



## public procurement - legal changes published in February 2023

**Regulation of the European Parliament and of the Council of the European Union no. 2560/2022 on foreign subsidies distorting the internal market** was published in the Official Journal of the European Union no. 330 of December 2022, in force from 12th of January 2023.

Regulation no. 2560/2022 addresses foreign subsidies that distort the internal market in the context of public procurement procedures.

For the purposes of the Regulation, a foreign subsidy shall be deemed to exist where a third country grants, directly or indirectly, a financial contribution which confers a benefit on an enterprise engaged in an economic activity in the domestic market and which is limited, in law or in fact, to one or more enterprises and industries.

A distortion in the domestic market refers to a case where a foreign subsidy is likely to improve the competitive position of an enterprise in the domestic market and where the foreign subsidy thereby has an actual or potential negative impact on competition in the domestic market.

According to the Regulation, there is a foreign financial contribution subject to notification in a public procurement procedure in the following situations:

- the estimated value, not including VAT, of the procurement, framework agreement or specific acquisition under the dynamic procurement system is equal to or greater than EUR 250 million;
- the economic operator, its subsidiaries without commercial autonomy, its holding companies and its main subcontractors and suppliers involved in the same tender in the public procurement procedure have received total financial contributions during the last three years preceding the notification or, as the case may be, the updated notification, equal to or greater than EUR 4 million per third country;
- where the contracting authority decides to divide the procurement into lots, if the estimated value, excluding VAT, of the procurement exceeds EUR 250 million and the value of the lot or the total value of all lots in which the tenderer submits a tender is equal to or greater than EUR 125 million and the foreign financial contribution is equal to or greater than EUR 4 million.

If the conditions for notification of a financial contribution are met, economic operators participating in a procurement procedure shall notify the contracting authority of all foreign financial contributions. In all other cases, economic operators shall include in a declaration all the foreign financial contributions received and confirm that they are not subject to the notification requirement. If the lack of notification or declaration is found in the request for participation or the tender, the contracting authority may request the economic operators concerned to submit the relevant document within 10 working days. Tenders or requests for participation of economic operators subject to the obligations provided for in the Regulation which, following a request from the contracting authority, are not accompanied by the notification or declaration of financial contributions shall be declared non-compliant and rejected by the contracting authority.