Council of the European Union
General Secretariat

Interinstitutional files:
2026/0265 (COD)

Brussels, 16 October 2026

WK 14963/2026 REV 1 ADD 1

LIMITE

MAP

PUBLIC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

CONTRIBUTION

From: To:	General Secretariat of the Council Delegations
N° Cion doc.:	12969/2026, ADD1, ADD2, ADD3, ADD4, ADD5
Subject:	Public Procurement Act: 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 – MT General Comments

Delegations will find in the Annex the general comments made by MT delegation after the presentation of the Public Procurement Act by the Commission and the exchange of views at the Working Party meetings on Competitiveness and Growth (Public Procurement) on 17-18 September 2026.

GOVERNMENT OF MALTA
MINISTRY FOR FOREIGN
AND EUROPEAN AFFAIRS
EU COORDINATION DEPARTMENT

PUBLIC

MT Written Comments

HIGH-LEVEL OBSERVATIONS & COMMENTS

Malta welcomes the European Commission's efforts to simplify and modernise the Public Procurement Legal Framework. The Public Procurement Act is indeed the most significant reform of the EU procurement framework since the 2014 package, seeking to move from a fragmented, procedure-driven system towards a more consolidated, strategic and digitally enabled model. While the overall objectives of simplification, greater flexibility, stronger SME participation and enhanced strategic procurement are broadly welcome, the practical success of the reform will ultimately depend on legal certainty, clear implementing guidance, and the operational capacity of contracting authorities to manage the substantial changes in procedures, governance, reporting obligations and digital requirements. For Malta, the key challenge is likely to be less the policy ambition itself and more the scale of implementation, change management and institutional readiness required to transition effectively to the new framework.

The PPA proposal introduces significant new obligations relating to Strategic Procurement, Digital Interoperability, Data Management, Professionalisation, Reporting and Governance, amongst others. The cumulative Administrative, Technical and Financial impact of these new measures, particularly on small Member States and their respective Contracting Authorities/Entities (such as those in Malta), requires further assessment. Particular attention should be given to Implementation Costs, Transition Periods, Interoperability Requirements and the availability of sufficient Support Mechanisms at National level as well as at European Union (EU) Level.

1. Legal Instrument: Directive vs Regulation

Malta remains of the view that the future Public Procurement Legal Framework should continue to be based primarily on a Directive rather than a directly applicable Regulation. While Malta recognises the objective of achieving greater harmonisation and legal consistency across the EU, Public Procurement remains closely intertwined with National Administrative Structures, Budgetary Controls, Governance Arrangements, Review Systems and Public Administration Organisation.

The European Commission itself acknowledges that matters relating to Public Administration, Budgetary and Financial Controls, Decision-Making Structures and National Contract Law remain matters for Member States. Against this background, Malta considers that the principles of Subsidiarity and Proportionality are better served through a Directive-based Framework which establishes Common Objectives whilst preserving sufficient flexibility for national implementation.

Malta therefore remains cautious regarding a Full Transition towards a single directly applicable Regulation (i.e. "one-size-fits-all" approach) . Accordingly, it considers that a more differentiated approach may better accommodate the diversity of Member States' Procurement Systems whilst still delivering Simplification and Coherence.

PUBLIC

2. Sectoral Legislation

Malta supports the objective of consolidating Procurement-Related Provisions currently dispersed across Sector-Specific Legislation into a Single Horizontal Procurement Framework, as this could enhance Coherence, Simplification and Legal Certainty for Contracting Authorities/Entities as well as for Economic Operators.

However, the incorporation of these Sector-Specific provisions within the PPA should not be construed as transferring substantive policy ownership or regulatory oversight to the procurement function. It is believed that the cumulative legal, operational and policy implications would need to be assessed holistically rather than on a case-by-case basis. Thus, Malta considers that a detailed Legal and Policy Assessment is required to fully understand the National Implementation Implications of such consolidation, particularly in relation to Governance Arrangements and the interaction with competent Sectoral Authorities. While Procurement-related Obligations may be integrated into the PPA, responsibility for Policy Ownership, Implementation, Monitoring, Verification and Enforcement should remain with the competent authorities designated under the respective Sector-Specific Legislative Frameworks.

Furthermore, taking into consideration that Sector-Specific Legislation with Procurement-related Provisions span across 61 different laws, it is observed that the published draft PPA proposal does not make reference to all such Sectoral Legislation. Accordingly, it is understood that there still exists legislation which shall not be consolidated via the PPA; in such instances, it is presumed that such PP-related Provisions shall remain outside the scope of the PPA and Contracting Authorities/Entities shall not be expected to incorporate any such provisions in a Procurement Procedure.

3. Centralisation vs Decentralisation at National Level

Malta notes that a substantial number of provisions in the PPA are addressed directly to Public Buyers (i.e. Contracting Authorities and/or Contracting Entities) requiring them to undertake particular assessments, choices and decisions. On the other hand, the PPA Regulation contains a limited number of provisions that expressly empower or require action by Member States from a governance perspective. The draft PPA does not always appear explicit on where the line should be drawn.

Therefore, it is unclear to what extent Member States may centralise, standardise or mandate how the PPA obligations are to be carried out by Contracting Authorities/Entities. It is believed that the distinction is important because the practical implementation and responsibility of the PPA could either (i) sit individually with each Contracting Authority/Entity, resulting in different interpretation and Modus Operandi (ii) be largely coordinated centrally through the Department of Contracts (being the sole Central Government Authority on Public Procurement, as well as the PP Regulator) through Policies, Standard Documents and Guidance.

4. Definitions

It is observed that Article 6 of the PPA contains 27 General Definitions applicable across the PPA. However, a number of additional concepts appear to be defined or explained later within specific Chapters and/or Provisions. In addition, it seems that certain Key Operational Terms (such as, but not

limited to, "Economic Security", "Innovation", "Best Quality For Public Money", Resilience", "Security Of Supply", "Appropriate Measures", "Proportionate Measures", "Critical Dependency ", "Notified Body", "Technical Assessment Body", "Label", "Material Substance", "Significant Change", "Material Errors", Economic Balance, "Additional Works/Services/Supplies") remain undefined.

It is opined that if all Key Terminology are collected in a single centralised definitions article, legal certainty and consistency is enhanced. Nonetheless, where a Term carries also Context-Specific Terminology, Article 6 could expressly provide separate definitions, making a distinction between 'For the purposes of this Regulation…' and 'For the purposes of Chapter X…'.

With regard to undefined concepts/terminology, it is believed that different Stakeholders (Member States, Public Buyers, Economic Operators, Auditors, Review Bodies) might adopt divergent interpretations resulting in inconsistent decisions as well as increased challenges and litigation. Therefore, Malta recommends that the current Definitions Article is expanded to include Terminology that Public Buyers would require during procurement procedures. Such an approach would allow Public Buyers to identify all relevant definitions from the outset.

The PPA should possibly include certain Procurement-Related concepts/terminology as it is unclear how Public Buyers should proceed.