FICSIMM - the Federation for Innovation and Sustainable Competitiveness in SMEs, Romania

Observations and proposals on the European Commission Proposal for a Regulation on Public Contracts and Concessions (Public Procurement Act) - COM(2026) 590 final, 2026/0265 (COD)), together with its Annexes, the Impact Assessment (SWD(2026) 591 final) and its Executive Summary (SWD(2026) 592 final)

The SME perspective

1. SME access should be anchored as an explicit strategic policy objective of the Regulation (Article 5):

Article 5 lists competitiveness (through a thriving internal market, innovation and the Union's manufacturing and clean industrial base), climate, social justice and fair working conditions and safety, security, resilience and economic security as the strategic policy objectives guiding public procurement, but **SME participation is not named as a self-standing objective**, despite the Court of Auditors' finding - cited in the Explanatory Memorandum - that SME and cross-border participation has stagnated, and despite the Commission's own estimate that SMEs win around 71% of public procurement contracts (SWD(2026) 592 final).

FICSIMM proposes adding a point (e) to Article 5: **"broad, non-discriminatory access of small and medium-sized enterprises to public contracts and concessions"**.

Elevating SME access from recitals (Recitals 14 and 43) to an operative policy objective would make it a mandatory design parameter for every procurement - Article 110(3)(f) already requires public buyers to indicate in the public summary of competition "the suitability of the procurement for SMEs", which shows that the concept is operational - and a benchmark for national monitoring under Article 137, rather than a soft aspiration dependent on buyer goodwill.

Ana-Maria Icatoiu
Digitally signed by Ana-Maria Icatoiu
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2. The increase of thresholds (Article 2) must be accompanied by minimum EU-level principles for below-threshold procurement, to prevent fragmentation that hits SMEs first:

Article 2 sets the application thresholds at **EUR 5,404,000 for works and concessions, EUR 140,000 / 216,000 for supplies and services, EUR 432,000 for utilities and EUR 750,000 for social, health and educational services (Article 58)**, leaving everything below to 27 diverging national regimes. In addition, Article 100(4) allows individual lots below EUR 80,000 (supplies and services) or EUR 1 million (works) to be awarded outside the Regulation, up to 20% of the aggregate value of all lots. Yet the below-threshold market is precisely where **most micro-enterprises and SMEs win their first public contracts**.

FICSIMM proposes a short chapter of **common minimum principles for below-threshold awards** - transparency, proportionality, publication through the national data spaces (Article 134) - and supports the biennial GPA-aligned revision mechanism in Article 3, provided the Commission also pursues an **upward renegotiation of GPA thresholds**, as anticipated in Recital 6 of the proposal ("the Commission will explore with GPA partners the question of an increase in the thresholds set in the GPA").

The published proposal offers a useful anchor: Article 134(3)(b) and (4) already bring below-threshold procurement information and all contracts of at least EUR 10,000 into the National Public Procurement Data Spaces, and Article 134(5)(k) requires information on the functioning of national markets below the thresholds. FICSIMM proposes that this data obligation be matched by a minimum publication obligation for below-threshold opportunities, so that SMEs across the Union can actually find them.

3. FICSIMM strongly supports the new discipline on selection criteria (Article 27) - the 50% turnover cap and the restriction on requiring prior public-contract experience - but the "duly justified cases" exceptions must be tightly framed:

Article 27(7) caps the minimum yearly turnover requirement at **50% of the estimated annual contract value** - a major improvement over the 200% ceiling in Directive 2014/24/EU; the reference to the annual, rather than total, estimated value is particularly important for multi-annual contracts, where it materially lowers the entry ticket for SMEs - and Article 27(6), with Recital 14, provides that public buyers shall not require **prior experience in public contracts as such**, "unless justified due to the complexity of the contract or the nature of the subject-matter". These two changes directly remove the barriers most frequently reported by Romanian SMEs and new market entrants. FICSIMM also welcomes Article 27(8), under which information available in national databases, official lists or certifications may not be questioned without sufficient justification.

However, the two derogations - the **“duly justified cases”** for exceeding the turnover cap and the “complexity or nature of the subject-matter” for demanding prior public-contract experience - risk becoming the rule in national practice. The proposal requires the public buyer to “indicate the main reasons” for a higher turnover requirement, but only in the procurement detail (Article 27(7)), not in the public summary of competition, and provides no equivalent obligation for the prior-experience derogation.

FICSIMM proposes that any exceedance of the 50% cap or any prior-experience requirement be subject to **mandatory publication of the justification in the public summary of competition (Article 110(3)) and ex-post monitoring** through the National Public Procurement Data Space (Article 134), with the Commission empowered to issue guidance on acceptable justifications, and that the prior-experience derogation be reworded as an exhaustive, narrow list rather than an open reference to “complexity”.

4. The dynamic procedure (Articles 36 - 40) is welcome for SMEs selling off-the-shelf solutions, but the random algorithmic shortlisting of suppliers needs safeguards:

FICSIMM welcomes a procedure **without selection criteria** (Article 38), in which operators express interest simply by sharing their **eligibility profile** through the electronic eligibility service (Article 133) (Recital 19) - this is exactly the low-bureaucracy channel micro-enterprises and SMEs need for recurrent supplies.

FICSIMM also welcomes that the procedure must remain open to all interested operators throughout its validity (Article 37(1)) and that every contract signed under it must be published in a public summary of result (Article 40(2)).

However, where demand exceeds capacity, the proposal allows buyers to invite only a limited number of suppliers selected by **“random indiscriminate algorithmic determination”** (Article 38(3)): where more than five operators express interest, the buyer may invite “only five or certain more”, and must inform those not invited through the eligibility service. Under Article 38(4), operators that are not invited - and therefore cannot submit a tender - are not “tenderers concerned” within the meaning of the Remedies Directives and thus have no standing to challenge the shortlisting. FICSIMM proposes:

(i) a **minimum number of invited operators** per purchase proportionate to the value of the individual contract - the floor of five in Article 38(3) is welcome, but should rise for higher-value call-offs;

(ii) a **rotation mechanism** so that the same operators are not repeatedly excluded over the validity period of the dynamic procedure (Article 37(1)); and

(iii) full **auditability of the algorithm** via the procedure documentation under Article 109, publication of the algorithm defined in the implementing act under Article 133(6)(f) after consultation of SME organisations, and a right for non-invited operators to obtain the record of the random determination.

5. Division into lots (Article 100) should be upgraded from "consider" to a genuine "apply-or-explain" obligation with published reasoning.

Article 100(1) merely requires buyers to **"consider"** division into lots, while Article 100(2) asks for **"the main reasons"** when lots are not used - which may be recorded in the procurement detail or buried in the individual documentation under Article 109 rather than published. Recital 43 itself recognizes lots as **one of the main tools for SME participation and supplier-base diversification**. FICSIMM welcomes two additions in the published proposal: Article 100(2) lists SME participation, reduced dependency on a single supplier, supply-chain resilience and innovation as factors to be weighed, and Article 100(7) allows Member States to make division into lots mandatory - a possibility Romania should use.

FICSIMM proposes that the justification for not dividing be **mandatorily published in the public summary of competition (Article 110(3)(f), which already requires an indication of the suitability of the procurement for SMEs)**, that lot design explicitly reference **SME-accessible scope and size** in Article 100(3), and that aggregated procurement by central purchasing bodies (Article 9) and framework agreements (Article 103) be subject to the same lot-design discipline, since excessive aggregation is a well-documented SME exclusion mechanism.

6. The payment provisions (Article 108) are too weak to protect SME liquidity: FICSIMM asks that a 30-day payment rule, statutory interest and an advance-payment obligation be written into the Regulation, and that the supply-chain pass-through and direct payment to subcontractors be made binding rather than optional.

Late payment by public buyers remains one of the most damaging failures of the public market for SMEs, and the Regulation was the natural place to address it. Yet Article 108(1) only refers to the obligations of public buyers "without prejudice to" Directive 2011/7/EU and to "timely payment", without any deadline or interest rule in the Regulation itself; Article 108(5) merely allows advance payments ("may"), "especially to encourage the participation of SMEs", and makes an "appropriate" advance mandatory only for contracts of particular relevance for innovation, and even then subject to an "overriding interest" exception. The Regulation neither restates the **30-day payment rule (maximum 60 days if objectively justified)** of Directive 2011/7/EU, nor entitles operators to statutory late-payment interest in its own text, nor mandates a **30% advance payment for strategically relevant contracts**. For SMEs this is the most significant gap in the proposal.

Paragraph 2 only says buyers **"may" require contractors to pass equivalent payment terms through the supply chain**, while paragraph 6 provides that, at the request of the subcontractor and "where the nature of the contract so allows", the public buyer shall transfer due payments directly to the subcontractor - a welcome principle, but one that leaves the decisive condition undefined.

Since most SMEs participate as **subcontractors**, FICSIMM proposes: writing into Article 108 a 30-day payment period (60 days only where objectively justified), the automatic entitlement to statutory interest and a minimum 30% advance payment for strategically relevant contracts; mandatory pass-through of payment terms in all contracts above threshold; direct payment to subcontractors as a **right upon request**, with the "nature of the contract" exception replaced by an exhaustive list of cases; and public disclosure of each buyer's payment performance via Article 134(4) - FICSIMM welcomes that Article 108(3) and (4) require the payment status of each contract and the annual prompt-payment compliance of each public buyer to be made available through the NPPDS -, with persistent non-compliance treated as a governance deficiency in national monitoring under Article 137.

7. The commitment to timely reduction and release of financial guarantees is absent from the proposal and must be introduced as an operative article with caps and deadlines:

The **timely reduction or release of financial guarantees once they are no longer justified** strengthens the financial standing of SMEs as much as prompt payment does. The proposal is silent on this: Recital 43 refers only to prompt payment and advance payments, and no operative provision in the contract-execution chapter (Articles 104 - 108) gives the release of guarantees any legal effect. Blocked performance bonds and retention money are, alongside late payment, the **main liquidity drain on small contractors** in works and services.

FICSIMM proposes a dedicated paragraph in Article 108 or Article 104 setting: a **proportionality cap on guarantees** (as a percentage of contract value), a **mandatory partial release** pegged to accepted execution milestones, and a **maximum release deadline** after final acceptance, with statutory interest applying to unjustified retention by analogy with late payment, and that guarantee data be included among the "information on contracts and on individual payments" to be made available through the NPPDS (Article 134(5)(e)).

8. FICSIMM supports the European preference framework (Articles 70 - 77) as the procurement pillar of "Made in Europe", but its operability for SMEs depends on simple, digital and proportionate proof of origin.

The toolbox in Article 73 - **restriction of participation to Union / covered operators and subcontractors, origin requirements on goods and services, evaluation-only price reductions or bonus points and rejection of tenders with less than 50% covered value** - complements the Industrial Accelerator Act and converges with the logic of the Polish **"Local Content"** programme: using the public market to build domestic and European productive capacity, suppliers, competences and export references.

FICSIMM welcomes that all such measures must be stated in the public summary of competition (Article 73(3)), that groups in which the majority - but not all - of the members are Union or covered operators remain eligible (Article 73(1)(a)), which protects SME consortia, and that the Commission will operate a free online tool determining coverage for each procedure (Article 71).

For SMEs, however, the binding constraint is **documentation of origin**: Article 28(4) requires operators to indicate their origin in the electronic eligibility service and, where required under Article 73(2), the origin of goods in the digital product passport, and allows exclusion where verification is made "practically impossible or very difficult". FICSIMM asks that origin declarations run exclusively through the **electronic eligibility service and the digital product passport** (Article 28(4)), that verification requests remain proportionate for micro-enterprises and that any exclusion under Article 28(4), fourth subparagraph, be preceded by a reasonable time limit to supplement the information, and that Commission guidance accompanying the online tool under Article 71 and the rules of origin in Article 74 include **SME-specific**

examples on rules of origin for goods, services and works, in particular where a Union SME assembles or finishes products with third-country components.

9. The electronic eligibility service and digital business credential (Articles 28 - 29 and 133) must deliver a genuine "once-only" principle - free of charge for SMEs and fully interconnected with national registries:

FICSIMM strongly supports replacing repetitive documentary checks with **automated eligibility assessment** (Article 28(2)) fed by interconnected national and Union databases (Recital 15), and welcomes that Article 133(5)(e) requires the digital business credential tools to be "adapted to the particular needs of SMEs" and that Article 29 obliges Member States to connect the national criminal, tax, social-security, insolvency and trade registers by 15 June 2029.

For Romania, this requires binding **interoperability with ONRC, ANAF and SEAP / e-licitație data** so that no certificate already held by a public authority is ever requested again.

FICSIMM proposes that the Regulation state explicitly that use of the eligibility service and credential tool is **free of charge for economic operators** - the proposal guarantees only the free access of the tool to national databases (Article 29(1)) -, that the **self-declaration fallback** in Article 28(3) is preserved throughout a realistic transition period - the Regulation applies two years after entry into force (Article 149), while the Union-level credential tools must be available only by 30 June 2028 (Article 133(5)(a)) and the national databases by 15 June 2029 -, and that the digital ecosystem's projected savings for operators (**EUR 1 billion per year, or around 8.9% of the cost of participation per procedure**, per the Explanatory Memorandum and SWD(2026) 592 final) be tracked and reported by SME size-class.

10. FICSIMM endorses the minimum 30% quality weighting (50% for labour-intensive contracts), enshrined in Article 98(4), and the strengthened abnormally-low-tender test (Article 101), which together end the tyranny of lowest price - provided quality criteria remain objective, the "comply-or-explain" derogation is monitored and buyer capacity is built:

Article 98(4) introduces a **minimum 30% weighting for quality criteria** in the best price-quality ratio, rising to **50% for labour-intensive contracts** (Recital 42 adds that the 50% should include significant social considerations) - a shift consistent with the Polish reform, where capping the price criterion and applying the abnormal-price test after the COVEC failure produced measurably better outcomes than lowest-price awards. Public buyers may derogate under Article 98(5) where quality is secured through specifications or performance conditions, provided they indicate this in the public summary of competition.

Article 101 usefully obliges buyers to demand explanations where prices fall significantly below other tenders, the buyer's estimate (including labour, materials and logistics costs) or past comparable contracts, requires the explanation to establish the economic viability of the price over the whole duration of the contract, and imposes rejection where explanations are unsatisfactory. The link with foreign subsidies is handled through an optional exclusion ground (Article 26(1)(h)) for operators found by the Commission under Regulation (EU) 2022/2560 to have benefited from distortive subsidies, rather than through a presumption of abnormally low pricing; FICSIMM considers that both mechanisms should apply cumulatively.

To protect SMEs from arbitrariness, FICSIMM proposes **standardized, verifiable quality criteria per contract category** issued by the Commission, monitoring of the use of the Article 98(5) derogation through the NPPDS (Article 134) so that "explain" does not quietly replace "comply", plus investment in buyer professionalisation and competence centres (Recital 58; Article 139) that also **advise economic operators**, not only public buyers - Article 139(3) and (7) foresee such support for SMEs, but only as a "may" for the support structures; FICSIMM asks that it become a "shall".

11. The mandatory use of Building Information Modelling for works above EUR 25 million (Article 65) needs an explicit SME proportionality clause, transition period and support measures - and any lowering of the threshold by delegated act must pass an SME test:

Article 65(1) makes **BIM compulsory for works contracts of EUR 25 000 000 or more**, with paragraph 3(a) allowing buyers to limit the requirement to certain contractors or lots where it would impose a **disproportionate burden**. Article 65(4) further empowers the Commission to lower this threshold by delegated act "where justified by an increased market uptake". Romanian construction SMEs - typically subcontractors on exactly such large projects - face real costs in software, training and certified staff.

FICSIMM proposes:

(i) a rule that **BIM obligations may not be contractually cascaded to SME subcontractors** beyond what is strictly necessary for their scope of work;

(ii) a **transition period of at least 24 months** after entry into application (itself two years after entry into force, Article 149);

(iii) reliance on **open, interoperable formats** (as defined in Article 65(2)) so SMEs are not locked into proprietary tools;

(iv) eligibility of BIM upskilling costs under ESF+/ERDF and the future European Competitiveness Fund; and

(v) an obligation that any delegated act under Article 65(4) be preceded by an assessment of SME readiness, based on the NPPDS data on SME participation in works contracts (Article 134(5)(h)).

12. National monitoring (Article 137 and Recital 56) should include mandatory SME-specific indicators - direct and indirect participation, win rates, payment performance - published through the National Public Procurement Data Spaces:

Article 137(1)(a) requires Member States to assess the **barriers to competition and access to procurement opportunities, in particular for SMEs**, and Article 134(5)(h) requires the NPPDS to contain "information on the participation of SMEs in public procurement", but neither provision sets common metrics. Without comparable data, the Regulation's SME promises cannot be evaluated.

FICSIMM welcomes that the results of the national assessment must be made public at least once a year, that structural shortcomings must trigger a country-specific action plan and that Member States report to the Commission every three years (Article 137(1) and (2)).

FICSIMM proposes that the implementing acts under Article 134(8) define, and the Data Spaces publish, at least annually: the **share of contracts and contract value awarded to SMEs** (directly and as subcontractors), the **single-bid rate**, average number of lots per procedure, average **payment times per public buyer** (Article 108(3)–(4)), and use of the derogations in Articles 27(6)–(7), 98(5) and 100(2).

Social partners - including employer organizations representing SMEs - should be formally consulted on the monitoring reports and the action plans before their transmission to the Commission.

13. FICSIMM welcomes the innovation chapter (Articles 59 - 65) and the innovation procedure (Articles 41 - 45), in particular the retention of intellectual property by suppliers (Article 64), which is decisive for startups and innovative SMEs - but the new derogation allowing the transfer of pre-existing IP must be narrowed:

Article 64(1) guarantees that **pre-existing IP, software, models and platforms remain the supplier's property**, and Article 64(4) lets suppliers **retain ownership of IP developed under the innovation procedure**, with exceptions only for overriding public interest which must be “clearly stated in the procurement detail”. Combined with Article 61(1)(d) - selection **without turnover or past-performance requirements** where appropriate - and the possibility to designate **innovation lots** (Article 61(1)(f)), this materially opens the public market to startups and scale-ups, as sought by Recital 27.

FICSIMM also welcomes Article 44(5), under which milestone payments in the testing, validation and assessment phase must be made upfront, and Article 108(5), which makes an advance payment the rule for innovation-relevant contracts.

However, Article 64(2) introduces a derogation: public buyers may require the transfer of ownership of pre-existing IP “necessary for the performance, operation and maintenance of the solutions, in particular in cases of critical infrastructure”. For a startup, its pre-existing platform is its entire enterprise value; a transfer requirement would deter participation altogether. FICSIMM asks that Article 64(2) be limited to critical infrastructure and to the grant of an irrevocable licence rather than a transfer of ownership, that the public-interest exceptions in Article 64(4) be interpreted narrowly and exhaustively defined, so that innovative SMEs can **price the IP risk before bidding**, and that deployment contracts awarded under Article 45 carry payment terms no less favourable than those proposed by FICSIMM for Article 108.

14. Payment discipline (Article 108) must also cover the verification and certification stages that precede payment, which frequently create hidden delays for SMEs:

Even once a 30-day payment rule is written into Article 108 (point 6), the payment period under Directive 2011/7/EU often starts only once the public buyer has completed the **verification, certification or acceptance** of the relevant deliverables, invoices or interim payment applications. Undefined or excessively long verification stages can neutralise any payment discipline and generate **hidden liquidity pressure** precisely on the smallest contractors.

FICSIMM proposes **maximum time limits for verification and certification** - as a general benchmark, **15 days**, unless the complexity of the contract objectively requires otherwise, and in any event never exceeding the 30 days of Article 4(5) of Directive 2011/7/EU - a **deemed-acceptance rule** where no duly substantiated objections are raised within that period, and **automatic accrual of statutory late-payment interest** once deadlines are exceeded, without any separate formal notice from the economic operator.

Average verification and certification times per public buyer should be published through the National Public Procurement Data Spaces (Article 134), alongside the payment-performance indicators of Article 108(3)–(4) and those proposed under point 12.

15. Price-revision and indexation clauses should be mandatory for all contracts exceeding 12 months, anchored in official statistical indices and disclosed in the procurement detail (Articles 104 - 106):

Article 104(2) merely lists price indexation among possible performance conditions, and Article 105 leaves adjustment mechanisms entirely to buyer discretion (“may include”), although it expressly names “indexation mechanisms, including those linked to objective economic indicators, such as price indices, inflation rates or volatility of input costs such as for key materials” (Article 105(2)(b)) and confirms that adjustments under such clauses are not contract modifications (Article 105(3)). The Romanian experience of 2021 - 2022 shows the cost of that discretion: the input-price shock had to be managed through successive emergency acts - **Government Ordinance 15/2021**, limited to works contracts indexed on the **ICCM construction-cost indices**, later extended by **GEO 47/2022** to supplies and services - generating years of legal uncertainty, renegotiation disputes and a flood of methodological queries to ANAP. SMEs, with **thin margins and no hedging capacity**, are the first to abandon execution or stop bidding on firm-price multi-annual contracts.

FICSIMM proposes an operative rule: every contract with a performance period exceeding **12 months** must include a **price-revision clause pegged to official, publicly disseminated statistical indices** relevant to the contract category, with the formula **disclosed in the procurement detail** from the outset and applied automatically when predefined conditions are met. The proposal itself acknowledges the relevance of indexation indirectly: under Article 106(8), the reference value for calculating permissible modifications is the indexed value where the contract contains an indexation clause, and the average national inflation where it does not.

Changes in legislation, taxation or mandatory minimum wages that materially affect contract costs should trigger an **objective rebalancing mechanism** under Article 106(4)(b), which already lists “substantial changes in the applicable regulatory or legal framework” among the unforeseeable circumstances; public buyers should not be permitted to transfer **unlimited macroeconomic or regulatory risk** to contractors through standard clauses; and the Commission should issue **standard methodologies and model clauses** to ensure consistency across Member States - the task given to national coordinating authorities under Article 138(2)(c) to provide model provisions on “financial adjustment mechanisms” for large infrastructure projects and concessions should be extended to all contracts exceeding 12 months. Predictable revenue is as vital to SME liquidity as timely payment.

16. Framework agreements and centralised purchasing should be “open”, with mandatory periodic reopening for new entrants and strictly justified durations (Articles 9 and 103):

Article 103(2) caps framework agreements at **three years (single operator) and five years (multiple operators)**, but allows a longer duration “in exceptional cases” justified by the complexity or specialised nature of the procurement, and Article 103(4) lets contracts based on a framework run up to 50% beyond its end. Moreover, a multi-operator framework still locks the public market for its whole term in favour of the operators who happened to be ready at the moment of establishment - typically excluding **young and fast-growing SMEs** for the entire cycle. The **UK Procurement Act 2023** offers a directly relevant benchmark through its **"open framework"**, under which new suppliers are admitted when the framework is reopened part-way through its term; within a year of application, the share of lots designated as suitable for SMEs rose from **57% to 72%**. The proposal's own dynamic procedure (Articles 36 - 40), which must remain open to new entrants throughout its validity, shows that the Commission accepts the principle; it should be carried over to framework agreements.

FICSIMM proposes:

(i) a **mandatory reopening of multi-operator framework agreements at least every 24 months** for the admission of new qualified operators, using the low-bureaucracy **eligibility-profile mechanism** of Articles 28 and 133;

(ii) durations approaching the five-year maximum only with **published justification**, and deletion of the open-ended "exceptional cases" extension in Article 103(2) - or, at least, its subjection to prior publication in the public summary of competition; and

(iii) reporting of **SME participation in call-offs** under framework agreements and central purchasing bodies (Article 9) through the monitoring indicators proposed under point 12 - facilitated by the new obligation to publish a public summary of result for each contract based on a framework agreement (Article 103(4)).

17. A right of access without an affordable right of review is incomplete: remedies must be fast, digital and proportionate for SMEs:

The proposal unifies award rules in a single Regulation, yet legal protection remains governed by **Remedies Directives 89/665/EEC and 92/13/EEC** (to which Articles 35(2) and 38(4) expressly refer) as transposed into 27 diverging national regimes of fees, security deposits and deadlines. In Romania, the **security deposit (cauțiune)** required for challenges before the CNSC and the associated legal costs deter precisely the small operators that Article 27 is designed to bring into the market, while prolonged suspensions exhaust SME **financial endurance** faster than that of large groups.

FICSIMM proposes minimum common rules to accompany the Regulation:

(i) **review fees and security deposits capped in proportion to the value of the contested lot**, not of the entire procedure;

(ii) a **mandatory, structured debriefing** for unsuccessful tenderers on the relative strengths and weaknesses of their tender - the disclosure of the evaluation results and ranking to tenderers under Article 40(1) is a first step that should be generalised to all procedures, but is not a substitute - without feedback, SMEs cannot learn to win the next time;

(iii) **harmonised maximum deadlines** for first-instance review decisions and **fully digital review procedures**; and

(iv) carefully targeted measures against manifestly abusive challenges that do not restrict legitimate SME access to review.

The average duration and cost of procurement remedies should be monitored and published as SME-specific indicators under Article 137 - the proposal already requires the NPPDS to hold “information on the functioning of national review systems” (Article 134(5)(j)), which should be broken down by size of the challenging operator.

18. Green public procurement (Articles 50 - 54) must include an explicit SME proportionality test, so that the environmental transition does not become a new market-entry barrier:

FICSIMM supports the Union's climate objectives and the integration of former sectoral green requirements into the Regulation (Recitals 23 - 25; Articles 50 - 54 on green public procurement, circular economy, energy efficiency and mandatory requirements for the products listed in Annex VII). Article 54(2) empowers the Commission to make specific environmental characteristics mandatory by delegated act for such products; when doing so it must consider the economic feasibility for public buyers and the effects on competition (Article 54(2)(c) and (d)), but not the capacity of SME suppliers to comply. However, complex environmental certifications, extensive reporting obligations and costly verification requirements can **disproportionately affect micro-enterprises and SMEs** where imposed without regard to the size of the contract or of the operator - unintentionally favouring large undertakings with greater administrative and certification capacity.

FICSIMM proposes:

(i) an explicit **SME proportionality test** for environmental and sustainability requirements, including as a mandatory criterion in Article 54(2) for every delegated act;

(ii) a duty on public buyers to accept **equivalent evidence and alternative means of proof** where formal certification would impose disproportionate costs - Article 92(3) already allows a manufacturer's technical dossier where certificates could not be obtained in time; this should become a right of the operator rather than a discretion of the buyer;

(iii) **transition periods** whenever new mandatory environmental criteria are introduced through delegated acts under Article 54 or the common specifications under Article 130; and

(iv) **SME-specific Commission guidance** with simplified compliance methodologies.

Green public procurement should create opportunities for innovative and sustainable SMEs, not reward certification capacity alone.

19. Preliminary market consultation (Article 30) should become systematic for high-value contracts, to prevent specifications that unintentionally exclude SMEs:

Article 30 makes market consultations merely optional, yet insufficient dialogue with the market before launch is a root cause of **unrealistic technical specifications, disproportionate qualification requirements and excessive contract aggregation** - conditions that only a limited number of large operators can satisfy. Recital 16 itself encourages consultations precisely to improve buyers' understanding of the maturity and structure of supply markets.

FICSIMM welcomes that consultations must be announced through a public summary of consultation (Articles 30(2) and 110(2)), that estimates based on market consultation are recognised as a benchmark for detecting abnormally low tenders (Article 101(1)(b)), and that national support structures must assist buyers with market engagement (Article 139(6)(b)).

FICSIMM proposes that market consultations be **required for high-value or strategically significant contracts unless duly justified**, announced and conducted **digitally and transparently** (Articles 110(2) and 127), and explicitly **open to SMEs and their representative organizations**. Public buyers should publish a **summary of the main conclusions** in the public summary of competition and explain how market feedback was reflected in the final procurement design, while safeguarding equal treatment and ensuring that participation in a consultation does not prejudge eligibility (Article 30(4)).

20. Joint bidding and SME consortia (Article 22) should be actively facilitated, with capacity assessed at the level of the group - the published proposal largely delivers this and must be preserved in the legislative process:

Many public contracts exceed the individual technical or financial capacity of a single SME even where a **group of smaller specialised operators** could perform them efficiently. The proposal moves in the right direction: Article 22 admits temporary associations **without legal personality**, prohibits requiring a specific legal form in order to participate - and, expressly, also after award (Article 22(4)) - and, together with Recital 11, deems a group to fulfil a selection criterion where it is met by one member or by combining the capacities of several members (Article 22(1)): the **combined basis** is the general rule, with derogations only for identified “critical tasks”, justified in the procurement detail (Article 22(2)). Article 22(5) adds a duty not to create disproportionate barriers related to the size of the group members, in particular for SMEs.

FICSIMM proposes consolidating this approach: **combined-capacity assessment as the general principle** for all selection criteria - as drafted in Article 22(1) -, with member-by-member requirements permitted only where objectively indispensable to the performance of the contract (the “critical tasks” of Article 22(2) should be defined restrictively and monitored); no imposition of a **specific legal form before or after contract award**; proportionate use of the joint-liability option in Article 23(4) where SMEs rely on the capacities of other entities; and Commission-issued **standard contractual and procedural models for SME consortia**, including proportionate rules on liability and evidence of capacity, so that joint bidding becomes a genuinely low-cost route towards larger and more complex contracts.

21. SME participation should be recognised as a component of the Union's economic security, resilience and strategic autonomy (Article 5(d); Articles 69 - 77):

SMEs form the overwhelming majority of European enterprises and the backbone of **local and regional supply chains**; a diversified supplier base reduces excessive dependence on a small number of large suppliers and strengthens the Union's capacity to absorb economic, geopolitical and supply-chain shocks. The proposal already links the division into lots to **reduced dependency on a single supplier, supply-chain resilience and security of supply** (Article 100(2)) - and, in the published text, places SME participation in the same sentence - and pursues economic security as a strategic goal (Article 5(d)), with a dedicated provision on resilience and security of supply for critical entities and infrastructures (Article 69) - but without connecting Article 5(d) or Article 69 to SMEs.

FICSIMM proposes that the Regulation explicitly recognise **SME participation and supplier-base diversification** as contributing to European economic security and strategic autonomy, that the measures available under Article 69 expressly include supplier diversification through SME sourcing, and that public buyers designing strategically relevant procedures assess **concentration risk** alongside price and immediate efficiency. This would ensure that the European preference framework (Articles 70 - 77) and the "Made in Europe" direction translate into **concrete opportunities for European SMEs throughout the supply chain**, not only for large prime contractors.

22. An "SME Test for Public Procurement" should apply to all future implementing and delegated measures under the Regulation (Articles 141 - 143):

The practical impact of the new framework on SMEs will be decided largely downstream - in **implementing acts, delegated acts, standard forms and digital systems** (the electronic eligibility service, the digital business credential tool, the Data Spaces) and in national implementation. The proposal confers extensive delegated powers on the Commission (Article 141(2) lists twelve empowerments, including the thresholds, mandatory green requirements, the BIM threshold, European preference towards non-covered countries, the content of public summaries and the eligibility service) without any SME-impact safeguard attached to their exercise, beyond the general consultation commitment in Recital 60. Article 133(5)(e) - requiring the credential tools to be "adapted to the particular needs of SMEs" - shows that such a safeguard can be drafted.

FICSIMM proposes a systematic **SME Test**: before adopting procurement-related implementing or delegated measures, the Commission and Member States should assess their impact on micro-enterprises and SMEs in terms of **administrative costs, financial requirements, digital compliance, certification obligations and market access**. Where disproportionate impacts are identified, **simplified procedures, exemptions, transition periods or alternative compliance mechanisms** should be provided, in line with the "think small first" principle promoted consistently by FICSIMM, Concordia and BusinessEurope. Representative SME organisations should be consulted in the preparation of the delegated and implementing acts referred to in Articles 141 and 143, including within the Advisory Committee on Public Contracts.

23. The transition to the new framework (Article 149) must be planned with SMEs: a coordinated timeline, no double burden and early national preparation:

The Regulation will apply two years after its entry into force (Article 149), while the Union-level digital business credential tools must be available by 30 June 2028 (Article 133(5)(a)) and Member States must connect their national databases by 15 June 2029 (Article 29(1)).

Depending on the pace of the legislative process, SMEs could face a period in which the new procedures already apply but the digital ecosystem that is meant to simplify them is not yet operational - the worst of both worlds, with new rules and old paperwork.

FICSIMM proposes: alignment of the date of application with the availability of the electronic eligibility service and of the interoperability network (Articles 128 and 133); an explicit rule that, until the digital business credential tool is fully operational in a Member State, the self-declaration under Article 28(3) is accepted without additional evidence unless strictly necessary; and, at national level, the early designation of the national coordinating authority (Article 138) and of the NPPDS authority (Article 134(2)), with a standing consultation of SME organisations on the migration from SEAP / e-licitație to the new ecosystem.