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INFORMATIVE NOTE

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Amendment to the Public Contracts Code - Decree-Law no. 177/2026, of 4 September

RELEVANT LEGAL INSTRUMENTS

Decree-Law no. 177/2026, of 4 September 2026

CONTEXT

On 4 September, Decree-Law no. 177/2026 was published, introducing a broad new revision of the Public Contracts Code ("PCC"), with the stated aim of simplifying, clarifying and updating the public procurement regime.

The reform covers several dimensions of the regime, ranging from the principles and planning of procurement to the estimated contract value and the choice of procedures, as well as the revision of the thresholds for recourse to direct award and prior consultation, the reorganization of the grounds for exclusion, and the integration into the PCC of simplified procurement solutions previously set out in special legislation.

The instrument enters into force on 1 October 2026 and applies to contract formation procedures initiated after that date, as well as to the performance of contracts concluded following such procedures. The rules on the objective modification of contracts and on the alternative resolution of pre-contractual and contractual disputes apply to procedures under way and to contracts being performed on 1 October 2026.

We analyze below, in greater detail, the main changes and innovations introduced by this reform.

MAIN CHANGES

1. THE "ESTIMATED CONTRACT VALUE" TAKES ON A NEW PROMINENCE

Decree-Law no. 177/2026 significantly reshapes the regime governing contract value.

Previously, the PCC started from the definition of "contract value" as the maximum economic benefit obtainable by the successful tenderer from performing all the services making up its subject matter.

The emphasis now shifts to the concept of "estimated contract value", defined as the price estimated to be paid by the contracting authority and by third parties, plus certain consideration and advantages to be granted to the successful tenderer directly arising from performance of the contract and which may be regarded as counterparts of the obligation's incumbent on it (cf. Article 17).

The estimated value must be stated in the invitation or in the procedure's programme, determines the choice of procedure (where this depends on value), determines the body competent to authorize expenditure, and must be calculated on the basis of objective economic criteria, such as market prices, preliminary consultations or average unit costs of previous procedures.

The special rules for calculating the estimated contract value in the case of works contracts, framework agreements and dynamic purchasing systems, innovation partnerships, and public works and services concessions are also revised and made autonomous in a new article (cf. Article 17-A).
Rules aimed at preventing the artificial splitting of contracts are also reinforced (cf. Article 17-B).

These changes reinforce the need for rigorous economic and financial preparation of procedures, especially in successive procurements of services of the same type.

2. THE BASE PRICE IS NO LONGER MANDATORY

Another change with significant impact concerns the relaxation of the base price regime.

The revised PCC no longer requires the fixing of a base price, with the wording of Article 47 changing from "must fix" to "may fix". The contracting authority thus gains greater flexibility in defining the economic architecture of the procedure, without prejudice to the requirements relating to the estimated contract value, budgetary availability and the principles of public procurement.

3. New thresholds for direct award and prior consultation

One of the changes with the greatest practical impact is the increase in the values that allow recourse to direct award and prior consultation.

For public works contracts (cf. Article 19), prior consultation may now be used where the estimated contract value is below €1,000,000.00 (previously <€150,000.00), while direct award becomes possible for values below €150,000.00 (previously <€30,000.00).

For contracts for the leasing or acquisition of movable assets and the acquisition of services (cf. Article 20), prior consultation becomes possible for values below €130,000.00 (previously <€75,000.00) and direct award for values below €75,000.00 (previously <€20,000.00).

For public works or public service concession contracts with a term of less than one-year, prior consultation or direct award procedures may be used provided the estimated value is below €1,000,000.00 (previously <€75,000.00), cf. Article 31(4).

As for the remaining contracts covered by Article 21, prior consultation becomes possible for values below €130,000.00 (previously <€100,000.00) and direct award for values below €75,000.00 (previously <€50,000.00).

4. Integration of simplified procedures into the PCC – special prior consultation

With a view to eliminating legislative dispersion, certain simplification solutions previously set out in Law no. 30/2021, of 21 May, are integrated into the general rules of public procurement, with the PCC now including «special prior consultation», governed by new Articles 127-A to 127-C of the PCC.

This procedure may be adopted where the following two conditions are cumulatively met:

i) certain types of contract subject matter are involved, such as projects funded or co-funded by European funds, interventions considered priority or strategic, namely in the housing, digital transformation, health and social support sectors, as well as certain interventions in real estate and equipment whose management has been transferred to municipalities; and

ii) the estimated contract value is, at the same time, below the applicable European thresholds and below €2,000,000.00.

In this case, the contracting authority directly invites at least five economic operators of its choosing, unlike the general prior consultation procedure, whose invitation must be addressed to at least three economic operators.

The increase in the minimum number of entities to be invited seeks to counterbalance the greater flexibility granted by this regime, and new Article 127-C also establishes rules limiting the choice of entities to be invited where this type of procedure is chosen.

5. Open procedure with a new flexibilization regime

The instrument introduces, in Articles 161-A et seq., a regime for the flexibilization of the open procedure applicable to contracts whose estimated value is below the European thresholds.

The contracting authority may now adapt the rules and formalities of the procedure, provided this is compatible with the general principles of public procurement and proves useful in promoting simplification, efficiency or speed.

Among the solutions provided are:

- the setting of minimum technical and financial capacity requirements;
- verification of such requirements at the time of tender assessment;
- phased assessment of tenders;
- recourse to electronic auctions;
- the adoption of a negotiation phase for tenders.

The new regime also allows the period for tenderers to comment on the preliminary report to be reduced to three days and establishes three-day time limits for certain administrative challenges.

This is therefore a change with significant potential to reduce the duration of pre-contractual procedures, but one that requires particular care in defining the rules and their justification.

6. Contracts reserved for start-ups

The revised PCC extends the range of contracts reserved for *start-ups* recognized under Law no. 21/2023, of 25 May, where contracts for the acquisition or leasing of movable assets and the acquisition of services are at stake, within the limits set out in Article 54-A(1)(d).

The measure aims to promote the participation of innovative companies in public procurement and bring the public market closer to the innovation ecosystem.

7. NEW PRINCIPLES-BASED SYSTEMATIZATION AND DIGITAL AND SUSTAINABLE PUBLIC PROCUREMENT

The revision of the PCC introduces a clearer distinction between the general principles governing administrative activity and those of relevance in the field of public procurement.

Thus, Article 1-A now concerns solely the framework of principles resulting from the Constitution, European Union law and the Code of Administrative Procedure, while the newly added Article 1-B specifically brings together the principles proper to public procurement, giving them greater autonomy and normative weight. A distinction is also now drawn between cost-effectiveness and quality criteria and objectives of sustainable development, innovation and social responsibility.

A new provision on energy efficiency is introduced (Article 49-B of the PCC), providing that, for contracts above the European thresholds, the contracting authority must take energy efficiency concerns into account when defining technical specifications, namely by considering goods, services and works with high energy performance.

The new PCC also now expressly recognizes digital public procurement, keeping pace with the technological evolution of Public Administration.

Article 1-C provides, in this respect, for the use of digital systems, including artificial intelligence tools, throughout the various stages of procurement, from the planning and preparation of the procedure through to contract performance.

The use of digital systems is nevertheless subject to the principles and safeguards set out in Article 1-C(2), namely regarding transparency and explainability, security, oversight, interoperability and data protection.

8. PLANNING IN PUBLIC PROCUREMENT: SPONTANEOUS INITIATIVES AND PREPARATORY TESTING IN ICT PROCUREMENT

The revision of the PCC strengthens the planning dimension of public procurement.

A new Article 35-D is introduced, reinforcing the requirement that contracting authorities must not launch procedures without first clearly, objectively and functionally determining the nature and extent of the needs they intend to satisfy.

The idea is to prevent a contracting authority from launching a procedure without having previously identified, with sufficient specificity, what it needs, to what extent and for what purpose, which could otherwise lead to inadequate specifications, unnecessary or poorly sized acquisitions and, ultimately, inefficient use of public resources.

At the same time, the instrument strengthens the rules on preliminary market consultation (Article 35-A) and introduces the possibility for economic operators to submit spontaneous initiatives (Article 35-B).

In such cases, the operator must submit a technical study identifying the subject matter of the contract, the public interest to be served and the essential conditions for its implementation. The contracting authority has 90 days to assess the legality, expediency and feasibility of the initiative. If it decides to proceed, it may use the study in preparing the procedure and must ensure that it is made available to candidates or tenderers.
The author of the initiative who takes part in the procedure and whose tender is neither awarded nor excluded is entitled to reimbursement of the expenses duly incurred in preparing the technical study.

Another interesting novelty is set out in Article 35-C, which allows contracting authorities, when preparing procedures for the acquisition or subscription of information systems and technologies, to promote or accept the free and temporary provision of technological solutions, in order to assess their technical and functional suitability, interoperability, security and responsiveness to public needs.

This possibility thus allows the contracting authority to evaluate a technological solution before contracting for it. The carrying-out of such tests is subject to a set of safeguards designed to protect transparency, equal treatment and competition. The contracting authority must ensure that recourse to this phase does not confer an undue advantage on the economic operator whose solution is tested, ensuring, in particular, adequate justification of the options adopted, documentation of the process, and the availability, in any subsequent pre-contractual procedure, of the information necessary to ensure equal conditions of participation for all economic operators.

9. Reducing red tape

The “only once” logic is reinforced, seeking to reduce the repeated submission of documentation by economic operators and to eliminate formalities considered unnecessary.

In this context, Article 475(4) now provides that the European Single Procurement Document may be made available, filled in, reused and submitted through interoperable platforms and Public Administration digital wallets, without prejudice to recourse to the e-Certis system.

10. Contracting in emergency situations:

The possibility of accelerated contracting in emergency situations is reinforced:

- On the one hand, recourse to direct award on grounds of extreme urgency (Article 24(1)(c)) for contracting public works, and the leasing and acquisition of goods or services intended for the reconstruction and rehabilitation of affected areas and for supporting individuals and legal persons following events giving rise to a declaration of a state of siege, state of emergency or situation of calamity, under Article 24(12) and (13) of the PCC;

– On the other hand, new Article 129-A provides for a specific simplified direct award regime for the same situations, but for reconstruction and rehabilitation interventions in affected areas and support for individuals and legal persons following such events, up to the following limits: €500,000.00 for public works contracts and €100,000.00 for the acquisition or leasing of movable assets and the acquisition of services.

Recourse to both regimes is, however, limited to the period of one year following the end of the relevant declaration of a state of siege, state of emergency or situation of calamity.

11. Reorganization of the rules on the exclusion of tenders

The revised PCC reorganizes the grounds for excluding tenders, concentrating in Article 70 the main grounds for exclusion, of both a substantive and a formal nature. The change seeks to clarify the distinction between situations that lead to the exclusion of a tender and those which, for different reasons, lead to the termination of the procedure due to non-award or the impossibility of awarding the contract, now made autonomous in new Article 80-A.

12. Changes during contract performance: new framework for contract modifications, concessions and alternative dispute resolution

The main novelty consists in making the regime governing abnormal and unforeseeable changes of circumstances autonomous, which is no longer included among the grounds for objective modification set out in Article 312, and is now specifically governed by new Articles 314-A (abnormal and unforeseeable change of circumstances) and 314-B (change of circumstances attributable to a decision of the contracting public party).

This separation makes it possible to more clearly distinguish situations in which a contract may be modified under the mechanisms set out in Article 312 - namely in the case of additional services, unforeseeable circumstances or non-substantial modifications - from those in which an abnormal and unforeseeable change occurs in the circumstances underlying the decision to contract.

The reform thus introduces greater systematization of the regime applicable to the contract performance phase, clarifying the requirements for modifying the contract and, separately, the legal consequences of an abnormal and unforeseeable change of circumstances, including the right to financial compensation provided for in Article 314-A and the right to the restoration of financial balance in the situations set out in Article 314-B.

In the field of concessions, the revision introduces relevant changes to the applicable framework, beginning by reformulating the concept of public works concession set out in Article 407 and by making autonomous, in new Article 407-A, the requirement of transfer of operating risk. This risk must reflect genuine exposure of the concessionaire to market uncertainties, with no guarantee, under normal operating conditions, of recovery of the investments or expenses incurred in the operation.

The reform thus clarifies one of the essential elements for classifying a contract as a concession.

The revised PCC also introduces a new framework for alternative dispute resolution, which now has its own dedicated chapter, comprising new Articles 464-B to 464-G. The reform seeks, on the one hand, to clarify recourse to arbitration in public procurement matters and, on the other, to revive mechanisms for the consensual resolution of disputes, namely through technical conciliation committees.

As regards arbitration, new Article 464-C establishes a fully voluntary regime. Thus, where the contracting authority intends to allow recourse to arbitration in a contract formation procedure, it must indicate in the procedure's programme or invitation the competent arbitration center, the applicable procedural rules and the need for acceptance of arbitration by candidates or tenderers. A candidate's or tenderer's refusal to accept recourse to arbitration may not, however, result in the exclusion of its application or tender.

At the same time, new Articles 464-D to 464-F revive the technical conciliation committee, allowing either party to a public or administrative contract to request its establishment with a view to preventing or resolving a contractual dispute. The procedure provides for a response from the requested party within 10 days, and for the conciliation attempt to take place, in person or by electronic means, within a maximum period of 15 days after the end of that period, with the committee seeking to obtain an agreement between the parties.

The reform also establishes, in Article 464-G, a significant effect on time limits: the request for a conciliation attempt suspends limitation and forfeiture periods for judicial or arbitral actions, which resume running 30 days after the requesting party is notified of the impossibility of holding, or the unfeasibility of, the conciliation.

SOME RECOMMENDATIONS...

Given the scope of the changes introduced and their entry into force as early as 1 October 2026, it is recommended that **contracting authorities** should:

- Review templates for procedural documents, namely invitations, tender programmes and terms of reference;
- Update internal procedures relating to the calculation of the estimated contract value and the choice of procedure;
- Reassess the templates used to justify decisions to contract, choice of procedure, admission or exclusion of tenders, and award;
- Assess the use of special prior consultation and flexible open procedures in future procedures;
- Review contract templates, in particular clauses relating to contract modification and dispute resolution;

- Identify procedures under way and contracts being performed on 1 October 2026, and check, in each case, which new provisions immediately apply to them and whether any adaptation is required;
- Update digital systems and procedures, considering the new interoperability solutions and use of digital tools;
- Promote the updating and training of teams involved in public procurement, to ensure knowledge and correct application of the new regime.

At the same time, it is recommended that **economic operators** should:

- Monitor the new public procurement solutions, namely special prior consultation and the flexible open procedure, identifying new opportunities for participation;
- Assess the possibility of submitting spontaneous initiatives to contracting authorities, where they have innovative solutions capable of meeting public needs;
- Take advantage of the new digitalization and interoperability solutions, namely those relating to the use and reuse of the European Single Procurement Document through interoperable platforms and digital wallets;
- Become familiar with and assess the new alternative dispute resolution mechanisms, namely arbitration and technical conciliation committees, considering their use in preventing and resolving disputes arising from public contracts.

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