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CONTRIBUTION

From:	General Secretariat of the Council
To:	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 – Member States' General Comments

Delegations will find in the Annex the general comments made by some Member States 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.

The Annex contains comments and questions by CY, CZ, DK, FI, FR, HR, HU, IT, PL , RO, SI, and LV.

A change to the initial document concerns only comment by PL.

CYPRUS (CY)

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Proposal for PPA

CY Comments / Questions / Suggestions

Article No. and Title	Short Summary of Article Content	Question / Comment / Suggestion
Article 1 — Subject-matter and scope	Establishes rules for above-threshold public contracts and concessions, including award, planning, execution, strategic objectives and the digital ecosystem.	We would expect more explanations in the preamble and the recitals regarding the proper implementation of the provisions. The recitals do not follow the flow of the Articles in the Act nor the flow of the procedure The preamble should be used to give the thinking of the law maker and be useful for the Buyers when they have to take decisions based on principles.
Article 4 — Principles of procurement	Requires best quality for public money, equal treatment, transparency, proportionality, competition, integrity and compliance with applicable obligations.	Clarify how buyers can practically ensure contractors' compliance with all environmental, social, labour and policy obligations.
Article 5 — Policy objectives	Lists competitiveness, innovation, environmental, social, security, resilience and economic-security objectives guiding procurement.	It should be stated clearly that public buyers are enabled to decide which objectives they wish to pursue at each procurement and that not all objectives need to be achieved in every procurement as this approach has previously been unsuccessful.

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Article 6 — Definitions	Defines key concepts used throughout the Regulation.	• Place definitions at the start and retain only important horizontal definitions; article-specific terms should be defined locally. • Add missing definitions, remove duplications and rationalise the list. • "Classified information" should cover police matters (i.e. fighting drugs and prisons), not only national security. • Consider including a terminology for new IT systems and photovoltaic parks as they constitute works within the meaning of "public works contract" without the need to have a building contractor CPV. • For subcontractors, replace the wording with "for which specific requirements exist in the tender documents".
Article 8 — Contracting entities	Defines contracting entities, public undertakings and entities operating through special or exclusive rights.	Question why contracting authorities and contracting entities need different definitions since the effort is to have one Act. GPA is not considered a valid argument for the complication introduced.
Article 20 — Exemption procedure	Establishes preliminary and formal Commission procedures for exempting competitive utility activities.	• The preliminary procedure needs clarification. • The deadlines, automatic exemption and procedural

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		steps are difficult to understand and should be simplified.
Article 21 — Economic operators	Protects participation regardless of legal form and permits identification of responsible personnel.	• Clarify paragraph 2, since operators are already natural or legal persons. • Move personnel-identification requirements to contract execution.
Article 22 — Groups of economic operators	Regulates satisfaction of selection criteria, critical tasks, legal form and performance conditions for groups.	•This article is not necessary and clauses are complicated and unclear. • Confirm that selection criteria cannot differ between individual operators and groups. • Explain why a legal form cannot be required after award. • Clarify when restrictions based on operator size may apply to group participation.
Article 23 — Reliance on the capacity of other entities	Allows reliance on third-party capacities and regulates verification, replacement, resources and liability.	• Clarify whether eligibility applies only during evaluation or also during implementation. • We disagree with the idea of allowing replacement of other entities in case of not conforming with a relevant eligibility criterion as this is an exercise a diligent EO should undertake before requesting the

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		support of another entity. If this is allowed, consider equivalent flexibility for the tenderer itself.
Article 24 — Subcontracting	Permits partial subcontracting, requires disclosure and replacement in specified circumstances, and preserves main-contractor liability.	• Define what constitutes subcontracting as we believe that this should be limited to areas where specific requirements exist by the Buyer in the tender documents. "Any share" is too broad and could mean that in a works contract we might end up evaluating and monitoring hundreds of subcontractors. On top of that, Buyers would need to monitor and approve their replacement during execution. • Clarify the relationship between information in the tender and updated post-award information.
Article 26 — Optional exclusion grounds	Sets discretionary exclusion grounds, self-cleaning measures, duration and possible national-authority assessment.	• For security risks, consider a "reasonable doubt" standard to avoid an excessive burden of proof. • Clarify whether the public buyer or designated national authority assesses self-cleaning evidence.
Article 27 — Selection criteria	Limits criteria to proportionate professional, technical, legal, economic and financial capacity requirements.	• Question the restriction on requiring prior public-contract experience. • Reconsider whether limiting minimum turnover to 50% of annual contract value is reasonable.

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Article 28 — Means of proof of the eligibility of economic operators	Makes the electronic eligibility service the principal proof mechanism, with self-declaration fallbacks.	What happens if an automated verification produces a false positive (e.g., flagging a cleared taxpayer due to an administrative sync delay) or a false negative (clearing a entity whose criminal conviction hasn't been uploaded yet)? Also GDPR issues (GDPR Article 22 restricts solely automated decisions that produce legal or significant effects without meaningful human intervention)? The above are also applicable to Article 29(2)
Article 29 — Connection of databases to the electronic eligibility service	Requires national databases to connect to the eligibility service and support automated verification.	• Confirm that any expenses, costs associated with platform adjustment are to be borne by the platforms and not by the Buyers or MS. MS have a bad previous experience with the platforms and the costs undertaken to adjust eforms every time the COM issued new SDK. • The text sets a Member-State deadline without committing the Commission on when standards will be available. Will the Commission be operationally ready? • Instead of having the eligibility service collecting EO certificates, it is preferable that a national red/green eligibility indication is provided to the eligibility service for simplicity, consistency and accountability. • Clarify how selection and origin evidence will be connected.

Article 30 — Market consultations	Permits announced consultations with experts, authorities and market participants without prejudging eligibility.	Market consultation is formalised through the PPA both being regulated and heavily burdened with reporting obligations. The problem is magnified by using "may" in the conduct of the consultation and "shall" in the reporting obligation which will lead Buyers not to take advantage of this important tool. Instead of regulating how market consultation should be conducted, it is preferrable to include an urge to Buyers to consult with the market prior to tendering. In addition, protection should be provided to the procedure against challenges concerning actions or omissions during consultation under the Remedies Directive once the competition is published. Mandating a formal publication/announcement for every market consultation creates unnecessary administrative friction for standard, informal preliminary market research
Article 31 — Choice of procedures	Permits open, dynamic, innovation and special procedures in prescribed circumstances.	• Provide practical examples explaining the procedural architecture and interaction with Remedies Directive (what stages standstill periods).

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Article 32 — Estimation of the value of the contract	Requires estimation of maximum expenditure over the full contract duration, including options and renewals.	• Clarify whether the estimate is a binding ceiling including modifications or merely an indication.
Article 33 — Conduct of negotiations	Regulates negotiable matters, rounds, equal treatment, information protection, elimination and final tenders.	• Place this Article after the individual procedures. • Suggested clause “provided that the result of the negotiation improves compared to the evaluation criteria” • Clarify standstill/review rights between rounds and what happens if one operator remains. • Requirements are vague; clarify minutes The text fails to provide a clear test for distinguishing between "essential" and "non-essential" characteristics. While it lists examples of non-essential elements (e.g., technical merit, quantity, delivery conditions), altering elements like quantity or technical merit can fundamentally reshape the scope of a contract, leading to subjective interpretations and increased risk of litigation before review bodies or national courts.
Article 34 — Launch and conduct of the open procedure	Establishes the open procedure with optional selection criteria and negotiations.	Provide an example to demonstrate the different possibilities under this procedure to better comprehend the rationale

		• The Buyer should have the option to negotiate only with the best/preferred bidder as long as this is included in the tender documents. Introducing optional negotiations directly into the open procedure fundamentally disrupts the traditional nature of open procurement. Economic operators face a major tactical dilemma: if they expect negotiations, they may hold back their best commercial terms; if the public buyer then unexpectedly exercises its right under Article 34(6) to award on first tenders without negotiating, bidders who held back will be unfairly penalized.
Article 35 — Finalisation of the procedure and award of the contract	Requires award to the best-quality-for-money tender and conclusion under national law after standstill.	Mandating that all open procedure contracts be awarded strictly on the basis of best quality for money removes necessary flexibility for highly standardized off-the-shelf goods, commodities, or basic services.
Article 36 — Dynamic procedure	Creates an open supplier base for invitations to individual contracts throughout its validity.	Clarify why both an expression of interest and a tender are required.
Article 38 — Conduct of the dynamic procedure without selection criteria	Regulates joining, interest in individual contracts, tender invitations and random algorithmic selection.	Provide an example to demonstrate the different possibilities under this procedure to better comprehend the rationale

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		• The procedure requires substantial further work and compromise. • Random selection where more than five operators express interest is not considered fair. An economic operator eliminated at the expression of interest stage by the random algorithm (under Article 38(3)) is legally barred from filing an official appeal against the decision or the execution of the draw, as it is not recognized as a "tenderer concerned." This creates a significant gap in legal protection and judicial oversight.
Article 46 — Contracts requiring only publication of public summary of result	Allows direct requests to operators in specified cases, followed by result publication.	Provide an example to demonstrate the use of the procedure
Article 47 — Conditions for the use of contracts with publication of a public summary of result only	Lists exclusive, technical, additional-supply and specified service circumstances permitting Article 46.	Connect CPVs under (c) to article 58 or move them there
Article 48 — Emergency and crisis	Permits the special procedure for extreme urgency not attributable to the buyer and recognised crises.	Also provide for urgent cases attributable to the public buyer (providing for resulting consequences on the PB)

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Article 49 — Qualification list for contracting entities	Allows contracting entities to maintain qualification lists and award contracts from them.	Why is this mechanism not also available to contracting authorities? What are the differences with the Dynamic Procedure? Is it necessary to have both?
Article 52 — Energy efficiency	Requires high energy-performance products, services, works and buildings, subject to specified exceptions.	• Requiring service providers to use only top-tier products creates unmanageable monitoring burdens. • Conditioning building purchases and new lease agreements on the strict technical screening criteria could severely restrict public buyers. In many regional or local property markets, compliant buildings are virtually non-existent or concentrated in monopolistic real estate hands, potentially driving up public lease costs.
Article 55 — Socially responsible public procurement	Defines and permits social considerations linked to procurement.	Requiring public buyers to evaluate "effective human rights protection across supply chains" places an unrealistic burden on procurement officers. Public authorities lack the administrative tools, jurisdictional reach, and investigative resources to audit multi-tier global supply chains
Article 59 — Innovation objectives in public procurement	Identifies objectives supporting innovative markets, enterprises and cost-effective solutions.	We strongly believe that the provisions of the European Innovation Act should be introduced in this section of the PPA.

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		Clarify the concept of "innovation" to avoid confusion / in connection with article 41
Article 61 — Techniques to pursue innovation objectives in public procurement	Lists procurement-design techniques supporting innovation.	• Clarify whether new software or an IT system qualifies as innovation.
Article 81 — Public-public cooperation	Exempts genuine public-public cooperation meeting public-interest and market-activity conditions.	This should be moved to the front together with the exclusions. Provisions of Public to Public cooperation in the PPA fails to simplify and address the issues existing in the current Directive. Approach should allow PP cooperation between CAs/CEs that fall under the scope of the PPA, without the private interest. Proving "public-interest" intent rather than commercial efficiency is difficult and creates challenge risks.
Article 88 — Specifications	Requires objective specifications, generally using functional requirements, standards and equivalence.	Question whether buyers must prove that functional requirements are insufficient before using standard technical prescriptions.
Article 89 — Variants	Requires buyers to consider variants and explain decisions not to allow them.	Requiring reasons for not allowing variants creates administrative burden and legal vulnerability.

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Article 101 — Abnormally low tenders	Requires explanations and rejection where price viability is not satisfactorily demonstrated.	• Make clear that the tenderer bears responsibility for proving viability. • Regulatory compliance is not itself an explanation for a low price. • Remove wording presupposing that buyers must seek further justification / clarification.
Article 102 — Corrections during procedures and cancellation	Regulates correction of documents, tender clarifications and cancellation.	• Changes should be issued at least 48 hours before deadline. • Permit submission of objective documents that demonstrably existed before the deadline. > If a confirmation is missing and the buyer requests its submission, it basically changes eligibility information as a non eligible becomes eligible. Therefore, the conditionality should be more based on principles, i.e. does not alter the scoring or improves the award criteria of the tender and does not create an advantage to the tenderer by providing time to compile the documentation that was not available to other tenderers not being able to participate. > Article 102 attempts to balance the necessary flexibility of contracting authorities with the principles of equal treatment and transparency. However, **it remains particularly restrictive** (especially paragraph

		2, which limits corrections strictly to "minor informalities or irregularities"). In practice, this excessive strictness often leads to the unfair exclusion of economic operators for trivial errors, burdening contracting authorities and delaying procedures. *Suggested Amendment: "The completion or correction of elements within a bid should be permitted, provided that it does not confer, even a potential, advantage to the economic operator nor substantially alter the subject matter of the bid."* Also, the subsequent submission of pre-existing documents and objective facts (such as work experience records or financial statements) that demonstrably existed prior to the submission deadline should be explicitly permitted.
Article 103 — Framework agreements	Regulates duration, maximum scope and award of contracts under framework agreements.	Permit framework maxima to be expressed by time, supporting time-boxed purchases rather than only money or quantities.

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Article 106 — Modifications of contracts during their term	Regulates non-substantial and permissible substantial modifications, documentation and publication.	• Define “initial value”, considering options/extensions and prior changes • It should include also any other justified reason. If for example an antiquities department intervening in a project to handle antiquities found and clear the area • Clarify corporate restructuring and individual to-company transformations. • Delete: “by competent supervisory, audit and review bodies” (para 5). • Replace notification of every modification with an end-of-period total. • Delete the inflation-calculation paragraph.
Article 107 — Termination of contracts	Requires termination for specified convictions or serious Treaty/Regulation infringements.	Allow flexibility where a contract—especially construction—is near completion, while requiring penalties and possible future disqualification.
Article 108 — Payments	Regulates prompt, advance and direct subcontractor payments and payment reporting.	• Clarify required payment-status information and consequences of non-completion. • Explain how Member States can report buyer-level compliance. • Direct subcontractor payment should not be

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		automatic; buyer protection and contractual relationships must be respected.
Article 109 — Individual documentation of procedures	Requires lifecycle documentation, decision traceability and recording of risks and conflicts.	• Avoid generic documentation of every decision; it may deter responsibility and initiative, creating massive volume of data. • Documentation retention should run from contract completion, not award. • Provide a standard form specifying required documentation.
Article 110 — Publication information in public summaries	Requires six public-summary types and prescribes their information content.	• Six summaries create major burden and are not simplification. • Clarify whether contract terms must be published for every competition. • Question whether delegated powers could add further requirements.
Article 111 — Publication of public summary of result, of contract and of completion	Sets 20-day publication duties, permitted withholding and NPPDS data responsibilities.	Clarify interaction with remedies; the reporting system is cumbersome, lacks a clear purpose and may create disputes over buyer compliance.
Article 112 — Form and manner of publication	Routes summaries through NPPDS to the Publications Office for validation and publication.	Processing should be automatic; five-day publication and validation delays conflict with real-time interoperable platforms.

Article 113 — Publication at national level	Restricts national publication before EU publication, subject to a 48-hour fallback.	Remove the delay: electronic national systems are globally accessible, and EU publication should be automatic rather than holding competitions for 48 hours.
Article 114 — Scope	Applies the concession Part and, by default, all public-contract provisions to concessions.	Reverse the approach: only provisions expressly identified in the concession Part should apply.
Article 115 — Definition and characteristics of concessions	Defines concessions, operating risk and arrangements that do not constitute concessions.	Clarify excluded public-domain/resource arrangements, explain their legal classification and provide examples.
Article 117 — Excluded concessions	Lists concession-specific exclusions and notification requirements.	Explain why concession exclusions are separate rather than consolidated with general exclusions.
Article 119 — Contractual obligations relating to public needs	Requires concession performance conditions and permits measurable indicators and monitoring.	The concession provisions are overly detailed; business and contract-management methodology should remain with professionals rather than legislation.
Article 123 — Procedures for the award of a concession	Applies Regulation procedures and requires publication of estimated-value components and risk allocation.	Difficult to provide estimated investment costs and revenues, as some investment, revenue and risk information depends on the tenderer's proposal and commercial strategy.

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Article 126 — Termination of concessions	Permits public-interest termination with proportionality, compensation and documentation safeguards.	Provide for bringing in or training a replacement operator before terminating complex, long-term concessions.
Article 128 — Interoperability network	Requires a Commission interoperability network and detailed technical arrangements.	Confirm that platform providers—not Member States or buyers—bear qualification and adaptation costs.
Article 133 — Electronic eligibility service	Creates electronic verification of exclusions, selection criteria and origin.	• Question whether implementation is realistic in time and substance. • Provide a practical example illustrating the Commission's intended operation.
Article 134 — National Public Procurement Data Spaces	Requires national data spaces, extensive lifecycle information, validation, retention and governance.	Mandating that detailed procurement information must be ingested into the NPPDS within 20 days of occurrence creates an untenable administrative burden.

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PPA – CZ preliminary questions

Core questions:

- Can it be confirmed that in areas not expressly regulated by the PPA, Member States will retain the possibility to adopt or maintain national rules, provided that such rules are consistent with the principles, objectives and provisions of the Regulation, as well as with EU law more generally?
- Will the Regulation contain an explicit provision clarifying the extent of Member States' regulatory autonomy in areas not expressly regulated by the PPA?

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Art. 1 Subject-matter and scope

According to Article 1(2), the subject matter of the Regulation comprises not only "procedural rules" for the award of public contracts but also "aspects of the planning and the execution" of public contracts and concessions and the establishment of strategic objectives "to be taken into account".

It is necessary to clarify the role (competences) of Member States and contracting authorities in light of the shift to the legal form of a Regulation (an issue that would, however, be equally relevant had the legal form of a Directive been retained), specifically regarding the individual elements of the PPA's scope:

- procedural rules – who will fill gaps in the legal framework? Can a Member State supplement or clarify procedural rules in its national legislation? Can a contracting authority regulate them in the procurement documents? Is it possible to prevent the introduction of new procedural rules through "surprising" case law - whether at national or EU level? There is also a practical issue regarding the applicability of existing national case law, which is often based on provisions added or clarified by the Member State during transposition;
- aspects of public contract planning and execution – PPA clearly does not constitute a comprehensive regulation of public contract planning and execution; planning is governed by the administrative and financial regulations of Member States, while issues related to contract performance are regulated by civil law—areas intended to remain unaffected (see Article 1(3), Recital 2); for individual provisions, it is necessary to consider whether they are essential and whether they encroach upon the competences of Member States; Should aspects of the planning and performance of public contracts be subject to review under the Remedies Directives?
- setting up of policy objectives – during the presentation of the proposal, it was emphasized that contracting authorities have autonomy in setting strategic

objectives for the individual contract being awarded (see also Recital 8) (though the wording "strategic objectives to be taken into account" in Art. 1(2) does not fully align with this); may Member States limit the autonomy of contracting authorities - for example, by mandating specific strategic objectives, conditions, or criteria? Should issues related to the consideration of strategic objectives be subject to review under the Remedies Directives?

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Art. 4 Principles of procurement

What was the reason for introducing new principles (economic principles in para. 1, measures to ensure integrity in para. 3)? Recital 7 does not state specific reasons. New specific rules could be derived from these principles; they represent a potential source of "surprising" case law. Was the inclusion of economic principles in paragraph 1 intended to expand the ability of suppliers to challenge contracting authorities on the grounds that the required subject matter of the contract represents an inefficient investment? Should the efficiency of public spending and investment be subject to review under the Remedies Directices?

Art. 5 Policy objectives

Was the inclusion of provisions on policy objectives intended to expand the ability of suppliers to challenge contracting authorities on the grounds that the required subject matter of the contract fails to meet, or insufficiently meets, EU strategic policy objectives? Should the extent of EU policy objectives in the individual public contract be subject to review under the Remedies Directives?

DENMARK (DK)

Initial written remarks and questions from Denmark

25.09.26

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The following questions and comments are of a preliminary nature and intended for clarification purposes only. We may submit additional questions or comments at a later stage, should the need arise.

Furthermore, we would like to emphasise that the questions and comments provided below are of a technical nature and do not represent the official Danish position, as Denmark still holds a scrutiny reservation.

The questions and comments concern parts I, II, III, V and VI. They are structured chronologically according to article.

No.	Comments and questions	Article
1	What is the scope for supplementing the regulation with national legislation? We note that certain articles, such as Article 24(7) and Article 80(5), allow Member States to adopt stricter national provisions. Please provide an overview of all instances in the regulation where national measures or stricter national provisions are permitted.	
2	The practical implications of Article 5 on individual public buyers are unclear, as to the extent they "shall be guided" by the strategic objectives. Please clarify.	Art. 5
3	To clarify the practical implications, please specify to what extent economic operators are required to indicate their subcontractors? Specifically, we would appreciate clarification regarding: 1) How many levels upstream in the supply chain this requirement applies to; 2) Whether there are thresholds/limits in terms of the size or relevance of the subcontracted part of the contract; 3) What the expectations are regarding timing, given that not all subcontractors may be known at the time of submitting a tender, and that changes to subcontractors can occur during the contract delivery phase. Additionally, what is the connection to the concept of a "significant sub-supplier" in the Foreign Subsidy Regulation?	Art. 24.
4	What does it entail in practical terms that a competent national authority must ensure that subcontractors comply with the obligations set out in Article 4(4)? Please clarify what is expected from the national authorities in this regard.	Art. 24
5	Why are economic operators no longer able to self-clean if they fall under one of the mandatory exclusion grounds? Has the Commission considered changing access to self-cleaning from being a legal right for economic operators to instead being an option that public buyers may grant at their discretion?	Art. 25

6	There is a risk that strict requirements to announce market consultations may discourage public buyers from choosing to conduct them, because it becomes too formalised.	Art. 30
7	How can public buyers using the open procedure select and prequalify tenderers in situations where a high number of bids is expected due to specific market conditions? Depending on the market, there might be many interested economic operators, leading to many tenders and high transaction costs for both the economic operators and the public buyer. How should the mechanism for applying selection criteria be understood and implemented in markets with many potential suppliers, such as, for example, management consultancy or car dealership sectors?	Art. 34
8	Given that social, health and educational services are predominantly national markets with little or no cross-border interest and are therefore excluded from the procedural rules of the PPA, how does the requirement in Article 58(3) to publish public summaries align with the principle of subsidiarity?	Art. 58
9	Under what circumstances and through which procedures can the Commission make use of the delegated powers in Article 75 to require public buyers to apply European Preference requirements? What factors must be considered, what types of analyses need to be presented, and how will Member States be involved in the process at an early stage?	Art. 75
10	In which situations can a public buyer award contracts to other authorities and establish local and regional administrative cooperation? Please specify the conditions under which this exemption applies and provide examples illustrating its limits.	Art. 82
11	Is it correct that the EU Ecolabel takes precedence over any other environmental labels when an EU Ecolabel exists for a specific product? What are the implications for public buyers that wish to set higher environmental requirements than those covered by the EU Ecolabel, for example by using other labels such as The Nordic Swan Ecolabel?	Art. 91
12	According to Article 98(4), the quality criteria for labour-intensive contracts shall represent at least 50 % of the total points awarded. Does this provision require public buyers to use specific criteria relating to social aspects of the contract performance, or is it permissible to fulfil the requirement exclusively through e.g. environmental criteria?	Art. 98
13	Please clarify whether Article 102(1) reflects existing case law. Additionally, please explain the rationale behind setting a 24-hour threshold after which the deadline for submission of tenders must be extended.	Art. 102
14	We note that the requirement regarding the economic balance of the contract features more prominently than before. Please clarify the rationale behind emphasising this requirement to such an extend and explain how it should be	Art. 105-106

	interpreted and applied in practice. Additionally, to what extent are public buyers required to document that they have assessed the economic balance?	
15	The digital initiatives may be listed as follows: 1) Interoperability and standardization 2) Commission eProcurement platform 3) Electronic eligibility service 4) National Public Procurement Data Spaces. The timeline and inter-connectedness of these digital initiatives remain unclear. Please provide a coherent project plan outlining the different phases and the division of responsibilities between the Commission and Member States, including considerations on the transitional period before the digital initiatives are in operation. A significant part of the solution and initiatives will be defined through delegated acts. Please clarify the expected level of detail, the timeline, and the anticipated administrative costs for national authorities, public buyers, and eProcurement service providers.	Art. 128-129, Art. 132 Art. 133 Art. 134
16	What does the Commission consider to be the main risks associated with the digital initiatives, and how does the Commission plan to mitigate them? For example, what measures are foreseen to address potential delays during the development phase?	
17	What governance structure does the Commission intend to establish for the deployment of the digital initiatives, and what role will Member States play?	
18	How does the Commission consider that the initiatives set out in the National Public Procurement Data Space align with the principle of subsidiarity? For instance, in relation to Article 134(3) and (4).	Art. 134 (3) and (4)
19	The impact assessment does not appear to fully account for the costs associated with the expanded governance, data and reporting obligations imposed on Member States and public buyers. Does the Commission intend to provide financial or practical support to facilitate the implementation of these new requirements?	Art. 132-140, Art 131
20	What is the underlying rationale and overall ambition behind establishing the Commission eProcurement platform? What specific needs should the platform address, and who are its intended users?	Art. 132
21	In Article 138(2), it is stated that “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.”	Art. 138

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	Please explain the reasoning for including this paragraph. Would Member States not, in any case, be able to regulate the practices of their entities under the general principle of freedom to organise public administration?	
22	Please clarify the ambition behind Article 139, and specify which elements constitute minimum obligations and in which areas Member States retain discretion in organising their support structures. How does this balance reflect the principles of subsidiarity and proportionality?	Art. 139
23	Please provide further information on Arachne+ as a digital tool and explain the implications to the procurement process in cases where risks are identified. Additionally, what criteria or functionalities are considered essential to ensure that an alternative tool is deemed equivalent for the purposes of risk management in the procurement process?	Art. 140
24	Has the Commission considered introducing an exclusion ground related to tenderers from non-cooperative tax jurisdictions, in order to safeguard fair competition and protect public contracts from tenderers based in tax havens?	Not included

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FINLAND (FI)

Finland supports the Commission's objectives of simplification, increased flexibility and greater coherence within the public procurement legal framework. Finland does not yet have a position on the proposal for a PPA as we have just begun examining it carefully. However, we have a couple of comments from structural point of view;

- we propose that the chapter on *Mixed and excluded contracts* be moved to Part I.
    - These are important provisions as the key question is, whether a certain activity or contract falls within the scope of the PPA or not. In practice, this is often quite unclear. Both public buyers and economic operators as well as other stakeholders seek guidance on this matter. This question may be self-evident to many legal experts on public procurement law, but the law should be clear and coherent enough to serve well also those who need it rarely. In our view, it is customary and a well-functioning solution that the provisions on scope should be located in the same place, preferably in the early part of the statute. This way the text and content would be operational, and it would run well. And more importantly, this can also be a matter of legal certainty.
- We also propose that article 74, *Origin*, be moved to the beginning of chapter 5, *European preference*.

In addition, the scope of the indirect link to the subject matter in article 90 seems to be broad and open to interpretation. Thus,

- we propose that the provision on indirect link to the subject matter be clarified.

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FRANCE (FR)

N°2026-0354475

Legislative instrument

1) What were the reasons that led you to opt for a regulation, despite the Member States' stated preference for a directive, which makes the rules applicable above and below the European thresholds clearer to public buyers as a result of its implementation into national law?

France welcomes the publication by the European Commission of a proposal to revise the European public procurement framework. France welcomes the start of the revision process, which it has been advocating for several years. This revision is essential to ensure a comprehensive consideration of the European Union's strategic objectives, taking into account the growing need for competitiveness and resilience in our economy, as well as significant simplification and alignment with other major legal frameworks and numerous sector-specific regulations. France will provide constructive support for this ambitious reform of public procurement law.

The French authorities reiterate their objection to the Commission's decision to use a regulation The adoption of a regulation, by the resulting maximum harmonisation effect, would run counter to the objective of simplification pursued by both the Commission and the Member States and would adversely affect the practice of public buyers and economic operators to the detriment of our competitiveness, depriving the Member States, contracting authorities and contracting entities of any room for manoeuvre to use public procurement as a lever for economic policy and, above all, excessively rigidifying the use of some of its tools from the European thresholds for the future. The objective of simplification, which is being pursued by both the Commission and the Member States, is likely to be significantly undermined.

This choice is all the more regrettable that the majority of Member States have on several occasion, most recently at COREPER on 11 September, expressed their concern, which the French authorities reiterate. The expression of such a majority must be taken into account constructively.

Furthermore, this decision, whose concrete implications, both operational and legal, do not appear to be fully understood, is all the more regrettable given that the majority of member states have repeatedly expressed their concerns. This expression of concern, now reiterated, cannot be ignored and must be considered constructively in order to achieve a legal framework that is fully satisfactory. France is ready to work towards this goal

European preference

2) In light of the Commission's presentation at the last WP meeting, we understand that the interplay between the PPA and the sector-specific legislative provisions relating to European preference would be addressed in different ways. Where the sector-specific provisions cover an area already addressed by the PPA, the latter would apply (e.g., the determination of origin under Article 18(2) of the CMA), unless that sector-specific legislation provide otherwise. Conversely, where the sector-specific provisions address matters not covered by the PPA (e.g., the EU-origin share of certain materials under the IAA), the sector-specific provisions would apply.

Could a more operational approach to the interplay between the two frameworks be considered, with a view to preserving the ambition and specificities of the sector-specific provisions? For instance, could it be provided that the PPA would apply without prejudice to any requirements laid down in sector-specific legislation?

The mechanisms for prioritizing offers that include European content or excluding offers composed of goods or services from third countries not covered by the agreement are fundamental aspects of the text and must be maintained to ensure that public investment primarily benefits European industries of the future.

The French authorities consider that efforts should be made to raise the level of ambition of the European public procurement framework as regards sector-specific European preference, in particular by making the exclusion of non-covered offers mandatory in certain strategic sectors, as proposed, albeit only in part, by the IAA.

At least, the French authorities consider that the PPA should expressly empower Member States to restrict, at national level, access to their public procurement markets for non-covered economic operators, goods and services.

In this regard, once clarified, the provisions of Article 77 should make it possible to preserve the more ambitious provisions on European preference in public procurement set out in certain sector-specific instruments, such as the IAA, the CMA or the CADA, and future provisions on the agricultural and food sectors. This would ensure that the provisions of the PPA, which would provide a welcome cross-cutting baseline in this area, do not supersede sector-specific provisions on European preference where the latter are more ambitious.

Such a clarification would also help public buyers to make a correct application of the European legal framework, and guarantee legal certainty with regard to the applicable provisions, thus reducing litigation risks.

3) How would the information published on the Commission's platform at a given point in time, identifying the covered countries for each procedure, be made legally enforceable?

The French authorities also welcome the reference to a platform maintained by the Commission allowing buyers to identify, for each procedure, the third countries covered by an agreement. However, it could be added that the information published at a given time is legally enforceable, in order to prevent any error and to avoid possible litigation.

3a) [Article 66] The French authorities would like clarification of the definition of "critical infrastructure" within the meaning of the proposed Regulation. At a minimum, infrastructure necessary for territorial continuity, safety, security and the sovereignty of a Member State should systematically be regarded as "critical infrastructure". The proposed Regulation should clarify this concept.

The French authorities would like confirmation that point (b) of paragraph 3 of Article 66 covers both direct and indirect shareholdings and allows, under the conditions laid down in Article 66, companies from a Member State that are indirectly controlled by a power not subject to this Regulation to be excluded.

<u>Strategic objectives in public procurement</u>

The provisions on strategic purchasing are satisfactory, with the French authorities welcoming in particular the provisions on the purchase of food, allowing buyers to target products in particular according to quality or sustainability characteristics, and in particular products from organic farming or under geographical indication. They call for strengthening these measures towards performance obligations in terms of the share of these products in food purchases. They also call for the implementation of the guidelines of the Vision for Agriculture and Food by putting in place appropriate incentives for local products that comply with quality and sustainability requirements, for example by promoting organic products as well as quality and origin identification (SIQO) products and products with the outermost regions logo (*logo RUP)*.

4) Will Member States still be able to introduce stricter requirements regarding sustainable and socially responsible procurement, for example by requiring that, in addition to price, at least one criterion of this kind be taken into account?

The provisions on strategic design and execution of public procurement allow buyers to take environmental or social considerations into account in all their contracts via award criteria, technical specifications or performance conditions, while providing that, in general, the link with the subject matter of the contract may now be 'indirect' (a consideration is deemed to have an indirect link with the subject matter of the contract where it has an impact at any stage of the life cycle of the works, services and supplies concerned, including the working conditions of employees). These provisions echo developments in national law requiring environmental considerations to be taken into account in public procurement, but both the choice of a regulation and the wording raise the question of the possibility for Member States to maintain such requirements in the future (in national law under and above European thresholds). The failure to preserve existing mandatory account of a criterion and a performance clause relating to the environmental characteristics of the tender would constitute a

major regression for certain EU countries which, like France, require at least one such criterion to be taken into account in addition to the price, and one such clause regarding performance conditions concerning environmental considerations. A clause concerning social aspects is also required for public procurement contracts whose value exceeds the European thresholds. This approach gives public procurers sufficient flexibility to include environmental and social considerations tailored to their needs. At this stage, the approach proposed by the Commission risks placing excessive constraints on buyers and needs to be addressed.

Simplification

The French authorities welcome the efforts made in terms of simplification, and in particular the substantial approximation between the current regimes applicable to contracting authorities and contracting entities. However, it is imperative that this general progress is not accompanied by regressions on certain issues.

5) What assessment led you to remove the public buyers' ability to use the restricted procedure, while this loss of flexibility runs counter to the simplification objective?

Thus, the full liberalisation of the use of negotiation is a remarkable step forward for the benefit of all public buyers. However, it is regrettable that the possibility for the latter to implement a restricted procedure has disappeared or concerns only the dynamic procedure. Restricted procedures provide considerable flexibility for public buyers in this respect, in particular allowing them to save time by reducing the number of offers to be analysed, while preserving equal access to public procurement by implementing non-discriminatory selection criteria.

The French authorities are concerned about the effective applicability of the two general procedures provided for in the Regulation to the award of complex contracts, as experience shows that there is often a need for a restricted procedure involving negotiations

6) Why has the maximum duration of framework agreements not been aligned with the provisions currently applicable to contracting entities?

Furthermore, the shortening of the duration of framework agreements is an important point of concern for the French authorities. It is essential to align the duration with what currently exists for contracting entities and to provide for additional derogations, which are easier to use. These periods are also not compatible with the requirements of an efficient public investment policy, which relies on the possibility to have a reasonably long-time horizon, especially for network operators for whom the investments to be made are massive): this reduced duration will certainly penalise contracting entities without any appreciable improvement in terms of simplification for other buyers. The envisaged durations also run counter to the needs of many long-term development and construction projects, which require continuity of intervention, technical consistency and contractual stability essential for the proper conduct of these operations; and many complex IT procurement projects. The maximum durations of framework agreements should therefore be substantially increased, especially while, in France, these contracts accounted for more than 40% of all contracts awarded in 2024 by number (out of 223,383 public contracts recorded), they represented more than 74% by value (out of a total of €233.3 billion). They are all the more necessary in a context of multiple consideration of different criteria, implying more complex and potentially longer procurement (security, sustainable purchases, European preference).

7) How do you reconcile the reinforcement of transparency obligations under the PPA with the simplification objective?

In addition, the strengthening of transparency obligations for public buyers must preserve the balance between transparency of public procurement and simplification of buying practices.

While the French authorities welcome the inclusion of security considerations in public procurement (Article 66) in a broad manner, these considerations could be more explicitly extended to cover issues of national sovereignty.

As regards technical clauses, the choice to refer to environmental characteristics strictly defined by delegated acts or to restrict certain environmental labels to European eco-labels without leaving

the buyer free as to the content of the clauses to be inserted risks over-rigidifying the way in which the environment is taken into account in the markets, notably regarding the agri-food sector.

7a) [Article 33] The French authorities question the scope of the requirement to maintain, in each round of negotiations, a number of "solutions" allowing for genuine competition. This appears to mean that a round of negotiations may only take place with at least two candidates. While sharing the goal set by the competition commission of ensuring the greatest possible openness the proposed text should allow the public buyer to determine the number of candidates with which it negotiates, having regard to the characteristics of the tenders while respecting the objective of achieving the best price-quality ratio introduced by this Regulation.

7b) [Article 52] The climate and environmental objectives pursued through public procurement must be tailored to the economic realities of the various sectors. In particular, the obligation to carry out "green procurement" might be potentially inconsistent with the principle of purchasing on the basis of the best price-quality ratio introduced by the Regulation, since the only exception to that principle is "technical impossibility". However, in specific situations involving continuity of public service or safety, the robustness of the installation should systematically take precedence over the "green procurement" obligation. Article 52 should be reformulated as an option or, at a minimum, the exception should be extended to safety and continuity-of-service considerations.

Concessions

8) What justifies providing for a general reference from the concession regime to the public contracts regime under Article 114(2), rather than preserving the full autonomy and flexibility of the rules applicable to concession contracts?

As regards concession contracts, more flexibility must be maintained, in particular with regard to the award procedures and the rules governing their execution, in particular, regarding the right, as currently provided for under the Concessions Directive, to freely organise the negotiation process, or to retain the existing rules governing amendments to contracts. This flexibility appears to be necessary in view of both the specific nature of these contracts and the fact that they are often the basis for public investment and enable everyday public services to be carried out.

According to the French authorities, these specific features mean that the legal framework should not be made more rigid and that the provisions relating to concessions should remain entirely separate from those relating to public contracts. In that regard, the general reference provided for in Article 114(2) is not operational and, in the absence of strict separation, should even be reversed: the provisions regarding public contracts should only apply to concession contracts upon express referral. As things stand, in addition to the procurement procedures applicable to concession contracts, provisions hitherto specific to public contracts would apply to concessions, in particular the mechanism relating to the justification for not dividing a contract into lots (Article 100) to abnormally low tenders (Article 110), the limitation of turnover requirements (Article 27), and new obligations such as the planning obligation (Article 31).

In particular, it appears necessary to remove the obligation introduced by the proposed regulation to carry out a structured risk analysis before the award of a concession (Article 120), as this creates unnecessary burdens affecting public action for several reasons:

- projects covered by concessions are generally already the subject of very advanced procedures and preliminary studies;

- the requested analysis creates a new source of litigation.

Moreover, constructing an "objective" risk analysis is, by its very nature, largely aspirational: traffic risk and political risk are particularly difficult to estimate quantitatively.

France cannot support the new provisions concerning the duration of concession contracts because they prevent the public buyer's own strategy from being taken into account in the light of territorial development challenges as well as financing challenges (e.g. maturity of borrowing) and introduce *a contrario* the need to take into account technological and environmental life cycles, which are nevertheless systematically decorrelated, in practice, and difficult to anticipate.

French authorities would like to illustrate that the buyer's own strategy could have a huge impact in itself, irrespective of other parameters. In 2022 the French authorities entered into a very short concession contract for an airport (five years) in view of weak traffic prospects. The aim was to provide an opportunity to revive air traffic at that airport without committing to continue operating it for several decades. This short duration gave local stakeholders a few years to consider the future of the airport and avoid a hasty decision taken without consultation. Conversely, for precisely the same reason, the French authorities are preparing to award a relatively long concession (20 to 30 years): this time, the objective is to mitigate the concessionaire's risk in a sector with weak prospects but where the airport is vital for territorial continuity to reduce the risk so that there are a sufficiently large number of bidders to ensure genuine competition. The only difference between these examples is the strategy of the French authorities to take into account the territorial environment.

Lastly, the obligation to take technological, environmental and social life cycles into account would require the public buyer to have a detailed forward-looking view of those cycles, which in practice is extremely difficult. By way of illustration, a public buyer issuing a concession notice for a motorway concession today would include among the main investments to be made the development of large-scale heavy-duty vehicle charging stations with megawatt chargers. Yet it is currently impossible to determine the technological life cycle of such stations, as it structurally depends on the development of electric-road technologies for heavy goods vehicles (induction, rail or overhead catenary). Similarly, the possible development of Taxibots in the coming years could have a major impact on airport movement areas. As this remains hypothetical, the life cycle of current movement areas cannot be estimated.

Consequently, the French authorities consider that Article 122 on the duration of concessions should be limited to its current paragraph 2.

Moreover, if these factors were to lead to a reduction in the duration of concessions, the public person would have to finance a significant part of the investments, which would be detrimental to the country's budgetary situation. Long concession periods therefore also mean that the procedures for amending the contract during the concession period should not be rigidified.

In addition, the concept of "reasonable return" to be taken into account in determining the duration of the concession should be deleted (Article 122(3)(e)), in order to avoid opening the door to excessive claims by concessionaires who, merely on the ground that their actual return is lower than expected, would seek to challenge the duration determined by the contracting authority. Besides, the insertion of such a requirement runs counter to the simplification objectives pursued by the regulation, insofar as it introduces a new condition on the design of the concession contract.

Article 119, which seeks to provide a substantive framework for the determination of mandatory conditions governing the performance of the concession, introduces more formalisation into procurement documents and creates additional administrative burdens for public buyers. More precisely, the French authorities oppose the obligation to provide for bonuses in the event of overperformance. Furthermore, paragraph 1 should be limited to an indicative list of matters that may be covered by indicators. More specifically, in the list proposed by the European Commission, only service quality is systematically subject to indicators. The other aspects (continuity, accessibility, safety and effectiveness) are insufficiently defined and may be more appropriately addressed through strict obligations on the contractor rather than financial incentives (in particular continuity of service and safety).

9) Have you assessed the compatibility of the rules governing the performance of concession contracts with existing national regimes? To what extent are these new provisions necessary at European level?

Moreover, the interference of the PPA with the contractual performance of concessions appears inappropriate in that it generates legal uncertainty and litigation risks, in particular as regards its relationship with national provisions having the same subject matter. Thus, France opposes the introduction into Article 126 of a right to compensation which was not included in Directive 2014/23. The same applies to the provisions concerning risk contractualisation clauses (Article 121(1) to (3)), which should at least be optional.

Finally, France will pay particular attention to ensuring that the PPA does not undermine the reverting property regime ("biens de retour"), which is an essential theory for the organisation of public services in France and has constitutional value (see Conseil d'Etat Ass., 21 December 2012, *Commune de* Douai, no 342788; Conseil d'Etat, 4 March 2026, *Société Partouche*, no 511285). In particular, Article 121 constitutes a way for the public buyers to acquire certain goods or infrastructure considered to be in the public interest. However, in France the public buyer is in principle the owner of the property as soon as the concession contract is signed, since the property is in principle returned to the buyer free of charge (which does not exclude, on the one hand, compensation if the property could not be fully depreciated by the concessionaire and, on the other hand, that this constitutes one of the elements of negotiation of the financial terms of the contract). Article 121(4) is thus capable of calling that mechanism into question, in particular by requiring the inclusion of specific compensation clauses or by requiring this property return to meet proportionality requirements. France will thus oppose those provisions, in order to preserve its national law and Constitution, since those provisions are in any event unrelated to the aims pursued by European law.

9a) [Article 64] The Article makes it impossible to provide for the transfer of intellectual property rights between the operator and the public buyer, notwithstanding the derogation provided to ensure the performance, operation or maintenance of the solutions. However, at the end of a concession, many assets necessary for the performance of the public service (in particular software used by the concessionaire) are assets to be returned, fully financed by users of the public service over the term of the concession and which must therefore revert to the public buyer free of charge.

Paragraph 2 is not sufficient to cover these cases, since it appears to be limited to cases where the asset is necessary for the implementation of the "solution" selected by the operator. Lastly, it requires a detailed and exhaustive list of assets to be returned, although such a list necessarily evolves over the course of the concession, creating a situation particularly prone to disputes between the public buyer and the operator.

9b) The scope of Article 64 should be limited to sectors where it is relevant, such as the building industry. Conversely, for public works, such an obligation is unnecessarily costly.

9c) [Article 93] The French authorities note difficulties in reconciling the obligation to protect business secrets during the award of a contract with Directive 2009/12/EC, which, for airport regulation purposes, requires information to be disclosed to users under conditions that may appear contradictory. The judgment of the CJEU of 12 February 2026 in Case C-680/24 moreover confirms the broad meaning of "airport user" under Directive 2009/12/EC. The French authorities therefore call for the PPA to be amended on this point.

9d) [Article 125] On paragraph 3, the French authorities would like the words "Without prejudice to Article 125(2)" to be added at the beginning of the paragraph, in order to establish the autonomous nature of the 15% threshold provided for in paragraph 2. Modifications below that threshold would thus, by definition, be non-substantial. On paragraph 3 again, the French authorities would like changes to the indicators established pursuant to Article 119 not to constitute, in themselves, a substantial modification. A change to the indicators may have either a major or a minimal impact on a concession. The French authorities therefore wish to retain the principle that a modification is considered substantial where it would have changed the conditions of the initial competition. On paragraph 4, the French authorities would like, in point (b) of paragraph 4, unforeseen circumstances alone to be sufficient to justify a modification of the concession, and the second condition relating to a significant impact on the performance or feasibility of the concession to be deleted. In practice, this second condition can only be assessed by reference to the effective transfer of risk provided for in the concession contract.

Mixed procurement

10) What were the reasons that led you to depart from the 2014 directives' rule under which the regime applicable to the main object governs inseparable mixed contracts?

The PPA does not incorporate the provisions of the 2014 directives on mixed contracts, which provide that where the different parts of a contract are inseparable, the regime applicable to the

main subject matter shall apply. Consequently, the regime provided for by the PPA applies to all inseparable mixed contracts. France supports the reinstatement of these provisions.

Financial execution

11) What were the reasons that led you to regulate the financial execution of contracts, and will Member States still be able to introduce stricter requirements in order to support SMEs?

The European public procurement framework should not, as a matter of principle, seek to govern the performance of contracts, and in particular their financial performance. Consequently, France cannot support the new provisions on advance payments, which undermine the measures implemented in France, in particular to support SMEs. The same applies to the provisions concerning direct payment to subcontractors and adjustment mechanisms.

Digitalisation of public procurement

12) What assurances can you give that the digitalisation measures you propose will take account of investments already made and tools already deployed by Member States?

With regard to the provisions on the digitalisation of public procurement, French authorities fully endorse the objective of making better use of digital tools to simplify access to public procurement, reduce the cost of award procedures, and shorten the time taken to award contracts. They will nonetheless remain vigilant as to the consistency of the envisaged mechanism, which must take into account the investments already made and the systems already deployed, or in the process of being deployed, by Member States. Similarly, the text must guarantee genuine interoperability between these tools and their effective operational functionality, in particular in compliance with a principle of data minimisation. These considerations must in particular be taken into account in drawing up the timetable for the deployment of the mechanism.

Due to the crucial importance of the provisions relating to the digitalisation of public procurement for the proposal's overall balance, French authorities would deem useful that a draft of the delegated and implementing acts provided for on this matter be shared with the Member States during the negotiation, so as to enable Member States to assess their potential consequences and the underlying impact on the feasibility of the whole digital ecosystem.

13) The French authorities would like to know how the provisions of Article 97 relate to the time limits for appeals and the domestic rules governing the retention of administrative documents.

14) [Article 109] The French authorities consider that the requirements to document the decision-making process are disproportionate and create an excessive administrative burden in relation to the objective pursued. By way of illustration, during a concession procedure, candidates submit several hundred questions as well as several hundred requests for amendments or comments on the procurement documents. Requiring the decisions taken to be justified in relation to each of these questions or requests for amendments runs counter to the Commission's objective of simplification, particularly since the public buyer's decisions involve discretionary choices that it is not required to justify to candidates. Moreover, such documentation requirements further increase the risk of legal challenges. Fairness and non-discrimination are largely ensured by a precise definition of the need and transparency in exchanges with candidates. The French authorities would like the documentation requirements to be limited to the factual material exchanged during the procedure (initial procurement documents, questions and answers, and any amended procurement documents).

Public procurement and innovation

Would having two different regulatory frameworks (PPA and Innovation Act) not risk making the process more complex for a public buyer seeking to support a solution from the R&D phase through to deployment? Apart from the inconsistency raised by the inclusion of these rules in a sector-specific text rather than in the PPA, such a framework represents a step backwards from existing law, under which the public buyer remains free to conduct its procurement as it sees fit, provided that the pre-commercial procurement does not constitute State aid. Consequently, the rigid

procedural framework laid down in the Innovation Act would constitute a significant barrier to innovation and runs counter to the intended objective, in that it would severely inhibit the use of R&D procurement, including pre-commercial procurement.

To what extent a Member State will keep the ability to further develop its national framework for innovative procurement without prior publication or competitive tendering, particularly for local authorities, given the different European thresholds?

The PPA explicitly recognises innovative solutions contributing to environmental sustainability and allows the impact on “green” objectives to be integrated into innovation criteria. It should be ensured that this link is maintained throughout the negotiations, as it reinforces the use of public procurement as a lever for environmental innovation.

Couldn’t the detailed description of the innovative procurement methodology risk limiting the flexibility and discretion of contracting authorities? (Article 61)

PUBLIC

CROATIA (HR)

Preliminary comments on the proposal for a Regulation on public contracts and concessions (Public Procurement Act)

PUBLIC

We welcome the new PPA proposal and its objectives, particularly its strategic approach, further digitalisation with a stronger focus on data rather than documents, and the simplification of public procurement procedures. Please find below our preliminary observations and questions concerning aspects of the proposal that, from our perspective, would benefit from further clarification or consideration.

In this context, the Republic of Croatia would like to highlight the importance of avoiding further fragmentation through the expansion of sector-specific files and of maintaining public procurement as an operational and straightforward instrument within a coherent and consistent framework.

Croatia considers the Directive a more effective legal instrument and welcomes further digitalization, while emphasizing that it already uses advanced national-level digital solutions in public procurement. Therefore, the future EU framework should be based on existing national solutions and retain their functionality. In this context, it is important for us to keep a single mandatory national platform for all public buyers. Additionally, we believe that digitalization should allow the publication of public procurement notices in TED without delay, in line with functionalities already available at the national level.

Regarding the shift from an ex-ante to an ex-post concept, Croatia considers that many irregularities can actually be prevented during the preparation phase and through the use of digital tools. Therefore, the application of such a concept and its consequences need to be further analyzed.

Croatia questions the balance of the delegated powers of the EC and calls for clearer reasoning regarding their purpose, as well as an analysis of how many key elements need to be specified in the legislative act itself and how much can be left to delegated or implementing acts. A further legal review of all delegated powers of the EC is needed.

With regard to the text of the proposal, we would respectfully propose that the following amendments to the relevant provisions be considered:

Recitals:

Recital 1, We would like to point out that the statement, "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," does not accurately reflect the situation in our national system, which does not suffer from data gaps and provides high-quality data. Therefore, this statement should be revised accordingly.

Recital 2, It should be clarified whether member states have wright to regulate the functioning of their national digital ecosystem and to independently choose their e-procurement provider.

Recital 6, the European Commission's obligation to require GPA partners to raise the thresholds should be more clearly defined.

Recital 28, In relation to article 65 which prescribes the requirement of using BIM for high value public works contracts, it should be made clear that the use of BIM doest not, in itself, mean that the contract constitutes public procurement of innovation within the meaning of Article 60. BIM may be used a standard project-delivery methodology even where the solution procured is not innovative. Otherwise, such contracts may be recorded as innovation procurement merely because BIM was used, leading to incorrect statistics about the actual level of public procurement of innovation.

Recital 32, it should be clarified whether the rules on access to the Union public procurement market laid down in this Act are intended to provide a single horizontal framework, including for procurement requirements currently contained in sectoral legislation. If sectoral legislation continue to introduce separate rules on market access, original of EU preference, public buyers may be required to apply several overlapping regimes, thus maintaining or further increasing the current fragmentation of public procurement rules and result in legal uncertainty.

Recital 43, recitals text should be revised with the following text:

„(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, ***and use of electronic catalogues*** *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* ***or usage of electronic catalogues*** *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.* ***Member States should be allowed to impose obligations regarding direct payments to subcontractors and obligations in relation to lower-tiered subcontractors chains"***

Recital 52, allowing economic operators to submit tenders through a different eProcurement service provider may result in fragmented procurement documents across several platforms. The platform chosen or designated by the public buyer should remain the official system of record (end-to-end monitoring).

Recital 58, read together with Article 139(4) and (5), the provision should be considered in light of the objective of strengthening professionalisation. The Republic of Croatia supports this objective; however, a separate national strategy should not be the only means of achieving it.Member States should be able to organise their professionalisation systems through the most appropriate means, depending on their existing national arrangements. In our case, professionalisation is ensured through legislation, ordinances, certification requirements and continuous training, while in other Member States, the appropriate approach may involve institutional support or a dedicated strategy. Croatia already has a well-regulated professionalisation system, with more than 7,000 valid certificates and over 500 professional training programmes yearly. Requiring a separate strategy could represent a step backwards and would risk returning to the approach applied prior 2007. The objective should instead be the effectiveness of professionalisation measures, while Member States should retain the flexibility to choose the most appropriate instruments in line with their national systems.

Recital 65: Proposed public procurement management and monitoring model at the national level might require institutional and complex technical adjustments in member states, which should be taken into account when setting the implementation timeline.

Part I i II:

Article 1: Relationship between the regulation and national law should be stated more clearly. National rules will remain necessary for procurement, review procedures and matters of administrative, budgetary and contract law, as well as for the organisation of national procurement

systems. It shoud therefore be confirmed that a member states may retain a single mandatory eProcurement platform for all its public buyers. The new EU digital framework should build on existing national systems and should not require parallel platforms, separate workflows or the loss of functionalities already available at national level. Furthermore Cratia maintains a scrutiny reservation and continues to prefer a directive. Public procurement is closely connected with national administrative, contractual, budgetary and review systems. A directly applicable regulation will not remove the need for national rules and may create parallel regulatory layers unless the relationship with national law is defined with sufficient precision. Even where the rules are established by a Regulation, gold-plating of the rules will still occur in practice through the decisions and interpretations of Member States' review and appeal bodies, potentially leading to different interpretations and applications of the same provisions across Member States. Also, greater procedural flexibility should not result in a general shift from preventive controls to ex post monitoring. A significant number of errors can be prevented during the preparation and conduct of the procedure, particularly through validation, warnings and other functions already built into national eProcurement systems. The Regulation should preserve the ability of member states to maintain such preventive digital controls.

The Regulation should avoid requiring separate processes or data flows for the two categories of procurement, as this could lead to the fragmentation of systems that are currently integrated in Member States where a single national system is used for procurement both above and below the EU thresholds.

Article 2: It is necessary to insist on increasing the thresholds in line with the proposed amendment to Recital 6 set out above.

Article 5: It is necessary to clarify how a public buyers, in conducting public procurement procedures, contributes to one of the objectives referred to in this Article. If the intention is to require public buyers to select one of the four objectives for each procurement procedure, this should be clearly and explicitly stipulated in the Regulation.

Article 6: Croatia considers it necessary to define, under point (27), the terms "turnover" and "fixed network" and to replace the definition of "eProcurement platform".

Regarding point (7) of the same article, it should be clarified that the definition also covers a public authority or another entity designated under national law to operate the official national eProcurement platform, where that authority or entity does not act as an economic operator offering services on the market. This distinction should also be reflected in article 131, in particular as regards exclusion grounds, supervision and penalties.

Therefore, the definition set out in point (7) should be replaced with the following text:

„(7) „eProcurement service provider" means a public or private entity that provides or operates an eProcurement platform;"

Regarding point (14) of the same article words: „technical specifications" should be replaced by word: „specifications".

Regarding point (25), subcontractors responsibility to perform a part of the public contract should be clarified in relation to article 24(6) in wich it is stated that subcontracting under the provisions in that Article is without prejudice to the main contractor's liability. Additionaly, it is stated that subcontracting excludes the mere provision of goods or parts that are necessary for the provision of a work or service, but the term „the mere provision of parts" should be more clarified.

Article 7(4): The guidance currently contained in recital 10 of Directive 2014/24/EU should be retained due to the fact that in practice, determining whether needs in the general interest have an industrial or commercial character continues to be difficult.

Article 9 (2): It is not prescribed whether it is member states's autonomous decision when it comes to establishment, designation and organisation of central purchasing bodies at national level.

With regard to **paragraph 4** of the same Article, it should be clarified whether a CPB is required to accept such requests and whether it is required to procure for all public buyers if they so request.

Article 13: the term "fixed network" should be defined.

Article 22 (2): the term "critical tasks" should be further clarified.

Article 23: It is necessary to clarify whether, during the execution of the contract, there can be a change in the economic operators on whose abilities the bidder relies, provided that they meet the required conditions. With regard to **Paragraph 5** of the same Article, we propose replacing the paragraph with the following text:

"(5) Where an economic operator relies on the capacities of other entities to prove technical and professional ability, an economic operator must specify in its tender how and in which part of the contract that other entity will participate in the performance of the same contract."

Article 23(2): is unclear as to why it provides that the public buyer may require the replacement of a relied-upon entity where optional grounds for exclusion exist on its side, as opposed to the obligation to require such replacement where mandatory grounds for exclusion apply. The same issue arises under **Article 24(3)** in relation to subcontractors.

It should therefore be clarified what the alternative to requiring replacement is in cases where optional grounds for exclusion apply. In particular, can the public buyer automatically exclude the relied-upon entity or subcontractor in respect of which optional grounds for exclusion exist?

Article 24 (1) The provision stating that the contract may not be subcontracted in its entirety requires further clarification, in particular as regards the maximum proportion of the contract that may be subcontracted.

This provision appears to be contrary to the established case law of the CJEU, which has consistently held that subcontracting may not be subject to abstract quantitative limitations. Rather, any limitation should be linked to the requirement for the contracting authority to ensure that certain essential tasks are performed directly by the main contractor.

If the intention is to depart from the existing case law of the CJEU, it should be clearly specified to what maximum extent a contract may be subcontracted. Otherwise, the provision may give rise to practical uncertainty as to the permissible level of subcontracting, for example whether 99% or 99.9% of the contract may be subcontracted.

(2): it is not clear what is meant by the term "any share of the contract". It should be clarified whether this refers to the subject matter, value, or percentage of the contract to be subcontracted. Likewise, the sentence "They may also require information about the identity of any subcontractors" is unclear, in particular as regards which subcontractors this refers to.

Furthermore, the provisions of Article 24 do not clearly establish an obligation for the contracting authority to verify subcontractors when new subcontractors are introduced, or when the initially identified subcontractors are replaced, during the performance of the concluded contract.

Article 25: The reference to a final conviction "in any Member State" appears to limit the mandatory exclusion grounds to judgments delivered within the Union. As a result, a final conviction in a third country might not trigger mandatory exclusion. This is not in line with recital 13 of the act (first sentence of the same recital). This distinction does not appear justified and may result in unequal treatment of economic operators. The provision should also cover final judgments delivered in third countries, subject to appropriate safeguards concerning the equivalence of the offence, the final nature and reliability of the judgment and the economic operator's right to provide an explanation or challenge the information relied upon. The Regulation should also clarify how such convictions are to be evidenced and verified.

The Regulation should also clarify how such convictions are to be evidenced and verified.

The same approach of defining mandatory exclusion grounds by reference to EU criminal-law instruments is currently used in Article 57(1) of Directive 2014/24/EU. Under the present framework, however, member states have been able, when transposing the directive, to link those grounds to the corresponding offences under their national criminal law.

Since the proposed regulation will apply directly, it should be clarified whether member states may retain national provisions identifying the corresponding national offences. If such provisions are no longer envisaged, article 25 should itself explain how a final conviction under national criminal law is to be linked to the offences referred to in points (a) to (f), particularly in cross-border cases.

Given that these points (a) to (f) concern a Directives that has been transposed into national law, how will it be possible for a directly applicable this Regulation to operate without corresponding national procurement legislation?

Additionaly, certain elements national elaboration will be needed. For example, the concept of a minor unpaid tax amount may differ among Member States, so it should be provided that this is regulated at the national level.

With regard to the existence of outstanding tax debts, there no longer appears to be a provision stating that a tenderer should not be excluded if the outstanding amount is paid. Could you please clarify the rationale and objective of this change?

Article 26 (1) (g) is unclear. Based on practical experience, public buyers are not in a position to independently assess whether an economic operator poses a security risk to, for example, the Republic of Croatia or the EU. Such an assessment could only be made by the competent authorities, including the relevant security services. Otherwise, this provision could create a risk of arbitrary or inconsistent application.

26 (1)(h): exclusion based on an earlier European Commission decision needs to be carefully aligned with FSR rules, according to which a decision in a specific procedure has effect in that procedure.

Furthermore, it is unclear how self-cleaning measures could be applied in relation to this ground for exclusion.**Article 27 (6) (a)**: "Conflicting interests" is a concept from the current legal framework that has proven ineffective and difficult to apply in practice. We therefore request further clarification of the objectives and purpose of this provision, as well as its practical application, in order to better understand why it is considered necessary to retain it in its current form.. **Paragraph 7:** the meaning of "appropriate minimum **turnover**" and the method for calculating the "estimated annual contract value" should be clarified, particularly for contracts lasting less than one year, framework agreements and contracts whose value varies significantly between years.

Article 28 (1): It should be clarified whether this is a special system or part of the e-procurement platform. Currently, at the national level, retrievals from other countries' records use the functionality of the national e-procurement platform, EOJN RH. The provisions of the national public procurement law are defined as follows:

Article 71

(1) Public bodies maintaining records or registers in electronic form shall enable access to the relevant data from such records or registers for the purposes of the EPPC RC by electronic means of communication.

(2) Narodne novine d.d. is a body from the public sector within the meaning of special legislation governing the field of state information infrastructure.

Article 28 (2) : It is unclear how an automated assessment of all optional grounds for exclusion could be carried out, particularly in light of the possibility for economic operators to demonstrate that they have taken self-cleaning measures, and how an automated assessment of the selection criteria, such as references, could be conducted.

Part III

Article 30: It should be clarified whether member states may require public buyers to conduct market consultations before launching a procurement procedure. Croatia currently requires market research as part of the preparation of the procurement procedure and this is supported through the national e-procurement platform.

Article 33 (2): The stipulation that public buyers can not negotiate on award criteria could be considered overly restrictive. While the overall weighting or ratio between the criteria should remain unchanged, there should be scope for negotiation on the sub-criteria.

Article 34 (1): It is necessary to define at which point a public procurement procedure is considered to have commenced.

Paragraph 2: It should be clarified whether, at this stage, the entire tender is to be submitted or only the part relating to the economic operator's compliance with the selection criteria.

Paragraph 3: It should be clarified whether the award of a contract to several economic operators refers to a framework agreement or to another procedure or method, taking into account the obligation of public buyers to select the best value for money through the public procurement procedure.

Paragraph 6: It should be clarified whether the term "first tenders" refers to the most economically advantageous tender.

Article 38: The random selection of economic operators does not provide the necessary level of legal certainty. Selection should be made on the basis of objective and non-discriminatory criteria or rules.

Article 41: Although the concept of societal challenges is defined in Article 6, it should be borne in mind that the need for innovation may be linked to a broader issue. Demonstrating the existence of a societal challenge should not create an additional administrative burden for public buyers or discourage them from using this procedure. Furthermore, assessing the scalability potential could impose an additional burden on public buyers when conducting the procurement procedure for innovative solutions.

Article 42 (1): It is not considered appropriate to prescribe a specific duration for the preparation of the procurement procedure or for market research, as different methods may be used to ensure adequate preparation of the procedure. The duration should therefore depend on the specific circumstances of each procedure. It is proposed that this paragraph be deleted.

Article 46 (1): It should be clarified whether communication between public buyers and economic operators under this procedure is also to be conducted through an eProcurement platform, which we consider should be the standard for all procurement procedures.

Article 49: It is unclear what additional purpose qualification lists serve, given that contracting entities may also use the dynamic procedure. In the interest of simplification, we would be open to deleting this article.

Article 53 (1): The link with Article 47(c)(ii) should be clarified. It is unclear how a procedure involving only the publication of a summary of the results would contribute to promoting green food procurement.

Part III Title II: It should be clearly specified whether and to what extent Member States have the flexibility to develop their own national measures and strategic public procurement targets beyond the framework established by the PPA, in order to avoid inconsistencies between future implementing acts and national strategic approaches to public procurement.

Article 65: As the use of BIM would be mandatory for high-value public work contracts. The article should make clear that this requirement alone does not make the contract public procurement of innovation within the meaning of article 60. BIM may be used as a standard project-delivery method even where the solution being procured is not innovative. Treating all such contracts as innovation procurement would distort the statistics on the actual use of public procurement of innovation. **Paragraph 1:** it should be clarified on which basis the threshold of 25 is set; we think that this threshold should be set higher. **Paragraph 4**: The required level of BIM should either be prescribed directly by this act or not be prescribed at all; in any case, it should not be left to a delegated act.

Article 66 (2) (g): It should be clarified whether ensuring public health also covers the prevention and management of shortages of medicinal products and other critical medical supplies.

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Article 67 (1): It should be clarified which 'economic operators'' may be excluded during contract performance. In particular, does this provision also covers subcontractors and entities whose capacities the contractor relied upon and which perform part of the contract

Article 76: It is necessary to define, at least in general terms, the concept of "disproportionate costs" referred to in point (d).

Article 85 (1) (d): It should be clarified whether the acquisition of buildings remains excluded as under the current rules or whether a change is intended. Where a particular type of procurement is expressly excluded from the scope of the regulation, but certain provisions of the regulation nevertheless apply to it, this should be stated clearly in the provision governing the exclusion. Otherwise, legal uncertainty may arise. **Paragraph 2(c):** We propose extending the exclusion for contracts intended for resale or lease to contracting authorities, rather than limiting it only to contracting entities.

Article 88 (5) and (6): We propose to retain the exception 'unless justifies by the subject-matter of the contract' currently contained in article 42(4) of the Directive 2014/24. Under Article 88 a reference to a specific make, source, process, trademark, type, origin or production would be permitted only where a sufficiently precise description is otherwise not possible and would always have to be accompanied by the words 'or equivalent. These are separate situations. In DYKA Plastics (C-424/23) judgment, the CJEU confirmed that such a reference may also be used, without the requirement to add 'or equivalent', where the requirements follows inevitably from the subject-matter of the contracts. Removing this exception would depart from the current rule as interpreted by the CJEU and remove an options which is important in practice.

Article 89: In the context of simplification, consideration should be given to whether a separate set of rules on variants is still needed. This article may add another procedural layer, including a requirement to explain why variants are not permitted, without clear practical benefit. We would therefore be open to deleting this article.

Article 90 (2): The concept of an indirect link to the subject-matter of the contract should be clarified, in particular the meaning of ''specifically impacts'' and ''to the extend covered by the contract'' to ensure consistent application in practice.

Article 92: It remains unclear whether public buyers may require other means of proving compliance with the specifications, such as catalogues, product descriptions, photographs or samples. This possibility should be expressly provided for.

Article 94 (1): Further guidance should be provided regarding the definitions of family, emotional, economic, political or other relevant shared interests, including the degree and nature of the connection required for a conflict of interest to arise. Unlike a directive, the regulation will apply directly, and these concepts cannot be further clarified through national transposition. Without common criteria, they may be interpreted differently across member states, creating uncertainty as to when a conflict exists and which remedial measures are required.

Article 94 (3): The purpose and legal effect of the declaration required from economic operators should be clarified. Such a declaration may assist the public buyer in identifying relevant links, but it does not remove the public buyer's responsibility under paragraph 1 to prevent, identify and remedy conflicts of interest. The reference to "conflicts of interest in relation to the subject-matter of the procurement procedure" is also unclear. Paragraph 1 defines a conflict of interest by reference to the personal interests of the persons listed in paragraph 2, rather than a connection with the subject matter itself.

Article 97 (1): The 3-year period is too short, especially for contracts whose performance lasts longer than three years.

Article 102 (3): With regard to the clarification and completion of tenders, the current provision appears to preclude the submission of new documents, such as additional references. Such a formalistic approach seems difficult to reconcile with the overall objective of simplifying the

procurement procedure. It appears inconsistent that negotiations may be permitted in relation to certain elements of the subject matter of the procurement, while new documents demonstrating that the required capacity already existed at the time of submission of the tender cannot be provided. The provision should therefore be reconsidered in order to avoid an unnecessarily formalistic approach and to ensure that the rules support the intended simplification and efficiency of procurement procedures.

Article 108 (6): The provision should provide for the possibility for Member States to establish, under national law, an obligation for direct payments to subcontractors. It would also be necessary to clarify how the timeliness of payments will be monitored automatically through the digital marketplace and how the link between payments and the digital marketplace will be established.

Article 223 of the national Public Procurement Act provides as follows:

(1) The contracting authority shall transfer due payments directly to the subcontractor for the part of the contract performed by such subcontractor, unless, in duly justified cases, in connection with the nature of the contract or specific conditions for its performance, that is not applicable, provided that such reasons are stated and explained in the procurement documents or that the contractor provides proof that the obligations towards the subcontractor for that part of the contract have been settled.

(2) The contractor shall enclose the pre-certified invoices or payment certificates of its subcontractors to its own invoice or payment certificates. "

Article 111 (1): The role of the Official Journal/TED in relation to the digital marketplace and PPDS should be clarified. It is not considered appropriate for the Publications Office to have up to five days to publish a notice, combined with a requirement to wait 48 hours before its national publication. At a minimum, Member States should be allowed to publish notices at national level without delay.

We propose that Part III includes a specific provision on e-catalogues, with the following wording:

„ Article X

(1) The public buyer may require that a tender be submitted in the form of an e-catalogue or that the tender contain an e-catalogue.

(2) The public buyer shall create the e-catalogue on the public procurement platform and determine its structure, format and content.

(3) The tenderer shall complete the e-catalogue in accordance with the rules and instructions established by the public buyer.

(4) The public buyer shall specify in the procurement documents the extent to which the e-catalogue is to be completed by the tenderer when submitting the tender. „

Part VI i VII – and related digital provisions

We fully support the principles underpinning the reform: a **data-centric approach, high-quality data, interoperability, and end-to-end digitalisation of public procurement**. However, the proposed framework does not sufficiently recognise the different national e-procurement systems, architectures, investments, and specificities already established across Member States.

A common European approach should not mean that Member States with advanced and integrated national systems are required to replace or fragment those systems in order to comply with a common model. An excessive focus on collecting only limited or narrowly defined data, combined with the introduction of multiple digital tools and platforms, may have unintended negative consequences. It could lead to the loss of valuable historical and operational data, reduced monitoring and analytical capabilities, the loss of advanced functionalities, and limitations on the future development of national systems.

There is also a risk that such an approach could create an unintended situation in which procurement below the EU thresholds is supported by more advanced digital functionalities than procurement above the EU thresholds.

We understand and support the objective of establishing an EU e-procurement network and ensuring interoperability between national systems. At the same time, Member States have followed different approaches and have made significant national investments in developing their e-procurement infrastructures.

We strongly believe that Member States should retain the right to determine which entity, or entities may provide e-procurement platform services at national level. This is not contrary to the objectives of the proposed framework. On the contrary, allowing Member States to build on their existing national infrastructure can facilitate the implementation of EU requirements while avoiding unnecessary duplication, fragmentation and costs.

The requirement or expectation that multiple platforms should operate within a national system could create significant additional challenges. It may fragment data, negatively affect data quality and consistency, complicate monitoring and oversight.

Where a Member State already has a mature, integrated national e-procurement system that fulfils the required EU standards, that system should be able to serve as the national gateway to the EU e-procurement network.

Croatia is a relevant example of such an integrated approach. The **National Public Procurement Data System (NPPDS), Public Buyers Platform, Public Suppliers Platform, and e-procurement platform**, including end-to-end procurement and eligibility services, are integrated within the national **EOJN RH** system. In Croatia, there is a single e-procurement provider—a state-owned company that delivers this service as a service of general non-economic interest, in accordance with the provisions of the national Public Procurement Act (PPA). The platform supports procurement both **above and below the EU thresholds.**

The continued development and improvement of EOJN RH also represents a long-term national investment and commitment. Under the Croatian public procurement framework, at **least 10% of the income from publication fees is allocated annually to the development and improvement of the system.**

This existing infrastructure, accumulated data, functionality, and investment should be taken into account when establishing the future EU framework. The objective should be to **connect and make interoperable with existing national capabilities**, where they meet the required standards, rather than require Member States to create parallel platforms or dismantle integrated solutions.

At a minimum, the Act should explicitly recognise the right of each Member State to determine which entity or entities are authorised to provide e-procurement platform services at national level, provided that those platforms comply with the requirements established by the EU framework.

We therefore propose that this principle be explicitly included in **Article 1 through a new paragraph 3**, for example:

"3. Member States shall retain the right to determine the entity or entities authorised to provide e-procurement platform services within their territory, provided that such platforms comply with the requirements of this Regulation, including requirements concerning interoperability, data quality, security, accessibility and integration with the European e-procurement network."

This would preserve the EU objective of interoperability and a common European e-procurement network, while respecting the existing national systems, investments, governance structures, and technological solutions of Member States.

Our Comments on the Digital Provisions of the Proposed Act

Recital (1) stipulates: "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 certain national levels hamper effective governance, strategic decision-making and the prevention of corruption." However, this is not correct for all Member States and should therefore be amended.

Recital (43): In the sentence "including documentation and registration requirements", the word "registration reequipments" should be deleted, as registration is essential for applying the once-only principle, ensuring data traceability, security risks, and enabling a range of functionalities provided by national e-procurement systems. These functionalities may include notifying registered economic operators about potential business opportunities, communicating with them by competent authorities, and requesting indicative offers. Registration is also essential for effective communication between the e-procurement system and relevant stakeholders in the field of public procurement.

Recital (54) It may be worth reconsidering the link between greater flexibility for public buyers and improved data quality and oversight. While flexibility can be beneficial in certain circumstances, it may also result in less standardised and structured data, which could make monitoring and oversight more challenging. In turn, this may limit the scope for implementing automated checks and potentially increase the risk of errors by both public buyers and economic operators when preparing procurement documents or submitting bids.

Recital (56) This recital further demonstrates why Member States should retain the right to have and manage an end-to-end e-procurement system for which they are responsible. Currently, the Croatian national e-procurement platform also performs the functions of the NPPDS, Public Buyers Platform, Public Suppliers Platform, and other related functions. This integrated approach would not be possible if the European Commission were to determine which entities may operate as e-procurement platforms. Such an approach could instead lead to fragmentation of the national system and have the opposite effect to the objectives of the Regulation.

Article 6(1)(6) The definition of an "e-procurement platform" is too narrow, as it focuses primarily on communication between public buyers and economic operators through the interoperability network. The primary purpose of an e-procurement platform should be to support and facilitate the full procurement process, including the preparation and conduct of public procurement procedures, as well as the monitoring of contract execution. Accordingly, an "e-procurement platform" could be defined as a digital system supporting the preparation, conduct and monitoring of public procurement procedures, including contract execution.

Article 26(e) in our view, the required information can be collected through the e-procurement platform from the contract register and could be part of the data referred to in Article 29(1).

Article 29(1) can you clarify can digital business credential tool be functionality of national e-procurement platform.

Article 30(1) we propose introducing market analysis as a standard pre-procurement function and developing an AI-supported module within the e-procurement platform to facilitate market analysis and market research. Our question is whether Member States may, under national legislation, make the use of such pre-procurement digital tools and market analysis mandatory for public buyers.

Article 46 - Regarding the wording "only publication of a public summary of the result", we would like to emphasise that several provisions should clearly distinguish between recording data in the system, conducting procurement procedures through the e-procurement platform, and the obligation to publish information. An exemption from publication may be justified in certain cases, but this

should not mean that the relevant data or procurement procedures are excluded from the e-procurement system. The goal of having all procurement data in one place, without exceptions, as an unequivocal standard through the national e-procurement platform, is essential to ensuring data quality and effective monitoring.

Article 71(1) The online tool should provide an API connection to the national e-procurement platform. We have been requesting access to the Access2Markets API for some time but have not yet received it. As a result, we currently provide this information to public buyers during the market research phase through other means. We believe that integrating this information directly into the e-procurement platform and making it available when preparing and initiating a procurement procedure would be a step forward.

Article 74 A digital tool for determining the origin of goods, like Access2Markets for international trade agreements, would be highly valuable for public buyers and should be made available as part of the digital procurement environment.

New Article – Electronic Catalogues After Article 100, we propose adding a new article on electronic catalogues, as described in point 4.3 "Electronic Catalogues" of the Croatia e-Procurement document.

The proposed provisions could read as follows:

1. The public buyer may require a tender to be submitted in the form of an e-catalogue or to include an e-catalogue.
2. The public buyer shall create the e-catalogue on the public procurement platform and determine its structure, format and content.
3. The tenderer shall complete the e-catalogue in accordance with the rules and instructions established by the public buyer.
4. The public buyer shall specify in the procurement documents the extent to which the e-catalogue must be completed by the tenderer when submitting the tender.

E-catalogues are a modern and flexible digital procurement tool that can facilitate broader participation and increase competition, particularly for SMEs. In certain procurement contexts, they can provide a more effective means of enabling participation by multiple suppliers than dividing procurement into lots.

Article 106 (6) Clarify the provisions concerning contracts. Can a Member State require contracts signed with a qualified electronic signature to be exchanged through the e-procurement system and require the publication of all amendments to such contracts under the relevant legal framework, regardless of their value?

Article 109 (1) In HR, the e-procurement platform also serves as the NPPDS. We would therefore appreciate confirmation that this approach is not precluded by the proposed provisions and that a single national platform may fulfil both functions. In addition, a minimum period of three years for retaining data after the completion of the procurement procedure is too short, as such data may remain relevant for a significantly longer period, for example for market research and for analysing the successful or unsuccessful performance of contracts. Member States should therefore be able to determine the appropriate data retention period at national level.

Article 110 (1) Points (a) to (f): Can it be stipulated at national level that the preparation, conduct, and monitoring of contract performance be carried out through a single national e-procurement platform?

(2)(e) Care should be taken regarding how much information from the preparation phase is disclosed, to whom, and at what stage. We suggest replacing this with a focus from information regarding the consultation to the conclusions reached. Experience has shown that if key information, such as indicative prices and other commercially sensitive information, becomes widely known, economic operators may be discouraged from participating in the preparation phase.

(6) As a Member State where more than 60% of procurement data is not derived from or connected to eForms, we have concerns that delegated acts could introduce requirements or solutions that are

incompatible with existing national systems and data structures. Such changes could create significant implementation challenges and undermine existing national investments and functionalities.

Article 111 (1)(a) It is important that, where market research is mandatory, the relevant information is recorded in the e-procurement system before the procurement procedure is launched. This would ensure that the required preparatory steps are completed before publication and help prevent errors and potential non-compliance with the applicable public procurement rules.

Article 112 (1) A five-day period for publication on TED is no longer appropriate for the current digital environment or for the coming decade. Such a timeframe reflects a legacy approach from the era of fax-based submission of tenders. Today, instantaneous publication is technically feasible and should be the objective. At national level, we also aim to apply the same principle for publication without delay to procurement above the EU thresholds, as we already do for procurement below the EU thresholds. Therefore, these time limits should be significantly shortened.

(2) Who will be responsible for incorrect or inaccurate translations? In which language should tenders be submitted? Will economic operators be able to submit tenders in any language, with AI providing the translation, or must tenders be submitted in the language of the Member State and/or in the language specified by the public buyer? Furthermore, clarification is needed regarding liability for damages and disputes arising from inaccurate or incorrect automated translations, particularly where such translations affect the interpretation or evaluation of a tender. Is Member State allowed to proscribe in national law that only its official language is the authentic one? This is constitutional issue for us.

Article 113 It should be provided that notices published at national level can be published immediately, without delay or a mandatory 48-hour waiting period.

Part V., and Part VI. General comment: *it is difficult to comment on articles of a proposed regulation that refer to standards, delegated acts, or the other provisions, that have not been defined yet.*

Article 127 (1) wording "electronic communication tools" should be replaced with eProcurement platform". The provision should clearly establish that all procurement-related activities and communications, on an end-to-end basis, are carried out through and recorded in the e-procurement platform.

(4) We request a practical example demonstrating the purpose and added value of this provision. In Croatia, the use of EOJN RH is mandatory for conducting public procurement procedures including negotiated procedure without prior publication, and all relevant procurement techniques and tools are integrated within the same platform.

(5) Based on practical experience, the proposed provision may create unnecessary administrative burdens for tenderers, particularly SMEs. A good practice can be found in the national PPA, stipulates that: "A tender transmitted by electronic means of communication via the EPPC RC shall be binding upon the tenderer during the period of validity regardless of whether it is signed or not, and the contracting authority/entity may not reject the tender solely on such grounds." This approach avoids unnecessary formal requirements for electronic signatures while preserving the legal validity and binding nature of the tender. We therefore propose that Member States be allowed to determine which documents exchanged through the e-procurement platform require an advanced or qualified electronic signature, considering the nature and legal effect of the document. For example, this requirement could be limited to contracts and contract amendments/annexes, where a signature is necessary to establish the legal commitment of the parties.

Article 128 (1) It is not clear what exactly this communication refers to: Expression of interest, Clarifications, submitting offers, signing contracts, submitting appeals, Submitting evidences, Subcontractors exchange requests, Purchase orders, Participation in market research…
2(b) missing after the word Union add also Member States
2(e) Why should this be limited to the needs of SMEs? The system should also consider the needs of public buyers and other relevant stakeholders, including supervisory authorities, competition authorities, decisionmakers, and review bodies, particularly in relation to the e-appeal module. The

e-procurement platform should support the full range of roles and functions required for effective procurement governance, oversight, decision-making, and review.

4) A Member State should be able to nominate the e-procurement platforms that it wishes to connect to the European network, with the European Commission verifying their compliance with the standards and requirements established by the Regulation. Clear rules are also needed for situations where an e-procurement service provider loses access to the interoperability network due to technical or legal non-compliance. In particular, the Regulation should clarify what happens to ongoing procurement procedures, contracts under execution, and the data held on the platform.

As Member States are responsible for overseeing e-procurement service providers operating within their territory, it should also be clarified whether a Member State may request the European Commission to suspend or withdraw a provider's access to the interoperability network. More generally, Member States should retain the right to decide whether their national e-procurement environment consists of one national e-procurement service provider or multiple providers, taking into account their national system, governance model, and existing infrastructure.

Article 129(d): Same comment as provided for Article 128(e).

Article 130(1) What does this mean for advanced national functionalities that go beyond the EU standards, such as the automatic generation of records based on the once-only principle or the establishment of national requirements specifying which data must be provided in a tender?

Article 131 (2) In the case of a joint procurement or reliance on the capacities of other entities, is the consent of those entities required for their data from the European business wallet to be used in the public procurement procedure and accessed by the relevant parties?

(5) The provision is unclear in terms of pricing modalities. It is not clear if it is possible to charge public buyers / economic operators for other services when using the e-Procurement platforms (not directly for things described in the provision). If it is possible to charge for other services, this provision is questionable, since the eProcurement system providers will most likely define the pricing differently.

(8) It is not stipulated that a Member State may designate a national service provider in the form of a single National Procurement Platform for public buyers and economic operators that communicates with the interoperability network. We would like to draw attention to the fact that the Croatian Public Procurement Act provides that Narodne novine d.d. shall invest at least 10% of the annual revenue generated from fees for the publication of public procurement notices in research and development and the improvement of the EPPC RC system. Investment in the continuous development and improvement of the e-procurement system is therefore a statutory obligation and an established national practice, financed through publication fees paid by contracting authorities. Will such a financing and investment model continue to be permitted under the proposed Regulation? If so, this should be clarified more explicitly in the relevant provision.

Article 132 In combination with 131 and 132, we conclude:

The proposed framework does not allow Member States to determine whether they will have one or multiple e-procurement service providers for public buyers and economic operators. We consider this approach unsuitable for Croatia, which has followed a single-platform strategy since 2012. Member States should retain the right to determine the number and structure of e-procurement platforms within their national system, taking into account existing infrastructure, investments and national specificities.

Member States should also be able to require that procurement notices and related information be published exclusively through the national e-procurement platform. This is essential where the national platform provides integrated functionalities beyond EU requirements, such as e-appeals, e-invoicing, data retrieval, supervision, reporting and statistics. Allowing publication outside the national platform could fragment data and undermine data quality, monitoring and the effective

functioning of an end-to-end procurement system. Therefore**, paragraph 3** should also allow Member States, given the range of national functionalities available—such as e-appeals, procurement procedure preparation, supervisory functions, and the link with e-invoicing—to require, at a minimum, that procurement procedures published on the EU platform be simultaneously published on the relevant national e-procurement platform.

Article 133 (2) It is unclear whether the European Business Wallets is a separate system where the tenderer would need to update data related to each procurement separately from the preparation and submission of the rest of the bid, which would represent an administrative burden and break the process of:

- Tender preparation – two platforms – eProcurement service provider for public buyer & electronic eligibility service
- Tender submission into two platforms (one place where the submission is happening and other place where the eligibility profile is created)
- Tender evaluation – two platforms – (one platform on which the evaluation of submitted tenders is happening and other for checking the eligibility profile)

We see that as fragmentation of the e-Services to be used. Instead of every participant doing everything on their platform, the process is split into multiple platforms, and the overall idea of the digitization is addressing the issue of fragmentation. Additionally, if this is set-up per each procurement procedure, we don't see any significant / functional difference from the eESPD.

Article 134 (5) k what in practice will require to have information about origin of goods and information on beneficial ownership. **Points (7) and (8)** should be deleted, as the Member State should retain the right to determine which data are collected at national level through the NPPDS. The European Commission should establish, through implementing or delegated acts, the common data standards and requirements for publication in the PPDS, which would then automatically influence the NPPDS. **(9)** It is also unclear what the purpose of penalties imposed on a Member State would be where the e-procurement system concerned is owned, operated and governed by the State itself.

Article 135 clarify considering that the primary objective of the PPDS was to collect procurement data below the EU thresholds, does this Regulation apply only to data above the thresholds, or also to data below the thresholds? Furthermore, does the transmission of data to TED automatically constitute transmission of the data to the PPDS?

Missing article- There is no provision addressing the unavailability of the e-procurement platform. A specific provision should be included to regulate the procedure and consequences in the event of temporary unavailability, or alternatively, Member States should be given the flexibility to regulate this matter at national level, considering their national systems and legal frameworks.

TITLE II GOVERNANCE

Article 137(1): The concept of "large infrastructure projects and long-running contracts such as concessions" should be defined, and the term "adjustments" should be clearly specified, in order to ensure that Member States have a clear understanding of their obligation to monitor the performance of such contracts. The rationale for this provision and for imposing such an obligation on Member States should also be clarified. Furthermore, the concept of "structural deficiencies" and the methodology for determining when such deficiencies are sufficiently serious to trigger the obligation to establish an action plan should be defined more precisely. An action plan may also constitute an administrative burden, particularly where the issue concerned can be resolved within the time required to prepare and adopt such a plan. A clearer definition of the minimum set of monitoring requirements is therefore needed.

Article 138(2): Further clarification is needed regarding the scope for national arrangements and the extent of the obligations of the national coordinating body, including its role in issuing written

opinions and its role in determining misdemeanor provisions for public buyers in cases of non-compliance with the obligations under the Regulation.

Article 139: The added value of requiring a mandatory professionalization strategy for Member States that have already had a well-established system of professional training and appropriate national legislation in place for many years is questionable. Concerns are also raised that such a requirement could undermine an advanced national system for training in public procurement. It should therefore be clarified to what extent Member States may retain their existing professionalization systems.

Article 140 (1): The task of taking appropriate measures to combat fraud, favouritism, collusion and corruption should primarily be the responsibility of the Member States, with other stakeholders within the public procurement system, including public buyers, implementing and following the measures established at national level.

140 (2): Concerns are raised regarding the limitations of using the Arachne system and equivalent tools for identifying relationships that may indicate a conflict of interest, as such systems cannot detect certain forms of relationships, such as emotional ties or family relationships that may not necessarily involve the same surname. Similarly, such tools may have limited capacity to identify the existence of prohibited agreements. Their use may result in an additional administrative burden due to the need to carry out checks with potentially inconclusive results, while also creating an unjustified perception among public buyers that no prohibited relationships exist.

Article 144: It should be clarified whether procurement for the needs of diplomatic and consular missions could be addressed in a similar manner, for example where such procurement takes place outside the EEA.

Article 147: The rationale for amend only 14 sectorial files should be reconsidered in view of the much broader set of sector-specific files containing public procurement rules (child sexual abuse, migrant smuggling and other)

Article 149: The transitional and final provisions should specify how the rules apply to ongoing procurement procedures and to contracts already concluded but still under performance, in order to ensure the necessary level of legal certainty. This matter cannot be adequately regulated at national level, considering the legal form of the act. Sufficient time should be provided for Member States to transpose the act, as otherwise this may create legal uncertainty and a regulatory gap during the transition period.

HUNGARY (HU)

Proposal for a Regulation of the European Parliament and of the Council on public contracts and concessions

Questions by Hungary

September 2026

PUBLIC

1. What are the obligations of public buyers in applying the rules on policy objectives in Article 4(4) and Article 5? If there are no specific obligations, then what is the legal value of having Article 5 in the Regulation?
2. Why is Regulation (EU) 2023/1115 on deforestation neither listed in Article 25(1) among mandatory exclusion grounds nor is its exclusion ground deregulated in Article 147?
3. Do you envisage a possibility for Member States to be able to supplement the list of optional exclusion grounds in Article 26, in line with the conditions set in the C-213/07 Michaniki judgment?
4. Can Member States determine in their national legislation means of proof for exclusion grounds and selection criteria in case evidence is not available through the electronic eligibility service (Article 28)?
5. As regards the rules on determining the estimated value of the contract, why were current rules on aggregation and the prohibition of subdivision of procurements with the aim of avoiding the scope of the rules not carried over into the text of the Regulation?
6. Are any horizontal procedural rules and rules on economic operators applicable to special procedures beyond the provisions specified in Article 46?
7. Can Member States maintain or introduce mandatory provisions on the use of green criteria in light of the rules of the Regulation in this field?
8. What is the relationship between European preference rules in the Regulation and measures adopted under the International Procurement Instrument (IPI)?
9. It is crucial that stakeholders clearly understand what kind of award criteria are permissible, also in light of the soft obligation to take quality criteria into account and taking into account that design contests (characterized by the general assessment of aesthetical, architectural etc. aspects by a jury) should be substituted by the general procedures. Article 98 Paragraph 3. contains the general legal requirements relating to award criteria. These requirements are formulated differently than the current text of the Directives in that they specifically require “objective and measurable” criteria. This change suggests that the legal test that award criteria have to meet would change and become stricter not allowing such criteria that are based on the assessment of professional/aesthetical etc. aspects. Please explain if this is intended or what is the aim of the changes in the general requirements for award criteria.
10. Please explain what the changes in the conditions of a substantial modification would imply, in particular, how they change compared to the current Pressetext-based test. In particular, how does the condition “would have changed the condition of competition” relate to the current test and whether “changes essential terms or conditions” would mean that certain conditions are always regarded as essential irrespective of the magnitude of change.
11. What is the relationship between the rules on public summaries (Article 110) and eForms?

12. Please explain whether the wording in the definition of operating risk (Article 115, paragraph 2.) would bring about any changes in how certain contracts are classified now, in particular are availability-fee contracts meant to be included?
13. How do you envisage the development of the different elements of the digital ecosystem? Please provide a timeline on how the Commission expects the roll out the relevant systems and what is expected from Member States.
14. Can Member States continue to oblige their national public buyers to use their national e-Procurement system, without allowing private operators or the use of other Member Sates' systems? Is our interpretation correct that member states which now consider the e-procurement service a public task are not obliged to liberalize their market.
15. Can member states collect more data – as required by national law – than what is regulated in Article 134. as content of the NPPDS?
16. What criteria did you use for determining which sectoral rules to include in the PPA and amend under Article 147?
17. Do you have any plans for amending or absorbing the public procurement provisions of currently ongoing legislative files (e.g. Critical Medicines Act, Industrial Accelerator Act, Cloud and AI Development Act)?

PUBLIC

ITALY (IT)

Comments on the Proposal for a Regulation on Public Contracts and Concessions (Public Procurement Act)

1. Shared Objectives and Conditions for an Effectively Simplifying Reform

Italy supports the objectives pursued by the proposed Public Procurement Act, including the strengthening of competition, the quality of public expenditure, digitalisation, SME participation, labour protection, sustainability, resilience of supply chains and European preference. Likewise, the rationalisation of procedures, the enhanced use of preliminary market consultations, the broader possibility of negotiation and the integration of public procurement, utilities and concessions into a single framework are welcome developments.

At the same time, achieving these objectives requires due consideration of the different levels of maturity of national systems. While Article 1(3) states that the Regulation does not govern national administrative or general contract law beyond the matters expressly regulated and does not affect the organisation of national administrations, the practical scope of this safeguard remains unclear. Article 1(2) extends the Regulation to aspects of planning, contract performance, digital systems and governance mechanisms. For this reason, the Regulation should expressly clarify that national provisions ensuring equivalent outcomes or higher levels of protection remain permissible, provided that they are proportionate, transparent and non-discriminatory.

More generally, while recognising the advantages of greater harmonisation, Italy considers it essential to avoid the adoption of a directly applicable instrument that could generate overlaps, interpretative uncertainty or delays in implementation. In recent years, the Italian procurement framework has undergone significant reforms, including those linked to the National Recovery and Resilience Plan (PNRR). Public administrations and economic operators therefore require stability, clarity and legal certainty. Italy has consistently supported the retention of directives as the preferred legal instrument, considering that simplification, consistency and harmonisation can also be achieved through a highly harmonised directive while preserving sufficient flexibility for national adaptation. The choice of legal instrument should therefore remain a central issue during negotiations.

In this context, harmonisation should not result in the loss of safeguards and advanced solutions already developed by Member States. A general non-regression clause should therefore be introduced, allowing Member States to maintain compatible national rules where they ensure equivalent or higher levels of protection. Adequate transitional periods and a clear delimitation of Member States' powers should also be provided to ensure an orderly implementation of the new framework. Particular attention should additionally be paid to the relationship between above-threshold and below-threshold procurement. Given that the Italian Public Procurement Code applies a unified approach to both categories, the future European framework should avoid recreating fragmentation of rules and administrative requirements.

2. Equivalence and Non-Regression of National Systems

2.1 General Non-Regression Clause

The proposal does not contain a general clause on equivalence and non-regression. The issue is not merely the preservation of more detailed national rules, but the possibility that directly applicable and exhaustive European provisions could be interpreted as preventing the continuation of national solutions that are already consistent with EU objectives and, in some cases, have recently been introduced under the PNRR.

A specific provision should therefore allow Member States to maintain or introduce national measures that ensure equivalent or higher levels of digitalisation, professionalisation, labour protection, contractual balance, integrity and market access, provided that such measures are compatible with Treaty principles. Such a clause would preserve advanced national systems without undermining uniform competition safeguards.

2.2 Digitalisation: BDNCP and FVOE

Articles 127 to 136 establish a European digital ecosystem based on interoperability networks, the electronic eligibility verification service, National Public Procurement Data Spaces and the European Public Procurement Data Space. Although Article 133(4)(d) allows the Commission to select national services that meet common requirements and Article 134 enables Member States to establish or designate national data spaces, the recognition of existing national infrastructures remains uncertain and dependent upon future Commission decisions.

Moreover, Article 135 establishes the European Data Space as a central repository and requires transfers of information from national systems, while Article 134 covers an extensive range of data, including information on participants, subcontractors, tenders, contracts, testing documents, payments, litigation, risk indicators and below-threshold markets.

Italy therefore considers it necessary to provide for the explicit recognition of the National Public Contracts Database (BDNCP), the recognition of the Virtual Dossier of Economic Operators (FVOE) as equivalent to the European eligibility verification service, the effective application of the "once only" principle so as to avoid duplication and full data migration, and the adoption of a federated architecture in which data remain at national level and are transmitted only when strictly necessary.

2.3 Qualification of Contracting Authorities

Articles 138 and 139 govern national coordination authorities and professionalisation requirements but do not expressly recognise the possibility of requiring contracting authorities to possess specific organisational, professional and digital qualifications before independently carrying out procurement and contract-management functions.

The Italian system of qualification of contracting authorities and central purchasing bodies is a key component of the reforms implemented under the PNRR and cannot be reduced to a simple training measure. Although Articles 1(3) and 138(3) may support its preservation, legal uncertainty remains. An express provision should therefore safeguard national systems of qualification, centralisation and aggregation of demand and clarify that the Regulation does not automatically confer full procurement autonomy on all public buyers.

2.4 Advanced National Digitalisation Levels and BIM

Article 65 requires the use of Building Information Modelling (BIM) for works with a value of at least EUR 25 million. Italy has already adopted a more advanced framework with lower thresholds and therefore considers it necessary to clarify that the proposed threshold represents only a minimum European standard. Member States should remain free to maintain more extensive obligations concerning BIM, digital-platform certification and other information-management tools covering the entire contract lifecycle.

3. Safeguarding National Institutions and Mechanisms

3.1 Price Revision Clauses

Article 105 permits contracting authorities to include mechanisms for the adjustment of contractual conditions, including indexation linked to price indices, inflation or cost volatility. Article 104 also refers to indexation as a possible contract-performance condition, while Article 124 contains similar provisions for concessions.

However, the proposed framework remains optional and does not expressly recognise the ability of Member States to impose mandatory adjustment mechanisms. Following Legislative Decree No. 209 of 2024, Italy considers price revision a structural tool for preserving contractual balance and ensuring continuity of performance through mandatory clauses, official indices and differentiated rules for works, services and supplies.

The Regulation should therefore expressly confirm the right of Member States to regulate price-revision mechanisms, including mandatory clauses and the determination of indices, thresholds, periodicity and implementation methods.

3.2 Contract Modifications and Rebalancing

The rules governing modifications are set out in Article 106 for public contracts and Article 125 for concessions. While the proposal prohibits alterations to the initial economic balance in favour of contractors or concessionaires, it also allows modifications resulting from unforeseeable circumstances and acknowledges the need to ensure continuity of performance.

Further clarification is required regarding the modifications that do not constitute an alteration of the original economic balance. In particular, the Regulation should expressly recognise price-adjustment and rebalancing measures that are based on objective and verifiable factors and are strictly limited to neutralising the effects of unforeseen circumstances, thereby restoring the original allocation of contractual risks.

3.3 Labour Protection and Fair Remuneration

Several provisions already recognise the importance of labour protection. Article 4(4) refers to obligations arising from national law and collective agreements; Article 55 highlights collective bargaining while respecting national diversity and social-partner autonomy; Article 104 includes remuneration, working conditions and safety among contract-performance conditions; and Article 24(7) allows restrictions on subcontracting where there is a documented risk of social or labour-law violations.

Against this background, it should be clarified that national mechanisms for identifying the applicable collective agreements, including systems for verifying equivalence of protections, are compatible with EU law where they aim to prevent contractual dumping throughout subcontracting chains.

With regard to fair remuneration, Article 98(2) allows contracting authorities to establish a fixed price and conduct competition solely on quality criteria. While this supports the compatibility of Italian rules applicable to engineering and architectural services, it would be useful to clarify that national rules ensuring fair professional remuneration remain permissible where proportionate and compatible with genuine competition.

3.4 Consortia and SMEs

Article 6 expressly includes joint ventures, consortia and temporary groupings of undertakings within the concept of economic operator, even where they do not possess legal personality. The proposal also prevents the imposition of a specific legal form and emphasises the need to avoid disproportionate barriers for SMEs. Nevertheless, it does not take account of the specific Italian models of permanent consortia, cooperative consortia and craft-enterprise consortia.

The Regulation should therefore preserve national forms of aggregation and their related qualification and execution regimes, provided that the effective availability of resources is ensured and multiple or purely formal use of requirements is prevented.

Although the proposal contains SME-friendly measures, including lot division and proportionality requirements, it does not expressly safeguard national initiatives designed to facilitate SME participation in supply chains and below-threshold markets. Such measures should also be covered by a general non-regression principle where proportionate and non-discriminatory.

3.5 Project Finance, Public-Private Partnerships and Concessions

The proposal establishes a unified framework for concessions and contains provisions on operational risk, economic balance, duration and financial structure. It does not, however, regulate concession procedures initiated by private operators through project finance, as provided for by Article 193 of the Italian Public Procurement Code.

The absence of European regulation in this area does not imply any incompatibility between project-finance schemes and EU law. On the contrary, the current Italian model, revised following discussions with the European Commission after the CJEU judgment concerning pre-emption rights, appears consistent with the flexible open procedures contemplated by the proposal.

Nonetheless, the lack of an explicit legal basis creates uncertainty concerning the compatibility of the initiative phase, project evaluation, possible pre-emption rights and subsequent competitive procedures with the European framework. The Regulation should therefore expressly recognise national PPP mechanisms initiated by private operators, provided that final award decisions result from transparent, competitive and non-discriminatory procedures.
Further clarification is also needed regarding Article 126(3), which grants concessionaires an "appropriate compensation" in the event of early termination for overriding public-interest reasons. This provision should be coordinated with national law, the contractual allocation of risk and the grounds for termination so as to avoid creating an excessively broad and uniform right to compensation.

3.6 Collaborative Contract Management and Dispute Prevention
The proposal does not expressly safeguard national mechanisms for collaborative contract management and the prevention or rapid settlement of disputes, including collaboration agreements, reservations, amicable settlements, transactions and technical advisory boards.
Although Article 1(3) could arguably allow these instruments to remain within the sphere of national administrative and contract law, the fact that the Regulation directly governs contract performance makes an explicit safeguard preferable. The Regulation should therefore clarify that Member States may maintain alternative dispute-prevention and dispute-resolution mechanisms, provided that they are not used to introduce contract modifications incompatible with Articles 106 and 125.

POLAND (PL)

PL initial written comments on the proposal for Public Procurement Act (PPA)

PUBLIC

General remarks

1. The draft regulation contains procedural provisions; and since the regulation is, by its very nature, intended to be applied uniformly across all Member States, this would require procedural matters to be set out in detail within the regulation, thereby ensuring such uniformity. However, the way in which procedural matters are regulated in the draft PPA is of a general nature, resembling the approach taken in directives. An exception to this are the provisions relating to procedures in which the European Commission is involved (e.g. Article 20). This approach will necessitate the creation of the indispensable supplementary regulations at national level, which, on the one hand, will lead to differences in the approach to application of the Regulation at national level in each Member State (contrary to the Commission's intentions), and, on the other hand, will cause enormous difficulty in applying these provisions for contracting authorities, which, in some areas, will have to refer to the provisions of the Regulation and its numerous annexes and related implementaing and delegated acts, whilst at the same time having to apply national provisions in a supplementary manner. Such an approach will not contribute to simplification but will have the opposite effect – indeed, it will make the public procurement system very complicated.

2. The draft introduces and employs a number of concepts hitherto unknown in the context of the directives (e.g. Article 6 point (14) - "contract details", point (10) - "labour-intensive contract", point (15) - "contract information", point (20) - "public summary", point (23) - "societal challenge"). Introducing new concepts to replace those previously established for public procurement - at the level of directives governing the award of public contracts and concessions - is unnecessary; it further complicates the application of the regulation in Member States and creates legal uncertainty. Moreover, certain new concepts - such as "digital business credential tool" (Article 6 point (3)) or "eligibility profile" (Article 6 point (5)) - are being introduced in conjunction with new elements of the public procurement (or concession) award procedure, specifically linked to the introduction of new electronic tools and functions. The significance of these concepts regarding the operation of these new IT tools remains unclear. Incidentally, given the timeline envisaged in the regulation for the application of its provisions, it seems doubtful that Member States and their contracting authorities will be able to adapt their national systems to these solutions by the time the regulation is applicable; since these solutions are pivotal to the procedural solutions proposed in the regulation,

this will create chaos in public procurement (after all, contracting authorities still face problems using the EC's notice publication tool, despite that solution having been designed and implemented over several years). The rushed manner in which the draft regulation is being processed does not lend itself to considering the coherence of the proposed solutions.

3. It is not legislatively correct to incorporate general EU policy objectives regarding environmental, climate, social justice issues, or innovation, into the regulations governing public procurement and concession award procedures for horizontal application, as it is not always possible or advisable to take these considerations into account in every single case of awarding a public contract or a concession. For contracting authorities, this creates an additional burden - requiring them to provide justifications in the cases where these objectives are not considered - and opens the door to arbitrary interpretation by the various bodies overseeing, monitoring or controlling the award of contracts and concessions, on the one hand, as well as to judicial litigation by economic operators, on the other.

4. Even though PL strongly supports a wide access to negotiations in procurement procedures, it is questionable whether the PPA proposal ensures the transparency of the negotiation process in open procedure. The proposed approach to negotiations, which provides for a wide margin of discretion for contracting authorities whether or not to negotiate (e.g. decide not to negotiate if less than three economic operators remain eligible for negotiations and to award a contract on the basis of the tenders received) as well as to the characteristics of contracts, may be a source of irregularities (e.g. by distorting competition and non-discrimination principles) or may be inconsistent with the EU's international obligations. Therefore, we suggest negotiations being subject to basic procedural guarantees in order to ensure that Treaty principle are being observed.

5. Whilst the aim of reducing the burden on contracting authorities through the automation of processes in public procurement procedures and concession contract award procedures is undoubtedly justified, the automatic assessment of eligibility to participate in the procedure, as proposed in the PPA proposal, raises doubts as to who bears responsibility for such assessment in the event of errors.

6. What is more, there are doubts as to whether the proposed IT solution enabling access to criminal record information complies with the GDPR. The IT solution to be developed by the European Commission seems incompliant with the Polish legal system, which restricts access to criminal record information solely to those who are directly concerned – that is, the individuals to whom the information relates – and to authorised entities. It is therefore not possible to provide free access to such a database via the aforementioned tool. Access to certain information from the National Court Register (KRS) is also restricted, and there is

no legal basis for granting unrestricted access to the data stored in these systems via the eligibility tool proposed by the European Commission for the qualification of economic operators.

7. Generally speaking, the approach aimed at building a coherent European ecosystem of digital procurement tools, based on the interoperability of platforms, the single data model and the principle of single submission of information by economic operators, is to be welcomed. These solutions can improve access to cross-border procurement, data quality, market monitoring and the ability to identify systemic risks.

   The chosen option, i.e. maintaining national (both public and commercial) platforms and connecting them by using common standards, should be considered more appropriate than building a single central EU platform. It leverages existing investments by Member States and preserves the continued operation of the e-Procurement Platform.

   However, the PPA proposal does not sufficiently define the operational model of the future digital ecosystem. It describes in detail the obligations relating to data collection and transmission but does not resolve fundamental issues related to the conduct of procedures, the submission of tenders, responsibility for the operation of connected systems and access to source documents. Without supplementing the draft and providing the technical specifications, it is not possible to reliably estimate the costs or the scope of the changes to the existing eProcurement platforms.

8. Finally, in our view, too many issues are to be entrusted to the Commission for adoption by means of implementing or delegated acts after the entry into force of the PPA. Public procurement market participants may find it difficult to identify the applicable rules to be adopted by the Commission in non-transparent EU comitology processes, beyond the effective control of Member States and possible influence of various stakeholder groups.

Specific remarks

1. Article 1(2) of the draft regulation states that the PPA lays down procedural rules relating to the award of public contracts and concessions for works or services, but it also sets out strategic objectives that should be taken into account.

   There is no doubt that the identification of strategic objectives for public procurement is necessary in EU legislation; however, the inclusion of such objectives in the text of a legislative act that regulates procedures – and which is binding in its entirety and directly applicable – raises serious concerns.

   The purpose of setting out EU public procurement policy objectives in Article 5 of the PPA proposal is unclear, given that contracting authorities are required to take

them into account when awarding all public contracts as well as concessions. Since these objectives are defined in general terms, there is a significant risk of overinterpretation regarding the obligation to apply them - and the manner of their application - in specific procedures by the various bodies overseeing the award of contracts and concessions; this, in turn, would create uncertainty concerning the manner and scope of the PPA's application. In addition, such approach raises the risk of litigation as economic operators might tend to read that provision as an obligation of contracting authorities to include environmental, climate, social justice issues, or innovation, in each and every single procurement award procedure.

Therefore, it is proposed that Article 5 be deleted with its content potentially being transferred to the preamble.

2. Article 4 para (3) establishes the principle that contracting authorities shall take appropriate measures to ensure the integrity of the procurement procedure.

   It is unclear what, in relation to the procurement procedure, is meant by this principle of ensuring its 'integrity'. This is a new principle which, it would seem, should firstly be clarified in terms of the concept itself and, secondly, given substance through appropriate procedural provisions within the Regulation itself.

   The concept of 'appropriate measures' is vague and, in an implementing act such as a regulation, should not be left to the contracting authority to determine.

   Furthermore, the principle that contracting authorities may not design their contracts in a way that excludes them from the scope of the PPA or unduly restricts competition lacks clarity. In the case of principles, it is essential to clearly define the scope of their application so that there is no ambiguity in this regard. Otherwise, this increases legal uncertainty and exposes contracting authorities to allegations of irregularities in procedures relating to breaches of this principle, which is interpreted according to arbitrary rules.

3. Although, according to Article 1(1) and (2) of the proposal, it is intended to lay down rules applicable to both public contracts and concession contracts, the majority of the provisions relate solely to procurement contracts.

   In particular, Article 4 lays down rules regarding the award of procurement contracts, whilst no such rules are defined for the conclusion of concession contracts, which are, however, of a rather specific nature.

   On the other hand, by virtue of Article 114 para (2), all the provisions of PPA shall be applicable to concession contracts. Such approach would be counterproductive due to the specificity of concession contracts which requires an adapted approach. It is to be reminded that before 2014 concession contracts were regulated only by primary law (whith the sole exemptions of definitions and

rules on contracts awarded by concessionaire of works concession as provided for in 2004 Directives) and covering them by the same regime as public contracts would result in an unjustified rigidity.

4. The proposed definition of 'economic operator' in Article 6 para 1 letter (e) is based on the dichotomous distinction between natural and legal persons. The PPA proposal does not take into account the third category of legal entities recognized under Polish civil law, namely entities without legal personality, referred to in Article 33(1) of the Polish Civil Code as 'organizational units which are not legal persons but which are granted legal capacity by law'. Consequently, numerous provisions of the PPA relating to economic operators (e.g. Article 27 of the PPA requiring the mandatory exclusion of an economic operator from participation in a procurement procedure where that economic operator, or key persons in its functioning in case of legal persons, has been the subject, in any Member States, of a conviction by final judgment of the offences specified in that provision) do not take into account the specific nature of entities without legal personality. The correct application of the PPA would therefore require a fundamental change in Polish civil law.

   This example shows that full harmonization of public procurement legislation is not possible without prior unification of civil law and, consequently, that the assumption regarding inviolability of national civil law, as stated in recital 2 of the PPA, has not been realized.

5. The concept of 'procurement details' requires clarification.

   In accordance with Article 6 point (14) of the draft PPA the term „procurement details" 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

   The definition is unclear – in particular, such a definition would also encompass oral information, whereas in this case the focus is on essential matters describing both the subject-matter of the contract and procedural issues relating to the future contract that require documenting, and thus the contract (concession) documentation.

   At the same time, it is unclear how this definition relates to the subsequent definition in Article 6 point (15), according to which „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.

In this context, further confusion arises from the concept of a „public summary" introduced in Article 6 point (20), which is intended to refer to an overview of the procurement at a given time published by the public buyer.

6. Article 22 para (1) second subparagraph of the draft PPA introduces a principle whereby a group of contractors is deemed to fulfil the selection criteria if:
   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.

   In the case of letter (a), the assumption that, within a group, only one entity can meet all the requirements raises the question of the purpose of forming such a group, given that only one entity meets all the requirements and is able to apply for the contract on its own.

   In practice, such a rule may lead to abuses and the use of that entity merely as a figurehead, whilst the contract is actually executed by those group members who do not possess the relevant skills.

   With regard to letter (b), the combining of experience or other professional capabilities within a group creates a risk that the contract will be performed by those members of the group who do not possess the relevant competences.

6. The concept of a 'key person' introduced in Article 25 para (1) may give rise to difficulties in the application of the provision; according to this definition, „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.

   This definition may give rise to problems in application, as the powers and authorisations listed in points (a) to (c) may, within legal persons, also be assigned to persons other than those holding leading positions.

7. The new optional exclusion ground proposed in Article 26 para (1) letter (a), under which contracting authorities may, at any stage of the procedure, exclude an economic operator – including individual members of a group of economic operators – from participating in the procurement procedure, where the public buyer can demonstrate, by any appropriate means, that the economic operator has breached the applicable obligations under relevant Union legislation, as

referred to in Article 4 para (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), may create scope for abuse. It should be noted that this may concern any breach of policies which are interpreted in a general manner.

Furthermore, it is doubtful whether, in the case of the optional exclusion grounds under points (g) and (h) (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 and the economic operator has benefitted from foreign subsidies distorting the internal market and having impact on the tender), their optional nature is consistent with sector-specific legislation.

8. It is unclear to what extent the contracting authorities are obliged to use an electronic tool for certifying an economic operator's eligibility to participate in a procedure, and whether they may freely determine the content of the economic operator's declaration regarding compliance with the selection criteria and the absence of grounds for exclusion, or whether this must be equivalent to the current ESPD.

9. PPA does not provide for the possibility of awarding contracts for design services through design contests. Design contests are an important and practical part of the EU *acquis*. They are the most efficient and innovation-friendly method of procuring architectural, urban planning and engineering services. With the recognition of the importance of design contests for shaping urban and architectural planning, the Polish law (Article 325 para. 2 of the Public Procurement Law, hereinafter: PPL) requires the use of a design contest for construction design services. Moreover, in the GPA, one of the grounds for the direct award of the contract refers to a design contest.

10. As for dynamic procedure, the proposal to restrict competition by introducing a random, "indiscriminate" algorithmic determination, raises concerns, in particular as regards its compliance with the EU's international obligations.

11. The optional nature of environmental, social and similar requirements is in line with PL position.

    Although the PPA itself is not intended to impose new mandatory requirements for green procurement, it does not contain an adequate safety valve for situations where the cumulation of mandatory requirements arising from sectoral legislation will result in the need to cancel the procurement procedure or waive other statutory obligations of the contracting authorities or the necessary investments, due to a lack of tenders or the contracting authority's budget being exceeded.

12. As for the method and scope of national procurement monitoring, it should be examined whether additional reporting obligations for contracting authorities represent an unnecessary administrative burden and whether they unduly interfere with Member States' competences to monitor and control national procurements.

Remarks on digitalisation

1. The proposals may result in the Polish Public Procurement Office (hereinafter: PPO) being entrusted with new and extensive tasks, including in particular:

   - establishing or operating the national procurement data space (NPPDS);
   - ensuring the transfer of data to the EU public procurement data space and the Publications Office of the EU;
   - major overhaul of the e-Procurement Platform and Public Procurement Bulletin (Biuletyn Zamówień Publicznych – BZP) (data collection scope, new notice forms, integrations);
   - integration into the Polish node of the European economic operator's qualification service and digital business credentials;
   - cooperation in integrating the procurement system with national public registers;
   - monitoring the functioning of the market and preparing analyses based on micro-data;
   - supervision of commercial purchasing platforms providers (certifications, audits);
   - ensuring business continuity, cybersecurity and user support in a cross-border environment.

   The scale of these tasks goes beyond the current functions related to Public Procurement Bulletin and the e-Procurement Platform. Implementation will require new competences, increased employment and separate financing for investments and subsequent maintenance of the system.

2. As for conduct of procurement procedures and submission of tenders, the PPA proposal does not clearly specify where and how an economic operator will submit a tender after identifying a procurement opportunity within the European procurement digital ecosystem. It remains unclear whether the tender will be:

   - submitted directly through the platform designated by the contracting authority;
   - transmitted between platforms via the interoperability network;
   - optionally submitted by a Commission service;
   - handled under different models depending on the approach adopted by the Member State.

PUBLIC

The proposal also does not specify which system is responsible for ensuring that a tender has been duly received, as well as for timestamping, confidentiality, encryption, the modification or withdrawal of tenders, and the handling of system failures. It is also unclear how automated assessment within the electronic eligibility service will operate.

The Commission should present a complete procedural and technical model before Member States are required to commence implementation work.

3. Article 134 refers not only to information on procurement procedures, but also to procurement documents, tenders, contracts and acceptance documents. The literal wording of the provision may imply an obligation to make source documents available, including all tenders actually submitted.

   It should be clearly specified:

   - whether full documents or only data derived from those documents are to be transmitted;
   - whether the obligation covers all tenders or only the successful tender;
   - whether the documents are to be copied to the NPPDS or may remain in the source system;
   - what rules apply to the protection of trade secrets and personal data;
   - who will have access to non-public documents and on what basis;
   - what the retention periods for the documentation will be.

   Mandatory centralized collection of full tenders and contracts would significantly increase costs, security risks and the scope of responsibility of the NPPDS operator.

4. Concerns arise from the inclusion in the data reporting obligation of contracts with a value of at least 10 000 euro, without a direct link to the national thresholds for the application of public procurement rules.

   This may entail the need to register a significant number of purchases currently carried out outside the scope of the Polish Public Procurement Law and outside eProcurement systems. This would require the development of additional tools, integration with financial and accounting systems, or manual data entry by contracting authority.

   Poland advocates linking the data reporting obligation to the national threshold for the application of the PPL or, at a minimum, limiting the scope of information required for contracts below that threshold.

5. The proposal provides for obligations on eProcurement service providers and sanctions for non-compliance with those obligations. This entails the need to establish a national mechanism for the verification of commercial platforms.

It should be specified:

- the model for certification or confirmation of platform compliance;
- the authority responsible for supervision;
- the scope and frequency of testing;
- the procedure for connecting to the NPPDS and the interoperability network;
- the rules governing the operator's liability for failure to deliver a tender or for incorrect data;
- the procedure for imposing sanctions and the appeal procedure.

Entrusting the Polish PPO simultaneously with the role of operator of the e-Procurement Platform (Platforma e-Zamówienia) and that of the authority supervising competing commercial platforms may give rise to concerns regarding a conflict of interest. The operational and regulatory functions should be appropriately separated.

6. The proposal does not specify responsibility for providing support to economic operators and contracting authorities in an environment of interconnected systems. This is particularly important when submitting tenders, when support must be immediately available.

It should be specified:

- which operator is responsible for providing user support;
- in which language support is provided;
- who is responsible for diagnosing a failure occurring at the interface between national, commercial and Union-level platforms;
- what the legal consequences of an interruption in the operation of the network are;
- who is liable for damage resulting from the failure to deliver a tender;
- what response times and availability requirements will apply to operators.

7. At this stage, it is not possible to determine whether the requirements of the proposal can be implemented by upgrading the existing e-Procurement Platform or whether a new solution will need to be developed.

The potential scope of changes includes:

- new types of forms and information;
- handling of data throughout the entire procurement lifecycle;
- data on contracts, payments and contract performance;
- storage of or access to source documents;
- connection to the NPPDS, PPDS and TED;
- integration with national registers;
- handling of economic operators' digital credentials;

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- exchange of information with commercial platforms;
- handling of procurements with a value of at least 10 000 euro;
- enhanced analytics, monitoring and cybersecurity.

Before selecting the architecture, it is necessary to obtain the final data model, API specifications, validation rules, security requirements and the target model for the transmission of tenders and documents.

8. We support the overall direction of the reform in the area of digitalization, subject to substantial clarification of the proposal.

Therefore, PL suggests:

i. the Commission to present a complete model for the conduct of procurement procedures and the submission of tenders;

ii. a clear distinction between data, metadata and source documents;

iii. raising the EUR 10,000 threshold or linking it to the national thresholds for the application of the PPL;

iv. establishing a uniform mechanism for the verification of eProcurement service providers;

v. defining responsibility for system failures, user support and the due delivery of tenders;

vi. ensuring interoperability while maintaining existing national and commercial platforms;

vii. preventing duplication of data across BZP, NPPDS, PPDS and TED;

viii. providing Member States with an appropriately long implementation period;

ix. guaranteeing funding for the modernization of national systems;

x. involving representatives of Member States in the adoption of implementing and delegated acts, in particular concerning data model and technical specifications.

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ROMANIA (RO)

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1. Article 26 Notification to the Commission

Article 26(4) requires a public buyer that excludes an economic operator under Article 26(1)(h) to inform the Commission, but it does not specify a time limit, format or minimum content for that notification.

Please specify the notification deadline and the information to be transmitted, or empower the Commission to establish a uniform notification format.

2. Article 52 Energy efficiency

Article 52(1)(d) requires public buyers purchasing buildings, or entering into new rental agreements for buildings, to ensure that the buildings meet at least the technical screening criteria in section 7.7 of Annex I to Delegated Regulation (EU) 2021/2139.

Point (d)(i) exempts purchases whose purpose is "to undertake deep renovation or demolition". The proposal does not define "deep renovation". It does not refer to the definition in Directive (EU) 2024/1275 on the energy performance of buildings, and it does not set a minimum level of intervention, energy performance or investment needed to rely on the exception. It is also unclear whether partial demolition, staged renovation or a renovation of lower ambition, such as a major renovation, would qualify.

Please define what “deep renovation” means and how can it be assessed.

3. Recital 42 and Article 98 Award criteria

Article 98(1) and (4) establish the best price-quality ratio and minimum quality weightings as the general rule. Article 98(5) allows a derogation where quality can be ensured through specifications, contract performance conditions or a combination of those instruments with award criteria. For standardised purchases, where meaningful quality differentiation between tenders may be very limited, the practical scope of that derogation should be explicit.

Please confirm that Article 98(5) allows public buyers, where objectively justified by the nature of the contract and adequately documented, to award a contract on the basis of the lowest price or lowest cost when the required quality is fully secured through specifications or contract performance conditions.

Please also indicate whether the Commission intends to issue guidance on the design, weighting and evaluation of quality criteria and on the documentation of derogations under Article 98(5), in order to limit divergent interpretations and legal challenges.

4. Article 73 (2)(b) European preference requirements

Could the Commission clarify whether any limits or safeguards are envisaged regarding the percentage reduction applied under Article 73(2)(b)? In particular, is there a maximum percentage reduction that contracting authorities may apply for evaluation purposes, and how does the Commission intend to ensure a consistent application of this provision across Member States?

5. Article 88 Specifications

Article 88(3) requires specifications to describe the characteristics of the solution in terms of functional requirements, defined as requirements that do not refer to specific technical means, design or methods. Article 88(4) allows derogation where standards are mandatory under Union law or where characteristics cannot be sufficiently or appropriately described in functional terms, in which case technical prescriptions of the works or references to standards may be used.

The proposal does not expressly provide that functional requirements and technical specifications may be combined. In addition, Article 88(2) allows characteristics to relate to methods or specific processes of production, while the definition in Article 88(3) excludes references to methods.

For works executed on the basis of an approved technical design, permits and approvals, the essential characteristics of the works (alignment, geometry, structural solution, materials and safety solutions) are already determined before the procurement. The proposal, however, does not specify how the derogation in Article 88(4) applies in such cases. Nor does it address mandatory technical requirements that stem from national law compatible with Union law or from authorisation acts, rather than from Union law.

Moreover, the last subparagraph of Article 88(6) requires equivalent solutions to be accepted whenever reference is made to the standards or specifications in paragraph 4, including where the requirement is mandatory.

Please clarify or provide for the following:

- that the derogation in Article 88(4) may be applied to individual characteristics, so that functional and performance requirements may be combined with technical prescriptions, drawings, bills of quantities, execution methods and testing or acceptance conditions within the same specifications;
- that characteristics are deemed not capable of being sufficiently or appropriately described in functional terms where works are executed on the basis of an approved technical design, permits, approvals or technical authorisations, or where a specific solution is required for safety, interoperability or continuity with existing infrastructure;
- that the first ground for derogation in Article 88(4) also covers mandatory technical requirements laid down by national law compatible with Union law and requirements resulting from authorisation acts;
- that the obligation to accept equivalent solutions under the last subparagraph of Article 88(6) does not apply to mandatory standards or requirements of the kind referred to above, while the reference to "or equivalent" is retained for all other requirements; and
- how the reference to methods or specific processes of production in Article 88(2) relates to the exclusion of methods from the definition of functional requirements in Article 88(3).

6. Article 99 Life cycle costing

Article 99(1)(b) allows environmental and climate externalities to be monetised, while Article 99(2) and (3) require the method to be disclosed, accessible, objectively verifiable and non-discriminatory. The proposal does not identify common methodologies, reference values or minimum evidentiary requirements for monetisation.

Please clarify which methodologies, data sources and reference values public buyers should use and whether the Commission will provide a common methodology, guidance or standard reference values to support consistent and verifiable life-cycle costing across Member States.

7. Article 100 Division into lots

Article 100(2) refers to cases in which division into lots is not mandatory pursuant to paragraph 6, although the power for Member States to require division into lots is contained in paragraph 7. This appears to be an incorrect internal cross-reference. In addition, the relationship between the public buyer's assessment under Article 100(2) and a national rule adopted under Article 100(7) should be made explicit.

Please correct the reference in Article 100(2) from paragraph 6 to paragraph 7, if intended, and clarify whether a Member State may entirely remove the public buyer's discretion to conclude that division into lots is not appropriate or whether national rules must preserve defined exceptions based on the subject-matter, efficiency or integrity risks of the procurement.

8. Article 102 Corrections and cancellation

Article 102 introduces useful flexibility but leaves several procedural boundaries open to interpretation.

- Article 102(1) permits a correction without changing the public summary of competition, while requiring an extension of the submission deadline when the correction is made less than 24 hours before that deadline. Please clarify how the extended deadline must be notified or published and whether the public summary must be updated where it contains the original deadline.
- Please provide criteria for distinguishing a permissible correction under Article 102(1) from a substantial alteration that requires a new procurement procedure, including changes that affect competition, eligibility, award methodology or the economic balance of the envisaged contract even if the subject-matter is described as unchanged.
- Article 102(3) requires cancellation where uncorrectable material errors are liable to distort competition, while Article 102(4) permits cancellation before signature on broader grounds. Please clarify the objective circumstances that may justify cancellation under paragraph 4 and the safeguards against arbitrary or discriminatory use of that power.

9. Article 106 Contract modifications

Article 106 repeatedly uses the concept of the initial economic balance of the contract, but does not define it.

Please provide objective criteria for determining when a modification alters the initial economic balance in favour of the contractor, taking account of changes in price, scope, risk allocation, performance obligations and economic advantages.

10. Article 128 Interoperability network

What transition period is envisaged for Member States to adapt and update their national procurement systems to comply with the new Regulation? In addition, could the Commission clarify how procurement procedures launched during the transition period will be conducted, particularly where national systems have not yet been fully adapted to the new procedures and digital requirements introduced by the Regulation?

11. Article 34 Launch and conduct of the open procedure

Article 34(6) – reference to "first tenders"

With regard to Article 34(6), we propose replacing the term "first" with "eligible" and revising the provision as follows:

"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 eligible tenders, after applying the award criterion, provided that they have reserved the possibility of doing so in the public summary of competition."

The current wording of the Draft Regulation provides:

"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."

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We consider that the current wording may create ambiguity as to the intended meaning of “first tenders”, potentially suggesting that the contract would be awarded to the tenderer who submitted its tender first, in chronological order, rather than on the basis of the applicable award criterion.

For the sake of clarity and to avoid any possible ambiguity regarding the basis on which the contract is to be awarded, we therefore suggest referring to “eligible tenders” and expressly providing that the award criterion is to be applied.

12. Articles 26, 94 and 95 – grounds for exclusion relating to prior involvement in the preparation of the procurement procedure

As a general observation, Article 57(4)(f) of Directive 2014/24/EU on public procurement currently provides, among the optional grounds for exclusion, for the situation where a distortion of competition has occurred as a result of the prior involvement of economic operators in the preparation of the procurement procedure, where such distortion cannot be remedied by other, less intrusive measures than the exclusion of the economic operator concerned.

Under the wording proposed in the Draft Regulation, this situation is no longer included among the optional grounds for exclusion set out in Article 26. Instead, it is addressed separately in Article 95, although it similarly results in the exclusion of the economic operator where there are no other means of ensuring equal treatment and the economic operator has been given the opportunity to demonstrate that its prior involvement in the preparation of the procurement procedure did not distort competition.

It would therefore be useful to include, in the recitals/preamble to the Regulation, an explanation of the rationale underlying this change and, in particular, of the reasons for addressing this situation separately from the general grounds for exclusion.

The same observation applies to Article 94 of the Draft Regulation, in relation to Article 57(4)(e) of Directive 2014/24/EU currently in force.

13. Articles 34–35 – Clarification regarding the award of a contract to several tenderers

Article 34(3) provides that, where the public buyer does not intend to negotiate, it shall award the contract, in accordance with Article 98, to “one or more economic operators”. Similarly, Article 35(1) provides that the contract shall be awarded to the “tenderer or tenderers” that have submitted the tender offering the best quality for money.

These provisions appear to allow a single contract awarded through an open procedure to be awarded to more than one economic operator/tenderer.

It would therefore be useful to clarify whether Articles 34 and 35 are intended to introduce the possibility, outside the rules on lots or framework agreements, of awarding the same public contract to several separate tenderers.

Such clarification would ensure consistency between Articles 34 and 35, the definitions in Article 6 and the award rule laid down in Article 98 and would provide legal certainty as regards the use of multiple awards under the open procedure.

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SLOVENIA (SI)

Slovenia's initial observations on the proposal for a Regulation on Public Contracts and Concessions (PPA)

Slovenia supports the objectives pursued by the proposal, i.e. simplification of public procurement rules, increased digitalisation, improved transparency, enhanced cross-border participation and greater efficiency in the use of public funds. We also support initiatives aimed at strengthening interoperability of procurement systems and reducing unnecessary administrative burdens for economic operators and contracting authorities.

However, Slovenia remains unconvinced that the proposed Regulation, in its current form, will achieve these objectives. On the contrary, we consider that the proposal risks creating a more complex, fragmented and legally uncertain framework than the one currently established under the public procurement directives. We therefore continue to favour a modernised directive-based approach, complemented by common European digital tools and harmonised technical standards, rather than a directly applicable Regulation.

1. A uniform and simplified procurement framework

A key objective highlighted by the Commission is the creation of a more uniform and simplified procurement framework across the European Union. Nevertheless, genuine unification will not be achieved in practice with this proposal. The Regulation relies extensively on future secondary legislation, references to numerous other Union instruments and continued national implementation measures. As a result, contracting authorities and economic operators will be required to navigate a highly complex legal environment consisting not only of the Regulation itself, but also of a significant number of additional legal acts and sector-specific rules.

In particular, Slovenia notes that the proposal foresees at least twelve delegated acts and six implementing acts, meaning that at least eighteen future subordinate legal acts will be required before substantial parts of the new framework can be fully understood and applied. Many essential elements of the proposed system, including technical requirements, governance arrangements, interoperability standards and operational procedures, will only be defined through these future acts. This creates legal uncertainty and makes it impossible for Member States to accurately assess implementation costs and time frame, workload and necessary legislative adaptations.

The proposal also contains numerous references to other Union instruments and policy frameworks. Consequently, users of the procurement framework will be required to consult a broad range of external legislation to determine the applicable legal requirements. This approach reduces legal clarity and accessibility.

Despite the choice of a regulation as the legal instrument, the proposal does not establish a fully self-contained procedural framework. Several provisions allow Member States to regulate certain aspects differently or in greater detail. At the same time, many procedural issues remain insufficiently regulated. As a result, Member States will in practice still need to adopt national legislation to ensure the effective operation of procurement procedures and supporting systems. The continued need for national implementing measures further demonstrates that the proposed Regulation will not produce the envisioned level of harmonisation.

As was emphasised on numerous occasions during the initial Council working group meeting, it is essential that we adhere to the established terminology and structure. For instance, excluded contracts should be incorporated into Part I of the regulation, which determines what constitutes

public procurement and what does not fall under this category. Furthermore, various procedures and techniques are unnecessarily dispersed across Regulation, also terminology has changed, but the content remains the same.

2. Digital transformation

The concerns are particularly pronounced in relation to the extensive digital transformation envisaged by the proposal. Foremost, Slovenia supports and welcomes future change in the digital space of public procurement. We consider the proposal to be ambitious and believe it has huge potential to enhance the efficiency of public procurement processes within the EU. However, it is important to acknowledge that the complexity and reliance of our procurement procedures will be entrusted to a fully operational electronic system that is available 24/7.

Core elements of the future system, including the electronic eligibility service, the digital business credential tool, the Public Procurement Data Space and National Public Procurement Data Space, and the working of eProcurement service providers, Commission's eProcurement platform and the interoperability network remain insufficiently defined. Their practical functioning, governance structure and technical requirements are expected to be developed at a later stage. Without these essential details, Member States are unable to provide, in a timely manner, a realistic assessment of the financial resources required, determine the appropriate direction for the development of information technology, organisational changes and legislative adaptations, or establish a feasible timeframe for ensuring the proper functioning of the system. Slovenia therefore considers that realistic implementation timelines and appropriate transitional arrangements will be essential. Furthermore, clarification is needed regarding the envisaged role of eProcurement service providers and the practical operation of the interoperability network. During the Council discussions it was suggested that an economic operator established in one Member State could use a domestic eProcurement service provider to participate in procurement procedures conducted by contracting authorities across the Union. If this reflects the intended model, it will require the creation of a highly complex network connecting a very large number of service provider systems throughout the EU and enabling the secure, reliable and legally robust exchange of procurement data, including tender submissions, time-sensitive communications and public opening procedures. Such an architecture would inevitably entail substantial technical, organisational and financial costs.

Slovenia also notes that the proposal does not appear to sufficiently address the transitional period between the entry into force of the Regulation and the full operational deployment of the new digital architecture. Unless the intention is for the new legal framework to become applicable only once the electronic eligibility service, digital business credential tool, Public Procurement Data Spaces and related interoperability infrastructure are fully operational, comprehensive transitional arrangements will be required. In the absence of such arrangements, Member States will be forced to develop and operate temporary solutions while simultaneously preparing the new systems, creating significant additional costs, administrative burden and legal uncertainty. Such an approach would be difficult to reconcile with the stated objective of simplification. In practice, existing national and EU-level systems would need to remain operational until the new framework is fully functional. This is particularly important given that the current eForms architecture is linked to the procedures established under the existing directives and would require substantial adaptation to accommodate the new procedures and concepts introduced by the Regulation. Slovenia therefore considers it essential that the proposal provides a clear and realistic transition strategy, avoiding parallel systems and unnecessary duplication of technical and administrative efforts. The complexity of this undertaking should not be underestimated. The implementation of

eForms demonstrated that major digital procurement reforms require considerable time and resources, with eForms alone taking more than three years to implement at both EU and national level. Considering the extensive digital infrastructure envisaged by the proposal, we emphasise the need for a service responsible for the operation of these systems, coordination of technical support, incident management and the provision of prompt assistance to public buyers and economic operators throughout the Union by the Commission.

We also highlight the absence of provisions addressing situations in which electronic procurement systems become unavailable. As demonstrated by Slovenia's experience with its national procurement systems, technical failures and unforeseen emergencies can occur, preventing the proper functioning of the system while procurement deadlines continue to run. In such circumstances, clear contingency measures are essential to ensure legal certainty, equal treatment of economic operators, and the uninterrupted conduct of procurement procedures.

To facilitate a proper assessment of the proposal, a comprehensive overview of the future digital ecosystem would be highly beneficial. In particular, a flow chart illustrating all envisaged digital tools, the information each system will contain, and the interactions between them. At present, the architecture appears highly complex, comprising numerous systems, platforms and publication channels. This risks creating uncertainty for contracting authorities as to where information must be published and uncertainty for economic operators as to where procurement opportunities can be identified and accessed. Slovenia is concerned that the proposed model may not achieve the objective of simplification and could instead introduce additional complexity for all stakeholders.

Slovenia also considers that Member States, particularly smaller ones, should retain sufficient flexibility in organising their national digital procurement infrastructure, including the possibility of relying on a single eProcurement service provider within their territory where this is considered the most efficient and proportionate solution. In this regard, it is not entirely clear what added value is provided by the National Public Procurement Data Space (NPPDS). Based on our reading of the proposal, procurement information would already be published through eProcurement service providers and subsequently transmitted to the Public Procurement Data Space (PPDS) operated by the Commission. The need for an additional intermediary layer therefore warrants further justification, as it may introduce unnecessary complexity, administrative burdens and implementation costs without delivering corresponding practical benefits.

With regard to the publication obligations under Articles 110 and 134, Slovenia considers that the proposed requirements are excessively broad and risk imposing disproportionate administrative burdens on contracting authorities. In particular, the obligation to publish information relating to contract performance and completion appears overly intrusive and of limited added value. Requirements relating to documents generated during contract execution, including handover documentation, should therefore be reconsidered.

Furthermore, Slovenia considers that the envisaged role and structure of the PPDS require further reflection. The proposal appears to combine three fundamentally different categories of information: (i) information relating to procurement procedures, which is already available through eProcurement systems; (ii) information relating to contract execution, which is typically contained in the internal records and archives of public buyers and would require significant additional effort to collect, prepare and publish; and (iii) information concerning the functioning and performance of national procurement systems. The rationale for bringing these distinct categories together within a single data space is not entirely clear. In particular, the extensive

reporting and publication obligations relating to contract performance are likely to generate considerable administrative burdens while providing limited added value. Slovenia therefore encourages a reassessment of the scope, purpose and architecture of the PPDS, with a view to ensuring a more proportionate and coherent approach.

Furthermore, Article 134(4) requires the publication of contracts with a value exceeding EUR 10,000. The proposed threshold appears disconnected from the scope of application of the Regulation itself and raises questions regarding proportionality and the appropriate limits of EU regulatory intervention in low-value procurement. In Slovenia's view, the threshold is set excessively low and should be aligned with the thresholds determining the application of the Regulation itself. Requirements relating to procurement below those thresholds should remain primarily within the competence of Member States, allowing them to calibrate transparency obligations in accordance with their national procedures, administrative capacities and policy objectives. A more proportionate approach would avoid imposing excessive administrative burdens on public buyers while preserving an appropriate level of transparency and accountability.

As evidenced by Article 112, the role of the Publications Office of the European Union and publication in the Supplement to the Official Journal of the European Union remain part of the proposed framework, in addition to the numerous new electronic systems envisaged. We therefore understand that TED will continue to operate under the new regime. However, it is not entirely clear how TED will interact with the Commission's eProcurement platform, eProcurement service providers, the interoperability network and other digital tools introduced by the proposal. Furthermore, the five-day publication period appears difficult to justify in light of the extensive digitalisation envisaged by the proposal. If modern interconnected electronic systems are expected to support real-time or near real-time information exchange, the continued need for such publication delays should be explained.

In conclusion, we highlight the absence of electronic auctions from the proposed framework. In Slovenia, electronic auctions have proved to be an effective and transparent alternative to negotiated procedures and an important tool for increasing competition and achieving better value for money. While the dynamic procedure provides certain additional procurement functionalities, no equivalent tool appears to be available within the open procedure under the proposed Regulation.

3. Award criteria

Slovenia also has serious reservations regarding the proposed approach to award criteria, in particular the introduction of mandatory weightings. Such an approach is excessively rigid and fails to reflect the diversity of procurement needs across sectors, markets and individual contracts. Contracting authorities should retain sufficient discretion to determine the most appropriate method for achieving policy objectives and obtaining best value for money. Furthermore, the proposal appears to focus on the weighting of award criteria, while overlooking the fact that important policy considerations, including environmental, social and innovation-related objectives, may often be more effectively addressed through other procurement instruments, such as technical specifications, selection criteria, contract performance clauses or other contractual requirements. The proposed framework therefore risks encouraging a formalistic compliance approach instead of allowing contracting authorities to choose the most effective and proportionate modality for pursuing procurement objectives. Slovenia considers that greater flexibility should be preserved to ensure efficient procurement.

Moreover, the proposed system of mandatory weightings is likely to create significant practical difficulties for contracting authorities. From an economic perspective, the challenge lies in identifying economically feasible weights, given that legislators are unable to set the best value-added criteria for thousands of different procurements in advance. Legally, determining and justifying specific percentages is inherently linked to the subject matter of the contract and should remain within the discretion of the contracting authority. Such prescriptive requirements are more likely to generate unnecessary legal challenges than to improve procurement outcomes.

The proposed approach also fails to recognise that environmental, social or innovation objectives may be addressed through technical specifications or contract performance clauses rather than award criteria. In such cases, contracting authorities would face considerable difficulties in demonstrating whether a particular requirement corresponds to 30%, 20% or any other prescribed weighting. This risks creating artificial distinctions, additional administrative burdens and legal uncertainty without contributing to better procurement results.

With regard to labour-intensive services, Slovenia has, since 2018, applied specific exclusion grounds and dedicated verification requirements to a predefined list of 82 labour-intensive services. These services are identified through the following CPV codes: 50700000-2 to 50760000-0, 55300000-3 to 55400000-4, 55410000-7 to 55512000-2, 55520000-1 to 55524000-9, 60100000-9 to 60183000-4, 70330000-3, 79713000-5, 90600000-3 to 90690000-0 and 90900000-6 to 90919300-5. In Slovenia's experience, these 82 categories appropriately capture the concept of labour-intensive services and provide sufficient legal certainty for contracting authorities and economic operators alike. To ensure a harmonised approach across the Union and to avoid divergent interpretations and practices among Member States, Slovenia proposes that labour-intensive services be explicitly identified in an Annex to the Regulation by reference to specific CPV codes. Such an approach would enhance legal certainty, facilitate consistent application of the rules, and reduce administrative complexity for all stakeholders.

4. Exclusion grounds

Slovenia welcomes the simplification of mandatory exclusion grounds and, in principle, supports a verification regime focused on the economic operator. At the same time, the proposed framework raises a number of legal and practical concerns that require further clarification. In particular, it is not entirely clear whether the proposal introduces a genuine shift away from the current approach and envisages verification of only a single designated "key person" associated with the economic operator. Even if this interpretation is correct, Slovenia questions whether the resulting simplification would be proportionate to the complexity of the system that would need to be established to support such checks.

Moreover, the concept of a "key person" is not sufficiently defined, creating uncertainty as to which individuals should be subject to verification and potentially leaving this fundamental issue to future practice, interpretation or secondary legislation. This risks undermining legal certainty and leading to divergent application across Member States.

The proposed regime relies on the future development of sophisticated EU-level verification mechanisms, including the electronic eligibility service and the digital business credential tool, which will entail significant technical, administrative and financial implications for both Member States and the Commission.

Slovenia also notes that several key concepts remain insufficiently defined. In particular, the proposal refers to »minor amounts unpaid« regarding unpaid tax or social security obligations yet

provides no indication of the thresholds or criteria that should determine when an outstanding obligation is to be regarded as minor. Given that national approaches and thresholds currently differ among Member States, further clarification is required as to whether such thresholds would continue to be determined under national law and, if so, how they would be integrated into and reflected by the electronic eligibility service. Without a common understanding of these concepts, there is a risk of divergent application and reduced legal certainty across the Union.

Furthermore, the proposal does not sufficiently address the verification of economic operators established in third countries. As such operators are unlikely to be covered by the EU verification infrastructure, including the electronic eligibility service and the digital business credential tool, it remains unclear how exclusion grounds will be verified in practice. This raises important questions regarding equal treatment and the level playing field, as the absence of equivalent verification mechanisms could place third-country operators in a more favourable position than economic operators established within the Union. Slovenia therefore considers that the proposal should clarify the applicable verification regime for third-country operators, including whether and to what extent reliance on self-declarations could provide an appropriate and proportionate solution.

5. Lack of procedural provisions and increasing administrative burdens

Slovenia also notes that the proposal does not establish a genuinely self-contained procedural framework and leaves many fundamental procedural aspects either unregulated or regulated only at a very general level. In particular, the draft contains very limited provisions on procedural timelines, deadlines and procedural safeguards, while important issues such as the admissibility of tenders, the assessment and exclusion of tenders, the correction and clarification of submitted documents, the completion of tenders, and other key stages of procurement procedures are either insufficiently addressed or not addressed at all. In practice, Member States will therefore be required to adopt national procedural rules to fill these gaps and ensure the operability of the procurement system.

Furthermore, Slovenia is concerned that, despite the objective of simplification and reducing administrative burdens, the proposal introduces numerous additional obligations for contracting authorities to justify, explain and document their decisions. While transparency remains essential, the practical value of many of these requirements is unclear. In Slovenia's experience, extensive reasoning obligations often become grounds for legal challenges, encouraging economic operators to contest matters that should remain within the contracting authority's discretion. Rather than reducing red tape, the proposed approach risks increasing administrative burdens, lengthening procedures and promoting an overly formalistic procurement process. Contracting authorities should therefore retain sufficient autonomy, with justification requirements limited to what is strictly necessary to ensure transparency and accountability.

Slovenia also notes that the proposal introduces a significant shift in terminology compared to the current directives. While modernisation may be justified in certain areas, replacing well-established concepts and procedural terms risks creating unnecessary complexity and legal uncertainty. Slovenia therefore supports continuity in terminology and procedural concepts wherever possible. Furthermore, procurement procedures should be designated by clear, concise and easily recognisable names to facilitate practical application and consistent interpretation. While the proposal provides clear designations for procedures such as the open.procedure and the dynamic.procedure, it remains unclear how the procedures under Articles 46 and 47 should

be referred to in practice. Slovenia therefore encourages the use of simple and intuitive procedural names throughout the Regulation to support legal certainty and facilitate implementation.

6. Excluded public contracts (article 85)

Slovenia proposes excluding the procurement of medicinal products by public pharmacies from the scope of the Regulation. Public pharmacies operate under strict public health obligations and are subject to comprehensive national and EU pharmaceutical regulations governing the safety, quality, availability and pricing of medicinal products. In Slovenia, medicinal product prices are regulated, while reimbursement levels are determined by the national health insurance system. Public pharmacies are also required to ensure the supply of all authorised medicinal products within very short timeframes.

Furthermore, pharmacists are generally required to dispense the specific medicinal product prescribed by the physician rather than an equivalent product selected through a procurement procedure. This obligation is difficult to reconcile with fundamental public procurement principles, which generally prohibit references to specific brands and require the acceptance of equivalent products. As a result, public pharmacies face significant legal and practical challenges when applying procurement rules to the purchase of medicinal products. Excluding such procurements from the scope of the Regulation would better reflect the specific regulatory environment of the pharmaceutical sector and ensure the uninterrupted and timely supply of medicines to patients.

Slovenia also considers that the proposal does not adequately address the specific nature of food procurement. While Article 53 acknowledges the importance of quality, sustainability and local sourcing of food, it does not provide contracting authorities with suitably adapted procurement mechanisms. Slovenia therefore suggests either excluding food procurement from the scope of the Regulation or, alternatively, treating it as a special category of contract under Article 58, allowing Member States to establish simplified national procedures.

Food procurement pursues broader public policy objectives that extend beyond price competition, including food security, resilience of supply chains, nutrition quality, sustainability and support for local food systems. In Slovenia's view, such contracts rarely generate genuine cross-border interest and should therefore allow greater flexibility to promote short supply chains, local sourcing and resilience measures in emergency situations. In addition, equal treatment should be ensured between food purchased for in-house meal preparation and outsourced catering services, as both pursue the same public interest objective of providing meals to end users. A tailored regime for food procurement would strengthen food system resilience, support sustainability objectives and reduce administrative burdens, while continuing to ensure transparency, competition and equal treatment.

7. Additional Legal and Practical Concerns

The structure of the proposal is not always clear and does not consistently follow the logic and systematics of the current procurement directives. For example, it is unclear why framework agreements (Article 103) are not included among the procurement tools set out in Chapter 5 on “Special Procedures and Tools”. Their placement outside this chapter raises questions regarding their legal nature and relationship with the other procurement instruments provided by the Regulation.

Similar concerns arise in relation to the Qualification List under Article 49. Its purpose and legal nature are not entirely clear, particularly as regards whether it constitutes a distinct procurement procedure or merely a procurement tool that may be used within other procedures. Furthermore, we also do not see any particular added value or distinction between the Dynamic procedure

(Articles 36–40) and the Qualification list. We understand that Article 49 applies to contracting entities; however, the dynamic procedure is designed in a similar way, encompassing all public buyers, a category that includes also contracting entities. The proposal should therefore clarify the relationship between these instruments and explain the rationale for maintaining two seemingly comparable mechanisms, to avoid legal uncertainty and unnecessary complexity in practice.

Article 93 on confidentiality does not sufficiently address the processing and protection of personal data. Given the extensive publication obligations under the proposed framework, a significant amount of personal data contained in procurement documentation may ultimately become accessible through the NPPDS and PPDS. The proposal should therefore clearly define which personal data may be published, under what conditions, and how compliance with data protection requirements is to be ensured.

Article 94 on conflicts of interest appears excessively broad. The inclusion of concepts such as emotional interests creates significant legal uncertainty, as such circumstances are inherently difficult to define, verify and assess in an objective manner. Slovenia therefore considers that the provision should be more precisely framed to ensure legal certainty and practical enforceability.

With regard to Article 100, Slovenia welcomes the continuation of awarding excluded lots, which provide valuable flexibility in practice and can contribute to more efficient procurement outcomes. However, the proposed threshold of EUR 80,000 appears too low and should be increased to ensure that the mechanism can deliver meaningful practical benefits while avoiding unnecessary administrative burdens.

8. Conclusion

Slovenia welcomes the work and efforts of the Commission and its vision of a more simple, sustainable and digital procurement across the Union. We consider that these objectives can be seen in mayor parts of the PPA. However, the proposal will also result in a significantly more complex, administratively burdensome and difficult-to-operate procurement framework. Contracting authorities will be required to navigate numerous new concepts, obligations and policy objectives, including introduction of new terminology, exclusion grounds, mandatory weighting of award criteria and extensive justification and reporting obligations. For end users, this will represent a massive departure from established practice also where this is not necessary which is likely to increase legal uncertainty and administrative burden rather than simplify procurement.

Slovenia does not consider that a comprehensive redesign of the current system is necessary. The existing framework overall functions well and would be better improved through targeted improvements addressing identified shortcomings, while preserving well-established procedures and legal concepts. In Slovenia's view, a more proportionate approach would consist of maintaining the directive-based framework and introducing focused improvements and new digital tools where they bring genuine added value, thus ensuring legal certainty, practical continuity and a gradual modernisation of public procurement across the Union.

LATVIA (LV)

Please find below our current questions concerning Chapters I and II of the Public Procurement Act, as well as one question regarding the NPPDS.

PUBLIC

Part I

Article 5 (Policy objectives) - The introductory part of Article 5 uses the term "shall", which indicates an obligation. We would therefore welcome clear clarification as to – whether these policy objectives must be incorporated into each individual procurement procedure, and whether the contracting authority's approach in a specific procurement procedure could be questioned or challenged by a third party on the grounds that the strategic objectives have not been addressed or have not been addressed to a sufficient extent.

(Does the market have the right, in certain procurement procedures, to require the achievement of strategic objectives at a certain level?)

Part II

Article 24 (Subcontracting)

We consider that the provision set out in paragraph 2 should be reconsidered. We do not support making it mandatory to indicate in the tender all parts of the contract that are intended to be subcontracted, as well as the proposed subcontractors. This may create an unnecessary administrative burden, and the information may change before the performance of the contract begins. We consider that this matter should be left to the discretion of the contracting authority, with the possibility to require such information where necessary.

Article 25 (Mandatory exclusions) and Article 26 (Optional exclusion grounds):

1) Do Articles 25 and 26 provide an exhaustive list of mandatory and optional exclusion grounds? Are Member States entitled to introduce additional exclusion grounds in their national legislation? In our view, this should be clearly clarified.

The same issue arises with regard to any new exclusion grounds that may be introduced through EU sectoral legislation. It should be clarified how such additional exclusion grounds are to be applied alongside with those laid down in the Regulation.

2) Regarding Article 25 Para 3 - Exclusion on the grounds of unpaid taxes is provided for only where this can be established by final judicial or administrative decision. We would appreciate further clarification as to what is meant by term "final administrative decision" and would information obtained from an official database maintained by the State Revenue Service, which reflects the actual amount of outstanding tax liabilities, be considered sufficient information to justify exclusion?

Historically, in Latvia, we have applied as mandatory the existing exclusion ground where non-compliance with tax obligations can be established by "any appropriate means of evidence". Therefore, it is important for us to understand how the scope of this mandatory exclusion ground will change under the Regulation.

In addition, it should be clarified what exactly is meant by "minor amounts are unpaid" in order to ensure a consistent practice and common understanding, particularly where this information is to be exchanged through the new digital ecosystem.

3) Article 26 - Is it necessary to specify in the procurement documents the optional exclusion grounds that the contracting authority intends to apply in the procurement procedure concerned? Can an economic operator be excluded on the basis of an optional exclusion ground where that ground was not indicated in advance in the procurement documents?

There could potentially be an issue with point (g), where the contracting authority receives an opinion from a security authority indicating that an economic operator shall be excluded, but, for example, this exclusion case was not specified in advance in the procurement documents.

Article 28 (Means of proof of the eligibility of economic operators) + Article 29 (Connection of databases to the electronic eligibility service)

1) What is the scope/margin of the contracting authority's obligation to request and verify supporting evidence in cases where the relevant information or evidence is not available in the system? How is self-declaration intended to operate in practice if the contracting authority is nevertheless required to request and verify the supporting evidence in all cases? Is the intention that, where a self-declaration is relied upon, the contracting authority is not required to request and verify the underlying evidence?

2) From a practical perspective, for example, what type of evidence would need to be made available in the system in order to demonstrate experience in the construction of a public building?

Digital ecosystem

Article 134 (4) - We would appreciate clarification regarding the scope of Article 134(4). Does the scope also cover contracts below the EU thresholds?
