

ReNEUAL Model Rules on EU Administrative Procedure
2026 Revisions for Automated Procedures

Book IV – Contracts

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A. Introduction to the 2026 Revisions to Book IV for Automated Procedures

- (1) The rationale for the 2026 revisions for automated procedures in Book IV is already spelled out in the introduction to Book I. The general principle is laid down in the new **Article IV-7(3)** – to which Articles IV-10 (1), IV-21 and IV-39(1) refer – mirroring the amended preamble to the Model Rules: procedural obligations and rights provided in these model rules **shall not be compromised** in automated procedures related to EU contracts regardless of whether these are procedures leading to the conclusion, the execution or the termination of an EU contracts. The same applies to the “principles of good administration” to be applied by the EU authority in relation to subcontractors (**IV-39(1) second sentence**).
- (2) In accordance with this principle only a few **substantive amendments** have been made to clarify important details of existing procedural rights or obligations and to adapt them to specific challenges in automated procedures leading to the conclusion, the execution, or the termination of EU contracts. Moreover, these amendments are mostly limited to the addition of new **references to the specific rules on automated procedures in Book II and III** to the existing references to Book II and III already enshrined in Book IV (**Article IV-6 (1)** and **Articles IV-7 (1), IV-21 and IV-39 (1)**). Furthermore, to the extent that provisions of Book IV refer to provisions of Books II and III that have been amended by the 2026 revision, they naturally refer to those provisions in their current form, as amended in 2026.
- (3) A more fundamental addition to Book IV concerns **IV-12 (3)** on the use of fully or semi-automated procedures when evaluating applications in competitive award procedures (for details see the explanations to Article IV-12). Other amendments are more technical and/or clarifying in nature (**Articles IV-2 (11) and (12), IV-3 (5), IV-7(3) and (4), IV-10(1), and IV-20(1)**).
- (4) Finally, the issue arose as to whether and to what extent it would be necessary or advisable to include references to the **UNCITRAL Model Law on Automated Contracting (2024)** in Book IV. This UNCITRAL Model Law provides 'national legislators with a set of internationally acceptable rules' to overcome legal obstacles to automated contracting. In particular, it “establishes a framework for

legally recognising the use of automation and AI in the formation and performance of contracts”.¹ Ultimately, it was decided not to include such references. Book IV generally abstains from establishing **substantive public contract law** rules regarding the conclusion and execution of EU contracts. Instead, it refers either to EU law (Article IV-4) or the law of a Member State (Article IV-5), depending on which law is applicable to an EU contract according to the criteria set out in Article IV-3. Whether national or EU law should draw inspiration from the UNCITRAL Model Law for its respective law of obligations falls outside the scope of Book IV and the ReNEUAL Model Rules as a whole. In this regard it should be noted that the UNCITRAL Model Law is primarily designed as a tool to facilitate cross-border e-commerce by harmonising commercial law standards. Its focus lies on the private law aspects of digital trade, which do not necessarily align with the specific requirements of public contract law.

¹ Cf. <https://uncitral.un.org/en/mlac>.

B. Model Rules²

Chapter 1: General provisions

IV-1 Scope of application

- (1) Book IV applies to all contracts and legally binding agreements concluded
 - (a) between an EU authority and a private entity;
 - (b) between an EU authority and a Member State authority, if the Member State authority acts as a service provider on the market and concludes the contract with an EU authority as a private person would.
 - (c) Book IV applies also to contracts between an EU authority and a Member State authority other than those mentioned in (b) if these rules are appropriate in view of the nature of the contract constituting an arrangement relating to administrative organisation.
- (2) Paragraph (1)(a) and (b) of this article applies *mutatis mutandis* to contracts between EU authorities.
- (3) Where an EU contract involves subcontracting, only the special rules of Chapter 4 of Book IV shall apply to the latter.
- (4) Book IV does not apply to agreements concluded by EU authorities under public international law.

IV-2 Definitions

- (1) 'Contract' means an agreement between two or more parties which is intended to create a binding legal relationship or to have some other legal effect.
- (2) 'Contractor' means the person that has entered into a contractual relationship with an EU authority.
- (3) 'EU contract' means all contracts as defined in Article IV-1(1) and (2).

² Provisions added to the [2014/2017 version of ReNEUAL Model Rules Book I](#) are highlighted. We have based our work on the English version of the Model Rules published by Oxford University Press in 2017, which includes some minor changes compared with the version originally published online in 2014.

(4) 'General terms of contract' means contractual terms which have not been individually negotiated. A term shall be regarded as not individually negotiated where it has been drafted in advance by one of the parties and the other party has therefore not been able to influence the substance of the term.

(5) 'Participant' means any person that made an application or a tender in a competitive award procedure in the sense of Chapter 2 Section 3 of Book IV.

(6) 'Party' means the EU authority or the contractor as parties of an EU contract

(7) 'Potential Contractor' means any person that expressed an interest in concluding an EU contract in cases where a competitive award procedure in the sense of Chapter 2 Section 3 of Book IV did not take place or where he or she was excluded from the participation in such a procedure.

(8) 'Specific obligations of EU authorities as public authorities' mean the obligations of an EU authority to comply with fundamental rights in accordance with Article 6 TEU as well as with general principles of EU Law, with EU rules applicable to the conclusion of contracts, EU budgetary and financial rules, and with other general or specific obligations imposed under EU law on EU authorities as public authorities.

(9) 'Subcontractor' means any person who has entered into a contractual relationship with the contractor for the purpose of implementing an existing EU contract.

(10) 'Third party' means any person who is not a party to the EU contract.

(11) 'Automated decision-making system' means an automated data processing system that adopts a decision (fully-automated decision) or materially influences human decision-making (semi-automated decision).

(12) 'Automated procedure' means, in accord with Article I-4(8), an administrative procedure in which the administrative action is taken by an automated data processing system (fully-automated procedure) or is materially influenced by such a system (semi-automated procedure).

IV-3 Determination of the law applicable to an EU contract

(1) An EU contract is governed by either EU law or by the law of a Member State or by the law of a Third State. Where an EU legal act determines the law applicable to contracts, the parties cannot choose to submit a contract to another law.

(2) An EU contract is governed solely by EU law in the following cases:

- (a) if explicitly provided for by an EU legal act;
- (b) if the contract is a contract within the meaning of Article IV-1(1)(c);
- (c) if the contract is modifying or abrogating pre-existing EU law relations between the parties;
- (d) if the obligations of the EU authority can only be fulfilled through an act within the meaning of Article 288 TFEU or through similar measures implying the exercise of public authority conferred on the EU authority by EU law;
- (e) if an EU legal act establishes homogeneous rules regarding the principal obligations under the respective contract which are directly binding upon the contracting parties. The present rule applies in particular when unilateral powers to modify the contract or to enforce the contractual obligations are not explicitly enshrined in contractual clauses.

(3) For the purpose of paragraph (2)(e) of this article, the following contracts in particular are to be considered as contracts governed solely by EU law:

- (a) staff contracts within the meaning of the EU Staff Regulations;
- (b) grant agreements within the meaning of the EU Financial Regulations;
- (c) grant agreements within the meaning of the EU Regulations implementing Framework Programmes on Research.

(4) If an EU contract is not governed by EU law, it is governed by the law of a Member State chosen by the parties pursuant to the criteria under Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I). To the extent that the applicable Member State law has not been chosen by the parties, or if the choice of law clause is invalid, the criteria of Regulation (EC) No 593/2008 shall be applied to determine which Member State law is applicable.

(5) All 'concession contracts' and 'public contracts' within the meaning of Article 2 No. 14 and No. 57 of Regulation (EU, EURATOM) 2024/2509 on the financial rules applicable to the general budget of the Union are to be considered as contracts subject to paragraph (4) of the present article.

(6) The law of a Third State shall apply to a contract in the case of paragraph (4) of the present article, if the application of Regulation (EC) No 593/2008 on the

law applicable to contractual obligations (Rome I) stipulates this result. All the rules of Book IV pertaining to EU contracts governed by Member State law shall apply accordingly to EU contracts governed by the law of third countries.

IV-4 Rules applicable to EU contracts solely governed by EU law

EU contracts in the sense of Article IV-3(2) are governed by the rules of Book IV, by their respective contractual provisions, by sector-specific EU law, by general principles of EU contract law as well as other general principles of EU law.

IV-5 Rules applicable to EU contracts governed by Member State Law

(1) If an EU contract is governed by the law of a Member State, the EU authority shall enjoy the most extensive legal capacity accorded to legal persons under the law of the respective Member State pursuant to Article 335 TFEU. The EU authority cannot refer to the exercise of public authority conferred by the law of the respective Member State on its own public authorities. Article 343 TFEU on privileges and immunities shall remain unaffected.

(2) The applicability of Member State law to an EU contract cannot relieve the EU authority of its obligations to comply with fundamental rights in accordance with Article 6 TEU, general principles of EU Law, with EU rules applicable to the conclusion of contracts, EU budgetary and financial rules, and with other general or specific obligations imposed under EU law on EU authorities as public authorities.

Chapter 2: Procedures for the conclusion of contracts

Section 1: Preparation of general terms of contracts

IV-6 Procedure for drafting general terms of contract

(1) The rules of Book II, including the rules related to automated data processing systems, shall apply *mutatis mutandis* to the procedure for drafting general terms of the contract by the EU authority. This does not apply

- (a) to general terms of contracts corresponding to model contracts which are part of a legislative act or an act of general application in the sense of Article II-1(1);
- (b) to non-substantial modifications of general terms of contracts especially if such modifications serve to adapt contracts to new legislation or jurisprudence, or if they are solely advantageous for the contractor; **modifications adapting general terms of contracts to the use of automated data procession systems by the EU authority are substantial.**

(2) General terms of contract can be adopted through the expedited procedure of Article II-6. In such a case they may only be used for eighteen months after their first use. If new general terms of contract are adopted following the regular rule-making procedure, the EU authority is obliged to offer its contractor the opportunity to change the contract in order to incorporate the new general terms of contract. The second sentence of this paragraph is not applicable

- (a) if the contract has been fully performed by both parties;
- (b) if the new general terms of contract are disadvantageous for the contractor in comparison to the general terms of contract adopted in the expedited procedure.

(3) The second and third sentence of paragraph (2) shall apply *mutatis mutandis*

- (a) if the general terms of contract included in an EU contract have not been drafted according to paragraph (1) of the present Article, or if the general terms have been adopted before the entry into force of these Model Rules;
- (b) if the act of general application referred to in paragraph (1)(a) of the present article can be adopted through the expedited procedure of Article II-6.

(4) General terms of contract submitted by the EU authority and not individually negotiated may be invoked against the contractor only if the contractor was aware of them, or if the EU authority took reasonable steps to draw the contractor's attention to these terms, before or during the conclusion of the contract. A mere reference to such terms within a contractual document will not suffice for these to be considered as brought to the contractor's attention in a sufficient manner, even if the contractor signs the document. Section 3 of Chapter 3 of Book IV remains unaffected.

Section 2: General rules on procedure

IV-7 Applicability of Book III and Automated Decision Making

(1) The following articles of Book III shall apply *mutatis mutandis* to the decision of an EU authority on whether or not to conclude an EU contract unless stipulated otherwise in Book IV:

- Article III-3 – General Duty of Fair Decision-making and impartiality;
- Article III-3a – Deployment of automated decision-making systems;
- Article III-4 – Online information on existing procedures;
- Article III-5 – Initiation;
- Article III-6 – Special rules on application procedures;
- Article III-7 – Responsible official;
- Article III-8 – Management of procedures and procedural rights;
- Article III-10 – Principle of investigation;
- Article III-11 – Investigation by request;
- Article III-13 – Duties to cooperate of parties;
- Article III-14 – Privilege against self-incrimination and legal professional privilege;
- Article III-15 – Witnesses and experts;
- Article III-22 – Access to the file;
- Article III-23 – Right to be heard by persons adversely affected;
- Article III-29 – Duty to give reasons;
- Article III-30 – Duty to indicate available remedies;
- Article III-31 – Formal and language requirements;
- Article III-32 – Decisions in electronic form.

(2) Paragraph (1) of this article applies *mutatis mutandis* to the decision of an EU authority to suggest or to accept a modification of an existing contract, or its cancellation. Article IV-9(3) remains unaffected.

(3) Procedural obligations and rights shall not be compromised in automated procedures

(4) The competent authorities remain responsible for fully or semi-automated decisions to which paragraphs (1) and (2) of this article apply. If the system is provided by a third party the competent authority must establish safeguards to comply with its obligations according to these model rules

IV-8 Effects on judicial procedure

- (1) The refusal to conclude or to modify a contract is a decision in the sense of Article III-2 of the present Model Rules.
- (2) Any person having participated in a competitive award procedure or having expressed an interest in concluding the contract may institute proceedings within the meaning of Article 263 TFEU against the contract award decision in the sense of Article IV-18, in cases where a correct procedure did not take place, even if the decision is not addressed to that person.
- (3) The time limit established under Article 263 TFEU shall begin after the notification of the decision leading to the conclusion of the contract to the plaintiff, or in the absence thereof, on the day in which the decision came to the knowledge of the plaintiff.
- (4) A contracting EU authority whose decision leading to the conclusion of an EU contract, has been declared void by the Court of Justice of the European Union is required to render the contract ineffective in compliance with the judgment, if the contractor has not fully met his part of the contractual obligations. This duty only allows the contracting EU authority to terminate or modify the contract, or to claim its invalidity under the conditions laid down in Chapter 3 of the present book. This duty shall not affect any obligation which may result from the application of Article 340(2) TFEU.

Section 3: Competitive award procedure

IV-9 Scope

- (1) The competitive award procedure is applicable to the conclusion of EU contracts
 - (a) if the contracting EU authority is not legally obliged to conclude an EU contract with every person satisfying the criteria for the award;
 - (b) if the contracting EU authority is not legally bound by a framework contract, decision or otherwise to conclude the contract with a specific person.
- (2) The special rules regarding award procedures applicable to EU contracts in the sense of Article IV-3(3) and (5) as well as any other rules on competitive award procedures laid down in sector-specific EU law, take precedence over the rules of this section.

(3) A substantial modification of the provisions of an EU contract during its term shall be considered as a new award subject to the provisions of this section. A modification shall be considered substantial, where it renders the contract substantially different from the one initially concluded. Modifications arising from the rights provided under Article IV-6(2) and (3), Article IV-8(4), Article IV-23(3), Article IV-24(3), Article IV-28, Article IV-32 should in general not be deemed substantial.

IV-10 General principles

(1) The rules in Article IV-7(1) apply in a residual way to competitive award procedures, whereas those in Article IV-7(3) and (4) apply directly.

(2) The rules of the present section will be considered as respected if the contracting EU authority applies the rules mentioned in Article IV-9(2) *mutatis mutandis* in appropriate cases. This includes provisions relating to exceptions from obligations resulting from the rules mentioned in Article IV-9(2).

IV-11 Prior advertising

(1) The contracting EU authority has to ensure the publication of a sufficiently accessible advertisement prior to the award of the contract in order to guarantee competitive tendering and impartiality of the award procedure. An advertisement is sufficiently accessible if, in light of the relevant market, every person who may have a reasonable interest in the contract has access to appropriate information prior to its award, which enables this person to express his or her interest in obtaining the contract.

(2) The contracting EU authorities are responsible for deciding the most appropriate medium for advertising the contracts. Their choice should be guided by an assessment of the relevance of the contract for the respective market, in particular in view of the subject matter and value of the contract as well as the customary practices in the relevant sector.

(3) Adequate means of publication include:

- Advertisements on the website of the EU authority,
- Publication in the Official Journal of the European Union/ TED (Tenders Electronic Daily),

- Publication in National journals specializing in public procurement announcements, newspapers with national or regional coverage, or specialist publications where there is only a local, regional or specialized market for the contract in question.

IV-12 Content of the advertisement and the contract documents

(1) The advertisement may be limited to a short description of the essential details of the contract and of the award method along with an invitation to contact the respective EU authority. If necessary, it might be complemented with additional information available on the Internet, or accessible upon request from the contracting EU authority. The advertisement and any additional documentation should provide as much information as is reasonably necessary for the persons interested to be able to make a decision on whether to express their interest in obtaining the contract.

(2) The subject matter of the contract shall be described in a non-discriminatory manner within the contract documents. The description of the characteristics required of a product or service should not refer to a specific make or source, a particular process, or to trade marks, patents, a specific origin or types of production, unless such a reference is justified by the subject matter of the contract and is accompanied by the words 'or equivalent'.

(3) Where the final decision on a contract is fully- or semi-automated this must be formally acknowledged. The acknowledgement must include the information referred to in Article III-3a(1) and a link to the database of high-risk systems established by the EU Artificial Intelligence Act when such a system is used.

IV-13 Cases justifying use of the negotiated procedure without prior advertisement

Contracting EU authorities may award EU contracts by means of a negotiated procedure without prior advertisement in the following cases:

- (a) when for technical or artistic reasons, or for reasons pertaining to the protection of exclusive rights, the contract may only be awarded to a particular person;
- (b) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the EU authority in question, the rules laid down in this section cannot be complied with. The circumstances

- invoked to justify extreme urgency must not in any event be attributable to the contracting EU authority;
- (c) in similar cases, especially if the EU authority has developed and applies an award procedure pursuant to Article IV-10(2).

IV-14 Equal access for economic operators from all Member States

- (1) The contracting EU authority shall only impose conditions which do not cause direct or indirect discrimination against persons who might be interested in the contract in Member States.
- (2) If participants are required to submit certificates, diplomas or other forms of written evidence, documents from all Member States certifying an equivalent level of guarantee must be accepted.
- (3) Time limits for expressing interest and for submitting offers should be long enough to allow persons from all Member States to make a meaningful assessment and prepare their tender.
- (4) All participants must have prior access to the applicable rules along with the certainty that these rules shall apply without discrimination.

IV-15 Limit on the number of participants invited to submit a tender

- (1) The contracting EU authority may take measures to appropriately limit the number of participants, provided this is done in a transparent and non-discriminatory manner. The respective EU authority must apply objective factors, such as the experience of the participants in the relevant sector, the size and infrastructure of their business, their technical and professional abilities, or other factors. Contracting EU authorities may opt for a drawing lots procedure, either exclusively or in combination with other selection criteria. In any event, the number of shortlisted participants shall take account of the need to ensure adequate competition.
- (2) Alternatively, EU authorities may establish qualification systems where a list of qualified persons is compiled by means of a sufficiently advertised, transparent and open procedure. In the event of an award of individual contracts falling within the scope of this system, the EU authority may select the persons to be invited to submit a tender from the list of qualified persons on a non-discriminatory basis, in particular by drawing in rotation from the list.

IV-16 Equal treatment

(1) While the competitive award procedure is running, all contacts between the contracting EU authority and the participants shall satisfy conditions ensuring transparency and equal treatment. Such contacts shall not lead to an amendment of the terms and conditions of the contract or of the original tender.

(2) In procedures allowing for negotiation with shortlisted participants, negotiations should be organized in a way that gives all participants access to the same amount of information, excluding any unjustified advantages for a specific participant.

IV-17 Contracts of low value

(1) Contracts of low value may be awarded without prior advertisement on the basis of an appropriate market analysis and, if appropriate, through a negotiated procedure based on an adequate number of applications. The threshold for contracts of low value shall be established and published on a regular basis by each EU authority. In the absence of a published threshold, the threshold established by the Commission for the implementation of the EU Financial Regulations shall apply.

(2) For the purpose of this article the contracting EU authority should accept unsolicited applications and establish open lists with qualified persons. If it comes to the knowledge of the EU authority that a number of qualified persons are interested in concluding such low value contracts, the contracts should be awarded on the principle of rotation where the offered prizes and terms of contracts are similar, and where the negotiated procedure would be inappropriate with respect to the value of the contracts.

IV-18 Contract award decision

(1) The final decision awarding the contract has to comply with the procedural rules laid down at the outset as well as with the principles of non-discrimination and equal treatment.

(2) The contracting EU authority shall notify simultaneously all participants whose application or tender have been rejected of the grounds on which the decision was taken. The contracting EU authority shall notify all participants

meeting the exclusion and selection criteria who make a request in writing, the characteristics and relative advantages of the successful tender along with the name of the participant to whom the contract is awarded. Article III-32 on decisions in electronic form applies *mutatis mutandis*. However, specific details need not be disclosed if their disclosure would hinder the application of the law, would be contrary to the public interest or would harm legitimate business interests or could distort fair competition.

(3) The contracting EU authority shall invite all participants and known potential contractors to present their concerns or make their comments within the standstill period provided under Article IV-19.

IV-19 Standstill period before signature of the contract

(1) The contracting EU authority shall not sign the contract with the successful participant until 14 calendar days have elapsed. This period shall begin to run after the simultaneous dispatch of the notifications to successful and unsuccessful participants.

(2) If necessary, the contracting EU authority may suspend the conclusion of the contract for the purpose of additional examination if this is justified on the grounds of requests or comments made by unsuccessful or aggrieved participants or potential contractors or on the grounds of any other relevant information received.

(3) The non-observance of the standstill period or its expiry has no effect on the time limit mentioned in Article IV-8(3), or on the obligation of the contracting EU authority to render the contract ineffective pursuant to Article IV-8(4) and Article IV-31.

Chapter 3: Execution and validity of EU contracts

Section 1: General provisions

IV-20 Representation of EU authorities and formal requirements for EU contracts

(1) The representation of EU authorities and the question whether a person or an automated decision-making system is able to legally bind an EU authority are solely governed by EU law.

(2) Any provision pertaining to the form of an EU contract which is laid down in an EU legal act is to be understood as a rule limiting the representative power of the person representing the EU authority.

IV-21 Claims of the EU authority in the context of contracts

Procedures which lead to the EU authority's exercise of contractual rights or its claim of invalidity shall be subject to the principles of good administration, in particular those established especially those established in Article IV-7 (3) and (4) and those established in Book III under the following articles:

- Article III-3 – General Duty of Fair Decision-making and impartiality;
- Article III-3a – Deployment of automated decision-making systems;
- Article III-4 – Online information on existing procedures;
- Article III-5 – Initiation;
- Article III-7 – Responsible Official;
- Article III-8 – Management of procedures and procedural rights;
- Article III-10 – Principle of investigation;
- Article III-11 – Investigation by request;
- Article III-13 – Duties to cooperate of parties;
- Article III-14 – Privilege against self-incrimination and legal professional privilege;
- Article III-15 – Witnesses and experts;
- Article III-22 – Access to the file;
- Article III-23 – Right to be heard by persons adversely affected;
- Article III-29 – Duty to give reasons;
- Article III-30 – Duty to indicate available remedies;
- Article III-31 – Formal and language requirements;

- Article III-32 – Decisions in electronic form.

IV-22 Decisions of the EU authority on an extra-contractual basis

(1) Neither the terms of an EU contract nor Member State law applicable to such a contract can exclude the exercise of public authority powers on extra-contractual grounds by an EU authority. Such powers may not be misused by the EU authority in its intention to suspend or cease its own contractual obligations. The exercise of public authority powers by EU authorities, which are unrelated to contracts, shall leave unaffected:

- the rights of parties under Article 340(2) TFEU;
- any claim by the contractor on the basis of the contract.

(2) If the powers referred to in paragraph (1) are executed by means of a decision that is enforceable within the meaning of Article 299 TFEU, and if the pecuniary obligation imposed by this decision is also contractually due, the contractual obligation shall be deemed fulfilled if the contractor complies with the decision.

IV-23 Review by the European Ombudsman

(1) The scope of review by the European Ombudsman includes the fulfilment of EU authorities' obligations arising both from Article IV-21 and from EU contracts.

(2) The recommendation issued by the European Ombudsman does not affect the right of the parties to have their contractual dispute examined and authoritatively settled by a court of competent jurisdiction.

(3) A conclusion by the European Ombudsman that his inquiry has revealed an instance of maladministration on the part of the EU authority does not affect the validity of the contract or its terms and clauses, nor the validity of claims pursuant to Article IV-21. The EU authority has to remedy its maladministration by using its contractual powers or by accepting offers from the contracting party to re-negotiate or modify the respective contract, or by means of financial compensation.

IV-24 Arbitration Clauses

(1) The validity of an arbitration clause within the meaning of Article 272 TFEU is solely determined by EU law even if the EU contract is governed by Member

State law. The clause shall be incorporated into the written contract. If the arbitration clause is not incorporated into the contract, the parties can still conclude it by signing a separate document with reference to the contract. If there is no written arbitration clause whatsoever, it shall be presumed irrefutably that no arbitration clause has been concluded. The written form can be replaced by an electronic form. Article III-32 on decisions in electronic form applies *mutatis mutandis*.

(2) An arbitration clause within the meaning of Article 272 TFEU can be concluded until an application for court proceedings has been submitted.

(3) The EU authority shall agree to annul an arbitration clause within the meaning of Article 272 TFEU upon the request of the contractor:

- (a) if the arbitration clause has not been individually negotiated;
- (b) if the jurisdiction of courts or tribunals of the Member States or a Third State would be more appropriate in view of the law applicable to the contract and the principle of effective legal protection;
- (c) if the request has been made shortly after the contractor became aware of the intention of the EU authority to file an action based on the clause before the Court of Justice of the European Union.

A decision of the EU authority refusing the annulment of an arbitration clause shall give reasons as to why the conditions under b) of the present paragraph were not deemed to be fulfilled.

IV-25 Exclusion of compensation

Compensation as provided for in this chapter is excluded if the contractor

- (a) has obtained the award of the contract or a beneficial contractual position through false pretences, threat or bribery;
- (b) has obtained the award of the contract or a beneficial contractual position by providing substantially incorrect or incomplete information;
- (c) was aware of the illegality of the contract or was unaware thereof due to gross negligence on his part.

Section 2: EU contracts governed by EU law

Subsection 1: Execution and performance

IV-26 Good faith and fair dealing

- (1) The contracting parties have a duty to act in accordance with good faith and fair dealing when performing an obligation, exercising a right to performance, pursuing or disputing a remedy for non-performance, or when exercising a right to terminate an obligation or the contractual relationship.
- (2) The duty under paragraph (1) may not be excluded or limited by contract.

IV-27 Contractual rules

- (1) The EU authority should ensure that any EU contract solely governed by EU law contains a provision specifying a law of obligations, or specific model rules, applicable on a complementary basis to issues not covered by the rules mentioned in Article IV-4, such as the place and time of performance, remedies for non-performance, refusal of performance, termination, damages and interest, and limitation rules.
- (2) In order to guarantee uniformity in the execution of EU contracts, the EU authority should ensure that the provision introduced in paragraph (1) refers to the same law of obligations or model rules in all contracts serving the same purposes.

Subsection 2: Change of circumstances and related clauses

IV-28 Change of circumstances

If the circumstances which determined the content of an EU contract have changed so substantially since the conclusion of the contract that one of the parties cannot reasonably be expected to adhere to the original contractual provisions, this disadvantaged party may request the adaptation of the agreement or, where such an adaptation is not possible or cannot reasonably be expected of the other party, the disadvantaged party may terminate the contract.

IV-29 Termination to avoid grave harm to the common good

(1) The EU authority may also terminate an EU contract in order to avoid or eliminate a risk of grave harm to the common good. The termination shall have no retroactive effect.

(2) Following an application, the EU authority shall compensate any disadvantage suffered by the contractor which resulted from its reliance on the continued existence of the EU contract, provided such reliance deserves protection (legitimate expectation) and only to the extent that such reliance merits protection.

IV-30 Termination for non-performance

(1) Each party may terminate the contract if the other party's non-performance of a contractual obligation is fundamental. A non-performance of a contractual obligation is fundamental:

- (a) if it substantially deprives the creditor of what the creditor was entitled to expect under the contract, as applied to the whole or relevant part of the performance, unless at the time of conclusion of the contract the debtor did not foresee and could not reasonably be expected to have foreseen that result; or
- (b) if it is intentional or reckless and gives the creditor reason to believe that the other party's future performance cannot be relied upon.

(2) Each party may terminate the contract in a case of delay in performance of a contractual obligation which is not in itself fundamental if the party gives a notice fixing an additional period of time of reasonable length for performance and the debtor does not perform within that period. If the period fixed is unreasonably short, termination is possible only after a reasonable period from the time of the notice.

(3) Each party may terminate the contract before performance of a contractual obligation is due if the debtor has declared that there will be a non-performance of the obligation, or it is otherwise clear that there will be such a non-performance, and if the non-performance would have been fundamental.

(4) Each party which reasonably believes that there will be a fundamental non-performance of a contractual obligation by the other party may terminate if it has requested an adequate assurance of due performance and no such assurance has been provided within a reasonable time.

- (5) The right to seek damages is not excluded by the termination.

Subsection 3: Consequences of illegality and unfair terms

IV-31 Termination due to an infringement of the provisions of Chapter 2

- (1) For the purpose of complying with Article IV-8(4), or if the EU authority becomes aware that the rules on the procedure regarding the conclusion of an EU contract have not been respected to the detriment of a third party, the EU authority may terminate the contract in order to re-open this procedure.
- (2) This right of termination does not apply
- (a) if there is no possibility that the infringement has influenced the decision on the matter;
 - (b) if the contract award decision has become definitive due to the expiration of the time limit for the actions provided under Article IV-8(2);
 - (c) if the award decision has been confirmed by court;
 - (d) if the contractor has irreversibly executed his main obligations in whole or in substantial part.
- (3) A termination in the sense of paragraph (1) has no retroactive effect.
- (4) The EU authority shall compensate the other party for a disadvantage suffered due to its reliance on the existence of the EU contract provided such reliance deserves protection (legitimate expectation) and only to the extent that such reliance merits protection. The contractor cannot request to be treated as if the contract had been fulfilled.

IV-32 Renegotiation due to an infringement of the specific obligations of EU authorities as public authorities

- (1) If the content of an EU contract is illegal due to the non-observance of the specific obligations of the EU authority as a public authority, the EU authority may request that the content of the agreement be adapted to restore lawful conditions.
- (2) If the content of the contract is illegal because the unobserved rules intended to protect the rights and interests of the other party, then that party may request that the content of the agreement be adapted to restore lawful conditions.

(3) These adaptations may consist *inter alia* in a change of terms and clauses, price adjustments, modifications of the main obligations, or in the cancellation of the agreement with or without compensation.

(4) If the competitive award procedure was applicable to the contract, only a cancellation of the agreement with compensation may be negotiated. A change of terms and clauses is only possible if the modification is not substantial in the sense of Article IV-9(3).

IV-33 Invalidity

An EU contract is invalid

- (a) if an equivalent contract between private persons would be considered invalid and thus not binding in accordance with the general principles common to the laws of the Member States;
- (b) if a single case decision of the EU authority with equivalent content would be nonexistent.

Each party may request the other party to confirm the invalidity.

IV-34 Unfair terms

EU legislation on unfair terms in consumer contracts shall apply *mutatis mutandis* if the contractor is a consumer within the meaning of this legislation.

Section 3: *EU contracts governed by Member State Law*

IV-35 Applicable Law

(1) The conditions for the validity and termination of EU contracts governed by the law of a Member State shall be determined by the respective Member State law.

(2) If an EU contract infringes EU law, this shall not be considered a ground for invalidity or termination of the contract if a similar contract concluded between private parties would be considered valid and binding in accordance with the applicable Member State law.

(3) If the exercise of contractual rights of the EU authority is effective according to the law of the Member State in spite of an infringement of the rules mentioned in Article IV-5(2), this shall not preclude the obligation of the EU authority, which follows from its duties mentioned in Article IV-5(2), to conclude or re-negotiate the contract with the contractor, or to compensate the contractor by other means for the damage he or she suffered because of the illegal decision.

IV-36 Contractual clauses for compliance with EU Law

(1) The exercise of public authority by an EU authority may not give rise to contractual obligations on the part of the contractor. The specific obligations of an EU authority as a public authority may only entail direct consequences for the validity or termination of the contract if they have been made constituent components of that contract. The EU authority shall ensure that an EU contract includes a clause enabling the EU authority to terminate the contract where it is subsequently established that the specific obligations of the EU authority as a public authority have not been complied with.

(2) The validity of the standard terms and clauses described in paragraph (1) is determined in accordance with the Member State law applicable to the contract. These standard terms and clauses should provide adequate protection for the legitimate expectations of the contractor to the extent that his reliance on the continued existence of the contract merits protection.

Chapter 4: Subcontracts

IV-37 Admissibility and scope of subcontracts

(1) The contractor may subcontract the performance of the EU contract in whole or in part without the EU authority's consent, unless personal performance is required under the EU contract. Any subcontractor so engaged must be of adequate competence. The contractor must ensure that any tools and materials used for the performance of the EU contract are in conformity with the EU contract and the applicable laws, and fit to achieve the particular purpose for which they are to be used. The EU Financial Regulations are applicable to the contractor's choice of subcontractors and to the financial accountability of the contractor.

(2) A contract concluded for the performance of an EU contract by the contractor with a subcontractor does not create any direct relationship between the

subcontractor and the relevant EU authority in the absence of an explicit provision within the EU contract indicating the scope and consequence of such a relationship.

(3) The contractor remains responsible for performance of the EU contract. Nothing can limit the contractor's liability vis-à-vis the contracting EU authority for the breach of contractual duties caused by a subcontractor.

(4) The EU authority is not liable to third parties for the negligence of a subcontractor.

IV-38 Choice of the law applicable to subcontracts

(1) In the absence of a specific provision on the law applicable to subcontracts, such law shall be determined by the law applicable to the contractor's activities.

(2) Article IV-37(1) remains unaffected.

IV-39 Duties of the EU authorities towards subcontractors

(1) The absence of a direct relationship between an EU authority and a subcontractor, and the limitations that derive thereof for the standing of subcontractors in actions based upon Articles 263, 265 and 340 TFEU, shall not exempt that authority from its duties to apply the principles of good administration, especially those established in Article IV-7 (3) and (4) and those established in Book III under the following articles:

- Article III-3 – General Duty of Fair Decision-making and impartiality;
- Article III-3a – Deployment of automated decision-making systems;
- Article III-4 – Online information on existing procedures;
- Article III-5 – Initiation;
- Article III-7 – Responsible Official;
- Article III-8 – Management of procedures and procedural rights;
- Article III-9 – Time limits for concluding procedures;
- Article III-10 – Principle of investigation;
- Article III-11 – Investigation by request;
- Article III-13 – Duties to cooperate of parties;
- Article III-14 – Privilege against self-incrimination and legal professional privilege;
- Article III-15 – Witnesses and experts;

- Article III-22 – Access to the file;
- Article III-23 – Right to be heard by persons adversely affected;
- Article III-29 – Duty to give reasons;
- Article III-30 – Duty to indicate available remedies;
- Article III-31 – Formal and language requirements;
- Article III-32 – Decisions in electronic form.

(2) The EU authority shall ensure that the contractor informs the subcontractor of the applicability of principles of good administration

(3) A subcontractor shall have the right to know of any criticism by the EU authority which is party to the EU contract regarding his or her performance. The subcontractor shall also have the right to be heard in relation to such criticism. If the EU authority intends to request the replacement of a subcontractor, it shall inform the latter of its intention and give reasons for doing so. The request shall only be made to the contractor after the subcontractor has had an opportunity to present his or her observations.

(4) In order to also protect subcontractors, the EU authority shall check a contractor's financial stability before awarding it an EU contract, and shall continue to do so throughout the term of the contract.

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C. Explanations of the 2026 Revisions for Automated Procedures³

Chapter 1: General provisions

IV-2 Definitions

New paragraphs 7 and 8

- (1) The definitions in Book I of the terms “automated procedure” (**Article I-4(8)**) and “automated decision-making system” (**Article I-4(9)**) apply also to Book IV. They have been repeated in Article 2 (new paragraphs 11 and 12) to highlight their importance. For details concerning these new definitions see the explanations to Article I-4 above.

IV-3 Determination of the law applicable to an EU contract

Amended paragraph 5

- (2) Article IV-3 (1) is one of the few provisions of the Model Rules in their 2014 version which directly refers to existing EU legislation, in this case the EU financial regulation’s definition of those contracts to which its rules on procurement apply (today, Title VII of Regulation (EU, Euratom) 2024/2509 on the financial rules applicable to the general budget of the Union (recast)). This direct reference was inevitable because the EU financial regulation used the term ‘public contract’ in the sense of ‘*marché public*’ and ‘*öffentlicher Auftrag*’, i.e. in a very specific, technical sense (cf. today Article 2 (57) of Regulation (EU, Euratom) 2024/2509) to define the scope of its public procurement rules. According to the general practice of the EU authorities Article IV-3(5) states that these EU contracts are governed by the (private) law of a Member State.⁴
- (3) Unlike its predecessors, Regulation (EU, Euratom) 2024/2509 now also includes “concession contracts” (as defined in Article 2(14) of this Regulation) within the scope of its public procurement rules. This necessitates in 2026 a decision as to whether the (private) law of a Member State should also apply to these **EU**

³ Only explanations regarding new provisions are published here. Other explanations remain in the 2014 version of ReNEUAL Model Rules Book I.

⁴ See the Explanations to Article IV-3 (5) to the 2014 Model Rules.

concession contracts. Ultimately, this was decided in the affirmative, in part to clarify that such concession contracts cannot be used to transfer public authority functions—with effects on third parties—to private entities without specific provisions in an EU regulation respecting the so-called '**Meroni principles**'. This is of particular significance for EU contracts under which **automated data processing systems** are provided by third parties to EU authorities. As a result, Article IV-3(5) makes it clear—albeit, and admittedly, in a very indirect way—that the substantive and organisational requirements under Union law regarding the award and execution of contracts to private parties in connection with automated data processing systems cannot be satisfied merely by applying the provisions of Regulation (EU, Euratom) 2024/2509 on EU “concession contracts” and EU “public contracts”.

Chapter 2: Procedures for the conclusion of contracts

Section 1: Preparation of general terms of contracts

IV-6 Procedure for drafting general terms of contract

Amended Paragraph 1

- (4) The amendment to the first sentence of Article IV 6 (1) clarifies that this paragraph's reference to Book II includes the amendments of its provisions through this 2026 Update for automated procedures. This clarification was considered useful because Article IV-6 already broke new ground in its 2014 version by applying the provisions on rule-making to the elaboration of general terms of EU contracts.⁵
- (5) The amendment to the second sentence, lit. b) of Article IV 6 (1) clarifies that adapting general terms of contracts to the use of automated data processing systems for the execution of EU contracts cannot be considered to be a 'non-substantial' modification to which the procedure provided for in Article IV-6 (1) does not apply. In this context, a risk assessment regarding data protection and the requirements of Regulation (EU) 2024/1689 laying down harmonised rules on

⁵ See the Explanations to Article IV-6 to the 2014 Model Rules

artificial intelligence (AI Act) appears necessary, for which the procedure set forth in Article IV-6 is particularly suitable.

Section 2: General rules on procedure

IV-7 Applicability of Book III and Automated Decision Making

Amended Paragraph 1

- (6) As for the procedures to be followed by an EU authority to conclude an EU contract (or to amend or terminate it by mutual agreement, cf. Article IV-7 (2)) Article IV-7 (1) refers to several provisions of Book III to be applied *mutatis mutandis*. They naturally refer to those provisions in their current form, as amended in 2026, taking into account the particularities of automated and semi-automated procedures. Since **Article III-3a** on the use of automated decision-making systems was inserted as a new article, Article 7(1) had to be amended to include a reference to this new article, as it is also intended to apply to administrative procedures aimed at the conclusion of EU contracts.
- (7) Furthermore, a reference to **Article III-4** on online information regarding existing procedures has been added to Article IV-7(1). Such a reference was not included in the 2014 version of Article IV-7. This was omitted in 2014 because it was assumed that administrative procedures relating to contracts are significantly less standardised and less amenable to standardisation than procedures leading to decisions in individual cases. This is likely no longer true in general terms, as demonstrated by the very possibility of using automated data processing systems both in contract award procedures and in connection with the enforcement of contractual obligations. These are increasingly being used, particularly in competitive award procedures (cf. Article IV-9 (1)) and the execution of grant agreements (cf. Article IV-3(3)(b) and (c)). For this reason, a corresponding reference to Article III-4 has also been included in Articles IV-21 and IV-39. This is particularly so in relation to online information about competitive award procedures and grant agreements (e. g. how to apply, duties of the private contractor once the agreement is concluded is already current practice (cf., e.g. <https://eu-careers.europa.eu>)).

New Paragraphs 3 and 4

- (8) The new Article IV-7(3) – to which Articles IV-10(1), IV-21, and IV-39(1) refer – mirrors a new paragraph in the preamble and the general approach of the 2026 Model Rules that procedural rights and obligations shall not be compromised in automated procedures. For further details of this approach see the Introduction to the revised version of Book I above and of the Model Rules in general.
- (9) In line with this general approach **accountability** is key. Consequently, the new Article IV-7(4) – to which Articles IV-10(1), IV-21, and IV-39(1) refer – stipulates that competent authorities remain responsible for fully- or semi-automated decisions taken in EU contract related administrative procedures. The use of automated decision-making systems provides no shield for an authority deploying such a system. This is also the case if the system is not developed by the competent authority but provided by a third party. This is explained in more detail in the explanations to Article II-3 above to which we refer.

Section 3: Competitive award procedure

IV-10 General Principles

Amended paragraph 1

- (10) The insertion of “while those in Article IV-7(3) and (4) apply directly” in Article IV-10(1) ensures that Article IV-7(3) and (4) are not displaced by the more specific rules in Articles IV-10 to IV-18 under the *lex specialis* principle. This confirms that these specific safeguards remain fully and directly effective alongside the sectoral rules for competitive award procedures, rather than being merely residual.

IV-12 Content of the advertisement and the contract documents

New paragraph 3

- (11) The new paragraph 3 mirrors the new Articles III-4 (2)(h), III-5(3) (d) and III-8(1) (h) and ensures the right to be duly informed about the automated nature of the procedure. Reference is made to the explanations to these Articles. Article IV-12 (3) thus stresses the importance of this principle in competitive award procedures, where there is a rapidly growing trend towards using AI tools for the automated

pre-screening and ranking of applications. This development is particularly significant as these procedures often involve the **processing of highly sensitive personal data and proprietary business secrets**. Given that the underlying algorithms may influence the selection process through specific weighting or filtering criteria, providing clear information about the automated nature of these tools is essential to ensure procedural fairness and to allow for effective legal protection.

Chapter 3: Execution and validity of EU contracts

Section 1: General provisions

IV-20 Representation of EU authorities and formal requirements for EU contracts

Amended paragraph 1

- (12) The insertion of “or an automated decision-making system” in Article IV-20(1) clarifies that the legal attribution of declarations made by such systems is governed exclusively by EU law. This ensures that the question of whether an automated process can legally bind an EU authority is treated as a matter of the authority’s internal organisational law and representation. Consequently, this assessment remains independent of the law of a Member State, even in cases where the contract itself is otherwise governed by national law according to Articles IV-3 and IV-5. As explained in the Introduction to Book IV the decision of whether the EU rules in this context could or should be inspired by the UNCITRAL Model Law on Automated Contracting (2024) lies outside the scope of Book IV and the ReNEUAL Model Rules as a whole.

IV-21 Claims of the EU authority in the context of contracts

- (13) The insertions in Article IV-21 follow the same logic as the insertions to Article IV-7 (1) and guarantee the application of the principles enshrined in Article IV-7 (3) and (4) to procedures which lead to the EU authority’s exercise of contractual rights or its claim of invalidity governed by Article IV-21. The reasons behind these changes are explained in more detail in the explanations to Article IV-7 above to which reference is made.

Chapter 4: Subcontracts

IV-39 Duties of the EU authorities towards subcontractors

Amended paragraph 1

- (14) The insertions in Article IV-39 (1) follow the same logic as the insertions to Article IV-7 (1) and guarantee the application of the principles enshrined in Article IV-7 (3) and (4) to the duty of the EU authority to apply the principles of good administration. Reference is made to the explanations provided under Article IV-7 above.

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