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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 30 October 2019

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: C(2019) 7696 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 30.10.2019
amending Directive 2009/81/EC of the European Parliament and of the
Council in respect of the thresholds for supply, service and works contracts

Delegations will find attached document C(2019) 7696 final.

Encl.: C(2019) 7696 final



Brussels, 30.10.2019
C(2019) 7696 final

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

of 30.10.2019

**amending Directive 2009/81/EC of the European Parliament and of the Council in
respect of the thresholds for supply, service and works contracts**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 68 of Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC empowers the Commission to adopt delegated acts, in accordance with Article 290 TFEU, for the revision of the thresholds. That Article also provides, in case of time constraints, for the use of the urgency procedure, in accordance with Article 66b of that Directive.

Article 68 of Directive 2009/81/EC further provides that the thresholds laid down in Article 8 of that Directive shall be revised at the same time as the thresholds applicable to the Directive on procurement by entities operating in the water, energy, transport and postal services sectors (Directive 2014/25/EU of the European Parliament and of the Council).

For reasons of coherence, the thresholds laid down in Directive 2009/81/EC should be aligned to the revised thresholds laid down in Directive 2014/25/EU.

The calculation of the thresholds is made on the basis of the average daily value of the euro in terms of the Special Drawing Rights, over a period of 24 months terminating on 31 August preceding the revision, with effect from 1 January. Consequently, the calculation of the thresholds cannot start earlier than 1st of September due to data availability. Furthermore, according to Article 68 of Directive 2009/81/EC, the revised thresholds (in EURO) and their corresponding values in other European Union (EU) national currencies shall be published by the Commission in the Official Journal of the EU at the beginning of November.

In view of the above, and in order to meet the above mentioned deadline, the Commission makes recourse to the urgency procedure for adopting this regulation.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Experts Group on Defence and Security Procurement was consulted on this Regulation and the accompanying Communication.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

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

The GPA establishes a mechanism for recalculating the equivalent value of its thresholds, which are fixed in SDRs, in the currencies of its parties every two years. This mechanism is given legal effect in European Union through Article 6 of Directive 2014/24/EU.

Commission Delegated Regulation (EU) .../... of 30.10.2019 amending Directive 2009/81/EC of the European Parliament and of the Council in respect of the thresholds for supply, service and works contracts

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC¹, and in particular the second subparagraph of Article 68(1) thereof,

Whereas:

- (1) By Decision 2014/115/EU², the Council approved the Protocol amending the Agreement on Government Procurement³ ('the Agreement') concluded in the framework of the World Trade Organization. The Agreement is a plurilateral instrument and its purpose is to mutually open government procurement markets among its parties. It applies to any procurement contract with a value that reaches or exceeds the amounts ('thresholds') set in it and expressed as special drawing rights.
- (2) One of the objectives of Directive 2014/25/EU of the European Parliament and of the Council⁴ is to allow the contracting entities and the contracting authorities, which apply that Directive, to comply at the same time with the obligations laid down in the Agreement. In accordance with Article 17 of Directive 2014/25/EU every two years the Commission is to verify that the thresholds set out in points (a) and (b) of Article 15 of that Directive correspond to the thresholds established in the Agreement and is to, where necessary, revise them.
- (3) The thresholds laid down in Directive 2014/25/EU have been revised. In accordance with Article 68(1) of Directive 2009/81/EC, the thresholds laid down in that Directive are to be aligned to the revised thresholds laid down in Directive 2014/25/EU.
- (4) Directive 2009/81/EC should therefore be amended accordingly,

¹ OJ L 216, 20.8.2009, p. 76.

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

³ OJ L 68, 7.3.2014, p. 2.

⁴ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

HAS ADOPTED THIS REGULATION:

Article 1

Article 8 of Directive 2009/81/EC is amended as follows:

- (1) in point (a), 'EUR 443 000' is replaced by 'EUR 428 000';
- (2) in point (b), 'EUR 5 548 000' is replaced by 'EUR 5 350 000'.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2020.

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

Done at Brussels, 30.10.2019

For the Commission
The President
Jean-Claude JUNCKER