

IRU ANALYSIS OF THE PROPOSAL FOR A REGULATION ON PUBLIC CONTRACTS AND CONCESSIONS (2026/0265 (COD))

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I. BACKGROUND

The revision of the public procurement rules was announced in President von der Leyen's [2024 Political Guidelines](#). This proposal responds to the European Court of Auditors' finding that competition for EU public contracts has declined, with limited SME and cross-border participation and increasingly common single-bid procedures. This has been compounded by the European Commission's (EC) evaluation of the 2014 directives, which found excessive complexity and legal uncertainty, continued dominance of price-only awards, and rules on non-EU market access that are no longer suited to today's geopolitical realities.

IRU contributed to the public consultation preceding the preparation of the proposal in February 2025 ([TAXI/BR9779](#)) and shared its preliminary observations about the revision with its members in April 2025 ([TAXI/BR9911](#)). The official IRU position paper ([AD/BR9998](#)) was published on 11 June 2025. It called for reducing the high number of in-house awards, lowering the administrative burden, removing the prohibition on subcontracting, strengthening quality criteria, removing the European preference clause and enabling greater flexibility in times of crisis.

The [new Proposal](#) is designed with simplification and clarity in mind, transforming the three existing directives ([Directive 2014/24/EU on public procurement](#), [Directive 2014/25/EU on utilities](#), [Directive 2014/23/EU on concessions](#)) and amending certain provisions spread across sector-specific legislation into a directly applicable regulation. Importantly, opting for a regulation as the legislative instrument reduces inconsistencies and divergent national transposition choices.

II. ANALYSIS

As the proposal consolidates three directives into a single regulation, this combination is reflected in the structure of the document. Public contracts serve as the backbone of the regulation, with their rules present throughout the document; utilities are covered primarily under Part II, Chapter 2, with certain provisions scattered elsewhere in the proposal; and concessions are treated as a fully separate, dedicated regime under Part IV.

1. Subcontracting, group contracts and digital tools

Public contracts may be subcontracted, but not in their entirety at any point in the subcontracting chain. Public buyers may require information on the envisaged subcontracting arrangements, including the identity of subcontractors. Should any grounds for exclusion from the contract occur, the public buyer may require that the subcontractor in question be replaced; should any European preference conditions be applied to the original subcontractor, the replacement must also be compliant. In case of contracts for groups of economic operators, the public buyer can also require the main contractor to be responsible for certain critical tasks that must be identified and justified in the procurement detail.

Importantly, this revision introduces digital solutions that aim to reduce administrative burden and simplify procedures, which will be provided by the EC. They will enable verification against the exclusion grounds and selection criteria and allow supporting evidence to be uploaded through the electronic eligibility service. For economic operators, the electronic eligibility service lets them build a single digital eligibility profile once and reuse it across procedures, cutting the documentation and registration burden that currently falls disproportionately on SMEs. For public buyers, the same tool, drawing on the digital business credential tool and interconnected national databases, lets them verify exclusion grounds, selection criteria, and origin requirements automatically rather than manually reviewing self-declarations.

2. Public procurement procedures

a) Negotiations and different types of procedures

The Proposal foresees several stages of tendering, with different types of procedures depending on the specificity of a contract. The preliminary steps consist of market consultations, choice of procedures and estimation of the contract value, followed by negotiations on non-essential characteristics of the works, which can be carried out in several rounds. Contrary to the current directives, negotiations are part of all the procedures.

The procedures have also been restructured and consolidated, resulting in four categories:

- Open procedure: broadened default, single-stage procedure where any operator can express interest and submit a tender through the electronic eligibility service,
- Dynamic procedure: new rolling, always-open system that operators can join at any point during its validity. The number of operators invited to submit a tender may be limited, in case the procedure does not involve selection criteria,
- Innovation procedure: redesigned procedure which can be used to address a societal challenge. Once the challenge is determined, a solution must be selected, tested and validated before the award of the public contract. Before the procedure is launched, a market consultation must be conducted, and
- Special procedure: similar to the negotiated procedure without prior publication; public buyers may use it to award a contract by requesting a solution directly from one or more economic operators, bypassing competition and prior publication. It applies where only one operator can supply the solution and no reasonable alternative exists, for additional deliveries from the same supplier, commodity market purchases, or one-off bargain purchases.

b) Procurement detail and award criteria

Public buyers must evaluate tenders according to the best price-quality ratio method and by applying award criteria with the minimum quality weighting. In the assessment of tenders, the weight of quality criteria shall represent at least 30% of total points awarded. For labour-intensive contracts their contribution shall represent at least 50% of total points. Public buyers can establish a fixed price and decide the award of the contract based on quality criteria only. Where life-cycle costing and environmental criteria apply, they should be counted within those percentages. Importantly, public buyers may derogate from the mandatory minimum quality weighting rule where the quality of the product, service or works can instead be ensured through tender specifications, conditions for the performance of contracts or a combination of either of them with the award criteria.

c) Division of contracts into lots

To facilitate SME participation, public buyers should consider dividing contracts into lots. Member States (MS) can also decide that public buyers should divide contracts into lots, while public buyers can limit the number of lots for which economic operators may submit tenders and the number of lots that can be awarded to a single tenderer. Public buyers may award individual lots without following this Regulation's procedures if the lot's estimated value (excluding VAT) is below EUR 80,000 for supplies/services or EUR 1 million for works. However, all lots awarded this way together must not exceed 20% of the total value of all lots in the overall procurement.

d) Abnormally low tenders

The Regulation takes a stricter approach towards abnormally low tenders. Competing tenderers are required to explain the total price or its elements if any of these appear to be abnormally low in comparison with other tenders received, the buyer's own market-price estimate or prices and contract values from comparable past

procedures. This explanation addresses tender quality, compliance with all obligations, viability of price or its elements over the duration of the contract. The public buyer can consider the explanation as satisfactory and retain the tender in the procurement procedure or deem it not satisfactory and after providing an opportunity to submit clarifications and additional information, reject the tender.

e) Corrections of the contract

Provisions concerning corrections to the contract have been consolidated and substantially extended under a dedicated article. Before the tender or negotiation deadline, public buyers may correct procurement details without restarting the process, provided the correction does not substantially change the subject-matter and is clearly communicated to all operators; corrections made less than 24 hours before the deadline require at least a two-working-day extension (or more if warranted). Where tender or eligibility information is incomplete, erroneous, or missing, public buyers may, on a non-discriminatory basis, let operators fix minor issues within a set time, as long as this does not materially change the tender. Public buyers must cancel the procedure if uncorrectable material errors distort competition, and may otherwise cancel (fully or, for lots, partially) before signing, with reasons given to tenderers promptly.

f) Framework agreements

Public buyers may also conclude framework agreements setting out the terms for future contracts with one or more economic operators over a set period, normally up to three years (single operator) or five years (multiple operators), extendable only in duly justified cases. They must publicly announce their intention to conclude a framework agreement, along with its duration and expected maximum value or volume. Each contract awarded must be published, and none may run more than 50% longer than the framework agreement itself.

3. Focus on quality

The redesigned public procurement framework introduces a new approach to the award criteria, incorporating the EU's strategic objectives.

a) Green public procurement

Public buyers may consider environmental criteria such as climate change mitigation, pollution prevention and protection of ecosystems. Importantly, compliance with minimum standards at the EU, national or international level cannot be considered green public procurement – the environmental criteria must go beyond these baseline standards and be built directly into the contract's specifications or award conditions. Where technically feasible, public buyers must prioritise goods and services with high energy efficiency performance.

b) Socially responsible public procurement

Social considerations are also an element that may be considered in public procurement. Those considerations must be in line with the EU social objectives, which among others include social inclusion and labour market integration, high-quality jobs, accessibility, gender equality, and human rights protection. Mere compliance with responsibilities under the relevant labour and social rules is insufficient. Public buyers may also reserve specific contracts or their lots for organisations whose primary purpose is the social and professional integration of persons with disabilities or disadvantages, under certain conditions.

c) Public procurement of innovation

Innovative procurement promotes EU market uptake of research and innovation results; encourages the participation of start-ups, scale-ups and SMEs; supports the growth of lead markets in strategic sectors; and improves the cost-effectiveness of purchases compared with conventional solutions.

The procedures aimed at innovative solutions shall be preceded by an assessment, e.g. through market consultation, which may be reflected under the best price-quality ratio method or contract performance conditions. The intellectual property rights relevant for the execution of the contract must be specified by the buyer, alongside appropriate licences enabling the buyer to benefit from the deliverables.

d) Security and resilience

Public procurement procedures must not endanger the security and public safety interests of the EU or its MS, such as protection of critical infrastructure, crisis preparedness and cybersecurity. Procurement detail prepared by buyers shall correspond to the identified risks and include measures designed to ensure safety. Failure to comply with such measures and obligations can result in termination of the contract in whole or in part.

For cybersecurity, MS shall ensure that products comply with [Regulation \(EU\) 2024/2847 \(Cyber Resilience Act\)](#) and are not prohibited from imposing additional cybersecurity requirements. If a public buyer has been

identified as a critical entity by the competent MS, the procurement detail must include proportionate requirements relating to security of supply, economic, physical and geopolitical resilience, as well as transparency and sustainability of the supply chains for the works, supplies or services procured.

e) European preference

The Regulation also refers to matters related to the competitiveness of European industry, allowing public buyers to give priority to European products and services.

For competitions involving the European preference, public buyers must determine whether third-country economic operators and supplies are covered under the European preference, using a publicly accessible free online tool provided by the EC, referring to the EU's international commitments. It will build on the existing [Access2Markets](#) web portal, which will be expanded to support these new functions. The EC can also apply mandatory restrictions on covered supplies and economic operators in cases where their country of origin failed to meet their obligations under the international agreements, to avoid dependencies and other security of supply issues or under any other exception based on the applicable agreement. It can also include non-covered economic operators and supplies under the European preference through delegated acts if deemed necessary.

Economic operators, goods, services and works can be considered 'covered' under the new Regulation if they originate from:

- a third country that is a party to the [Agreement on Government Procurement \(GPA\)](#), where the procurement falls within the EU's commitments under the applicable Annexes,
- a third country with a bilateral or multilateral trade agreement with the EU, where the procurement falls within the EU's public procurement commitments under that agreement, and
- a third country with a customs union agreement with the EU, where the procurement falls within the EU's public procurement commitments under that agreement.

Public buyers may restrict participation in a procedure only to economic operators and subcontractors originating in the EU, including all operators forming part of a group as well as their subcontractors. Measures that can be applied may take a form of:

- a requirement that the supplies either originate in the EU or are considered covered (fully or to a certain extent),
- a reduction of the price of a tender or the allocation of additional award points, and
- a rejection of a tender where the value of the EU or covered supplies is below 50%.

They can be invoked only where they have been clearly stated in the public summary of the competition.

The preference for European operators and supplies foresees several exceptions. They apply:

- to contracts procured under the special procedure in the context of emergency and crisis,
- where the products or services cannot be supplied by an EU or covered operator and there are no alternative solutions,
- if no suitable tenders or requests have been submitted in the last two years preceding the launch of the procedure, and
- the supplies would be available to the buyer at disproportionate costs.

4. Contract performance: compliance, adjustments and modifications

a) Proof of compliance

Public buyers may require proof of a product's compliance with the conditions set in the specifications and award criteria, including compliance with the European preference requirements, via the [Digital Product Passport](#) (or equivalent electronic means, where the passport does not yet exist), or via a test report or certificate from a notified, technical assessment or conformity assessment body. Where an economic operator lacks access to these documents, or cannot obtain them in time, through no fault of its own, public buyers must accept other appropriate proof, such as a manufacturer's technical dossier, provided it demonstrates compliance with the relevant requirements.

b) Performance of the contract, adjustments and modifications

To ensure the necessary flexibility and provide options to adapt contracts to changing circumstances, the revised public procurement allows for adjustment mechanisms, which have been expanded and separated from the provisions on modifications. These mechanisms shall be objectively justified, maintain the economic balance of the contract between the contractor and the contracted economic operator, and be sufficiently clear. They may take the form of predefined rules for adjusting revenue (e.g. based on demand or usage), indexation linked to objective economic indicators (such as price indices, inflation, or input cost volatility), or performance-based payment adjustments tied to meeting qualitative or performance targets.

Beyond the adjustment mechanism, the possibility of modifications of contracts during their term has been maintained. They do not require a new procurement procedure if the modifications do not exceed 15% of the initial contract value and do not disrupt its economic balance – hence they can be considered non-substantial. A modification is considered substantial if it introduces terms that would have altered competition had they featured in the original procedure, or if it changes essential contract terms (such as scope, economic balance in the contractor's favour, or contractor identity). Substantial modifications are permitted only where they do not shift the economic balance in the contractor's favour, and only in specific cases such as the need for additional works/services/supplies, unforeseen circumstances significantly affecting performance, contractor replacement via corporate restructuring or the assumption of subcontractor obligations.

Modifications exceeding 50% of the initial contract value require prior publication of a summary justifying the change (unless urgency prevents this, in which case publication follows afterward), instead of being a hard price ceiling. Smaller substantial modifications (under 50% of the initial estimated value) must be published within 20 days. Values are calculated using indexation clauses where present, or average national inflation otherwise. Modifications may not be used to excuse a contractor's unjustified performance failures.

Public buyers must ensure timely payment to contractors and subcontractors, in line with [Directive 2011/7/EU](#), and may require contractors to pass equivalent payment terms down the supply chain. MS must report the payment status per contract and annual prompt-payment compliance per public buyer via the National Public Procurement Data Space (NPPDS) – a central national data-access point for procurement information. Public buyers may offer advance payments, particularly to support SME participation, and generally must do so for contracts with significant innovation relevance. Where appropriate, and at a subcontractor's request, public buyers may pay subcontractors directly for their share of the work, with safeguards allowing the main contractor to contest undue payments, as set out in the procurement details.

5. Excluded and mixed contracts

a) Controlled entities

The Regulation still does not apply to contracts awarded to controlled entities under the following conditions:

- the public buyer controls the other entity almost as if it were one of its own departments,
- more than 80% of that entity's work must be done for the controlling public buyer,
- the entity is free of private ownership, except for limited forms of private participation required by national law that do not give the private party any real influence over decisions.

MS are allowed to introduce more stringent national rules. Importantly, these exclusions do not apply where a contract is subcontracted in its entirety without a procurement procedure. For passenger transport, contracts for public passenger services by rail or metro within the meaning of [the PSO Regulation](#) are also excluded.

6. Concessions

Before launching a concession procedure, public buyers must assess and allocate the main operating and contractual risks. The contracts must include provisions promoting long-term efficiency, sustainability and innovation, as well as (where relevant) security, resilience and continuity safeguards, and must require the concessionaire to keep records for five years to enable monitoring and audit.

Concessions follow rules parallel to this Regulation's standard award procedures, with the public summary of competition additionally covering the concession's estimated value components and key risk allocation. Procurement details may include justified, clear adjustment clauses (e.g. revenue rules, indexation, performance-based payments) that preserve the concession's economic balance and the concessionaire's operating risk. Contracts may also be modified without initiating a new procurement procedure under the same rules as for public contracts, with the addition of public buyers' possibility to introduce proportionate temporary measures to preserve essential services without shifting risk back to themselves. Where necessary, public

buyers may terminate a concession early e.g. for overriding public-interest reasons, with the concessionaire entitled to appropriate compensation.

Importantly, this part of the Regulation does not impact public transport services within the meaning of [the PSO Regulation](#).

7. Digital tools

The revision requires public buyers to use standardised electronic tools for procurement, with the EC building an interoperable network and setting harmonised standards or common specifications for eProcurement platforms. Service providers must meet these standards, remain EEA-owned and controlled with data stored in the EEA, and connect to the interoperability network and NPPDS, while the EC will launch its own compliant platform that MS may mandate for public buyers. The EC must also set up an electronic eligibility service verifying exclusion grounds, selection criteria, and origin requirements via the European Business Wallets or interoperable alternatives, where public buyers specify requirements per procedure, and operators build a matching eligibility profile.

III. PRELIMINARY OBSERVATIONS

- **Instrument:** IRU supports the shift to a single, directly applicable Regulation on public contracts and concessions, replacing the three current Directives with harmonised rules across the EU. This approach ensures consistent application of the law across MS and ensures comparable conditions for tenderers competing in different markets.
- **Quality criteria:** By making the best price-quality ratio the default award method, with quality weighted at a minimum of 30% (50% for labour-intensive contracts), the proposal reflects the IRU call to prioritise strategic procurement over lowest-bid awards, while embedding sustainability, social, innovation, and security considerations more systematically into the award criteria. Public buyers retain the flexibility to derogate from the binding quality weighting requirement, provided the required quality is secured another way, whether through the tender specifications, the contract's performance conditions, or either of these combined with the award criteria.
- **European preferencing:** A new European preference framework allows public buyers to restrict participation, adjust scoring, or reject tenders based on EU or covered origin, going beyond today's baseline of equal treatment and non-discrimination. The EC may make use of the European preference mandatory in specific cases. Moreover, this Regulation will amend the PSO Regulation to make the new public procurement rules on security, security of supply, and European preference applicable to all contracts and concessions falling under the PSO Regulation. This approach to the EU origin of goods and services is closely correlated with the provisions of another proposal under evaluation, the [Industrial Accelerator Act \(IAA\)](#) – IRU adopted [a position paper](#) on the IAA in June. The revised public procurement legislation is horizontal in nature, applying across all sectors and contract types, except where sector-specific rules, such as the IAA, introduce mandatory origin requirements for strategic industries. Ensuring clarity and consistency between these two proposals is essential to a well-functioning market for public contracts.
- **Subcontracting:** subcontracting remains allowed under the new rules, but a contract cannot be subcontracted in its entirety. Together with lotting, it encourages greater participation by SMEs, which make up most of the road transport sector.
- **Digitalisation:** The procedure-related bureaucracy should be decreased through the creation of digital tools, allowing for simpler application and processing. IRU welcomes these developments, meeting the calls for lower administrative burdens, increased SME participation and fostering fair competition.
- **In-house awards:** The possibility of in-house awards remains restricted to cases meeting the same control, activity-share and no-private-capital conditions as today but does not guarantee open competition and does not include mandatory subcontracting provisions, where subcontracting is feasible. The new Regulation adds a specific anti-circumvention safeguard: an in-house award loses its exemption from procurement rules if the awarded contract is subsequently subcontracted out to the market in its entirety without running a procurement procedure.
- **Contract changes:** To increase flexibility, modification processes have been updated and a possibility to add adjustment mechanisms has been introduced, allowing public buyers to alter contracts without

restarting the procedure. IRU welcomes these review clauses in long-term contracts, making them more crisis-proof.

- Enhanced negotiations: Changes introduced to the procedures and availability of negotiations are a positive development as well. They mark an improvement on today's restrictive conditions for negotiated procedures, offering greater flexibility for discussion before final tenders are submitted.

IV. ACTION FOR MEMBERS

Members are invited to carefully examine this analysis document as well as [the Proposal](#) and provide comments in writing to the IRU Secretariat (michal.kozlowski@iru.org and suzanne.hoadley@iru.org).

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