
THE FUTURE OF YOUR PUBLIC PROCUREMENT PRACTICE

The proposed EU Public Procurement Act and European Innovation Act | Executive briefing | September 2026

Seven webinars. One practical proposition: before choosing a procedure, define the public need, assess the market where appropriate and identify the value that delivery must create.

Corvers position

The Commission proposes one directly applicable Public Procurement Act (PPA) for public contracts, utilities and concessions, alongside a distinct European Innovation Act (EIA) for qualifying R&D procurement and IP commercialisation. The proposals require difficult judgements across the whole transaction: need, market, route, rights, finance and performance. A common text will not itself supply market knowledge or implementation capacity.

Five decision gates

Gate	The buyer asks	Evidence to retain
1 Need	What public outcome and user need are not being met?	Needs assessment; baseline; functional challenge.
2 Market	What exists, is emerging, or needs R&D?	State-of-the-art (SOTA) review; proportionate consultation; alternatives.
3 Value	Which improvement merits the public investment?	Business case; lifecycle costs; measurable value framework.
4 Route	What is the intended endpoint—purchase, R&D, deployment or concession?	Scope and procedure memorandum; competition design.
5 Delivery	Can rights, finance, risk and performance survive scale and change?	IP framework; contractual controls; monitoring record.

This sequence is informed by EAFIP's preparation methodology—needs assessment, prior-art and market review, business case and procurement design. EAFIP is practical guidance, not the legal test for PPA or EIA scope.

The discipline behind the reform

The proposals distinguish strategic ambition from operative duties. Public buyers need to decide whether a rule is mandatory, discretionary, conditional on scope or future measures, and applicable to this purchase. Suppliers need notice of the actual requirement and an opportunity to compete on it. The contract must then hold the successful bid to its promises.

LEGISLATIVE STATUS | The Public Procurement Act (PPA) and the European Innovation Act (EIA) are proposals for EU Regulations, presented by the European Commission on 9 September 2026 (COM(2026) 590 and COM(2026) 567). They must now be negotiated and adopted by the European Parliament and the Council, and their final content may change. Until then, public procurement continues to be governed by the 2014 Directives as transposed into national law. As proposed, the PPA would generally apply two years after its entry into force, while the EIA has no equivalent general deferral, although some of its measures have later deadlines.

1 | Select the legal route

Begin with the endpoint, not with the label “innovative”.

What the buyer wants	Route to examine	Boundary that matters
Available or adaptable solution	PPA open procedure; dynamic procedure for successive individual purchases from a supplier pool that remains open to new entrants.	Disclose use of selection/negotiation; negotiation cannot substantially change the subject matter.
Challenge, testing and potential commercial purchase within one process	PPA innovation procedure (Arts 41–45).	Measurable value framework, minimum functional requirements and expected volumes precede launch; deployment may follow positive assessment and successful negotiation, not automatically.
R&D services, not commercial deployment	EIA Chapter 2, including PCP where risk/benefit sharing and phased competition apply.	Scope and thresholds under EIA Art 2; later commercial purchase requires its own lawful route.
Works or services remunerated through exploitation	PPA concession regime (Arts 114–126).	A genuine transfer of operating risk and a justified business case are essential.

A consequential scope distinction

PPA Article 79 excludes contracts exclusively for R&D services, but not mixed purchases with other PPA elements or the development and testing embedded in its innovation procedure. EIA Chapter 2 applies only where its Article 2 conditions are met: generally R&D procurement at or above the threshold cross-referenced to Article 4(c) of Directive 2014/24/EU; a different cross-reference and own-mandate conditions apply to innovation agencies. It excludes procurements falling within the three 2014 directives, defence procurement under Directive 2009/81/EC, and procurements excluded under that defence directive. Do not say that all R&D procurement simply “falls under the EIA”.

Design the deployment bridge

Under PPA Articles 41–45, the buyer defines the societal challenge and an objective value-assessment framework, consults the market (normally for at least two months unless a shorter period is justified by the specificities of the contract), tests eligible proposals and invites all positively assessed operators to negotiate deployment. The final volumes cannot exceed those announced; successful awards can occur for up to five years after the positive assessment is published. By contrast, EIA R&D may include limited prototype supply but not commercial deployment. Participation in PCP does not itself reserve a later contract.

2 | Turn policy into value

Strategic objectives matter only if they can be lawfully specified, compared and delivered.

PPA Article 5 sets the direction—competitiveness, innovation, environment, social justice, security and resilience. It is not a universal instruction to add every objective to every tender. Check the particular provision, its scope and any sectoral overlay before drafting a requirement.

Objective	Buyer's design question	Commercial proof
Quality and lifecycle value	Should quality be an award differentiator, a minimum specification or a performance duty?	Price/quality weighting; whole-life model; avoid double-counting.
Security and resilience	What asset, operator or supply-chain risk has actually been identified?	Proportionate requirement; contingency, monitoring and exit.
European preference	What is covered by EU international procurement commitments, and what origin evidence is needed?	Coverage test before any preference measure; published rules.
Green and social outcomes	What is mandatory for this category and what is discretionary?	Technical feasibility, link to subject matter, verifiable KPIs.
SME participation and integrity	Are turnover and evidence requirements, lots, and conflict controls proportionate?	Selection record; reasoned lot decision; recusal and audit trail.

Article 98 PPA normally requires at least 30% quality weighting, or 50% for labour-intensive contracts.

Article 98(5) allows a disclosed derogation where quality can be ensured through specifications, performance conditions or a combination with quality-based criteria. EIA Article 17 separately specifies at least 50% quality and generally at least 15% innovation-related criteria for covered R&D; the innovation-related criteria form part of the quality criteria, rather than an additional 15% on top of them. The two award regimes should not be collapsed.

Corvers watch point

Article 69(3)(e) PPA allows public buyers, in the relevant resilience context, to require service providers to disclose potential double-booking of capability or services to all concerned public buyers before accepting conflicting orders. It may reveal a real continuity risk, but also commercially sensitive capacity information. Where relevant, buyers should define the trigger, limited recipients, retention and handling rules; suppliers should understand what they are disclosing. Session 5 identified this as a practical drafting problem—not a reason to treat every contract as subject to Article 69.

3 | Design the whole bargain

The tendered price is only one part of innovation value.

For covered EIA R&D procurement, the proposal generally requires market consultation before tendering, multiple sourcing and competitive phases, subject to defined exceptions. Under EIA Article 19 combines contractor ownership of generated IP with public buyer's rights of use and access, contractors' duties to protect and seek commercialisation of the generated IP, and conditional fallback rights for public buyer. Under PPA Articles 62–64, proportionate licences can preserve use, maintenance and continuity without reflexively transferring all supplier IP. Request the rights the project needs, not the maximum rights conceivable: unnecessary rights can result in higher-priced bids or deter participation.

State aid remains a separate inquiry. Competitive tendering is evidence of market terms for the elements genuinely competed, not blanket immunity. Record the value of payments, access to facilities or data, IP, financing, risk, future volumes and contract changes. The EIA expressly preserves Article 107 TFEU; its proposed EUIPO competence centre also addresses IP valuation and commercialisation, but does not itself determine State aid compliance.

When designing	When operating	When changing
Define outcomes, public contributions, IP, milestones and pricing.	Monitor delivery, supplier capacity, rights and savings.	Test legal basis, economic balance, competition and notice duties.
For concessions, model revenues, costs and genuine operating-risk exposure.	Track service quality and continuity.	Preserve operating risk after any adjustment.

Do not confuse thresholds

PPA Article 106(2) and EIA Article 20(5) contain distinct 15% non-substantial modification rules with economic-balance and cumulative-value safeguards. The 50% figure in their publication provisions is a notice threshold in specified circumstances, not general permission to enlarge a contract by 50%. EIA Article 21 requires value-engineering clauses for covered R&D contracts above staged values, not for all PPA contracts or concessions.

In session 6, the audience question on unforeseen technology exposes the practical test: what would a diligent buyer, informed by a documented SOTA, reasonably have anticipated at launch? Ordinary upgrade cycles belong in initial design where possible; the unforeseen-change route should not repair avoidable planning gaps.

Ready for the new rulebook

The proposals change the questions public buyers and suppliers must answer, not only the rules they follow. Drawing on an EAFIP-informed approach, Corvers supports both from needs and market assessment to procedure design, contract drafting and implementation. To prepare for the Public Procurement Act and the European Innovation Act, or for help with a specific procurement, contact us at procurement.library@corvers.com.