 1, public buyers may use other means of communication to the extent that electronic communication is not possible due to the specific technical requirements of the procurement procedure or to the extent that this is necessary for one of the following reasons:

   (a) a breach of security of the electronic communication; or

   (b) the protection of the particularly sensitive nature of data requiring such a high level of protection that it cannot be properly ensured by using electronic communication tools.

3. In all communication, exchange and storage of data, public buyers shall ensure that the integrity of data and the confidentiality of expressions of interest, tenders and innovative solution proposals are preserved and that they are able to exchange data with the economic operator through the interoperability network pursuant to Article 128. They shall examine the content of expressions of interest, tenders and innovative solution proposals only after the time limit set for submitting them has expired and shall ensure that any unauthorised access is detectable.

4. Notwithstanding paragraph 1 of this Article and Article 65, public buyers may require the use of electronic communication tools which are not generally available and non-discriminatory only where this is necessary for the conduct of the procurement procedure and where they provide free and equal access to such tools to all economic operators intending to participate in the procurement procedure.

5. In accordance with Articles 27 and 37 of Regulation (EU) 910/2014[69], public buyers may require the use of advanced electronic signatures or seals, advanced electronic

[69] Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73, ELI: http://data.europa.eu/eli/reg/2014/910/oj).

signatures or seals based on a qualified certificate or qualified electronic signatures or seals for the signature of electronic communication by the economic operator.

Article 128

Interoperability network

1. The Commission shall establish or designate a secure network for data exchange, to enable public buyers and economic operators to communicate using electronic means in procurement procedures using different eProcurement service providers ('interoperability network').

2. The Commission shall adopt delegated acts in accordance with Article 141, to supplement this Regulation in order to establish or designate such an interoperability network.

   The Commission shall ensure that the interoperability network meets the following requirements:

   (a) it complies with the harmonised standards referred to in Article 129 and the common specifications referred to in Article 130;

   (b) it takes into account existing Union tools and standards;

   (c) it complies with the requirement for protection of personal data in accordance with Regulations (EU) 2016/679[70] and (EU) 2018/1725, and ensures 'data protection by design' and by default as laid down in Article 25 of Regulation (EU) 2016/679 and Article 27 of Regulation (EU) 2018/1725;

   (d) it allows for the establishment of a secure, practical, easily implementable, flexible, configurable and cost-efficient data exchange in all procurement procedures;

   (e) it considers the particular needs of SMEs;

   (f) it considers the eProcurement ontology as a semantic framework standardising the concepts of Union public procurement; and

   (g) it considers the public summaries and their technical implementation in accordance with Article 110.

3. The Commission is empowered to adopt implementing acts laying down the detailed arrangements for the implementation and operation of the interoperability network, including, where appropriate, the rules on the re-use of existing networks for the purposes of this Article. Those implementing acts shall specify at least the following:

   (a) technical information on the connection to the interoperability network;

   (b) data format and structure including configuration and syntax;

   (c) semantic repository;

   (d) interoperability requirements;

   (e) scalability and performance;

[70] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/679/oj).

(f) security and accountability requirements;

(g) data ownership and access management;

(h) qualification of eProcurement service providers;

(i) organisational and technical measures for processing personal data;

(j) arrangements to tackle inappropriate or fraudulent use of the interoperability network;

(k) availability of the interoperability network and data; and

(l) interconnections made via the interoperability network, including the interconnection to the digital business credential tool and to the NPPDS.

The implementing acts referred to in the first subparagraph of this paragraph shall be adopted in accordance with the advisory procedure referred to in Article 143(2).

4. The Commission may require the interoperability network operator to deny or remove access to the network for eProcurement service providers where those providers do not, or no longer, fulfil the requirements laid down in Article 131. The Commission shall provide appropriate prior notice to eProcurement service providers of the denial of or loss of access to the network. The interoperability network shall provide the Commission with the information necessary for assessing the compliance with the requirements laid down in Article 131.

Article 129

Harmonised standards for public procurement

1. The Commission may adopt a standardization request in accordance with Regulation (EU) No 1025/2012 for the drafting of harmonized standards, for the semantic data model and interoperability of the core elements of the following:

(a) the procurement procedures in accordance with this Regulation (the ‘harmonised standard for procurement procedures’); and

(b) at least the main elements of the procurement detail (the ‘harmonised standard for procurement detail’).

2. Standards adopted in accordance with paragraph 1 shall comply at least with the following criteria:

(a) they take into account existing Union tools and standards;

(b) they meet the requirement for the protection of personal data in accordance with Regulations (EU) 2016/679 and (EU) 2018/1725, in particular respecting the principles of ‘data protection by design’ and by default as laid down in Article 25 of Regulation (EU) 2016/679 and Article 27 of Regulation (EU) 2018/1725;

(c) they allow for the establishment of a secure, easily implementable, flexible, configurable and cost-efficient data exchange in all procurement procedures;

(d) they consider the particular needs of SMEs; and

(e) they consider the eProcurement ontology as a semantic framework standardising concept of Union public procurement.

3. Where the harmonised standard for procurement procedures or the harmonised standard for procurement detail, delivered following the request referred to in paragraph 1, complies with the requirements set out therein, the Commission shall publish the reference to that harmonised standard in the *Official Journal of the European Union*.

Article 130

Common specifications

1. The Commission may adopt implementing acts establishing common specifications as referred to in Article 88(4), point (a), covering the essential requirements for the semantic data model of the core elements of the procurement procedures referred to in Article 129(1), point (a).

   Those implementing acts may be adopted where the Commission has requested, pursuant to Article 10(1) of Regulation (EU) No 1025/2012, one or more European standardisation organisations to draft or to revise European standards for those requirements and:

   (a) the request has not been accepted by any of the European standardisation organisations to which the request was addressed; or

   (b) the request has been accepted by at least one of the European standardisation organisations to which the request was addressed, but the European standards requested:

   (i) are not delivered within the deadline set in the request;

   (ii) do not comply with the request; or

   (iii) do not satisfy the requirements they aim to cover.

2. Where the references of a harmonised standard are published in the Official Journal of the European Union, the Commission shall repeal the implementing acts adopted pursuant to paragraph 1, or the relevant parts thereof, to the extent they cover the same requirements.

3. When a Member State or the European Parliament considers that a common specification or parts thereof do not entirely satisfy the requirements which it covers, it shall inform the Commission thereof by submitting a detailed explanation. The Commission shall assess that detailed explanation and may, if appropriate, amend the implementing act establishing the common specification in question.

Chapter 2
eProcurement service providers

Article 131

Obligations of eProcurement service providers

1. eProcurement service providers shall ensure that their eProcurement platforms comply with the harmonised standards referred to in Article 129, the references of which have been published in the Official Journal of the European Union, or with the common specifications adopted pursuant to Article 130.

2. eProcurement service providers shall, where relevant, enable the use of the European Business Wallets established pursuant to Regulation [OP – please add proposal on the establishment of the European Business Wallets] for the services they provide to economic operators and public buyers.

3. eProcurement service providers shall ensure that their eProcurement platforms connect to the interoperability network in accordance with the implementation arrangements provided in the implementing acts in accordance with Article 128(3).

4. eProcurement service providers shall not be in an exclusion situation pursuant to Article 25. eProcurement service providers shall be established in the European Economic Area (EEA), shall be owned and controlled by natural or legal persons that are established in the EEA and no natural or legal person, established in a third country shall exercise, directly or indirectly, decisive influence over them. eProcurement service providers shall store all data related to public procurement procedures conducted by public buyers pursuant to this Regulation in the EEA.

5. eProcurement service providers shall ensure access to the procurement detail pursuant to Article 97 and shall not charge any fees for access to any electronic communication conducted through the interoperability network.

6. eProcurement service providers shall ensure that their eProcurement platform is compliant with the technical arrangements provided in the implementing act adopted pursuant to Article 133(5).

7. eProcurement service providers shall connect to an NPPDS established in accordance with Article 134, unless they provide their services exclusively to economic operators.

8. Member States shall designate one or more competent authorities responsible for verifying whether eProcurement service providers comply with the obligations set out in this Article. They shall provide for penalties applicable to infringement of those obligations which shall include the temporary prohibition to provide those eProcurement services. Those penalties shall be effective, proportionate and dissuasive.

Article 132

Commission eProcurement platform

1. The Commission shall set up and operate an eProcurement platform (‘Commission eProcurement platform’) and make it available to public buyers, for the purpose of conducting procurement procedures, and to economic operators, for the purpose of participating in procurement procedures.

2. The Commission eProcurement platform shall comply with the requirements applicable for eProcurement service providers set out in Article 131(1) to (6). The Commission shall make the solution developed for the Commission eProcurement platform available as open-source software.

3. Member States may require public buyers to use the Commission eProcurement platform. They shall notify the Commission of that decision at least 12 months in advance before the date from which public buyers are required to use the Commission eProcurement platform.

Chapter 3
Electronic eligibility

Article 133

Electronic eligibility service

1. The Commission shall set up and operate an electronic eligibility service. The electronic eligibility service shall provide an electronic verification service for exclusion grounds, selection criteria and requirement of origin for each procurement procedure by means of the European Business Wallets established pursuant to Regulation [OP – please add proposal on the establishment of the European Business Wallets] or by alternative electronic means which shall be interoperable with the European Business Wallets.

2. For each procurement procedure, public buyers shall specify the applicable exclusion grounds, selection criteria and requirements of origin, in the electronic eligibility service. Economic operators shall create an eligibility profile in the electronic eligibility service corresponding to the procurement procedure they wish to participate in. The eligibility profile shall allow public buyers to verify if the economic operator fulfils the requested requirements through use of the digital business credential tool.

3. The Commission is empowered to adopt delegated acts in accordance with Article 142 to supplement this Regulation, laying down detailed rules of the management the electronic eligibility service and designating the digital business credential tool and the related network to be used by economic operators for the purpose of determining eligibility.

4. When preparing the delegated acts referred to in paragraph 3, the Commission may select one or more of the following instruments, including any combination thereof, or any successor thereto:

   (a) the European Business Wallets pursuant to [OP: please add Regulation on the European Business Wallets];

   (b) the Once-Only Technical System pursuant to Article 14 of Regulation (EU) 2018/1724[71];

   (c) the European Digital Identity Wallet pursuant to Regulation (EU) No 910/2014[72];

   (d) Member States services where they fulfil the applicable requirements pursuant to paragraph 5, point (b) to (f), of this Article.

5. The digital business credential tools listed in paragraph 4 of this Article shall fulfil the following requirements:

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71 Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1724/oj).

72 Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73, ELI: http://data.europa.eu/eli/reg/2014/910/oj).

(a) for instruments set out at Union level, they shall, by 30 June 2028, be technically implemented in all Member States and be generally available to economic operators;

(b) they shall be based on existing Union tools and standards;

(c) they shall comply with the requirement for protection of personal data in accordance with Regulations (EU) 2016/679 and (EU) 2018/1725, and ensure 'data protection by design' and by default as laid down in Article 25 of Regulation (EU) 2016/679 and Article 27 of Regulation (EU) 2018/1725 and provide for appropriate safeguards for the rights and freedoms of data subjects pursuant to Article 10 and Article 22 of Regulation (EU) 2016/679;

(d) they shall ensure a secure, easily implementable, flexible, configurable and cost-efficient data exchange in all procurement procedures;

(e) they shall be adapted to the particular needs of SMEs; and

(f) they shall consider the eProcurement ontology as a semantic framework standardising the concepts of Union public procurement.

6. The Commission is empowered to adopt implementing acts specifying the technical arrangements for the electronic eligibility service. Those implementing acts shall specify in particular the following:

(a) technical set-up and structure of the digital business credential tool network;

(b) technical information on the connection to the digital business credential tool;

(c) data format and structure including configuration and syntax;

(d) semantic repository;

(e) interoperability requirements;

(f) set-up of the algorithmic tool required for the dynamic procedure, including definition of the algorithm;

(g) scalability and performance;

(h) security and accountability requirements;

(i) data ownership and access management;

(j) technical information on national access points of the digital business credential tool and the access point of the Commission;

(k) organisational and technical measures for processing personal data;

(l) arrangements to tackle inappropriate or fraudulent use of the digital business credential tool network;

(m) technical audits;

(n) availability of the digital business credential tool network and data;

(o) obligations of the digital credential business tool network; and

(p) detailed rules on the obligations of the Member States and the Commission regarding the electronic eligibility service, including handling the exclusion grounds set out in Articles 25 and 26, and selection criteria set out pursuant to Article 27.

The implementing acts referred to in the first subparagraph of this paragraph shall be adopted in accordance with the advisory procedure referred to in Article 143(2).

7. For the purposes of Regulation (EU) 2018/1725 the Commission shall be regarded as the processor as defined in Article 3, point (12), of that Regulation, in relation to the processing of any personal data that may result from the setting up and management of the electronic eligibility service.

8. Member States shall inform the Commission within 30 days of the creation of any new certificates or other forms of documentary evidence to be provided through the electronic eligibility service.

Part VI
Transparency and governance

Title I
Data spaces

Article 134

National Public Procurement Data Spaces

1. Each Member State shall establish or designate a National Public Procurement Data Space ('NPPDS') as the central national data access point for procurement information related to the public procurement and contract life-cycle and other related national procurement information covered by this Regulation and shall act as the Member State's contact point to the Public Procurement Data Space pursuant to Article 135.

2. Each Member State shall designate the authority or authorities responsible for the operation of the NPPDS referred to in paragraph 1 ('the NPPDS authority').

   The NPPDS shall be established in the EEA, shall be owned and controlled by natural or legal persons that are established in the EEA and no natural or legal person, established in a third country, shall exercise, directly or indirectly, decisive influence over the NPPDS. Procurement information shall be stored within the EEA.

3. The NPPDS authority shall ensure that the following procurement information is made available through the NPPDS:

   (a) procurement information relating to procurement procedures above the thresholds referred to in Article 2, corresponding to the public summaries specified in the implementing act adopted pursuant to Article 110;

   (b) procurement information relating to procurement procedures below the thresholds referred to in Article 2, where this procurement information is provided in the format corresponding to public summaries specified in the implementing act adopted pursuant to Article 110; and

   (c) procurement information relating to public contracts awarded based on the exclusions pursuant to Articles 80, 81, 83 and 84 in particular information on the organisations relevant to the contract, the purpose and result of the contract as well as a justification for the exclusion.

   The procurement information referred to in point (a) and (b) shall be made available through the NPPDS at the same time as it is made available at the Union level or where it is not made available at the Union level, at the same time as it is made available at national level. The procurement information referred to in point (c) shall be made available within 20 days after contract conclusion and contract completion, respectively.

4. The NPPDS authority shall ensure that procurement information from concluded contracts and from completed contracts with a value of at least EUR 10 000, where the preceding procurement would have been covered by this Regulation if its value had exceeded the relevant threshold laid down in Article 2 is made available through

the NPPDS. It shall include information on the organisations relevant to the contract and the purpose and result of the contract.

The information shall be made available through the NPPDS no later than 20 days after contract conclusion and contract completion, respectively.

5. The NPPDS authority shall ensure that the following information is made available through the NPPDS:

   (a) information on participants in the procurement procedure, including on the outcome of their participation;

   (b) information on subcontractors and ancillary service providers;

   (c) procurement detail, tenders, contracts and handover documents;

   (d) information on budget, including information on EU funds;

   (e) information on contracts and on individual payments;

   (f) information that is relevant for the assessment of the compliance by public buyers with this Regulation;

   (g) information relevant for the assessment of the extent to which public buyers pursue strategic procurement objectives such as environmental, social or innovation objectives, and of their contribution to the attainment of those objectives;

   (h) information on the participation of SMEs in public procurement;

   (i) information relating to risk factors in public procurement, including corruption, fraud, collusion, or unfair competition practices;

   (j) information on the functioning of national review systems; and

   (k) information on the functioning of national procurement markets below and above the thresholds, including information on national, cross-border and third country participation including origin of goods and information on beneficial ownership.

   The procurement information shall be made available through the NPPDS as soon as possible, but not later than 20 days after the occurrence of the respective information Where the information is related to an ongoing review procedure, it shall be made available through the NPPDS 20 days from the conclusion of the respective review procedure.

6. The procurement information shall be considered to be available only once it has been validated according to the technical validation requirements set up by the Union. Upon successful validation, the NPPDS shall transmit a validation confirmation to the entity that made the procurement information available. The procurement information shall remain available through the NPPDS for at least ten years from the date it has been made available.

7. The Commission is empowered to adopt delegated acts in accordance with Article 141, specifying further categories of procurement information to be made available to the NPPDS.

8. The Commission is empowered to adopt implementing acts in accordance with Article 143(2) specifying the procurement information which shall be made available through the NPPDS as well as its technical format, the designation and modalities of

such designation of specific procurement information as publicly or not publicly available procurement information , the source of the technical validation requirements according to paragraph 7, as well as establishing the connection of public summaries and the sequencing of specific information contained in multiple public summaries, and establishing requirements for public buyers to reuse information already provided in a public summary as well as requirements for eProcurement service providers to provide a corresponding reuse service.

Where procurement information is not designated as publicly available, Member States shall ensure that certain categories of users such as public buyers, competition authorities, courts of auditors and national Financial Intelligence Units have direct and comprehensive access rights corresponding to their respective needs and purposes.

9. Member States shall establish rules ensuring the complete, correct and timely provision of access to procurement information for the NPPDS in accordance with to this Regulation, as well as rules providing for data governance that assign clear responsibilities for the management and use of the available procurement information, including access for the user categories set out in paragraph 10. Member States may also establish rules assigning the obligation to provide procurement information to the NPPDS to specific legal entities, including rules regarding the provision by or retrieval of procurement information from other national databases. Member States shall impose effective, proportionate and dissuasive fines in respect of infringements related to the obligation to provide access to procurement information. Member States shall communicate these rules to the Commission within 12 months of the adoption of this Regulation.

10. Where a Member State so requests it, the Commission shall provide the Member States with the source code of the Public Procurement Data Space for purpose of setting-up the NPPDS.

Article 135

Public Procurement Data Space

1. The Public Procurement Data Space (the ‘PPDS’) established by the Commission and built on the eProcurement ontology and the Findability, Accessibility, Interoperability, and Reuse of digital assets (FAIR) principles, shall be a central repository of procurement information originating from all NPPDS for the monitoring of public procurement procedures and contracts at Union level.

2. Member States shall provide procurement information available through the NPPDS to the PPDS within ten days from availability of the procurement information pursuant to Article 134.

The procurement information shall be considered to be received only once it has been validated according to the technical validation requirements set up by the Union. To this end, the NPPDS shall receive a confirmation of the validation. The procurement information shall remain available to the PPDS at least ten years from the date it has been made available.

3. The Commission is empowered to adopt implementing acts specifying the procurement information which shall be provided by the Member States through the PPDS including its technical format, the minimum publication terms for procurement

information not designated as publicly available and the source of the technical validation requirements according to paragraph 2.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 143(2).

4. Access to procurement information that is not designated as publicly available shall be restricted to persons having the necessary access rights granted by the Commission. Where a Member State requests access rights for a national public authority to procurement information from another Member State, it shall obtain access rights only once the other Member State approves the access.

5. The Commission may grant access to the PPDS to Union institutions within the meaning of Article 2, point (73) of Regulation (EU, Euratom) 2024/2509, Executive Agencies and Union bodies within the meaning of Articles 68, 69 and 70 of that Regulation, to the European Public Prosecutors Office, to the European Anti-Fraud Office and to the European Central Bank, corresponding to their respective needs and purposes.

Article 136

PPDS data exchange

1. The Commission shall establish a data exchange for the management of access to PPDS and NPPDS procurement information.

2. The Commission shall manage the data exchange and shall ensure that procurement information is exchanged securely. To this end, the Commission may adopt implementing acts in accordance with the advisory procedure referred to in Article 143(2) specifying the following implementation arrangements of the data exchange pursuant to Union law:

(a) technical information on the connection to the data exchange;

(b) data format and structure including configuration and syntax;

(c) semantic repository;

(d) interoperability requirements;

(e) scalability and performance;

(f) security and accountability requirements;

(g) data ownership and access management;

(h) organisational and technical measures for processing personal data;

(i) arrangements to tackle inappropriate or fraudulent use of the data exchange;

(j) availability of the data exchange and data; and

(k) interconnections made via the data exchange, such as to the NPPDS.

Title II
Governance

Article 137

Monitoring of the performance of public procurement markets

1. Member States shall monitor and assess the performance of their public procurement systems, on the basis of the data in their NPPDS. They shall identify potential shortcomings and possible improvements, thereby supporting the continuous enhancement of their public procurement system.

   Member States shall as a minimum:

   (a) assess the barriers to competition and access to procurement opportunities, in particular for SMEs;

   (b) identify and assess the main vulnerabilities and risks affecting the integrity and efficiency of the public procurement system;

   (c) assess the application of security, resilience and European preference mechanisms, including identifying any indications of circumvention by economic operators for the latter;

   (d) evaluate progress in achieving the strategic procurement objectives, including environmental, social and innovation considerations;

   (e) monitor the performance, adjustments and modifications of large infrastructure projects and long-running contracts such as concessions.

   The results of the assessment referred to in the second subparagraph shall be made publicly available through appropriate means of information, at least once a year.

   Where structural shortcomings have been identified, the measures to address them shall be underpinned by Member States developing and implementing a comprehensive, country-specific action plan.

2. Every three years, Member States shall report to the Commission on the results of the assessment and, where the structural shortcomings are identified, on the measures taken, planned or envisaged to address those shortcomings, with the first report due by … [OP please insert the date three years after the entry into force of this Regulation].

3. The Commission shall monitor and analyse the functioning of public procurement in the Union, in particular the competition in procurement markets, on the basis of the data in the Public Procurement Data Space. The Commission shall every three years provide an analysis of the public procurement system across the Union.

Article 138

National coordinating authority

1. Each Member State shall designate one authority, body or structure as national coordinating authority for the purposes of this Regulation.

2. The national coordinating authority shall:

(a) ensure effective coordination among the national authorities responsible for carrying out the tasks and exercising the powers provided for under this Regulation;

(b) facilitate cooperation and the exchange of information between those authorities;

(c) make available standardised contract documents, guidance or advice for large infrastructure projects and long-running contracts such as concessions, including guidance, methodologies or model provisions relating to risk allocation and financial adjustment mechanisms;

(d) act as the single contact point for the Commission, the competent authorities of other Member States and, where appropriate, relevant stakeholders in matters relating to this Regulation.

Member States may provide that modifications of large infrastructure projects and long-running contracts such as concessions involving an increase in the value exceeding 50 % of the value of the initial contract shall be subject to a structured and transparent prior review procedure by the national coordinating authority.

3. The designation of a national coordinating authority pursuant to paragraph 1 shall not affect the allocation of tasks and powers among competent authorities under national law.

4. Member States shall notify the Commission of the national coordinating authority designated pursuant to paragraph 1 and of any subsequent changes thereto.

Article 139

Professionalisation and capacity building

1. Member States shall ensure that the professionalisation of public procurement is a long-term and strategic element of public governance by taking appropriate measures, including institutional, organisational, financial and human resources arrangements.

2. The measures adopted pursuant to this Article shall support the professionalisation of public buyers throughout the public procurement cycle.

3. In addition, Member States shall promote measures to enhance the ability of economic operators to effectively participate in public procurement procedures, in particular SMEs, as well as measures supporting other actors contributing to the functioning of the public procurement system, such as oversight authorities.

4. Member States shall adopt, implement and periodically update a national strategy for the professionalisation of public procurement. The strategy shall include at least the objectives, measures and appropriate monitoring arrangements for the development of the skills and competencies of public buyers at national, regional and local level.

5. Member States shall review and update the strategy in light of paragraph 6.

6. Member States shall ensure that appropriate support structures are available to public buyers throughout the public procurement cycle, at national, regional and local level, with particular attention to public buyers with limited administrative capacity.

These support structures shall provide to public buyers guidance, advice, assistance and other capacity-building measures, in particular in relation to:

(a) procurement planning and needs assessment;

(b) market engagement and dialogue with economic operators;

(c) risk assessment and risk management;

(d) integrity, transparency and the prevention of conflicts of interest, fraud and corruption;

(e) the preparation and conduct of procurement procedures;

(f) sustainable, innovation and strategic procurement;

(g) contract management and performance monitoring;

(h) collection and dissemination of good practices;

(i) digitalisation and use of electronic procurement systems and data;

(j) supply chain management and resilience.

7. The support structures may also provide guidance, advice, assistance and other capacity-building measures to economic operators, in particular SMEs, with a view to facilitating their access to public procurement, as well as to other actors contributing to the functioning of the public procurement system.

8. The Commission shall assist Member States in their efforts to strengthen the professionalisation of public procurement, including by promoting cooperation between national support structures, the exchange of knowledge and good practices, peer learning, the use of capacity-building tools and, where appropriate, the development of additional measures.

9. Member States shall monitor and assess the implementation and effectiveness of the measures adopted pursuant to this Article, including their impact on the performance of the public procurement system, and shall report as part of the reporting referred to in Article 137(2).

Article 140

Integrity governance

1. Public buyers shall take appropriate, proportionate, and effective measures to combat fraud, favouritism, collusion, and corruption, and to effectively prevent, identify, and remedy conflicts of interest arising in the conduct of procurement procedures and in the execution of public contracts. Those measures shall be designed to avoid any distortion of competition, to ensure the transparency of the procedure, and to guarantee the equal treatment of all economic operators originating from the Union and covered economic operators in accordance with Article 70(1) participating in the procurement procedure.

2. To support the measures referred to in paragraph 1 of this Article, public buyers shall use, before award and where relevant during contract execution, appropriate data-based risks analysis tools, such as Arachne+ or an equivalent tool made available at national level, to prevent and detect irregularities, fraud, collusion, corruption and conflict of interest. Member States shall ensure that the tools referred to in the first

sentence are effectively accessible to public buyers and, where appropriate, interoperable with the National Public Procurement Data Spaces referred to in Article 134.

3. Where the use of the tools referred to in paragraph 2 of this Article identifies a high-risk pattern, including indications of collusion, conflicts of interest or other integrity risks, the public buyer shall record in the individual documentation pursuant to Article 109 appropriate measures taken to remedy the situation or explain why no such measures were considered necessary.

Where, in accordance with paragraph 2 of this Article, a public buyer identifies a high risk of irregularities, all procurement personnel involved in the preparation, evaluation, or award of the public contract shall be required to complete and submit an electronic integrity declaration. The public buyer shall take appropriate measures to remedy any irregularities that it has identified and recorded in the individual documentation pursuant to Article 109 the follow-up carried out.

Part VII
Final provisions

Title I
Exercise of delegation and other cross-cutting provisions

Article 141

Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 2(2), 7(5), 54(2) and (4), 65(4), 66(6), 69(4), 72(1), 75, 110(6), 128(2), 133(3) and 134(7) shall be conferred on the Commission for an indeterminate period of time from … [OP please insert date of entry into force of this Regulation].
3. The delegation of power referred to in Articles 2(2), 7(5), 54(2) and (4), 65(4), 66(6), 69(4), 72(1), 75, 110(6), 128(2), 133(3) and 134(7) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 2(2), 7(5), 54(2) and (4), 65(4), 66(6), 69(4), 72(1), 75, 110(6), 128(2), 133(3) and 134(7) shall enter into force only where no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of the act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 142

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 141(5). In such case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

Article 143

Committee procedure

1. The Commission shall be assisted by the Advisory Committee on Public Contracts established by Council Decision 71/306/EEC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 144

Outermost regions

Where the specific needs of the public procurement markets of the outermost regions of the Union within the meaning of Article 349 of the Treaty cannot be met without the adaptation of certain procedures laid down in this Regulation, Member States may adapt the application of specific aspects of Part III of this Regulation in line with the Union's international obligations and without affecting the principles of equal treatment, non-discrimination and transparency. Member States shall notify to the Commission and to the other Member States the national laws, regulations and administrative provisions providing for such adaptations as well as their detailed justification. The adaptations concerned shall not apply before three months after that notification. The Commission shall publish the adaptations in the Official Journal of the European Union without delay.

Article 145

Procurement with Union support

In addition to any rules set out in this Regulation, for the award and execution of contracts supported by a Union programme or instrument, public buyers shall apply any conditions necessary to comply with the requirements for Union support in all management modes established in Article 62 of Regulation (EU, EURATOM) 2024/2509.

Title II
Amendments, repeals, transitional provisions, entry into force and application

Article 146

Repeal

1. Directive 2014/23/EU, Directive 2014/24/EU and Directive 2014/25/EU are repealed.

2. References to the repealed Directives shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex VIII, Part A.

Article 147

Amendments to horizontal public procurement provisions

(1) Regulation (EU) 2024/1781 is amended as follows:

(a) Article 65 is deleted;

(b) in Article 74(3), point (b) is deleted.

References to Article 65 and Article 74(3), point (b), of Regulation 2024/1781 shall be construed as references to Article 54 and Article 26(1), point (a) of this Regulation, respectively;

(2) Article 25 of Regulation (EU) 2024/1735 is amended as follows:

(a) paragraphs 4 and 5 are deleted;

(b) the following paragraph is added:

"This Article does not apply to public procurement procedures for net-zero technologies that are used in a project awarded in an auction pursuant to Article 26.".

References to Article 25(4) and (5) of Regulation (EU) 2024/1735 shall be construed as references to Article 54 of this Regulation;

(3) Article 85 of Regulation (EU) 2023/1542 is deleted.

References to Article 85 of Regulation (EU) 2023/1542 shall be construed as references to Article 54 of this Regulation;

(4) Article 83 of Regulation (EU) 2024/3110 is deleted.

References to Article 83 of Regulation (EU) 2024/3110 shall be construed as references to Article 54 of this Regulation;

(5) Article 63 of Regulation (EU) 2025/40 is deleted.

References to Article 63 of Regulation (EU) 2025/40 shall be construed as references to Article 54 of this Regulation;

(6) Directive 2023/1791 is amended as follows:

(a) Article 7 is deleted;

(b) Annex IV is deleted.

References to Article 7 and Annex IV of Directive 2023/1791 shall be construed as references to Article 52 of this Regulation;

(7) in Article 11(1) of Directive 2008/98/EC the words 'procurement criteria' are deleted;

(8) in Article 26(1) of Regulation (EU) 2024/1252, point (d) is replaced by the following:

"(d) increase the use of secondary critical raw materials, including through measures such as taking recycled content into account in financial incentives for the use of secondary critical raw materials;"

References to Article 26(1), point (d) of Regulation (EU) 2024/1252 shall be construed as references to Article 51 of this Regulation, as far as they concern award criteria related to public procurement;

(9) in Article 24 of Directive 2019/882, paragraph 1 is deleted.

References to Article 24(1) of Directive 2019/882 shall be construed as references to Article 56 of this Regulation;

(10) in Article 8 of Directive 2022/2381, paragraph 3 is deleted.

References to Article 8(3) of Directive 2022/2381 shall be construed as references to Article 4(4) of this Regulation;

(11) Article 5 of Regulation (EU) 2024/2847 is deleted.

References to Article 5 of Regulation (EU) 2024/2847 shall be construed as references to Article 68 of this Regulation;

(12) Article 31 of Directive (EU) 2024/1760 is deleted.

References to Article 31 of Directive (EU) 2024/1760 shall be construed as references to Article 55 of this Regulation;

(13) in Article 63(3) of Regulation (EU) 2024/1157, point (c) is deleted.

References to Article 63(3), point (c) of Regulation (EU) 2024/1157 shall be construed as references to Article 26(1), point (a) of this Regulation;

(14) in Article 5(1) of Regulation (EU) 1370/2007 the following subparagraph is added:

"Public service contracts pursuant to this Regulation shall be subject to the provisions on "Security and Resilience" and "European preference", laid down in Part III, Title II, Chapter 4 and 5 of … [OP please adapt with the number of this Regulation]".

Article 148

Review

1. Every seven years after … [OP please insert the date of entry into force of this Regulation], the Commission shall carry out an evaluation of this Regulation.

2. The Commission shall present a report on the main findings of the evaluation carried out in accordance with paragraph 1 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Member States shall provide the Commission with the necessary information for the preparation of the report.

Article 149

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from … [OP please insert date two years following the entry into force of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*
[...]	*[...]*

LEGISLATIVE FINANCIAL AND DIGITAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Regulation of the European Parliament and of the Council on public contracts and concessions, repealing Directive 2014/23/EU, Directive 2014/24/EU and Directive 2014/25/EU, and amending Regulation (EU) 2024/1157, Regulation (EU) 2024/1781, Regulation (EU) 2024/3110, Regulation (EU) 2023/1542, Regulation (EU) 2025/40, Directive (EU) 2023/1791, Directive (EU) 2024/1760, Directive 2008/98/EC, Regulation (EU) 2024/1252, Directive (EU) 2019/882, Directive (EU) 2022/2381, Regulation (EU) 2024/1735, and Regulation (EU) 2024/2847.

1.2. Policy area(s) concerned

Public Procurement; Internal Market; Communications Networks, Content and Technology

1.3. Objective(s)

1.3.1. General objective(s)

The general objectives are to make public procurement a more efficient public investment instrument, supporting policy objectives, in particular single market integration, strategic economic autonomy, social and ecological sustainability and innovation. The general objectives contribute to the achievement of SDG goals, in particular #9 Industry, Innovation and Infrastructure, #12 Responsible consumption and production and #8 Decent work and economic growth.

1.3.2. Specific objective(s)

Four specific objectives have been derived from the general objectives, providing practical detail on how the latter will be achieved.

<u>Specific objective No 1:</u>

Simplify and promote flexibility in procurement procedures and increase legal clarity and coherence of applicable rules, so as to facilitate public procurement processes and access to them for economic operators across the single market, including for SMEs.

<u>Specific objective No 2:</u>

Increase the uptake of environmental, social and innovation public procurement in support of strategic policy objectives of the Union and provide a more coherent legal framework in this regard.

<u>Specific objective No 3:</u>

Improve EU economic security and strategic autonomy in public procurement, promoting a coherent legal framework in this regard.

<u>Specific objective No 4:</u>

Facilitate access to public procurement information, data and IT solutions so as to reduce administrative burden and increase transparency and monitoring, thereby preventing and reducing irregular practices and enabling policy-making choices.

1.3.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

This Regulation is expected to bring several positive outcomes for the three main stakeholders related to public procurement, namely policymakers, public buyers and economic operators. The main expected results are an easier access to negotiations, the increase level of competition, and the reduction of administrative burden.

1.3.4. *Indicators of performance*

Specify the indicators for monitoring progress and achievements.

Monitoring and evaluation aspect and relevant objectives	**Indicator(s)**	**Responsibility for collection**	**Source(s)**
Specific Objective 1: Simplify, increase flexibility and coherence of public procurement rules and procedures			
Has the public procurement framework become more simple, flexible and coherent?	Length of procedures in days counting from the moment of publication of the contract notice until the award; Length of procedures in days counting from the moment of publication of the contract notice until the signature of the contract; Cancellation rate; Share of procedures using negotiations	European Commission	Single Market and Competitiveness Scoreboard; PPDS; New IT tools and systems foreseen
Specific Objective 2: Increase the uptake of environmental, social and innovation public procurement			
Has the number of procedures that	Share of procedures (value	European Commission	Single Market and Competitiveness

Monitoring and evaluation aspect and relevant objectives	**Indicator(s)**	**Responsibility for collection**	**Source(s)**
include environmental, social and innovation elements increased?	and count) that include environmental, social and innovation procurement/share of BPQR procedures; Share of environmental procurement using EU Ecolabel		Scoreboard; PPDS; New IT tools and systems foreseen
Specific Objective 3: Improve EU economic security and strategic autonomy in public procurement			
Has the EU economic security and strategic autonomy in public procurement improved?	Share of participation of third country operators (direct + indirect); Share of EU origin of goods procured in selected sectors (understood as in the UCC)	European Commission	Single Market and Competitiveness Scoreboard; PPDS; New IT tools and systems foreseen
Specific Objective 4: Facilitate access to public procurement information, data and IT tools			
Has access to information on public procurement improved?	Transparency rate (eg. % of GDP published in TED/MPL); Accessibility and searchability of databases; Data quality (e.g.	European Commission	Single Market and Competitiveness Scoreboard; PPDS; New IT tools and systems foreseen

Monitoring and evaluation aspect and relevant objectives	**Indicator(s)**	**Responsibility for collection**	**Source(s)**
	completeness of data provided); Data integration with other databases (e.g. company register, tax register)		
General Objectives			
For public buyers: Facilitate public procurement processes and the implementation of strategic objectives, improve legal certainty	Share of procedures (value and count) that include environmental, social and innovation procurement; Number of first instance public procurement review decisions in relation to number of call for competitions	European Commission	Single Market and Competitiveness Scoreboard; PPDS; New IT tools and systems foreseen
For economic operators Facilitate access to public procurement (also cross-border) for EU businesses, including SMEs	Number of tenders per procedure; Number of contracts awarded to an economic operator in a different MS; Number of contracts including a subcontractor from a different MS;	European Commission	Single Market and Competitiveness Scoreboard; PPDS; New IT tools and systems foreseen

Monitoring and evaluation aspect and relevant objectives	Indicator(s)	Responsibility for collection	Source(s)
	Number of contracts awarded to SMEs		
Horizontal Reduce administrative burden, increase transparency, facilitate the monitoring to avoid irregularities and enable policy choices	Cost per procedure (for public buyers); Cost per procedure (for economic operators); Length of procedure from planning until the award of the contract; Number of economic operators using the digital tools; Number of public buyers using the digital tools; Cancellation rate; Share of procedures using negotiation	European Commission	Single Market and Competitiveness Scoreboard; PPDS; New IT tools and systems foreseen

1.4. The proposal/initiative relates to:

☑ a new action

☐ a new action following a pilot project/preparatory action[1]

☐ the extension of an existing action

☐ a merger or redirection of one or more actions towards another/a new action

[1] As referred to in Article 58(2), point (a) or (b) of the Financial Regulation.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

This Regulation aims to simplify the whole public procurement market. This includes the public procurement digital ecosystem. It requires eProcurement service providers to ensure interoperability in their services in accordance with the upcoming standards. Additionally, it will mandate that Member States integrate and connect their digital business credential tool to the electronic eligibility service and their respective national registries. This will enable economic operators to fully utilise the digital business credential tool. Member States will also be required to establish and connect their National Public Procurement Data Spaces to the PPDS data exchange.

1.5.2. Added value of EU involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this section 'added value of EU involvement' is the value resulting from EU action, that is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at EU level (ex-ante)

While significant efforts have been made in the last 50 years, a single market for public procurement is not yet achieved. Fragmentation persists in the form of divergent policy approaches across initiatives, gold-plating at Member State level, and the use of different digital tools and platforms. These issues make the current EU public procurement framework an area of perceived administrative burden and bureaucracy, instead of an instrument for sustainable economic growth. To leverage public procurement as a driver for competitiveness and efficient and effective public investment, also supporting EU policy objectives, EU action is needed. Simplifying the EU public procurement framework and implementing strategic objectives is only possible through EU action that ensures a consistent change across Member State. Absence of EU action would perpetuate the inefficiencies in the system and prevent public buyers from meeting their needs faster and strategically, and economic operators from accessing procurement contracts across the single market. A coherent legal framework for public procurement can only be achieved at EU level. In addition, in absence of EU action, the EU public procurement legislation will continue to underperform in key strategic aspects, such as advancing on sustainability, fostering resilient supply chains or ensuring the strategic autonomy of the EU. Likewise, joint investment in strategic sectors would be limited, while coordinated action will enable leveraging demand better. Finally, the lack of EU actions also creates a missed opportunity, as the legislation becomes outdated in light of current developments (e.g. accelerating digital change and hyper connectivity) and evolving threats. (e.g. changing security paradigms).

Expected generated EU added value (ex-post)

The proposal aims at amending EU legislation, directly touching upon the EU-wide procurement market. The same could not be accomplished at Member State level, in particular considering the need for ensuring a harmonised approach across Member States, such an approach being of critical importance for effective simplification. There is a strong value added of EU-level action because the problems that this proposal tackles are not limited to the territory of a single Member State. Only EU action can regulate the access of third country bidders and goods to the EU procurement market, as this is an exclusive competence of the EU. Similarly, insofar as the commitments of the EU under the GPA remain, Member States may not introduce procedural simplification beyond the level that is set at EU level because the public procurement thresholds and procedures are governed by EU rules implementing the procedural commitments under the GPA.

1.5.3. *Lessons learned from similar experiences in the past*

Previous reforms have shown that digital tools like eProcurement can streamline processes, but these need to be standardised across all member states to avoid fragmentation. The new rules should establish clear core requirements while allowing flexibility in how they are implemented.

Experience has demonstrated that simplified procedures and digital pre-qualification systems help small and medium-sized businesses participate more effectively in public procurement. Automated data collection has proven valuable for improving transparency and enabling better monitoring of procurement processes.

Finally, past reforms have shown that successful implementation requires early engagement with all stakeholders and providing clear guidance throughout the process.

1.5.4. *Compatibility with the multiannual financial framework and possible synergies with other appropriate instruments*

The revision of the Public Procurement Directives supports the EU's simplification and competitiveness goals by enabling economic operators with digital tools and harmonised processes, enabling trusted, secure, and user-friendly compliance with administrative requirements. This includes streamlined identification, authentication, and data exchange, ensuring seamless interactions between businesses and public authorities. Hence, it is fully in line with the objectives of the MFF 2028-2034.

The inclusion of the Commission and Member States in implementing this Regulation will have financial implications, which could be predominantly covered by the EU budget under the MFF 2028-2034, depending on the outcome of the ongoing negotiations on the Commission's proposal for the next MFF. These costs are mainly associated with:

1. The digital transformation of procurement processes, including the development and deployment of eProcurement platforms.

2. The integration of existing IT systems with new digital tools to ensure interoperability.

3. The establishment of supervisory and monitoring mechanisms to ensure compliance with the revised Regulation.

1.5.5. *Assessment of the different available financing options, including scope for redeployment*

The staff needs in the amount of 17 additional FTEs (8 ADs for DG GROW, 4 ADs for Publications Office, and 5 ENDs for DG GROW) will partly be met by redeploying existing allocations of the DG. Nevertheless, despite the considerable efforts made by the Commission to redeploy its human resources in the past year, to ensure successful delivery and proper implementation of this proposal, an additional reinforcement of Commission staffing will be required to meet the full need.

With regard to financing, the needs will strictly be met through redeployment.

The estimated impact on expenditure and staffing for 2028 and beyond is added for illustrative purposes only and does not pre-judge the next Multiannual Financial Framework. The source of financing and scope of Union financial commitment in the post-2027 period remain subject to the outcome of interinstitutional negotiations on the MFF 2028-2034 and thereafter shall be determined through the annual budgetary procedure. All appropriations and staffing allocations as of 2028 are indicative.

1.6. Duration of the proposal/initiative and of its financial impact

☐ **limited duration**

- ☐ in effect from [DD.MM]YYYY to [DD.MM]YYYY
- ☐ financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☑ **unlimited duration**

Implementation with a start-up period from 2028 to 2030,

followed by full-scale operation.

1.7. Method(s) of budget implementation planned(2)[2]

☑ **Direct management** by the Commission

- ☑ by its departments, including by its staff in the Union delegations;
- ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

- ☐ third countries or the bodies they have designated;
- ☐ international organisations and their agencies (to be specified);
- ☐ the European Investment Bank and the European Investment Fund;
- ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;
- ☐ public law bodies;
- ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;
- ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;
- ☐ bodies or persons entrusted with the implementation of specific actions in the common foreign and security policy pursuant to Title V of the Treaty on European Union, and identified in the relevant basic act
- ☐ bodies established in a Member State, governed by the private law of a Member State or Union law and eligible to be entrusted, in accordance

[2] Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx.

with sector-specific rules, with the implementation of Union funds or budgetary guarantees, to the extent that such bodies are controlled by public law bodies or by bodies governed by private law with a public service mission, and are provided with adequate financial guarantees in the form of joint and several liability by the controlling bodies or equivalent financial guarantees and which may be, for each action, limited to the maximum amount of the Union support.

Comments

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Every seven years after the entry into force of this Regulation, the Commission shall carry out an evaluation of this Regulation.

The Commission shall present a report on the main findings of the evaluation carried out in accordance with paragraph 1 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Member States shall provide the Commission with the necessary information for the preparation of the report.

2.2. Management and control system(s)

2.2.1. Justification of the budget implementation method(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

The revised Public Procurement Regulation introduce harmonised digital tools and processes to streamline administrative requirements, ensuring trusted, secure, and user-friendly compliance. These new rules necessitate the development of technical specifications, standards, and interoperability frameworks, as well as supervision and coordination among EU institutions, and Member States.

To effectively implement these measures, the Commission’s services must be adequately resourced, including:

1. Technical and operational support for digital infrastructure (e.g., eProcurement platforms, integration with the digital business credential tool).

2. Coordination with Member States to ensure consistent application of the new legislation.

The implementation of the provisions of the new Regulation is estimated to require 17 Full-Time Equivalents (FTEs) within the Commission, ensuring sufficient capacity for supervision, monitoring, and policy implementation.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

Risks of delays in implementation on Commission or Member States side, leading to non-compliance or fragmented application. Regular engagement with Member States and businesses to identify risks early and align control systems with stakeholder needs.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio between the control costs and the value of the related funds managed), and assessment of the expected levels of risk of error (at payment & at closure)

The internal control systems in place are effective.

2.3. Measures to prevent fraud and irregularities

The existing fraud prevention measures applicable to the Commission will cover the additional appropriations necessary for this Regulation.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing budget lines

<u>In order</u> of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. (3)[1]	from EFTA countries (4)[2]	from candidate countries and potential candidates (5)[3]	from other third countries	other assigned revenue
2	04.02.03 - Digital Leadership	Diff.	YES(6)[4]	YES(7)[5]	NO	NO
2	XX.XX.XX.XX(8)[6]	Diff.	YES	YES	NO	NO

1 Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
2 EFTA: European Free Trade Association.
3 Candidate countries and, where applicable, potential candidates from the Western Balkans.
4 Not yet determined. It is the intention of the Commission to have EFTA countries participating.
5 Not yet determined. It is the intention of the Commission to have candidate countries and/or potential candidate countries participating.

New budget lines requested

In order of multiannual financial framework headings and budget lines.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

☐ The proposal/initiative does not require the use of operational appropriations

☑ The proposal/initiative requires the use of operational appropriations, as explained below:

3.2.2. Appropriations from voted budget

EUR million (to three decimal places)

The estimated impact on expenditure and staffing for 2028 and beyond is added for illustrative purposes only and does not pre-judge the next Multiannual Financial Framework. The source of financing and scope of Union financial commitment in the post-2027 period remain subject to the outcome of interinstitutional negotiations on the MFF 2028-2034 and thereafter shall be determined through the annual budgetary procedure. All appropriations and staffing allocations as of 2028 are indicative.
This initiative will be financed by redeployment within the operational programmes of the next MFF, and partially by administrative expenditure. Redeployment financing operational lines will come from operational lines, and redeployment financing administrative lines will come from administrative lines. At this stage, it is not possible to indicate accurately the contribution from each MFF heading and programme, while it is expected that a significant contribution will come from programmes under heading 2 of the 2028-2034 MFF (e.g. the European Competitiveness Fund).
The difference in costs presented in the legislative financial statement and in the impact assessment arises because the legislative financial statement includes all costs, whereas the impact assessment accounts only for the additional costs introduced by the policy measures on top of the so-called business-as-usual costs. There are also slight differences in cost classification and presentation stemming from the requirements of the financial regulation.

[6] The details of the budget line cannot be provided at this stage because the nomenclature for the next MFF is still under discussion. However, this line will be the OP prerogative.

Heading of multiannual financial framework			Number				2			
DG: GROW(9)[7]			Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028-2034**
Operational appropriations										
04.02.03 - Digital Leadership	Commitments	(1a)	9.908	10.106	10.308	10.514	10.725	10.939	11.158	73.659
	Payments	(2a)	2.428	6.476	8.904	12.951	12.951	14.975	14.975	73.659
Appropriations of an administrative nature financed from the envelope of specific programmes (10)[8]										
Budget line		(3)								**0.000**
TOTAL appropriations for DG GROW	Commitments	=1a+1b+3	**9.908**	**10.106**	**10.308**	**10.514**	**10.725**	**10.939**	**11.158**	**73.659**
	Payments	=2a+2b+3	**2.428**	**6.476**	**8.904**	**12.951**	**12.951**	**14.975**	**14.975**	**73.659**
DG: Publications Office			Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028-2034**

7 DG GROW will collaborate with other DGs and Commission services, such as DIGIT, on the implementation of the PPDE.

8 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

Operational appropriations										
XX.XX.XX.XX(11)[9]	Commitments	(1b)	9.208	9.392	9.580	9.772	9.967	10.167	10.370	**68.456**
	Payments	(2b)	2.257	6.018	8.275	12.036	12.036	13.917	13.917	**68.456**
Appropriations of an administrative nature financed from the envelope of specific programmes (12)[10]										
Budget line		(3)								**0.000**
TOTAL appropriations for Publications Office	Commitments	=1a+ab+3	**9.208**	**9.392**	**9.580**	**9.772**	**9.967**	**10.167**	**10.370**	**68.456**
	Payments	=2a+2b+3	**2.257**	**6.018**	**8.275**	**12.036**	**12.036**	**13.917**	**13.917**	**68.456**
			Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028-2034**
TOTAL operational appropriations	Commitments	(4)	19.116	19.499	19.888	20.286	20.692	21.106	21.528	**142.115**
	Payments	(5)	4.685	12.49	17.17	24.98	24.98	28.89	28.89	**142.115**

9 The details of the budget line cannot be provided at this stage because the nomenclature for the next MFF is still under discussion. However, this line will be the OP prerogative.

10 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

				4	9	7	7	2	2	
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
TOTAL appropriations under HEADING 2 of the multiannual financial framework	Commitments	=4+6	**19.116**	**19.499**	**19.888**	**20.286**	**20.692**	**21.106**	**21.528**	**142.115**
	Payments	=5+6	**4.685**	**12.494**	**17.179**	**24.987**	**24.987**	**28.892**	**28.892**	**142.115**

			Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028-2034**
TOTAL operational appropriations (all operational headings)	Commitments	(4)	19.116	19.499	19.888	20.286	20.692	21.106	21.528	**142.115**
	Payments	(5)	4.685	12.494	17.179	24.987	24.987	28.892	28.892	**142.115**
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)		(6)	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
TOTAL appropriations Under Heading 1 to 3	Commitments	=4+6	**19.116**	**19.499**	**19.888**	**20.286**	**20.692**	**21.106**	**21.528**	**142.115**

of the multiannual financial framework (Reference amount)	Payments	=5+6	**4.685**	**12.494**	**17.179**	**24.987**	**24.987**	**28.892**	**28.892**	**142.115**

Heading of multiannual financial framework	4			‘Administrative expenditure’ (13)[11]				
DG: GROW(14)[12]	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028-2034**
Human resources	2.092	2.134	2.177	2.220	2.264	2.310	2.356	**15.553**
Other administrative expenditure	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
TOTAL DG GROW Appropriations	**2.092**	**2.134**	**2.177**	**2.220**	**2.264**	**2.310**	**2.356**	**15.553**
DG: Publications Office	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028-2034**
Human resources	0.776	0.792	0.807	0.823	0.840	0.857	0.874	**5.769**
Other administrative expenditure	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
TOTAL Publications Appropriations	**0.776**	**0.792**	**0.807**	**0.823**	**0.840**	**0.857**	**0.874**	**5.769**

[11] The necessary appropriations should be determined using the annual average cost figures available on the appropriate BUDGpedia webpage.
[12] DG GROW will collaborate with other DGs and Commission services, such as DIGIT, on the implementation of the PPDE.

Office									
TOTAL appropriations under HEADING 4 of the multiannual financial framework	(Total commitments = Total payments)	**2.868**	**2.925**	**2.984**	**3.044**	**3.104**	**3.167**	**3.230**	**21.322**

EUR million (to three decimal places)

		Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028-2034**
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework	Commitments	**21.984**	**22.424**	**22.872**	**23.330**	**23.796**	**24.272**	**24.758**	**163.437**
	Payments	**7.553**	**15.419**	**20.163**	**28.031**	**28.092**	**32.058**	**32.121**	**163.437**

3.2.3. Estimated output funded from operational appropriations (not to be completed for decentralised agencies)

Commitment appropriations in EUR million (to three decimal places)

Indicate objective			Year **2024**	Year **2025**	Year **2026**	Year **2027**	Enter as many years as necessary to show the duration of the impact (see Section 1.6)	**TOTAL**
	OUTPUTS							

s and outputs ⇓	Type (15) [13]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total Cost
SPECIFIC OBJECTIVE No 1 (16)[14]: [...]																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2																		

13 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

14 As described in point 1.4.2. 'Specific objective(s)...'

…																		
- Output																		
Subtotal for specific objective No 2																		
TOTALS																		

3.2.4. Summary of estimated impact on administrative appropriations

☐ The proposal/initiative does not require the use of appropriations of an administrative nature

☑ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

3.2.5. Appropriations from voted budget

VOTED APPROPRIATIONS	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028-2034**
HEADING 4								
Human resources	2.868	2.925	2.984	3.044	3.104	3.167	3.230	**21.322**
Other administrative expenditure	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
Subtotal HEADING 4	**2.868**	**2.925**	**2.984**	**3.044**	**3.104**	**3.167**	**3.230**	**21.322**
Outside HEADING 4								

Human resources	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
Other expenditure of an administrative nature	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
Subtotal outside HEADING 4	**0.000**	**0.000**	**0.000**	**0.000**	0.000	0.000	0.000	**0.000**
TOTAL	**2.868**	**2.925**	**2.984**	**3.044**	**3.104**	**3.167**	**3.230**	**21.322**

3.2.5.1. *Total appropriations*

TOTAL VOTED APPROPRIATIONS + EXTERNAL ASSIGNED REVENUES	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028-2034**
HEADING 4								
Human resources	2.868	2.925	2.984	3.044	3.104	3.167	3.230	**21.322**
Other administrative expenditure	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
Subtotal HEADING 4	2.868	2.925	2.984	3.044	3.104	3.167	3.230	**21.322**
Outside HEADING 4								

Human resources	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
Other expenditure of an administrative nature	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
Subtotal outside HEADING 4	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**
TOTAL	**2.868**	**2.925**	**2.984**	**3.044**	**3.104**	**3.167**	**3.230**	**21.322**

The staff needs will partly be met by redeploying existing allocations of the Commission services. Nevertheless, despite the considerable efforts made by the Commission to redeploy its human resources in the past year, to ensure successful delivery and proper implementation of this proposal, an additional reinforcement of Commission staffing will be required to meet the full need.

The estimated impact on expenditure and staffing for 2028 and beyond is added for illustrative purposes only and does not pre-judge the next Multiannual Financial Framework. The source of financing and scope of Union financial commitment in the post-2027 period remain subject to the outcome of interinstitutional negotiations on the MFF 2028-2034 and thereafter shall be determined through the annual budgetary procedure. All appropriations and staffing allocations as of 2028 are indicative.

3.2.6. *Estimated requirements of human resources*

☐ The proposal/initiative does not require the use of human resources

☑ The proposal/initiative requires the use of human resources, as explained below

3.2.6.1. Financed from voted budget

Estimate to be expressed in full-time equivalent units (FTEs) (17)[15]

15 Please specify below the table how many FTEs within the number indicated are already assigned to the management of the action and/or can be redeployed within your DG and what are your net needs.

VOTED APPROPRIATIONS	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**
Establishment plan posts (officials and temporary staff)							
20 01 02 01 (Headquarters and Commission's Representation Offices)	12	12	12	12	12	12	12
20 01 02 03 (EU Delegations)	0	0	0	0	0	0	0
01 01 01 01 (Indirect research)	0	0	0	0	0	0	0
01 01 01 11 (Direct research)	0	0	0	0	0	0	0
Other budget lines (specify)	0	0	0	0	0	0	0
External staff (in FTEs)							
20 02 01 (AC, END from the 'global	5	5	5	5	5	5	5

envelope')								
20 02 03 (AC, AL, END and JPD in the EU Delegations)		0	0	0	0	0	0	0
Admin. support line [XX.01.YY.YY]	at Headquarters	0	0	0	0	0	0	0
	in EU Delegations	0	0	0	0	0	0	0
01 01 01 02 (AC, END - Indirect research)		0	0	0	0	0	0	0
01 01 01 12 (AC, END - Direct research)		0	0	0	0	0	0	0
Other budget lines (specify) - Heading 4		0	0	0	0	0	0	0

Other budget lines (specify) - Outside Heading 4	0	0	0	0	0	0	0
TOTAL	**17**	**17**	**17**	**17**	**17**	**17**	**17**

3.2.6.2. *Total requirements of human resources*

TOTAL VOTED APPROPRIATIONS + EXTERNAL ASSIGNED REVENUES	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**
Establishment plan posts (officials and temporary staff)							
20 01 02 01 (Headquarters and Commission's Representation Offices)	12	12	12	12	12	12	12
20 01 02 03 (EU Delegations)	0	0	0	0	0	0	0

01 01 01 01 (Indirect research)	0	0	0	0	0	0	0
01 01 01 11 (Direct research)	0	0	0	0	0	0	0
Other budget lines (specify)	0	0	0	0	0	0	0
External staff (in full time equivalent units)							
20 02 01 (AC, END from the global envelope)	5	5	5	5	5	5	5
20 02 03 (AC, AL, END and JPD in the EU Delegations)	0	0	0	0	0	0	0
Admin. support line [XX.01.YY. – at Headquarters	0	0	0	0	0	0	0
– in EU Delegations	0	0	0	0	0	0	0

YY]							
01 01 01 02 (AC, END - Indirect research)	0	0	0	0	0	0	0
01 01 01 12 (AC, END - Direct research)	0	0	0	0	0	0	0
Other budget lines (specify) - Heading 4	0	0	0	0	0	0	0
Other budget lines (specify) - Outside Heading 4	0	0	0	0	0	0	0
TOTAL	**17**	**17**	**17**	**17**	**17**	**17**	**17**

The staff required to implement the proposal (in FTEs):

	To be covered by current staff available in the Commission services	**Exceptional additional staff***		
		To be financed under Heading	**To be financed from BA line**	**To be financed from fees**

		4 or Research		
Establishment plan posts	3	9	N/A	
External staff (CA, SNEs, INT)	2	3		

Description of tasks to be carried out by:

Officials and temporary staff	The tasks to be carried out by the officials and temporary staff pertain the legal workstream, the technical workstream, the coordination and the supervisory role. DG GROW will be responsible for the development and the management of the overall project. DG will collaborate with other DGs and Commission services, such as DIGIT, on the implementation of the PPDE. The Publications Office will be responsible to scale-up their current applications, evolve standards and the eProcurement Ontology, and integrate with the interoperability network and PPDS data exchange.
External staff	The tasks to be carried out by the officials and temporary staff pertain the legal workstream, the technical workstream, the coordination and the supervisory role.

3.2.7. **Overview of estimated impact on digital technology-related investments**

Compulsory: the best estimate of the digital technology-related investments entailed by the proposal/initiative should be included in the table below.

Exceptionally, when required for the implementation of the proposal/initiative, the appropriations under Heading 7 should be presented in the designated line.

The appropriations under Headings 1-6 should be reflected as "Policy IT expenditure on operational programmes". This expenditure refers to the operational budget to be used to re-use/ buy/ develop IT platforms/ tools directly linked to the implementation of the initiative and their associated investments (e.g. licences, studies, data storage etc). The information provided in this table should be consistent with details presented under Section 4 "Digital dimensions".

TOTAL Digital and IT appropriations	Year **2028**	Year **2029**	Year **2030**	Year **2031**	Year **2032**	Year **2033**	Year **2034**	**TOTAL MFF 2028-2034**
HEADING 4								
IT expenditure (corporate)	0.000	0.000	0.000	0.000	0.000	0.000	0.000	**0.000**
Subtotal HEADING 4	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**
Outside HEADING 4								
Policy IT expenditure on operational programmes	**19.116**	**19.499**	**19.888**	**20.286**	**20.692**	**21.106**	**21.528**	**142.115**
Subtotal outside HEADING 4	**19.116**	**19.499**	**19.888**	**20.286**	**20.692**	**21.106**	**21.528**	**142.115**
TOTAL	**19.116**	**19.499**	**19.888**	**20.286**	**20.692**	**21.106**	**21.528**	**142.115**

3.2.8. *Compatibility with the current multiannual financial framework*

The proposal/initiative:

☑ can be fully financed through redeployment within the relevant heading of the multiannual financial framework (MFF).

☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

☐ requires a revision of the MFF.

3.2.9. Third-party contributions

The proposal/initiative:

☑ does not provide for co-financing by third parties

☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **2024**	Year **2025**	Year **2026**	Year **2027**	Total
Specify the co-financing body					
TOTAL appropriations co-financed					

3.3. Estimated impact on revenue

☐ The proposal/initiative has no financial impact on revenue.

☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

☐ please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the	Impact of the proposal/initiative (18)[1]			
		Year	Year	Year	Year

[1] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20% for collection costs.

	current financial year	2024	2025	2026	2027
Article					

For assigned revenue, specify the budget expenditure line(s) affected.

[...]

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[...]

4. DIGITAL DIMENSIONS

4.1. Requirements of digital relevance

If the policy initiative is assessed as having no requirement of digital relevance, provide an explanation as to why digital means are not used.

N/A

Otherwise, please list the requirements of digital relevance in the table below:

Reference to the requirement	**Requirement description**	**Actor(s) affected or concerned by the requirement**	**High-level Processes**	**Categories**
Article 110, Article 111, Article 112, Article 113	Publication rules	European Commission, Member States, eProcurement service providers	Information publication	Data
Article 127	Electronic communication	Public buyers, eProcurement service	IT specifications	Digital solutions

		providers, economic operators		
Article 128	Interoperability network	European Commission, Member States, eProcurement service providers	Data management	Digital public services; Process digitalisation & automation
Article 129, 130	Harmonised standards for public procurement and common specifications	European Commission, Member States, eProcurement service providers	Data management	Process digitalisation & automation
Article 131	Obligations of eProcurement service providers	Member States, eProcurement service providers	IT specifications	Digital solutions; Digital public services
Article 133	Commission eProcurement platform	European Commission, Member States, public buyers	Development of a digital solution	Digital solutions; Digital public services
Article 131	Electronic eligibility service	European Commission, Member States, public buyers, economic operators	Development of a digital solution	Data; Digital solutions; Digital public services; Process digitalisation & automation
Article 134	National Public	Member States	IT and data	Data;

	Procurement Data Spaces		specifications, development of a digital solution	Digital solutions; Digital public services; Process digitalisation & automation
Article 135	Public Procurement Data Space	European Commission	IT and data specifications, development of a digital solution	Data; Digital solutions; Digital public services; Process digitalisation & automation
Article 136	PPDS data exchange	European Commission, Member States	Data exchange	Digital public services; Process digitalisation & automation

4.2. Data

High-level description of the data in scope and any related standards/specifications

Type of data	**Reference to the requirement(s)**	**Standard and/or specification (if applicable)**
Publication data	Article 110	The published information will contain information listed in Article 110. As stipulated by Article 110(6) and (7), the Commission shall further define this by means of delegated and implementing acts.

General Procurement Data	Article 134, Article 135	Information as set up in Article 134 will be made available at national and EU level. As stipulated by Article 134(7) and (8), and Article 135(3), the Commission shall further define this by means of delegated and implementing acts.
Data on means of proof	Article 133	As stipulated by Article 133(3) and (6), the exclusion ground evidence, selection criteria evidence, company information, and evidence on origin should be made available in the digital business credential tool and sharable to buyers through the electronic eligibility service.

Alignment with the European Data Strategy

Explain how the requirement(s) are aligned with the European Data Strategy

The proposal is aligned with the European Data Strategy as it will mandate the sharing of data towards the Public Procurement Data Space by also introducing National Public Procurement Data Space in each Member State. Thanks to this reinforcement, the transparency and accountability of public spending, fighting corruption and improving spending quality will be reinforced.

Alignment with the once-only principle

Explain how the once-only principle has been considered and how the possibility to reuse existing data has been explored

The proposal put the once-only principle as a central principle. Thanks to the use of the electronic eligibility service, and the digital business credential tool, economic operator will have the possibility to only share once the evidence to participate in a public procurement procedure.

Explain how newly created data is findable, accessible, interoperable and reusable, and meets high-quality standards

Newly created data respects the FAIR principles as the Public Procurement Data Space will securely gather, clean and align all data received from each Member States. This data will be available, with some restrictions applying on sensitive data, in order for each European citizens to have access to procurement data and get a complete overview of the European market.

Data flows

For each data flow, please fill the table below:

Type of data	**Reference(s) to the requirement(s)**	**Actor who provides the data**	**Actor who receives the data**	**Trigger for the data exchange**	**Frequency (if applicable)**
Publication data	Article 110	Public buyers	Economic operators	Publication of a call for tenders	//
General procurement data	Article 134	National responsible authority, including public buyer	NPPDS authority	Trigger depending on the data category, i.e. contract conclusion	No later than 20 days after the trigger
General procurement data	Article 135	NPPDS Authority	PPDS Authority	Availability in the NPPDS	Max 10 days after the availability in NPPDS
Data on means of proof	Article 133	Economic operators	Public buyers	Submission of a tender	//

4.3. Digital solutions

High-level description of digital solutions

Digital solution	**Reference(s) to the**	**Main mandated functionalities**	**Responsible body**	**How is accessibility**	**How is reusability**	**Use of AI technologies (if**

	requirement(s)			catered for?	considered?	applicable)
eProcurement platforms	Article 127, Article 131	The eProcurement platforms shall: Be in conformity with harmonised standards, Connect to the interoperability network Ensure access to procurement details Be connected to the electronic eligibility servic e Connect to the NPPDS	eProcurement services providers			N/A
Commission eProcurement platform	Article 132	The Commission eProcurement platform shall: Be in conformity with harmonised	European Commission	The platform will be developed to take into account accessibility	It is aimed to reuse modules already existing in the European Commission or in the Member	N/A

		standards, Connect to the interoperability network Ensure access to procurement details Be connected to the electronic eligibi lity service Connect to the NPPS		requirements.	States to build the eProcurement platform that will be provided by the European Commission. Platform fully available as open source.	
Electronic eligibility service	Article 133	The electronic eligibility service shall: Enable digital verification of company information, exclusion grounds, selection criteria and requirements of	European Commission	The platform will be developed to take into account accessibility requirements.	It is aimed to reuse modules already existing in the European Commission, such as eCertis and the ESPD, to build the service and to connect it with digital business credential tool. Service fully	N/A

EN

EN

		origin			available as open source.	
National Public Procurement Data Spaces	Article 134	The National Public Procurement Data Spaces shall: Be connected to the Public Procurement Data Space Ensure that all data from different sources are available	Member States			N/A
Public Procurement Data Space	Article 135	The Public Procurement Data Space shall: Contain publicly available data and data that are not publicly available Allow to have	European Commission	The platform will be developed to take into account accessibility requirements.		N/A

		different access rights				

For each digital solution, explanation of how the digital solution complies with applicable digital policies and legislative enactments

Commission eProcurement platform

Digital and/or sectorial policy (when these are applicable)	**Explanation on how it aligns**
AI Act	No AI-based decision-making is foreseen for the core legal obligations. If automated risk detection, ranking, recommendation or fraud analytics are introduced, an AI Act risk/compliance assessment will be carried out.
EU Cybersecurity framework	Without prejudice to Regulation (EU) 2016/679, Member States shall ensure the security, integrity, authenticity and confidentiality of the data collected and stored for the purpose of this Regulation. To be further detailed in the technical specifications.
eIDAS	eIDAS may not be relevant for identification, authentication and credential exchange.
Single Digital Gateway and IMI	Single Digital Gateway and IMI are not used as implementation channels at this stage.
Others	//

Commission eProcurement platform

Digital and/or sectorial policy (when these are applicable)	**Explanation on how it aligns**
AI Act	No AI-based decision-making is foreseen for the core legal obligations. If automated risk detection, ranking, recommendation or fraud analytics are introduced, an AI Act

Digital and/or sectorial policy (when these are applicable)	**Explanation on how it aligns**
	risk/compliance assessment will be carried out.
EU Cybersecurity framework	Without prejudice to Regulation (EU) 2016/679, Member States shall ensure the security, integrity, authenticity and confidentiality of the data collected and stored for the purpose of this Regulation. To be further detailed in the technical specifications.
eIDAS	eIDAS may not be relevant for identification, authentication and credential exchange.
Single Digital Gateway and IMI	Single Digital Gateway and IMI are not used as implementation channels at this stage.
Others	//

<u>Electronic eligibility service</u>

Digital and/or sectorial policy (when these are applicable)	**Explanation on how it aligns**
AI Act	No AI-based decision-making is foreseen for the core legal obligations. If automated risk detection, ranking, recommendation or fraud analytics are introduced, an AI Act risk/compliance assessment will be carried out.
EU Cybersecurity framework	Without prejudice to Regulation (EU) 2016/679, Member States shall ensure the security, integrity, authenticity and confidentiality of the data collected and stored for the purpose of this Regulation. To be further detailed in the technical specifications.
eIDAS	eIDAS may not be relevant for identification, authentication and credential exchange.

Single Digital Gateway and IMI	Single Digital Gateway and IMI are not used as implementation channels at this stage.
Others	//

National Public Procurement Data Spaces

Digital and/or sectorial policy (when these are applicable)	**Explanation on how it aligns**
AI Act	No AI-based decision-making is foreseen for the core legal obligations. If automated risk detection, ranking, recommendation or fraud analytics are introduced, an AI Act risk/compliance assessment will be carried out.
EU Cybersecurity framework	Without prejudice to Regulation (EU) 2016/679, Member States shall ensure the security, integrity, authenticity and confidentiality of the data collected and stored for the purpose of this Regulation. To be further detailed in the technical specifications.
eIDAS	eIDAS may not be relevant for identification, authentication and credential exchange.
Single Digital Gateway and IMI	Single Digital Gateway and IMI are not used as implementation channels at this stage.
Others	//

Public Procurement Data Space

Digital and/or sectorial policy (when these are applicable)	**Explanation on how it aligns**

AI Act	No AI-based decision-making is foreseen for the core legal obligations. If automated risk detection, ranking, recommendation or fraud analytics are introduced, an AI Act risk/compliance assessment will be carried out.
EU Cybersecurity framework	Without prejudice to Regulation (EU) 2016/679, Member States shall ensure the security, integrity, authenticity and confidentiality of the data collected and stored for the purpose of this Regulation. To be further detailed in the technical specifications.
eIDAS	eIDAS may not be relevant for identification, authentication and credential exchange.
Single Digital Gateway and IMI	Single Digital Gateway and IMI are not used as implementation channels at this stage.
Others	//

4.4. Interoperability assessment

Describe the digital public service(s) affected by the requirements

Digital public service or category of digital public services	**Description**	**Reference(s) to the requirement(s)**	**Interoperable Europe Solution(s)**	**Other interoperability solution(s)**
Interoperability network	Interoperability network will be used by eProcurement platforms to exchange data to all other connected eProcurement platforms.	Article 129, Article 129		//
eProcurement platforms	All platforms around the	Article 131, Article 132	DCAT_AP	//

	European Union will be interconnected by implementing the standards and exchanging data through the interoperability network.		Core Vocabularies	
Electronic eligibility service	The electronic eligibility service will be interconnected to digital business credential tools for economic operators to prove their compliance with exclusion grounds.	Article 133	Core Vocabularies	//
Public Procurement Data Space	The Public Procurement Data Space will gather notice information from every National Public Procurement Data Spaces through the PPDS data exchange.	Article 134, Article 135, Article 138	DCAT_AP Core Vocabularies	eProcurement Ontology

Assess the impact of the requirement(s) on cross-border interoperability

Digital public service #1: Interoperability network

Assessment	Measure(s)	Potential remaining barriers (if applicable)
Alignment with existing digital and sectorial policies. Please list the applicable digital and sectorial policies identified	Implementing Act will provide detailed further information and will deal with sectorial files.	The alignment with several sectorial policies, such as Directive (EU) 2023/1791, Regulation (EU) 2019/1242, Regulation (EU) 2023/1542, Regulation (EU) 2024/1781, Directive 2009/33/EC
Organisational measures for a smooth cross-border digital public services delivery. Please list the governance measures foreseen	The main legal act foresees governance for interoperability network and PPDS data exchange.	
Measures taken to ensure a shared understanding of the data. Please list such measures	The validation service will be used for collection of data and for the publication of information, in the Supplement to the Official Journal of the EU and in the PPDS.	Large unstructured tender files. National differences. National reluctance to share non-public procurement data. Data quality gaps.
Use of commonly agreed open technical specifications and standards. Please list such measures	Standards for the procurement procedures and the public procurement details will be developed and implemented.	Heterogeneous national eProcurement platforms. Uncertainty on the network technology choice. Uneven digital maturity of Member States.

Digital public service #2: Electronic eligibility service

Assessment	**Measure(s)**	**Potential remaining barriers (if applicable)**
Alignment with existing digital and sectorial policies. Please list the applicable digital and sectorial policies identified	Implementing Act will provide detailed further information and will deal with sectorial files.	The alignment with several sectorial policies, such as Directive (EU) 2023/1791, Regulation (EU) 2019/1242, Regulation (EU) 2023/1542, Regulation (EU) 2024/1781, Directive 2009/33/EC
Organisational measures for a smooth cross-border digital public services delivery. Please list the governance measures foreseen	The main legal act foresees governance for interoperability network and PPDS data exchange.	
Measures taken to ensure a shared understanding of the data. Please list such measures	Digital credential tool will be used and connected to the eligibility service to ensure correct sharing of data.	Large unstructured tender files. National differences. National reluctance to share non-public procurement data. Data quality gaps.
Use of commonly agreed open technical specifications and standards. Please list such measures	Standards for the procurement procedures and the public procurement details will be developed and implemented.	Heterogeneous national eProcurement platforms. Uncertainty on the network technology choice. Uneven digital maturity of Member States.

Digital public service #3: eProcurement platforms

Assessment	Measure(s)	Potential remaining barriers (if applicable)
Alignment with existing digital and sectorial policies. Please list the applicable digital and sectorial policies identified	Implementing Act will provide detailed further information and will deal with sectorial files.	The alignment with several sectorial policies, such as Directive (EU) 2023/1791, Regulation (EU) 2019/1242, Regulation (EU) 2023/1542, Regulation (EU) 2024/1781, Directive 2009/33/EC
Organisational measures for a smooth cross-border digital public services delivery. Please list the governance measures foreseen	The main legal act foresees governance for interoperability network and PPDS data exchange.	
Measures taken to ensure a shared understanding of the data. Please list such measures	Standards for the procurement procedures and the public procurement details will be developed and implemented.	Large unstructured tender files. National differences. National reluctance to share non-public procurement data. Data quality gaps.
Use of commonly agreed open technical specifications and standards. Please list such measures	Standards for the procurement procedures and the public procurement details will be developed and implemented.	Heterogeneous national eProcurement platforms. Uncertainty on the network technology choice. Uneven digital maturity of Member States.

Digital public service #4: Public Procurement Data Space

Assessment	**Measure(s)**	**Potential remaining barriers (if applicable)**
Alignment with existing digital and sectorial policies. Please list the applicable digital and sectorial policies identified	Implementing Act will provide detailed further information and will deal with sectorial files.	The alignment with several sectorial policies, such as Directive (EU) 2023/1791, Regulation (EU) 2019/1242, Regulation (EU) 2023/1542, Regulation (EU) 2024/1781, Directive 2009/33/EC
Organisational measures for a smooth cross-border digital public services delivery. Please list the governance measures foreseen	The main legal act foresees governance for interoperability network and PPDS data exchange.	
Measures taken to ensure a shared understanding of the data. Please list such measures	The validation service will be used for collection of data and for the publication of information, in the Supplement to the Official Journal of the EU and in the PPDS.	Large unstructured tender files. National differences. National reluctance to share non-public procurement data. Data quality gaps.
Use of commonly agreed open technical specifications and standards. Please list such measures	Standards for the procurement procedures and the public procurement details will be developed and implemented.	Heterogeneous national eProcurement platforms. Uncertainty on the network technology choice. Uneven digital maturity of Member States.

4.5. Measures to support digital implementation

For each measure to support digital implementation, please fill in the table below

Description of the measure	**Reference(s) to the requirement(s)**	**Commission role** (if applicable)	**Actors to be involved** (if applicable)	**Expected timeline** (if appl

				i c a b l e)
The Commission shall adopt delegated acts in order to establish or designate such an interoperability network.	Article 128(2)	The Commission shall adopt such acts	The Commission	/ /
The Commission is empowered to adopt implementing acts laying down the detailed arrangements for the implementation and operation of the interoperability network.	Article 128(3)	The Commission is empowered to adopt such acts	The Commission	/ /
The Commission may adopt implementing acts establishing common specifications covering the essential requirements for the semantic data model of the core elements of the procurement procedures.	Article 130(2)	The Commission may adopt such acts	The Commission	/ /
The Commission is empowered	Article 133(3)	The Commission is empowered	The Commission	/

to adopt delegated acts laying down detailed rules of the management the electronic eligibility service and designating the digital business credential tool and the related network to be used by economic operators for the purpose of determining eligibility.		to adopt such acts		/
The Commission is empowered to adopt implementing acts specifying the technical arrangements for the electronic eligibility service.	Article 133(6)	The Commission is empowered to adopt such acts	The Commission	/ /
The Commission is empowered to adopt delegated acts specifying further categories of procurement information to be made available to the NPPDS.	Article 134(7)	The Commission is empowered to adopt such acts	The Commission	/ /
The Commission is empowered to adopt implementing acts specifying the procurement information which shall be made available through the NPPDS as well as its technical format, the designation and modalities of	Article 134(8)	The Commission is empowered to adopt such acts	The Commission	/ /

such designation of specific procurement information as publicly or not publicly available procurement information and the source of the technical validation requirements.				
The Commission is empowered to adopt implementing acts specifying the procurement information which shall be provided by the Member States through the PPDS including its technical format, the minimum publication terms for procurement information not designated as publicly available and the source of the technical validation requirements.	Article 135(3)	The Commission is empowered to adopt such acts	The Commission	/ /
The Commission may adopt implementing acts specifying the following implementation arrangements of the data exchange pursuant to Union law.	Article 136(2)	The Commission may adopt such acts	The Commission	/ /