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Public procurement: the possible replacement of the public contracts code with the proposed EU regulation

On September 9, 2026, the European Commission adopted the proposal for a Regulation of the European Parliament and of the Council on Public Procurement and Concessions, known as the **Public Procurement Act**. The proposal provides for the repeal of the public procurement directives No. 2014/23/EU (concessions), No. 2014/24/EU (general sectors), and No. 2014/25/EU (special sectors), and their replacement with a **single regulation directly applicable throughout the EU without the need for national legislation.**

Listed below are what, based on the Commission's proposal, could be the main changes introduced by the regulation.

1. From three directives to a single regulation

The choice of a regulation entails the **elimination of national transposition**, with uniform application throughout the European Union and the stated elimination of additional national regulations (so-called gold plating). For Italy, the impact would be structural: the **Public Contracts Code** (**Legislative Decree No. 36/2023**) will have to be thoroughly revised, and its scope of application could essentially be limited to contracts below the threshold and to areas not harmonized by the Regulation.

2. Streamlined and negotiable procedures

The types of current award procedures are reduced to three: **open procedure, dynamic procedure** (operators join the procedure and are then invited to bid on or negotiate individual contracts), and **innovation procedure**. The open and dynamic procedures may be conducted with or without selection criteria, and **negotiation is permitted in all procedures**, provided that the necessary guarantees of transparency and non-discrimination are in place. Essentially, negotiation would no longer be a standalone procedure (requiring justification), but rather a method of conduct that the contracting authority may incorporate into any procedure, provided it is declared in advance and a set of rules of conduct is followed.

3. Quality, sustainability, and innovation

The **best value for money is the standard award criterion**, with qualitative criteria accounting for no less than 30% of the total score: awarding the contract based solely on price remains possible only in justified cases. Furthermore, green procurement, social criteria (accessibility, working conditions, reserved contracts), and the procurement of innovation (for new solutions not available on the market on a large commercial scale) are strengthened.

4. European preference, security, and resilience

The proposal introduces a **European preference** criterion, based on the distinction between Union operators, goods, services, and works that are "covered" and those that are not. Those originating from third countries bound to the Union by the WTO Agreement on Government Procurement or by a trade or customs

union agreement are covered, but only if the individual contract falls within the commitments undertaken by the Union: verification must be carried out on a tender-by-tender basis, using a dedicated online tool provided by the Commission (Access2Markets). Contracting authorities may:

- limit participation to Union operators and subcontractors or "covered" operators, rejecting bids from other operators;
- require that the goods, services, or construction work offered be of EU origin or covered origin, in whole, in part, or for individual components;
- award additional points or reduce the bid price solely for the purpose of ranking, without affecting the contract price to be paid;
- reject a bid where the EU or covered content is less than 50% of the value.

The contracting authority may waive the preference in specific cases: absence of EU alternatives, lack of suitable bids, or disproportionate costs (Art. 76).

It is permitted—and in some cases required—to consider and, if appropriate, adopt suitable measures at any stage of the procedure to protect interests related to security and public order, cybersecurity, and supply resilience, with the obligation to exclude high-risk ICT suppliers and terminate the contract for security reasons.

5. SMEs, exclusions, and digitalization

The grounds for exclusion are standardized and divided into mandatory and optional categories, with self-cleaning permitted only for the latter. Selection criteria are limited to the minimum necessary: prior experience in public procurement may not be required, unless justified, and the minimum revenue requirement may not exceed 50% of the contract's estimated annual value; subcontracting the entire contract remains prohibited.

On the digital front, the proposal provides for interoperable eProcurement platforms, an **electronic eligibility service** using digital business credentials under a once-only approach, national and EU-wide procurement data repositories, a national coordinating authority, and annual reporting requirements.

6. Timeline and initial operational guidelines

The proposal follows the ordinary legislative procedure: the Council's working group began its review on September 17–18, 2026, and continued throughout October, with negotiations expected to conclude in the fourth quarter of 2027. The regulation will enter into force on the twentieth day following its publication in the Official Journal of the European Union, but **it will apply only two years later**, with a review every seven years.

Until then, the 2014 directives and the current Public Contracts Code remain applicable.

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If confirmed, the proposal would mark a paradigm shift: a single, directly applicable European framework for public procurement, greater procedural flexibility, a focus on quality, and a clear orientation toward European preference and security of supply.

However, there are also areas of concern. A single regulation, directly applicable in all Member States, risks diminishing that national sensitivity to the specific challenges of individual legal systems which, in the Italian case, has developed over the decades primarily through the case law of the administrative courts (consider, for example, safeguards regarding the prevention of criminal infiltration, transparency, and the protection of competition).

The phasing out of additional national regulations could thus undermine, at least in part, a well-established body of interpretive precedent, potentially leading to uncertainties in application during the transition phase.

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