



Brussels, 22 November 2023
(OR. en)

15828/23

MAP 53
MI 1020
COMPET 1156
DELACT 184

COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 15 November 2023

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: C(2023) 7642 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 15.11.2023 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the thresholds for public supply, service and works contracts, and design contests

Delegations will find attached document C(2023) 7642 final.

Encl.: C(2023) 7642 final



EUROPEAN
COMMISSION

Brussels, 15.11.2023
C(2023) 7642 final

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

of 15.11.2023

amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the thresholds for public supply, service and works contracts, and design contests

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 6 of Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC empowers the Commission to adopt delegated acts, in accordance with Article 290 of the Treaty on the Functioning of the European Union. The purpose of these acts is to revise the thresholds applying to these contracts.

That Article also specifies that, where there are time constraints, the urgency procedure can be used, in accordance with Article 88 of that Directive.

According to Article 6(1) of Directive 2014/24/EU, the thresholds are calculated on the basis of the average daily value of the euro in terms of Special Drawing Rights (SDRs), over a period of 24 months, ending on 31 August preceding the revision, with effect from 1 January.

Consequently, the calculation of the thresholds cannot start earlier than 1 September, due to data availability. Furthermore, according to Article 6(4) of the Directive, the revised thresholds (in euro) and their corresponding values in the other national currencies of EU Member States must be published by the Commission in the Official Journal of the EU at the beginning of November.

In view of the above, and to meet the above-mentioned deadline, the Commission is using the urgency procedure to adopt this regulation.

2. CONSULTATIONS PRIOR TO ADOPTING THE ACT

The Experts Group for Public Procurement was consulted on this Regulation and the accompanying Communication.

3. LEGAL ASPECTS OF THE DELEGATED ACT

The calculation of the thresholds for 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 that are open to competition from companies in other signatory countries.

The GPA has 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 through Article 6 of Directive 2014/24/EU.

For reasons of consistency, it is appropriate to also align those thresholds in Directive 2014/24/EU, which are not covered by the Agreement.

Commission Delegated Regulation (EU) .../... of 15.11.2023 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the thresholds for public supply, service and works contracts, and design contests

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC¹, and in particular Article 6(5), second subparagraph, thereof,

Whereas:

- (1) By Decision 2014/115/EU², the Council approved the Protocol amending the Agreement on Government Procurement³ concluded in the framework of the World Trade Organization. The amended Agreement on Government Procurement ('the Agreement') is a plurilateral instrument and its purpose is to mutually open government procurement markets among its parties. The Agreement applies to any procurement contract with a value that reaches or exceeds the amounts set therein ('thresholds') and expressed as special drawing rights.
- (2) One of the objectives of Directive 2014/24/EU is to allow the contracting authorities which apply that Directive to comply at the same time with the obligations laid down in the Agreement. To ensure that the thresholds set in Article 4, points (a), (b) and (c), of Directive 2014/24/EU correspond to the thresholds established in the Agreement, it is necessary to revise the thresholds set out in that Directive. In accordance with Article 6(2) of Directive 2014/24/EU, the thresholds established in Article 13 of that Directive are to be aligned with the thresholds set out in Article 4, points (a) and (c), of that Directive.
- (3) Article 6(1) of Directive 2014/24/EU requires that every two years the Commission revise the thresholds with effect from 1 January. Hence, the thresholds for the years 2024-2025 should apply as of 1 January 2024.
- (4) The calculation of the thresholds cannot start earlier than 1 September, due to data availability. According to Article 6(4) of the Directive, the revised thresholds in euro and their corresponding values in other national currencies of EU Member States must 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.
- (5) Directive 2014/24/EU should therefore be amended accordingly,

¹ OJ L 94, 28.3.2014, p. 65.

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.

HAS ADOPTED THIS REGULATION:

Article 1

Directive 2014/24/EU is amended as follows:

- (1) Article 4 is amended as follows:
 - (a) in point (a), ‘EUR 5 382 000’ is replaced by ‘EUR 5 538 000’;
 - (b) in point (b), ‘EUR 140 000’ is replaced by ‘EUR 143 000’;
 - (c) in point (c), ‘EUR 215 000’ is replaced by ‘EUR 221 000’;
- (2) in Article 13, first paragraph is amended as follows:
 - (a) in point (a), ‘EUR 5 382 000’ is replaced by ‘EUR 5 538 000’;
 - (b) in point (b), ‘EUR 215 000’ is replaced by ‘EUR 221 000’.

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 2024.

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

Done at Brussels, 15.11.2023

*For the Commission
The President
Ursula VON DER LEYEN*