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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Delegations will find attached document SWD(2026) 590 final.

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EUROPEAN
COMMISSION

Brussels, 9.9.2026
SWD(2026) 590 final

COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

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)

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

Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The legal basis for this proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which enables the European Parliament and the Council to adopt measures to establish the single market and ensure its effective functioning.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
Shared competence
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2[1]: - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
- The preparation of the proposed Public Procurement Act was subject to a thorough consultation process to gather the views of different stakeholders across the Union. - A call for evidence and a public consultation ran from 3 November 2025 to 26 January 2026 (12 weeks) via the 'Have your say' portal. The call for evidence was first made available in English (3 November – 3 December), and then available in all languages. The call for evidence received 745 contributions, while the public consultation collected 1,037 answers. A factual synopsis report summarising the outcomes of the public consultation activities is publicly accessible on the 'Europa' portal[2]. In parallel, the Commission held targeted consultations: (i) five dedicated meetings with the Stakeholder Expert Group on Public Procurement (SEGPP); (ii) a dedicated meeting with social partners including 26 employers organisations and 24 trade unions; a meeting with NGOs active in the field of environment and social responsibility; and, an SME panel consultation, which ran from 17 December 2025 to 15 February 2026 (105 responses). A synopsis report summarising all stakeholders' positions and contributions to the proposed Public Procurement Act is presented in Annex 2 to the staff working document on the impact assessment report. - Furthermore, the explanatory memorandum and Chapter 3 of the impact assessment report present qualitative indicators enabling an assessment of the need to act at Union level.
2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?
Yes. The explanatory memorandum and Chapter 3 of the impact assessment report include a section that provides detailed proof of compliance with the subsidiarity principle.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN

[2] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/15492-EU-public-procurement-rules-revision/public-consultation_en

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?
(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?
The evaluation of the current public procurement directives concluded that significant problems persist that, in absence of EU intervention, would continue to create barriers to the cross-border participation of economic operators in public procurement.
(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty[3] or significantly damage the interests of other Member States?
Yes, Member States' action alone would lead to a fragmentation of the internal market.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
Member States have a limited capacity to act above the public procurement thresholds, as this is covered by international agreements on government procurement. The proposed Regulation is of general application and is binding upon and directly applicable in all Member States. Nevertheless, the proposal includes a few mandatory minimum measures while giving Member States and public buyers discretion as to the manner of implementation and the level of ambition they wish to pursue.
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
The complexity of the current public procurement framework hampers the roll-out of public spending. The lack of uptake of strategic considerations, and the legal uncertainty surrounding the introduction of security or buy European considerations hamper the resilience of the Union as a whole.
(e) Is the problem widespread across the EU or limited to a few Member States?
The problems identified are widespread across the Union.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
The consultations and the impact assessment carried out during the preparation of this proposal indicated that public buyers generally support the initiative, while seeking to balance the expected benefits of the preferred policy measures against the associated costs.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
The consultations and the impact assessment carried out during the preparation of this proposal indicated that national, regional and local authorities generally support the initiative.

[3] https://europa.eu/european-union/about-eu/eu-in-brief_en

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

(a) Are there clear benefits from EU level action?

Yes, the objectives of the proposed action can be better achieved at Union level.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

Yes. Action by Member States alone would not bring additional benefits and would introduce barriers to the internal market. Acting at EU level will thus improve the functioning of the internal market.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

As explained above, fragmented national approaches would risk undermining the single market by creating unequal conditions for public procurement contracts, increasing administrative burdens for economic operators and public buyers alike. A more homogenous EU framework will instead ensure consistency, predictability and interoperability across the Union, allowing public buyers to tender efficiently under a harmonised set of rules. It will also enable better coordination on shared tendering infrastructure, maximising synergies and avoiding duplication of effort.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

Yes, the benefits of EU level action outweigh the loss of competence of Member States. However, public buyers will see their competences and discretion increased.

(e) Will there be improved legal clarity for those having to implement the legislation?

Yes. The merging of the three previous directives will bring greater legal clarity and certainty.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of 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 eProcurement system 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 reduce compliance costs and facilitating cross-border participation and enhance 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 public buyers' budgets. They aim to limit administrative burden for public buyers, notably through implementation support and the use of digital tools within the procurement marketplace. The establishment of the best price-quality ratio as the standard award method with a "comply or explain" mechanism is necessary to achieve social, environmental and innovation objectives. 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.
3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?
(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?
Yes, taking into account that the competences of Member States were already limited due to international commitments.
(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?
A regulation is the most suitable instrument, as it ensures uniform application of core definitions and procedures and a simple digital ecosystem, essential for a functioning single market. It avoids delays linked to transposition and prevents divergences that could arise under a directive.
(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)
The proposal leaves as much scope for national decisions as possible, taking into account the problems and objectives to be achieved.
(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
The impact assessment found that the costs of the initiative are expected to be modest and outweighed by simplification and time savings, reduced duplication and improved certainty.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

Yes. The proposal accommodates differences in administrative structure, legal tradition and regional competences by allowing Member States to tailor implementation within common parameters.