



Brussels, 18.12.2017
C(2017) 7688 final

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

of 18.12.2017

amending Directive 2014/23/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 9 of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, empowers the Commission to adopt delegated acts, in accordance with Article 290 TFEU, with respect to 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 49 of that Directive.

According to Article 9(1) of Directive 2014/23/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 9(3) of that Directive, 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 legal deadlines, the Commission makes recourse to the urgency procedure for adopting this regulation.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Experts Group for Public 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 2 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 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 9 of Directive 2014/23/EU.

For reasons of coherence, it is appropriate to align also those thresholds in Directives 2014/23/EU, which are not covered by the Agreement.

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THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts¹, and in particular the second subparagraph of Article 9(4) thereof,

Whereas:

- (1) By Decision 2014/115/EU², the Council approved the Protocol amending the Agreement on Government Procurement ('the Agreement')³ 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 2014/23/EU 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. To achieve that, the thresholds laid down by that Directive for public contracts which are also covered by the Agreement should be aligned in order to ensure that they correspond to the euro equivalents, rounded down to the nearest thousand, of the thresholds set out in the Agreement.
- (3) For reasons of coherence, it is appropriate to align also the thresholds laid down in Directive 2014/23/EU which are not covered by the Agreement
- (4) Directive 2014/23/EU should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 8(1) of Directive 2014/23/EU, the amount 'EUR 5 225 000' is replaced by 'EUR 5 548 000'.

¹ OJ L 94, 28.3.2014, p. 1.

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.4.

Article 2

This Regulation shall enter into force on 1 January 2018.

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

Done at Brussels, 18.12.2017

For the Commission
The President
Jean-Claude JUNCKER