

Department of Contracts  
Notre Dame Ravelin  
FLORIANA

To Permanent Secretaries  
Directors General  
Directors  
Heads of Public Sector Organisations

10 May 2024

## INTERNATIONAL PROCUREMENT INSTRUMENT REGULATION

Regulation (EU) 2022/1031 in relation to the '*Access of third-country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries*' (hereinafter: the *International Procurement Instrument Regulation – IPI*) has been published on the Official Journal of the European Union on 30 June 2022 and has entered into force on the sixtieth day following its publication. Accordingly, this Regulation is binding in its entirety and directly applicable in all Member States since 29 August 2022.

The Department of Contracts, in liaison with the Economic Policy Department (within the Ministry for Finance) encourages Contracting Authorities<sup>1</sup> / Entities<sup>2</sup>, specifically officers responsible for Public Procurement to thoroughly read and familiarise themselves with Regulation (EU) 2022/1031, enclosed at Annex I. However, it is recommended that the latest version is always reviewed from the EUR-Lex website: <https://eur-lex.europa.eu><sup>3</sup>.

### Applicability of the IPI Regulation: Procedures and Thresholds

The IPI Regulation (EU) 2022/1031 applies to Public Procurement Procedures (including the aggregate tools: Framework Agreements and Dynamic Purchasing Systems) as well as

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<sup>1</sup> Contracting Authorities in S.L. 601.03 and S.L. 601.05 are defined as the 'State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law'. Contracting Authorities in S.L. 601.09 is defined as per S.L. 601.03 with the additional inclusion of ... 'other than those authorities, bodies or associations which pursue one of the activities referred to in Schedule 4 and award a concession for the pursuit of one of those activities'.

<sup>2</sup> Contracting Entities in S.L. 601.05 are entities which: (a) are contracting authorities or public undertakings and which pursue one of the activities referred to in regulations 8 to 14; (b) when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in regulations 7 to 13, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority.

<sup>3</sup> The IPI Regulation may be downloaded from <https://eur-lex.europa.eu/eli/reg/2022/1031/oj>.

Concessions specifically launched after 29 August 2022, and covered by the following European Union (EU) Directives as well as their respective locally transposed versions:

- Directive 2014/23/EU<sup>4</sup>
- Directive 2014/24/EU<sup>5</sup>
- Directive 2014/25/EU<sup>6</sup>

In line with Article 6(4) of the International Procurement Instrument Regulation, the IPI Measure applies to Public Procurement Procedures for Goods / Supplies and Services, wherein the Estimated Value equals or exceeds a Minimum Threshold of Euro 5,000,000 excluding VAT. On the other hand, the Minimum Threshold in relation to Works<sup>7</sup> Public Procurement Procedures and Concessions<sup>8</sup> increases to Euro 15,000,000 excluding VAT. For the application of the Thresholds in the IPI Regulation, the Estimated Values shall be calculated in accordance with Article 8 of the Directive 2014/23/EU, Article 5 of the Directive 2014/24/EU and Article 16 of the Directive 2014/25/EU respectively.

### **Application of the IPI Regulation: Procurement/Concession Documents**

Pursuant to Article 1(4) of Regulation (EU) 2022/1031, Contracting Authorities / Entities shall include a reference to the applicability of the IPI Regulation (and any applicable IPI Measure) in the Public Procurement / Concession Documents specifically for instances wherein the Public Procurement / Concession Procedures are within the scope of an IPI Measure.

### **Additional Information**

To assist Contracting Authorities / Entities in reviewing Regulation (EU) 2022/1031, at Annex II, a Glossary has been enclosed and at Annex III, an outline of the Applicability of the IPI Regulation in Public Procurement / Concession Procedures is also being provided. In addition, Annex IV provides a Brief Overview of other salient content of the IPI Regulation that impacts Public Procurement / Concession Procedures.

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<sup>4</sup> On 28 October 2016, Directive 2014/23/EU was transposed (through Legal Notice 353-2016) into National Law as the Concession Contracts Regulations S.L. 601.09.

<sup>5</sup> On 28 October 2016, Directive 2014/24/EU was transposed (through Legal Notice 352-2016) into National Law as the Public Procurement Regulations S.L. 601.03.

<sup>6</sup> On 28 October 2016, Directive 2014/25/EU was transposed (through Legal Notice 351-2016) into National Law as the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations: S.L. 601.05.

<sup>7</sup> Article 2(2) of IPI Regulation (EU) 2022/1031 states that 'For the purpose of this Regulation, except for Article 6(3) and (7) thereof, the execution of works or a work within the meaning of Directives 2014/23/EU, 2014/24/EU and 2014/25/EU shall be considered as the provision of a service'.

<sup>8</sup> Concessions shall be understood to be works or services concessions, as defined in Directive 2014/23/EU and in the Concession Contracts Regulations S.L. 601.09.

## Guidance Document

Article 12 of the IPI Regulation states that *‘to facilitate the application of this Regulation by contracting authorities and contracting entities and by economic operators, the Commission shall, within six months from 29 August 2022, issue guidelines’*. For ease of reference, the said Guidelines Document is enclosed at Annex V. Nonetheless, it is recommended that the latest version (should there be any changes) is always reviewed and downloaded from EUR-Lex website: <https://eur-lex.europa.eu/><sup>10</sup>.

Recital 34<sup>11</sup> of the IPI Regulation specifies that the *‘guidelines should provide information, in particular, on the notions of the origin of natural and legal persons, the origin of goods and services, additional obligation and the application of those provisions within the framework of this Regulation’*. To this end, Contracting Authorities/Entities are encouraged to review and consult the Guidelines Document.

## **Contact**

Contracting Authorities / Entities may submit any queries in relation to the generic procurement content of this Circular to the Department of Contracts’ Customer Care service on [info.contracts@gov.mt](mailto:info.contracts@gov.mt) or by calling on +356 2378 1001.

Adrian Dalli

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<sup>10</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2023.064.01.0007.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2023.064.01.0007.01.ENG)

<sup>11</sup> Recital 34 of the IPI Regulation states that the *‘guidelines should also take into account the specific information needs of SMEs, in their application of this Regulation, with a view to preventing their overburdening’*.