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POSITION ON THE PUBLIC PROCUREMENT ACT

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Eurochambres supports the Commission's aim, set out in the Public Procurement Act, of a simpler, more quality-oriented, fairer and more digital procurement framework that gives SMEs better access to public markets. The proposal contains valuable elements, notably on digitalisation, data reuse, SME support.

Its success will depend on keeping procurement focused on competition and value for money, prioritising simplification and practicability. Environmental, social and geopolitical objectives must not undermine them or create additional evidence, assessment and data obligations for companies and contracting authorities.

Key messages

- **Achieve uniform rules that respect well-functioning national systems.** Whether the reform is a Regulation or a Directive, it must reduce divergence across the single market, clearly define how it interacts with national administrative, contract and remedies law, and come with a realistic transition period for its implementation.

- **Avoid legal fragmentation and incoherence.** Procurement rules belong in one framework, with no new sectoral deviations, such as in the Industrial Accelerator Act. Delegated acts should be used only where strictly necessary. The European preference scope and sensitive choices belong to the co-legislators.

- **Optional strategic objectives.** Procurement should primarily serve competition and value for money. Environmental, social and innovation criteria should remain possible but not mandatory and must be linked to the subject matter of the contract.

- **Keep the European preference targeted and workable.** Any preference should only be used where existing instruments are insufficient and be limited to a few security-relevant sectors. It needs clear, digitally verifiable origin rules, proportionate evidence and realistic derogations, and must not deter SMEs from bidding or provoke counter-measures against EU exporters.

- **Define resilience.** Resilience, critical dependency and systemic risk are central to the proposal but not defined. Resilience requirements should be limited to critical infrastructure and must not become local-content requirements by another route.

- **Make access easier for SMEs.** Self-declarations should be the default and the once-only principle should apply in practice, with proportionate selection criteria and workable negotiation rules. Lots should be the rule, with a project-specific justification for awarding a contract as a whole.

- **Ensure timely payment without interfering in contracts between companies**. Explicit payment deadlines are welcome, as public buyers often pay late. Direct payment of subcontractors by the contracting authority would, however, interfere with contracts between companies and should be reconsidered.

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Public Procurement Act

General remarks

On the choice of the legal instrument

The main problems of recent years did not stem from the directive structure. They came from growing regulatory complexity, sector-specific rules, too little professionalisation and digitalisation, and divergent, sometimes excessive, national transposition. That divergence has raised compliance costs, held back cross-border bidding and created legal uncertainty for contracting authorities and economic operators alike.

Directly applicable common rules could help address this by improving uniformity and legal certainty across the single market. At the same time, procurement, especially for works, is closely tied to national administrative, contract and remedies law and to established standard terms. Many member states have well-functioning procurement systems that businesses rely on. The proposal leaves important areas to national law, including below-threshold procurement, administrative organisation, professionalisation and review mechanisms. Its interaction with these national rules must therefore be clearly defined. Otherwise, bidders and contracting authorities would face a new layer of EU rules on top of residual national rules, and the overall number of rules would not go down.

The main barriers to cross-border tendering remain diverging requirements, administrative practices, lack of standardisation, technical platform hurdles, and language. The interoperable digital platform can contribute to addressing some of the concerns.

Eurochambres therefore calls for:

- clear coordination provisions setting out how the Act interacts with national administrative, contract and remedies law;
- explicit scope to integrate proven national systems;
- a transition period of four years instead of two, as implementing a reform of this scope in two years is unrealistic.

Ensure coherence and avoid sectoral fragmentation

Procurement requirements are increasingly scattered across sectoral acts, making them hard to find and apply. Eurochambres welcomes the first steps towards consolidation but sees many remaining sectoral deviations. No new fragmentation should arise, for example, through the Industrial Accelerator Act, the European Innovation Act, or the Chips Act.

Limit the use of delegated acts

The Act contains numerous empowerments for delegated acts, including sustainability, resilience, European preference, and data. Fragmentation across legal acts was one of the most frequent criticisms of the current framework. Delegated acts should be used with utmost restraint and with defined subjects, objectives and limits. Fundamental and sensitive choices, such as the scope of European preference, must remain with the co-legislators.

Utilities

The conditions that justified a separate regime for utilities have not changed. Operators of critical infrastructure manage complex, long-lived assets, partly in competitive markets, under high security requirements. Their procedural flexibility should be preserved, including

qualification systems (Art. 49) and the exemptions for in-house awards, public-public cooperation and affiliated undertakings. Art. 20 should confirm that existing Commission exemption decisions remain valid.

Qualification systems are a useful tool, but the current Directive is unclear on how they work, so they are little used in practice. The Act should set out clearer rules on how utilities contracting entities set up and run these systems: how economic operators register, how tenders are invited, and how contracts are awarded. This would make qualification systems a practical tool for both contracting entities and suppliers.

Part I – General provisions

Title I Subject-matter and scope

Thresholds (Art. 2 – 3)

Eurochambres welcomes that thresholds remain aligned with the WTO Government Procurement Agreement (GPA) and are adjusted for inflation. The scope of EU procurement law determines whether bidders can enforce their rights, not only through damages but by having procedural errors corrected. Raising GPA thresholds would also put EU companies' access to third-country tenders at risk.

Below the EU thresholds, procurement should remain subject to simplified national procedures that still ensure appropriate transparency, competition and oversight. At the same time, greater consistency in how procurement rules are applied and monitored across member states is needed. Common minimum principles could help address this without extending the full range of EU procedural requirements to lower-value contracts.

Title II Principles, policy objectives and definitions

Strategic objectives (Art. 4 – 5)

The proposal effectively puts environmental, social, industrial, and geopolitical goals on an equal footing with economic procurement. Resilience and innovation are in businesses' interest too, but they must be pursued with proportionality.

Procurement law should primarily serve economical and competitive purchasing and not be overloaded with strategic requirements, which, instead, should remain possible, as today, but not mandatory. Where used, they must be linked to the subject matter of the contract, transparent, verifiable and proportionate, and must not create disproportionate evidence burdens. Mandatory minimum requirements typically mean higher administrative effort, more documentation requirements, lower company participation, and rising procurement costs.

Part II – Relevant actors

Title I Public buyers

Central purchasing and joint procurement (Art. 9 – 10)

Central purchasing and joint procurement can professionalise procurement and improve tender documents. However, they can also strengthen buyers' market power to the detriment of suppliers. This risk should be acknowledged, for example in the recitals.

Title II Economic operators

Subcontracting (Art. 24)

Eurochambres takes note of the proposed ban on subcontracting a contract in its entirety but rejects any further restriction of subcontracting chains. SMEs in particular depend on shared project structures. The Regulation should clearly define full subcontracting and confirm that design, integration, coordination, project management and supervision activities count as performance of the contract by the contractor itself, so that legitimate business models are not caught by the ban. The ban should exempt affiliated companies and supply contracts. Authorities should be able, but not obliged, to require the preferred bidder to name its subcontractors. Naming those for essential services in the tender should suffice, with the full list provided before or after award.

Exclusion grounds (Art. 25 – 26)

Gathering all exclusion grounds in two articles is helpful and should remain so: future EU rules adding grounds should amend these articles. The definition of "key person" in Art. 25(1) is, however, far too broad. Any person with powers of representation, decision or control could be covered, with no link to membership of management or supervisory bodies. Its terminology does not match national legal concepts. Ultimately, the notion should be limited to persons with statutory powers of representation.

Several further points need clarification:

- Conflicts of interest (Art. 94). Art. 94 requires an economic operator involved in a conflict of interest to be excluded, but conflicts of interest are not listed among the exclusion grounds in Art. 25–26. In line with the principle that all grounds should be gathered there, this should be aligned. The Regulation should also define “conflicting business interests” more precisely and distinguish it from a conflict of interest, and it should clarify how conflicts of interest are to be identified, established and verified, including whether contracting authorities will have access to the Arachne system.
- Consortia (Art. 26(1)). It should be clarified whether, when one member of a consortium is excluded, the remaining members can take over its role and obligations, or whether the entire consortium is excluded.
- Grave professional misconduct. The Regulation should define this concept. It currently derives from the case law of the Court of Justice and is open to broad interpretation, and that case law also treats deficiencies in contract performance, which are a separate exclusion ground, as professional misconduct. This makes it difficult for contracting authorities to apply.

Selection criteria (Art. 27)

Eurochambres welcomes the stronger proportionality principle. Limiting minimum turnover (Art. 27(7)) and requiring reasons for requesting references (Art. 27(6)) reduces burdens and helps start-ups and SMEs. At the same time, contracting authorities must remain able to verify that bidders have the capacity to perform the contract, particularly for major infrastructure projects, provided that requirements remain proportionate and do not unnecessarily restrict competition. Equivalent private references, key personnel references, consortia and alternative evidence must be given appropriate consideration. The presumption of suitability for operators on official lists (Art. 27(4) and (8)) is important as it is helpful also for prequalified companies.

Self-declarations should be the default form of evidence, with full evidence required only from the shortlisted bidder. The once-only principle should apply in reality: evidence already held by the authority should not be requested again within a reasonable period, for example two years.

Part III – Procedures for public contracts

Title I Public procurement procedures

Market consultations (Art. 30)

Eurochambres welcomes the stronger role of market consultations. Good preparation is a precondition for good procurement and dialogue with the market is a central component of modern procurement. The publication obligation should, however, apply only to structured consultations directly preparing a specific procedure that could give certain operators an information advantage. Ongoing market monitoring, supplier meetings or product presentations should not be covered. The proposal should also clarify that transparency applies to how a consultation is conducted, not to the details of solutions discussed; this element of clarification, contained in the draft proposal but not in the final Commission proposal, should be reinstated.

Estimating contract value (Art. 32)

It is unclear whether "satisfaction of the needs " is as broad as "project". If so, even very small direct awards could require EU-wide publication. The aggregation of contracts across organisational units and the value of open-ended contracts also need clarification.

Procedure types and negotiation (Art. 31 – 35)

Eurochambres welcomes that the open procedure remains the standard procedure and that the number of procedures is reduced. The new open procedure, however, raises many practical questions. Its terminology partly differs from current concepts while apparently meaning the same thing, so its relationship to existing procedures should be explained.

Negotiation can help with complex, non-standard purchases and functional specifications, letting bidders explain and adapt their solutions. This requires that needs are clearly described from the outset. Negotiations also mean more effort, longer procedures, more

legal uncertainty and a risk of unequal treatment, and SMEs often lack the capacity for several rounds. The sheer length of Art. 33, with detailed provisions on the content of negotiations and the assumption of several rounds of negotiation, show how demanding this process risks becoming in terms of time and capacity.

Negotiations must therefore remain optional, be limited to the necessary number of rounds and must not become mere price-reduction rounds. Award on the basis of initial tenders must remain possible, as the proposal provides. Bidders' substantial design work should be protected and, where appropriate, remunerated.

Two-stage procedure

The proposal no longer offers a generally available two-stage procedure: under Art. 34, an initial tender is required with the expression of interest. For critical infrastructure, prior selection protects sensitive information on networks, systems and security architectures. It also limits costly tender preparation to qualified bidders. A regular two-stage procedure should remain available, at least for utilities.

Dynamic procedure (Art. 36 ff.)

The dynamic procedure is intended to facilitate the award of individual contracts by building up a pool of suppliers. This new type of procedure, which is not limited to commercially available standard solutions for recurring needs, gives contracting authorities wide discretion: whether to use it with or without selection criteria and with or without negotiations. As a result, any relief for bidders depends on the buyer's choices. Waiving suitability evidence for standard, market-available solutions is an acceptable risk. Moreover, several points need attention:

- Expressions of interest should not be possible only via the eligibility service, which must in any case be easy to use.
- Random selection by algorithm (Art. 38(3)) means that the decision on who is invited to participate is taken away from the contracting authority, it can be manipulated and may exclude the best-suited bidder. Selection parameters must be transparent and the algorithm auditable. Where the selection tool qualifies as an AI system, bidders should be informed in advance. Where the selection takes place without meaningful human intervention or review, the operators affected should be able to obtain meaningful explanations of how the mechanism works and which parameters determined the outcome.
- Art. 38(4) restricts remedies to bidders who submitted a tender. Operators prevented from tendering by improper conditions or an improper exclusion must also have access to remedies.

Innovation procedure (Art. 41 ff.)

Eurochambres welcomes the new innovation procedure and the use of innovation as a contract-related element of strategic procurement.

Not mentioned at this point are the intellectual property rights that are always relevant in connection with innovation. These must be regulated so that the company, as creator of the protectable work, either holds the property right in full or at least receives appropriate compensation for the transfer of the property right or of rights of use.

The Commission proposal for the European Innovation Act (EIA), also contains numerous procurement-law provisions and it is meant to cover the procurement of pre-commercial innovation; the Public Procurement Act aims to cover, instead, all other innovation.

Eurochambres sees a clear risk of confusion of the applicable rules and demarcation difficulties for those applying the law. It is incomprehensible why the procurement provisions of the EIA were not integrated into the Public Procurement Act – all the more so as the Public Procurement Act 's explicit aim is greater coherence and less legal fragmentation. A merger would be necessary here to achieve coherence, greater legal certainty and simpler application overall.

Special procedures (Art. 46 – 47)

Until now, a public contracting authority could, under Article 32(2)(a) of Directive 2014/24/EU, use a negotiated procedure without prior publication if, for example, no bids or no suitable bids, or no requests or no suitable requests to participate, had been submitted in an open or restricted procedure, provided that the initial conditions of the contract were not substantially altered. No such provision can be found in either Article 46 or Article 47 of the proposal.

These provisions made it possible to continue a competitive procedure that had already been conducted transparently and in which no bids or no suitable bids, or no requests or no suitable requests to participate, had been submitted. In specialised markets, it can happen that no formally valid requests to participate or bids are received, or that the requirements of the public contracting authority or utilities contracting entity are misunderstood. The option of subsequent negotiations increases the likelihood of a contract being concluded and reduces the costs of unsuccessful tender procedures. The combination of a competitive procedure previously conducted transparently and the prohibition of substantial changes ensures a high level of protection. This option has been transposed into national procurement law and is used in practice, so removing it would reduce the flexibility currently available to contracting authorities in such cases. This provision, therefore, should be reintroduced.

In addition, Article 32(5) of Directive 2014/24/EU allowed contracts to be awarded in a straightforward and resource-efficient manner. At the same time, the same provision in Directive 2014/25/EU does not set any time limit for launching the follow-up procedure. Accordingly, Eurochambres suggests that the new version should not contain any such restriction either.

Eurochambres therefore calls for reinstating two grounds from Directive 2014/24/EU:

- negotiation without prior publication after an open or restricted procedure produced no suitable tenders, provided the original terms are not substantially changed (Art. 32(2)(a));
- repetition of similar works or services based on a basic project announced in the original call (Art. 32(5)), without a time limit for utilities, as under Directive 2014/25/EU.

In addition, the Regulation should clarify the conditions under which utilities contracting entities may use the negotiated procedure without prior publication where this is necessary to protect critical energy infrastructure or address security threats.

The two-year limit for additional deliveries (Art. 47(b)(i)) is far too short for infrastructure products with life spans of 30 years or more and should be deleted.

Title II Strategic design and execution of public procurement

Green public procurement (Art. 50 ff.)

The optional provisions allowing authorities to consider environmental and climate aspects are welcome. Further mandatory obligations would make tenders more complex, restrict competition, raise costs and burden SMEs, and should be rejected in the legislative process. Environmental criteria must be linked to the subject matter, proportionate, technology-neutral and verifiable. Company-related sustainability requirements must not be extended.

Energy efficiency (Art. 52)

The positive effects on actual energy-saving measures are difficult to grasp here. Eurochambres suggests reducing energy efficiency criteria to a minimum and to provisions that are as simple and directly applicable as possible, instead of references to other legal acts.

Socially responsible public procurement (Art. 55 ff.)

Social requirements are often company-related rather than contract-related. They increase bureaucracy and make participation harder, especially for SMEs. Requirements whose compliance cannot be effectively checked should not be part of procurement law.

Particular concerns relate to collective agreement compliance requirements, additional reporting duties and social policy targets without a direct link to the contract. Such requirements hinder cross-border participation. Applying different pay and working conditions only to staff working on a public contract is a heavy, sometimes unreasonable burden, especially as the staff is often unknown at the time of tendering. Art. 55(4) also appears contradictory. References to collective agreements should be removed.

Innovation objectives in public procurement and intellectual property (Art. 59 – 64)

Innovation should be promoted as an option, not an obligation. Quotas, targets or mandatory innovation requirements should be avoided. More effective levers are simpler tendering, making greater use of market consultations, openness to start-ups, innovation-friendly technical specifications and variants as the default.

The rules on intellectual property are particularly important. Where IP rights must be transferred to the contracting authority (Art. 64(2)), the company must receive adequate remuneration.

The provisions provided for in the EIA for the pre-commercial innovation procurement procedure should be integrated into the PPA at this point in order to avoid duplicate examinations, demarcation difficulties and legal fragmentation.

Building information modelling (Art.65)

Although the objectives set out in Art. 65 with regard to building information modelling are to be welcomed in principle, the decision on the type and extent of BIM use should remain

at the discretion of the contracting authority, taking into account project-specific requirements.

The appropriateness and the necessary extent of BIM use do not depend on a value threshold, but essentially on the particular features and subject matter of the respective (infrastructure) project. Mandatory BIM use above a certain contract value therefore appears to be of only limited practical use. The decision on whether the use of BIM is appropriate in a specific procedure must continue to be taken by the contracting authority, in compliance with the principles of procurement law. BIM can bring significant benefits in the construction process, but it also entails additional costs. BIM requirements should therefore be economically justified and linked to the contracting authority's actual needs, including how the model will be used after construction is completed. Where the authority has no plans or practical means to use the model further, requirements to prepare and maintain it may increase project costs without justification.

Security and resilience (Art. 66 – 69)

Recent geopolitical developments justify giving more weight to security of supply and resilient supply chains. Such requirements must, however, be limited to genuinely critical infrastructure and security-relevant areas, as listed in Art. 66(2) and (3), and remain transparent and proportionate. SMEs should be able to use simplified self-declarations on proof of origin and evidence should be required only for the value-determining share.

Eurochambres welcomes that Art. 68 places the duty to ensure compliance with the cybersecurity requirements of Regulation (EU) 2024/2847 on member states rather than individual contracting authorities.

Moreover, the proposal makes resilience a central notion, as a security interest under Art. 66, as a requirement for critical entities under Art. 69 and as an element of quality in award criteria. Yet neither resilience nor related notions such as "economic, physical and geopolitical resilience", "critical dependency" or "systemic risk" are defined. The definition in the Critical Entities Resilience Directive, to which Art. 69 refers only to determine its scope, concerns the ability to withstand and recover from incidents and does not cover the much broader economic and geopolitical dimension now introduced. As the lists in Art. 66(2) and (3) are open-ended and Art. 69 applies "where relevant", contracting authorities would largely decide for themselves what resilience means.

Eurochambres calls for clear definitions and for resilience requirements to be limited to genuinely critical infrastructure. Measures such as stockpiling within the Union or limiting dependency on third countries must not become local-content requirements without the safeguards that apply to the European preference. The power to make such requirements mandatory by delegated act (Art. 66(6) and 69(4)) should be deleted or strictly framed.

European preference (Art. 70 – 77)

The proposal would allow contracting authorities to restrict participation to EU and "covered" operators, set EU content requirements, grant price or scoring advantages, and reject tenders with less than 50% EU or covered content.

Eurochambres is sceptical of a general European preference in procurement law. Procurement should serve competition and value for money, not market design.

Eurochambres recognises the need to reduce critical dependencies, strengthen resilience, and address competition from subsidised third-country companies, and there may be legitimate reasons to apply a European preference in certain strategic sectors. However, the Foreign Subsidies Regulation, the International Procurement Instrument and the proposal's own chapter on security and resilience already address these concerns. Any preference should therefore only be used where these instruments are insufficient, strictly limited to a few security-relevant sectors, carefully calibrated, proportionate, transparent and verifiable. It must not deter European companies from bidding, especially SMEs that have never dealt with origin rules. Nor should it provoke counter-measures that close third-country procurement markets to EU exporters.

The broad definition in Art. 70, covering GPA parties, trade agreement partners and customs unions, is essential to preserve an open approach towards trusted partners. The Commission's power to narrow it by delegated act (Art. 72) should be used only in cases of serious and persistent breaches by the country concerned, after consultation and with an adequate transition period. Setting the requirements for the preference by delegated act (Art. 75) is inappropriate for such sensitive choices, which belong to the co-legislators. The relationship between Art. 70-76 and Recital 33 should also be clarified, so that contracting authorities know when they may allow, restrict or exclude the participation of third-country operators.

The measures in Art. 73 must be workable. Since Art. 73(1) and (2) leave it to public buyers whether, and which, measures to apply, requirements may differ from one procedure and one member state to the next. To keep the framework predictable, contracting authorities should state clearly in the procurement documents which measures apply, and the Commission should provide guidance to ensure consistent application. Key notions such as the "proportion" of EU content and the "value" against which the 50% threshold is measured need to be defined, together with a clear calculation methodology, so that bidders and contracting authorities can predict and consistently apply how their tenders will be assessed. Origin requirements should follow the general rules on changes to procurement documents, rather than the stricter regime in Art. 73(3).

Rules of origin must be clear, uniform and digitally verifiable, building on the Union Customs Code, including for technical equipment assembled from components originating in different countries. Evidence must be proportionate, with self-declarations as the default for SMEs. Bidders acting in good faith must be protected, and origin checks of every contract component avoided. The origin of services (Art. 74(3)) should depend on where the service is performed, not where the bidder is established. Otherwise, third-country companies could circumvent the rules through EU branches. Recording the origin of goods in the electronic suitability service (Art. 28(4)) is impractical where suppliers change frequently, so origin evidence should only be required for the specific procedure. The Commission's online tool to identify covered operators and products (Art. 71) must be practical, user-friendly and up to date, and wrongly classified operators must be able to get errors corrected quickly.

The derogations in Art. 76 should be extended and made more precise. The two-year reference period for prior unsuccessful procedures should become five years, and both "comparable procedure" and the starting point of the period should be defined. The Regulation should also set out how contracting authorities are to establish that a product or service is not available from an EU or covered operator and that no reasonable alternative exists, since even a detailed market assessment may not give them complete information.

The concept of “disproportionate costs” should be defined with clear criteria. Art. 76 should also include a derogation where the preference would delay the procedure by more than seven months, following the Net-Zero Industry Act model.

Finally, a single framework (Art. 77) is preferable to diverging rules in each sectoral act. The relationship with the proposed Industrial Accelerator Act (COM(2026) 68) must be clarified.

Title III Horizontal provisions

Other mixed contracts (Art. 87)

For mixed contracts under Art. 87, the existing distinction based on whether the parts of the contract are objectively separable should be retained. The planned abolition of this distinction may mean that even a small part relevant to procurement law brings a much larger overall contract within the scope of the rules. This does not seem appropriate, particularly for contracts that are objectively inseparable.

For separable services, it should still be possible to assign them according to the relevant applicable rules. For inseparable contract subjects, the main economic subject matter should remain decisive. An express prohibition of circumvention can ensure that this flexibility is not misused.

Specifications and variants (Art. 88 – 89)

Art. 88(3) clearly favours functional requirements. For complex infrastructure, such as control and signalling systems, IT interfaces, spare parts or safety-critical components, specific technical requirements may be needed for interoperability and safety. Both approaches should remain equally permissible. It should also be clear that identical replacement purchases can rely on the original specifications and approvals, rather than the latest standards.

Eurochambres welcomes the obligation on contracting authorities to consider admitting variants (Art. 89(1)). Admitting variants should be the default, with exclusion requiring justification, to foster innovation, competition, and possibly other strategic aspects.

Link to the subject matter (Art. 90)

The requirement that all criteria and conditions be linked to the subject matter of the contract is essential for businesses. However, Art. 90(2) and (3) regard an indirect link as sufficient and paragraph 3 refers, among other things, to the working conditions of the employees deployed. This makes companies' participation in tenders enormously complicated if only the specific employees deployed have to be treated differently from the others; if, on the other hand, the working conditions were required for the entire company, this would no longer be linked to the subject matter of the contract but company-related, and must therefore be rejected.

Labels (Art. 91)

Requiring specific labels can restrict competition and overburden SMEs. Authorities should describe the underlying requirements, with equivalent evidence as the rule. Art. 91(3) should not limit alternative evidence to cases where the operator is not at fault for lacking the label.

Partial evidence of the relevant requirements must be sufficient. At the same time, certification must not become a barrier to market entry.

Award criteria (Art. 98)

Eurochambres welcomes the stronger focus on best price-quality ratio: buying cheap often means buying twice. Minimum quality weightings can help prevent award decisions from reverting in practice to an excessive focus on price. However, mandatory minimum quality weightings of 30%, or 50% for labour-intensive contracts as in Art.98(4), are too rigid in their current form:

- For standardised and mass products, competition on price or life-cycle cost can be appropriate, as a mandatory need for quality evaluation in every case is not necessary and is too burdensome.
- In practice, strategic criteria would carry most of the quality weighting, making them de facto mandatory.
- Authorities might drop quality criteria altogether where possible, rather than weight them at 30%.
- Whether labour exceeds half of the contract value often depends on the bidder's approach and cannot be assessed in advance. Construction, which is labour-intensive, would be widely captured, risking artificial criteria and more legal challenges.

The weighting should remain the contracting authority's decision, with deviations allowed for standardised products. Should minimum weightings be retained, the Regulation must clearly define the conditions under which authorities may depart from them, in particular for standardised products where there is little room for quality differences. Authorities must state clearly what they mean by quality. Quality criteria must be clearly defined, objective, verifiable and meaningful, supported by practical guidance, especially for construction, so that they genuinely contribute to best value for money.

Division into lots (Art. 100)

Eurochambres considers the division into lots an important tool for opening public procurement to SMEs and welcomes the requirement in Art. 100 that contracting authorities examine whether contracts should be divided into lots, and that this examination now comes first in their assessment under Art. 100(2).

Division into lots should be the rule. Where a contracting authority awards a contract as a whole, it should give a project-specific justification. That justification should weigh competition and SME access against coordination needs and interface risks. It must be specific, objective and verifiable, and effective means must exist to review whether it is valid. A formal obligation alone is not enough: in practice, authorities sometimes award contracts as a whole even where division would be objectively possible and would promote competition. Effective application and oversight of the principle are therefore essential.

At the same time, utilities and complex infrastructure projects often depend on integrated delivery, long life cycles and the technical compatibility of systems. For them, the rules should allow sufficient flexibility, for example through a simplified justification. The opening clause in Art. 100(7), which allows member states to keep stricter national rules, should be retained.

However, division into lots does not reduce bidders' administrative burden. To improve actual SME participation, this must be coupled with simpler evidence requirements.

Abnormally low tenders and corrections during procedures and cancellation (Art. 101–102)

Eurochambres welcomes the proposed new elements and targeted simplifications. However, the term "correction" in Art. 102 should be defined more precisely, so that contracting authorities know when the provision applies and uncertainty during procedures is reduced.

Checks on abnormally low tenders at award stage should be complemented by effective oversight during contract performance. Otherwise, bidders that win on price without planning for full performance gain an unjustified advantage over those that price in the full cost of quality delivery. Contracts should therefore provide for clear, proportionate mechanisms, appropriate to the subject matter, to verify performance of the most important obligations and set out how the contracting authority will act if non-compliance is identified. This should not create additional bureaucracy, reporting duties or automatic sanctions, but clear rules that apply equally to all market participants.

Framework agreements (Art. 103)

Framework agreements provide flexibility and simplification. There is no reason to cut their standard maximum duration from four to three years. For utilities, the current eight years should be kept, given the long investment cycles for rolling stock, networks, IT systems and spare parts. Longer durations must remain possible where objectively justified. Quantities should continue to be specified only where appropriate, so that framework agreements carry no general purchase obligation, which is essential for large buyers, utilities and central purchasing bodies. At the same time, suppliers must hold capacity in reserve. Contracting authorities should therefore provide realistic call-off estimates where they can influence them. Tender documents should state whether a framework agreement is exclusive; under an exclusive agreement, the authority should not purchase outside it.

Adjustment mechanisms and modifications of contracts during their term (Art. 105–106)

Eurochambres welcomes the explicit rules on adjustment mechanisms such as indexation (Art. 105). They let bidders price changes in and, for some services, make tendering viable in the first place. Detailed rules on post-award modifications (Art. 106) give legal certainty, and preserving the economic balance of the contract (Art. 106(3)) is important. The new ground for emergencies and crises is also welcome.

At the same time, Eurochambres would like to draw attention to three elements:

- **Adjustment for long-term contracts.** Art. 105 leaves adjustment mechanisms entirely optional. Without them, bidders on long-term contracts must price expected cost increases and forecasting risk into their bids from the outset, so authorities may pay an inflated price from the first year, before costs have actually risen. Where the duration, subject matter or exposure to cost volatility of a contract creates a significant risk of economic imbalance, contracting authorities should therefore, as a rule, provide for adjustment mechanisms, for example regular (such as annual) indexation

based on objective and verifiable indicators. This would allow more accurate and competitive bids, reduce the risk of overpayment and share costs more fairly over the life of the contract.

- **Review clauses**. The rule in Art. 72(1)(a) of Directive 2014/24/EU allowing modifications of any value under clear review clauses should be reinstated, as it allows a valid contract modification, irrespective of its monetary value, where it has been provided for in the initial procurement documents in clear, precise and unequivocal review clauses.
- **Prior publication.** Article 106(6) contains an obligation of prior publication for any contract modification exceeding 50% of the initially estimated value. Firstly, it is unclear why the "initially estimated value" is used as the basis rather than the "initial contract value". This obligation of prior publication can lead to delays in time-critical situations (e.g., infrastructure failures, supply crises, etc.). Although paragraph 6 provides for an exception for urgent cases, it does not define the term "urgent cases", which could lead to difficulties of interpretation. It would therefore be desirable for the publication obligation in cases covered by Article 106(4)(b) (unforeseeable circumstances) to apply generally only after the event.

Termination of contracts (Art. 107)

Early termination of contracts ensuring services of general interest can cause serious problems. Termination should only be possible where the authority concluded the contract knowing of the exclusion ground, or the contractor should be able to remedy the situation through self-cleaning (Art. 28). The treatment of a company after a convicted person has left should be clarified.

The provision should be framed as a statutory ground for termination and its implementation should be left to member states so that it can be incorporated into the respective national civil law.

Payments (Art. 108)

Eurochambres supports a culture of timely payments and agrees that payment deadlines need to be expressly mentioned, since past practice has often shown that the public sector pays considerably late. Contracting authorities should pay as soon as performance has been checked and approved, rather than routinely waiting until the end of the payment period. The possibility of a shorter maximum payment term for public authorities in such cases should be assessed. Faster payment by the public sector would improve companies' liquidity and encourage prompt payment throughout the supply chain, and is a more effective systemic solution than additional payment mechanisms.

However, Art. 108(6), which provides for the option of the contracting authority paying subcontractors directly, raises considerable concerns, as it interferes with the contractual arrangements between the main contractor and the subcontractor. While direct payment may protect the subcontractor in individual cases, it is an unsystematic interference in the bilateral contractual relationship between companies and an undermining of contract law, focusing solely on payment and without taking account of other circumstances that the contracting authority may well not be aware of. At most, as under Art. 71 of Directive 2014/24/EU, the decision on whether to allow direct payments should remain with member states, so that national systems that already use this option can keep it.

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Public Procurement Act

Part IV, V, VI and VII – Concessions, digital ecosystem, transparency and governance, and final provisions

Definition and characteristics of concessions (Art. 115)

Eurochambres welcomes that the definition of a concession again includes "the provision and management of services".

Digital ecosystem (Art. 127 ff.)

Digitalisation offers major potential to simplify procurement and cut bureaucracy. Eurochambres supports EU-wide digital access to public tenders, consistent application of the once-only principle, digital company profiles and electronic evidence. Businesses need a single entry point that is easy to access and usable by non-specialists.

An interoperable EU system linking national platforms is clearly preferable to a new centralised EU system, and Eurochambres welcomes that the proposal largely follows this decentralised approach. The EU solution must complement and connect existing national and private platforms, not replace them. Preconditions are genuine data reuse instead of duplicate reporting, open interfaces, free access, workable correction and redress mechanisms, protection of confidential business data and robust fallback solutions. The new system must not create additional administrative or technical burdens for businesses, particularly SMEs. Mandatory use should only apply once technical maturity has been demonstrated.

Electronic eligibility service (Art. 28 – 29, 133)

Under Article 133 of the proposal, the Commission is to set up a service for the electronic verification of the suitability of economic operators ("electronic suitability service") to support contracting authorities and economic operators in award procedures.

While Eurochambres welcomes the aim of efficient, standardised digital verification of suitability, several questions remain open:

- **Relationship with national systems**. It is unclear whether the service replaces or strengthens national prequalification systems and official lists. Several member states already run such systems, some for decades, with evidence kept up to date automatically. These should be integrated rather than rebuilt at EU level.
- **Relationship with the ESPD**. It is unclear what role the European Single Procurement Document will play in future, given that its use is currently governed by Implementing Regulation (EU) 2016/7. The relationship between the new service and the existing ESPD requirements should be clearly defined, so that businesses do not face parallel systems.
- **Use in practice**. It is unclear whether the service is filled independently of specific tenders, and whether bidders must upload evidence to it or can prove suitability directly to the authority. No additional steps should be created.
- **Errors**. The proposal does not say how to handle justified doubts about an automated check, wrongful exclusion or admission, liability for awards based on wrong results, or evidence that is unclear or incomplete. Without a way to correct evidence, automated checks could restrict competition and hit SMEs hardest.

- **Data protection**. The service must not become a permanent repository of internal and personal data. Clear limits, deletion rules and access management are needed.

Data spaces and reporting (Art. 109, 111, 134, 139(9))

The proposed reporting and data requirements partly contradict the aim of reducing red tape. They cover extensive information on procedures, contract performance, subcontractors and payments, much of which businesses would ultimately have to supply. Eurochambres therefore calls for:

- limiting data collection to what is clearly defined, necessary and automatically available, without manual double entry, and improving the quality of existing data before adding new duties;
- strictly protecting trade secrets, personal data and security-relevant information;
- applying new obligations only after full technical specification, testing and a data security assessment, with longer implementation periods for documentation duties (Art. 109).

For critical infrastructure, pooling procurement and contract data in central data spaces can reveal network architectures, supply chains and technical dependencies. Given the risk of attacks, decentralised storage of sensitive information should be preferred.

Professionalisation and capacity building (Art. 139)

Many procurement problems are about application, not regulation. Eurochambres strongly supports professionalisation through training, competence centres and better market knowledge, which lead to better tenders and are often more effective than new rules. Measures to strengthen the capacities of economic operators, especially SMEs (Art. 139(3) and (7)), are particularly welcome.

Amendments, repeals, transitional provisions (Art. 146 ff.)

These provisions on the repeal and amendment of procurement-law provisions make clear that a large number of sector-specific EU rules affecting procurement have been adopted in recent years. This has led to a lack of clarity, incoherence, legal fragmentation, in some cases even contradictions, and in any case to high complexity and an excessive burden on those applying the law. The fact that greater coherence is now being pursued is a good approach to making the rules easier to find and to apply for practitioners. Whether the current provisions are sufficient for this remains to be seen. At the same time, it should be ensured that the necessary clarity is not lost again through new extensive strategic requirements. In addition, strict care will have to be taken in future that no new "proliferation" of rules arises. With a view to the Industrial Accelerator Act, the Innovation Act, the Chips Act, etc. in particular, this must not only be monitored but prevented.



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Eurochambres – the association of European chambers of commerce and industry – represents more than 20 million businesses through its members and a network of 1700 regional and local chambers across Europe. Eurochambres is the leading voice for the broad business community at EU level, building on chambers' strong connections with the grass roots economy and their hands-on support to entrepreneurs. Chambers' member businesses – over 93% of which are SMEs – employ over 120 million people.

Previous positions can be found here.

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