



Council of the  
European Union

**Brussels, 22 November 2023  
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**COVER NOTE**

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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 15 November 2023

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 15.11.2023 amending Directive 2014/25/EU of the European Parliament and of the Council in respect of the thresholds for supply, service and works contracts, and design contests

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Delegations will find attached document C(2023) 7647 final.

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Encl.: C(2023) 7647 final



Brussels, 15.11.2023  
C(2023) 7647 final

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 15.11.2023**

**amending Directive 2014/25/EU of the European Parliament and of the Council in  
respect of the thresholds for supply, service and works contracts, and design contests**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Article 17 of Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC empowers the Commission to adopt delegated acts, in accordance with Article 290 of the Treaty on the Functioning of the European Union. The purpose of these acts is to revise the thresholds applying to these contracts.

That Article also specifies that, where there are time constraints, the urgency procedure can be used, in accordance with Article 104 of that Directive.

According to Article 17(1) of Directive 2014/25/EU, the thresholds are calculated on the basis of the average daily value of the euro in terms of Special Drawing Rights (SDRs), over a period of 24 months ending on 31 August preceding the revision, with effect from 1 January.

Consequently, the calculation of the thresholds cannot start earlier than 1 September, due to data availability. Furthermore, according to Article 17(3) of the Directive, the revised thresholds (in euro) and their corresponding values in the other national currencies of EU Member States must be published by the Commission in the Official Journal of the EU at the beginning of November.

In view of the above, and to meet the above-mentioned deadline, the Commission is using the urgency procedure to adopt this regulation.

### **2. CONSULTATIONS PRIOR TO ADOPTION OF THE ACT**

The Experts Group for Public Procurement was consulted on this Regulation and the accompanying Communication.

### **3. LEGAL ASPECTS OF THE DELEGATED ACT**

The calculation of the thresholds for the public procurement Directives is a purely mathematical operation and therefore the revision of the threshold as such is merely a technical exercise. It must be carried out every two years in accordance with the terms of the World Trade Organisation Agreement on Government Procurement (GPA). The purpose of the adjustments is to correct for any currency movements between the signatories which would affect the extent of their procurement markets that are open to competition from companies in other signatory countries.

The GPA has a mechanism for recalculating the equivalent value of its thresholds, which are fixed in SDRs, in the currencies of its parties every two years. This mechanism is given legal effect through Article 17 of Directive 2014/25/EU.

For reasons of consistency, it is appropriate to also align those thresholds in Directive 2014/25/EU, which are not covered by the Agreement.

**Commission Delegated Regulation (EU) .../... of 15.11.2023 amending Directive 2014/25/EU of the European Parliament and of the Council in respect of the thresholds for supply, service and works contracts, and design contests**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>1</sup>, and in particular Article 17(4), second subparagraph, thereof,

Whereas:

- (1) By Decision 2014/115/EU<sup>2</sup>, the Council approved the Protocol amending the Agreement on Government Procurement<sup>3</sup> concluded in the framework of the World Trade Organization. The amended Agreement on Government Procurement ('the Agreement') is a plurilateral instrument and its purpose is to mutually open government procurement markets among its parties. The Agreement applies to any procurement contract with a value that reaches or exceeds the amounts set therein ('thresholds') and expressed as special drawing rights.
- (2) One of the objectives of Directive 2014/25/EU is to allow the contracting entities which apply that Directive to comply at the same time with the obligations laid down in the Agreement. To ensure that the thresholds for supply, service and works contracts and design contests set out in Article 15, points (a) and (b), of Directive 2014/25/EU correspond to the thresholds established in the Agreement, it is necessary to revise the thresholds set out in that Directive.
- (3) Article 17(1) of Directive 2014/25/EU requires that every two years the Commission revise the thresholds with effect from 1 January. Hence, the thresholds for the years 2024-2025 should apply as of 1 January 2024.
- (4) The calculation of the thresholds cannot start earlier than 1 September, due to data availability. According to Article 17(3) of the Directive, the revised thresholds in euro and their corresponding values in other national currencies of EU Member States must be published by the Commission in the Official Journal of the EU at the beginning of November. In view of the above, and in order to meet the above-mentioned deadline, the Commission makes recourse to the urgency procedure for adopting this regulation.
- (5) Directive 2014/25/EU should therefore be amended accordingly,

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<sup>1</sup> OJ L 94, 28.3.2014, p. 243.

<sup>2</sup> Council Decision 2014/115/EU of 2 December 2013 on the conclusion of the Protocol Amending the Agreement on Government Procurement (OJ L 68, 7.3.2014, p. 1).

<sup>3</sup> OJ L 68, 7.3.2014, p. 2.

HAS ADOPTED THIS REGULATION:

*Article 1*

Article 15 of Directive 2014/25/EU is amended as follows:

- (1) in point (a), ‘EUR 431 000’ is replaced by ‘EUR 443 000’;
- (2) in point (b), ‘EUR 5 382 000’ is replaced by ‘EUR 5 538 000’.

*Article 2*

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 1 January 2024.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15.11.2023

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*