



PUBLIC PROCUREMENT IN THE EU-MERCOSUR AGREEMENT

**ACCESS OF EUROPEAN COMPANIES
TO THE BRAZILIAN MARKET**

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AUTHOR: WELBER BARRAL

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Access of European Companies to the Brazilian Market

DELEGATION OF THE EUROPEAN UNION TO BRAZIL

Ambassador – Head of Delegation
Marian Schuegraf

Head of the Trade Section
Maurizio Cellini

Head of the Cooperation Section
Robert Steinlechner

Programme Officer of the Cooperation Section
Cintia Hoskinson

Programme Officer of the Trade Section
Eduardo Seixas

IMPLEMENTATION

AESA - Agriconsulting Europe S.A.

Technical Support EU-BR Dialogues
Elisa Natola, Team Leader
Renan Rigo, Key Expert

AUTHOR

Welber Barral (OAB/DF n. 34.742)

Research & Drafting Support

Luiza Takatsu
Victor Taranto
Natalia Vieira

Credit cover

Danilo Boges - Unsplash

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Foreword

This study comes at a particularly relevant moment in the relationship between the European Union and Brazil, following the provisional application of the EU–Mercosur Interim Trade Agreement from May 1, 2026. As strategic partners, the European Union and Brazil share a longstanding commitment to strengthening economic cooperation, promoting sustainable growth and fostering an open, transparent and predictable business environment.

Public procurement is an important component of the Agreement. By establishing common disciplines on transparency, non-discrimination and access to information, the Government Procurement Chapter of the Agreement provides a new framework for engagement between economic operators on both sides and contributes to creating more predictable conditions for participation in public procurement markets.

At the same time, translating international commitments into practical opportunities requires a clear understanding of the regulatory and institutional context in which they are implemented. In a large and diverse market such as Brazil, access to reliable information is essential to enable companies to identify opportunities, understand applicable requirements and make informed decisions.

This study provides a practical overview of Brazil’s public procurement landscape and the implications of the commitments undertaken under the EU–Mercosur Interim Trade Agreement. By facilitating a better understanding of both the opportunities and the regulatory framework, it aims to support closer economic ties and reinforce the partnership between the European Union and Brazil.

Developed with the support of the European Union Delegation to Brazil, this study contributes to strengthening cooperation under the EU–Brazil Strategic Partnership and to a better implementation of the procurement chapter under the EU–Mercosur agreement in the Brazilian market.



Marian Schuegraf
Ambassador of the European Union to Brazil

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1. Glossary

A

Administrative appeal (*recurso administrativo*): administrative mechanism under Law No. 14.133/2021 used to challenge certain decisions taken during the *licitação*, including decisions on pre-qualification, registration, evaluation of tenders, qualification or disqualification of a bidder, annulment or revocation of the *licitação*, and unilateral termination of the contract.

Annex 12-C: annex to the Agreement defining Brazil's coverage in government procurement, by identifying covered entities, goods, services, construction services, works concessions, thresholds, exclusions and reservations. A procurement will be covered only when it cumulatively satisfies the criteria relating to entity, object, value and absence of an applicable exclusion or reservation.

Annex 12-N: annex to the EU-Mercosur interim Trade Agreement (iTA) defining Brazil's government procurement coverage thresholds into national currency, based on the average conversion rate calculated over the 24-month period preceding 1 October of the year prior to the entry into force of

the threshold; the converted values apply from 1 January of the following year.

Annual Budget Law (Lei Orçamentária Anual — LOA): law initiated by the President of the Republic that estimates revenues and sets expenditures for the relevant fiscal year, comprising the fiscal budget, the social security budget and the investment budget of state-owned companies; in practice, it indicates the existence of a budgetary allocation for the procurement.

Appendix 12-C-1: covered central government entities and thresholds.

Appendix 12-C-2: covered Brazilian sub-central government entities and thresholds.

Appendix 12-C-4: covered goods and goods excluded by CATMAT.

Appendix 12-C-5: covered services.

Appendix 12-C-6: construction services and works concessions.

Appendix 12-C-7: general notes, exclusions and reservations in Brazil's Annex 12-C coverage.

B

Brazil's offer: the negotiated set of entities, objects, thresholds, exclusions and reservations undertaken by Brazil in Annex 12-C

of the EU-Mercosur interim Trade Agreement (iTA), defining Brazil's government procurement coverage under Chapter 12.

C

CATMAT: materials catalogue used in Brazilian public procurement to classify goods acquired by the Public Administration. In Annex 12-C, CATMAT is used to identify groups of goods expressly excluded from the coverage of Chapter 12.

Compras.gov.br: electronic procurement portal of the Brazilian Federal Government, integrated into the federal government procurement system and used to publish and conduct *licitações*, direct awards and other procurement procedures; it brings suppliers and the Public Administration together in an official digital procurement environment.

Construction services: services classified in Division 51 of the CPC, relating to the execution of works and material construction activities, including site preparation, construction of buildings, civil engineering works,

installation, finishing and specialised construction services.

Conversion of thresholds: methodology set out in Annex 12-N for converting thresholds expressed in SDR into national currency. For the Mercosur States Parties, the conversion must be based on the average of the conversion rates published by the IMF over the 24 months preceding 1 October of the year prior to the entry into force of the converted thresholds. The values apply from 1 January of the following year and must be published before they are applied.

Covered procurement: public procurement subject to the obligations of Chapter 12 because it cumulatively satisfies the criteria in Brazil's Annex 12-C coverage: covered procuring entity, covered object, value equal to or above the applicable threshold and absence of an exclusion or reservation.

E

Edital: Brazilian tender notice and tender documentation that sets the rules of the procurement, including the object, conditions for participation, qualification documents, award criteria, deadlines, tender submission rules, draft contract and annexes.

Equivalent documentation: document issued abroad, or in a format different from that usually required in Brazil, but capable of proving the same legal, tax, technical, economic-financial or regulatory

condition required from the domestic supplier.

EU-Mercosur interim Trade Agreement (iTA): interim trade instrument between the European Union and Mercosur covering trade matters, including government procurement. For the purposes of this report, "Agreement" refers to Chapter 12 of the iTA, read together with the relevant government procurement annexes, in particular Annex 12-C, which defines Brazil's coverage.

F

Federal Government Procurement Panel: tool for consulting and visualising data on federal public procurement, based on information

from SIASG and *Compras.gov.br*. It allows analysis of values, purchasing bodies, suppliers, procurement methods and objects procured.

G

Government Procurement Agreement (GPA/ACP): plurilateral agreement of the World Trade Organization governing reciprocal access to covered government procurement among the Members that have acceded to it, based on transparency, non-discriminatory treatment and market access commitments.

Growth Acceleration Programme (Programa de Aceleração do Crescimento — PAC): federal programme of priority investments in infrastructure and related areas; in this report, the term should be read as referring to public initiatives and projects that may lead to works, services and other procurements in Brazil.

H

Habilitação: phase of the *licitação* in which the Administration verifies whether the bidder satisfies the legal,

technical, tax, labour and economic-financial conditions required in the *edital* to perform the contract.

I

Impugnação: administrative challenge to the *edital*, submitted before the opening of the tender, used to request correction of an irregular, unlawful or restrictive clause.

Integrated Planning and Budget System (Sistema Integrado de Planejamento e Orçamento —

SIOP): system used in the Brazilian federal planning and budget cycle, gathering information on programmes, actions, budgetary allocations and budget execution. In this study, it was used as a source to identify budgetary priorities and sectors with greater potential to generate procurements.

I

Integrated System for General Services Administration (*Sistema Integrado de Administração de Serviços Gerais — SIASG*): auxiliary system of the General Services System that computerises and operationalises public procurement activities of the Federal Public Administration, integrating modules such as supplier registration, publication of *licitações*, price registration, contract management and other public logistics instruments.

Investment Partnerships Programme (*Programa de Parcerias de Investimentos — PPI*): federal programme created within the Presidency of the Republic by Law No. 13,334/2016, with the purpose of expanding and strengthening interaction between the State and the private sector through partnership contracts and other privatisation measures; projects qualified under the PPI are treated as national priorities.

L

Law No. 14.133/2021: Brazilian general statute on public bidding and administrative contracts, applicable to the direct public administrations, autarchies and foundations of the Federal Government, the States, the Federal District and the Municipalities; it structures the publication, competition, qualification, evaluation and contracting framework in the public sector.

***Licitação*:** competitive administrative procedure through which the

Public Administration selects the most advantageous tender for the procurement of goods, services or works, in accordance with the rules of the *edital* and the applicable principles.

Limited tendering: exceptional method of procurement under Chapter 12 whereby the procuring entity may restrict the procurement to one or more suppliers in the cases authorised by the Agreement, provided that the procedure is not used to avoid competition or to protect domestic suppliers.

N

National Public Procurement Portal (PNCP): official electronic website for the centralised and mandatory publication of the acts required by Law No. 14.133/2021, pursuant to Article 174; it is the main entry point for locating *editais*, notices, contracts and amendments, at gov.br/pncp.

Novo PAC: federal portfolio of projects and investments organised by axes, implementation stages, estimated values, location and responsible entities. In this study, it is used to identify projects under formation, especially those at the preparatory action, bidding or auction stage.

O

Offset measures: commercial, industrial or technological offset measures that may be required in certain procurements. Brazil's Annex 12-C coverage preserves room for offsets where the conditions are non-discriminatory, clearly set out in the tender documentation and indicated in the notice of intended procurement.

Open tendering: method of procurement under Chapter 12 whereby all interested suppliers may submit a tender. In the context of the Agreement, it should not be confused with the Brazilian *concurso* modality under Law No. 14.133/2021, which is used for the selection of technical, scientific or artistic work.

P

Preference margin: advantage allowed under Brazilian legislation for certain national goods or services, or for other policies provided by law, which may affect the comparison between tenders. Brazil's Annex 12-C coverage preserves the application of preference margins under Annex 12-C.

Procuring entity: entity responsible for conducting a public procurement procedure and awarding the contract.

For Chapter 12 purposes, the procuring entity must be included in Brazil's Annex 12-C coverage for the procurement to be treated as covered.

Projeto básico: technical design document used especially for works and engineering services, describing the solution, technical elements, scope and conditions required for procurement and execution.

S

Selective tendering: method of procurement under Chapter 12 whereby only qualified suppliers are invited by the procuring entity to submit a tender.

Special Drawing Rights (SDR): unit of account of the International Monetary Fund used by the Agreement to set coverage thresholds in government procurement. Conversion of

thresholds into Brazilian reais must follow the methodology in Annex 12-N, based on the conversion rates published by the IMF.

Supplier: natural or legal person that supplies, or may supply, goods, services, construction services or other objects covered by a public procurement procedure.

T

Technical specification: tender requirement defining the characteristics of the object to be procured, including quality, performance, safety, dimensions, production processes or labelling and packaging requirements.

Tender documentation: set of documents, annexes and information that form part of the *edital* and guide the preparation of the tender, qualification, participation and, where applicable, award in the procurement procedure.

Termo de referência: technical document attached to the *edital* that describes the object, scope, requirements, performance conditions and other technical elements of a procurement, especially for goods and services.

Threshold: minimum value from which a procurement becomes subject to the coverage rules of Chapter 12 of the EU-Mercosur interim Trade Agreement (iTA).

U

United Nations Provisional Central Product Classification (CPC): standardised international classification adopted by the United Nations to organise goods and services into

comparable categories, used as a technical reference for the identification, standardization and classification of objects in public procurement and economic statistics.

W

Works concession: contract whose main objective is the construction or rehabilitation of physical infrastructure, facilities, buildings, plants or other government-owned works, under which the supplier

is granted, for a specified period, temporary possession or the right to control, operate and charge for the use of those works. Under Annex 12-C, covered works concessions are subject only to the non-discrimination rule.

2. Executive Summary

This guide is intended as a practical tool for European companies seeking to identify and pursue public procurement opportunities in Brazil under the EU-Mercosur Interim Trade Agreement. It explains what the Agreement changes, where the most relevant opportunities are likely to arise, how to assess whether a specific tender falls within its coverage, and what to look out for at each stage of the Brazilian procurement process.

The provisional application of the EU-Mercosur Interim Trade Agreement from 1 May 2026 represents a structural shift in European companies' access to the Brazilian public procurement market. For the first time, that access is grounded in binding international commitments, rather than solely in the domestic rules of each tender. This changes the conditions under which European companies can identify opportunities, participate in procedures and respond to barriers.

The Brazilian public procurement market is among the largest in the world. Federal, state and municipal entities contract goods, services, works and technical solutions across virtually every sector of the economy. In 2025 alone, procurements registered on the National Public Procurement Portal exceeded BRL 1 trillion in awarded values.

For European companies, the Agreement's practical value lies in four areas. First, covered tenders must be published electronically and with sufficient advance notice, making opportunities easier to identify. Second, qualification requirements must be assessed based on the supplier's track record inside and outside Brazil — meaning international experience counts. Third, documents issued abroad must be accepted as proof of qualification where they demonstrate the same condition required from domestic suppliers. Fourth, technical specifications that restrict foreign competition without objective justification are prohibited.

The opportunities with the strongest alignment between Brazil's coverage commitments and the public investment pipeline are in construction services, engineering, architecture, technical consulting and sanitation. Budget allocations under the 2026 Annual Budget Law and the *Novo PAC* project portfolio point to significant planned expenditure in infrastructure, mobility, sanitation, energy and public facilities, sectors where European companies hold an established competitive advantage.

Not every Brazilian procurement is covered. Coverage depends on four cumulative criteria: the contracting entity must be listed in Brazil's Annex 12-C; the object must be a covered good, service or construction service; the value must meet the applicable threshold; and no exclusion or reservation may apply. Procurements related to the Unified Health System, food security and family farming programs, and national security, among others, fall outside coverage. Municipalities, state-owned enterprises and unlisted entities are also excluded.

Identifying covered opportunities starts with the National Public Procurement Portal (PNCP), where all covered tenders must be published. Each opportunity then requires a three-step check: confirm that the contracting entity appears in Annex 12-C, verify that the object and value meet the applicable thresholds, and confirm the absence of any exclusion or reservation. The substantive sections of this guide walk through each of these steps in detail.

The Agreement does not guarantee contract award, replace price competitiveness or remove the need for local presence. Its value is more precise: it gives European companies a defined legal basis to identify covered opportunities, compete under clearer and more stable conditions, and challenge requirements or decisions incompatible with the agreed standards. That is the key shift from the period before 1 May 2026.

3. Strategic Value of Chapter 12 for European Companies

The EU-Mercosur Interim Trade Agreement entered into provisional application on 1 May 2026. In the area of public procurement, its most direct effect is to establish a treaty-based framework applicable to the covered segment of the Brazilian market, with disciplines on the publication of opportunities, non-discriminatory treatment, conditions for participation, technical specifications and review mechanisms. For EU companies, this provides an additional legal reference point when assessing or challenging barriers encountered in covered procurements, through the mechanisms available under Brazilian law.

From a strategic perspective, the Agreement is part of a broader EU agenda of market diversification and expansion of its economic presence in South America. In public procurement, its value derives in part from a specific feature of the Brazilian market: Brazil is not a party to the WTO Agreement on Government Procurement, the GPA. The GPA is a plurilateral agreement whose obligations bind only those WTO Members that have specifically acceded to it. Brazil's absence meant that, until May 2026, there was no international commitment between Brazil and the European Union governing access to covered public

procurement.

That absence defined the conditions of participation before the Agreement. Foreign companies, including European ones, could take part in many Brazilian *licitações* where permitted by law and by the *edital*, but their participation depended on the domestic rules applicable to each procedure. In covered procurements, Chapter 12 now adds binding treaty-based standards that European companies may rely on when assessing requirements, criteria or decisions that affect access to the procedure.

This changes the position of EU companies compared to other foreign competitors. Suppliers from countries without an equivalent government-procurement commitment with Brazil may continue to participate in *licitações* where Brazilian law and the *edital* allow them to do so, but they do not benefit from the same treaty-based foundation under Chapter 12. For EU suppliers, this difference may be particularly relevant in covered construction services and in listed engineering, architectural, technical consulting and environmental services, where standards on equivalent documentation, technical specifications and time limits can have direct practical effects, subject in each case to verification of Annex 12-C coverage.

The main legal consequence is

found in Article 12.6¹: in covered procurements, EU goods, services and suppliers must receive treatment no less favorable than that accorded to domestic suppliers².

This protection also extends to companies established in Brazil that are owned or controlled by persons of the other Party, which directly affects market-entry strategies through subsidiaries, consortia or local partnerships. A Brazilian subsidiary of a European group cannot receive less favorable treatment solely on account of its ownership structure or the origin of the goods and services it offers.

The treaty-based foundation is not, however, a general authorization covering every Brazilian public procurement. Annex 12-C preserves exclusions and reservations in areas such as public health, food security, family farming, micro and small enterprises, preference margins and certain technology and security procurements. The actual extent of market opening depends on the coverage effectively undertaken by Brazil, and any opportunity assessment must begin with that verification.

In practice, Chapter 12 and Annex 12-C provide the tools to identify which procurements are covered, assess participation under defined standards of transparency and non-discrimination, and respond on a well-founded basis to barriers potentially inconsistent with Brazil's commitments.

¹Article 12.6, Non-discrimination, paragraph 2(a): "With respect to any measure concerning covered procurement, the European Union and each Signatory MERCOSUR State, including their respective procuring entities, shall not: (a) treat a locally established supplier less favorably than another locally established supplier on the basis of the degree of foreign affiliation to, or ownership by persons of the other Party."

²Article 12.6, non-discrimination, paragraph 1(b): "each Signatory MERCOSUR State, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the European Union and to the suppliers of the European Union offering those goods and services, treatment no less favorable than the treatment accorded to its domestic goods, services and suppliers."

4. The Brazilian Public Procurement Market

4.1. Size and structure of the Brazilian public procurement market

The Brazilian public procurement market is made up of procurements conducted across different federative levels and by different types of administrative entities. The Federal Government, the States, the Federal District and the Municipalities procure goods, services, works and technical solutions for the implementation of public policies, the operation of public administration and the provision of services to the population.

This market also includes autarchies, foundations, bodies of the Legislative and Judicial Branches, courts of accounts and, under their own regimes, state-owned companies that are dependent or not dependent on the Treasury.

This structure follows from Brazil's federative organization, which allocates powers, budgetary authority and administrative autonomy among the federative entities. Each level of government has its own procuring entities, planning mechanisms and internal and external control regimes.

At the federal level, electronic procurements are generally processed through *Compras.gov.br*, a platform integrated with the Integrated System for General Services Administration, known as SIASG. States and Municipalities may maintain their own portals, use state or municipal platforms, join shared platforms or use *Compras.gov.br*, depending on the institutional arrangement adopted and the applicable legislation. State-owned companies governed by Law

No. 13.303/2016 follow internal procurement regulations approved by their boards of directors. These categories operate under different legal regimes and platforms, which must be considered when identifying opportunities.

For European suppliers, the effect of this structure is that the Brazilian market does not operate as a single buyer. Each federative entity has its own budget cycle, procurement calendar, electronic platform, internal rules and control body.

A European company interested in supplying goods, providing services, carrying out works or offering technical solutions in Brazil must identify, in each case, the procuring entity, the platform used, the applicable legal regime and the corresponding control mechanisms.

The size of the Brazilian public procurement market should be examined in three layers, each answering a different question and requiring different sources of information:

The first layer is the analysis of the total Brazilian public procurement market, which comprises procurements by the Federal Government, the States, the Federal District, the Municipalities, the indirect administration and state-owned companies. This layer measures the aggregate volume of public procurements in Brazil, explains the institutional fragmentation of the market and identifies procurements that may be commercially relevant, even if not all of them are covered by Chapter 12.

The second layer is the assessment of the market accessible to foreign suppliers under Brazilian law. It includes procurements that may allow foreign participation under Law No. 14.133/2021, the procurement regulations of state-owned companies,

concession and public-private partnership regimes, or the *edital* itself, even when they fall outside the coverage of Chapter 12. This layer helps distinguish commercial opportunities in Brazil that are not covered by Chapter 12 from those that are.

The third layer is to identify procurements covered by Chapter 12, which is the focus of this study. Only procurements that meet the cumulative requirements of Brazil's Annex 12-C coverage, namely entity, object, value and absence of exclusion, give European companies treaty-based standards that may be invoked in relation to the procurement.

The separation between these three layers prevents European companies from confusing commercial potential with treaty protection. Procurements conducted by Municipalities, by States not included in Annex 12-C, by entities outside Annex 12-C, by state-owned companies not listed, for excluded objects, below the applicable threshold or subject to a reservation may allow foreign participation under Brazilian law but remain outside the coverage of Chapter 12.

The National Public Procurement Portal, known as PNCP, is the official source for mapping these layers. Created by Law No. 14.133/2021, the PNCP is the electronic website intended for the centralized and mandatory publication of the acts required by the Law and for the optional conduct of procurements by bodies and entities of the Executive, Legislative and Judicial Branches of all federative entities³.

Publication of the *edital de licitação* occurs through the disclosure and maintenance of the full text of the call instrument and its annexes on the PNCP⁴, making the Portal the starting point for any systematic search for

⁴Law No. 14.133/2021, art. 174, caput and items I and II: "The National Public Procurement Portal (PNCP) is hereby created, an official electronic website intended for: I - the centralised and mandatory publication of the acts required by this Law; II - the optional conduct of procurements by the bodies and entities of the Executive, Legislative and Judicial Branches of all federative entities."

⁵Law No. 14.133/2021, art. 54, caput: "Publication of the *edital de licitação* shall be carried out by disclosing and maintaining the full text of the call instrument and its annexes on the National Public Procurement Portal (PNCP)."

opportunities. Consultation of the PNCP makes it possible to filter procurements by federative entity, procurement method, object, value and procedural status, and provides the link to the documents of each tender.

For procurements conducted at the federal level, *Compras.gov.br* and the Federal Government Procurement Panel operate as complementary layers. *Compras.gov.br* is the electronic platform used to operationalize federal public procurements within SIASG, the system used by the Federal Public Administration to record information on purchases, contracts, suppliers, materials and services.

The Procurement Panel aggregates data from SIASG and *Compras.gov.br* and provides historical series on contracted values, procurement methods used, purchasing bodies, awarded suppliers and recurrence of objects within the direct federal public administration, autarchies and foundations.

Functionally, the PNCP plays a role close to that of Tenders Electronic Daily, or TED, for purposes of publicity and opportunity search, although each system operates under its own legal regime. *Compras.gov.br* is closer to an operational platform for electronic procurement, like the national portals used by contracting authorities in EU Member States. The Procurement Panel has an analytical function, as it organizes data on values, purchasing bodies, procurement methods and suppliers.

Data from the PNCP, *Compras.gov.br* and the Procurement Panel make it possible to estimate published procurement activity and locate opportunities. Coverage under Chapter 12 requires an additional verification: procuring entity, object, value and applicable exclusions. A procurement published on the PNCP,

with a significant value or conducted by an entity that forms part of the Public Administration, must still be checked against Brazil's Annex 12-C coverage before being treated as a covered procurement.

The assessment of opportunities in Brazil should therefore start with the official sources of publicity and data, but end with the verification of the coverage undertaken by Brazil in Annex 12-C. For European companies, the relevant opportunity for purposes of this study is one that combines practical identification in the Brazilian market with confirmation that the procurement falls within Chapter 12 and Annex 12-C, allowing the company to invoke the applicable treaty-based standards.

4.2. Brazilian legal framework: Law No. 14.133/2021

Law No. 14.133/2021 is the main Brazilian statute governing *licitações* and administrative contracts conducted by the direct public administration, autarchies and foundations of the Federal Government, the States, the Federal District and the Municipalities. It also applies to bodies of the Legislative and Judicial Branches when they act in an administrative capacity, that is, when they carry out procurements for the acquisition of goods, the provision of services, the execution of works or the fulfilment of their administrative needs⁵. It does not, however, exhaust the Brazilian public procurement landscape. In particular, procurement by state-owned companies and certain concessions, PPPs and other partnership arrangements may be governed by distinct statutory or regulatory frameworks.

Although the statute was enacted in 2021, its adoption as the general regime

for new Brazilian public procurements became consolidated after the transition period ended on 30 December 2023.

For European companies, understanding this legal framework is necessary because it defines how a significant share of Brazilian public procurement opportunities will be structured, published, competed for, awarded and challenged. In this section, *licitação* is treated as the competitive procedure through which the Public Administration carries out a significant share of its public procurements.

The first relevant point for foreign suppliers is the Brazilian rule on equal treatment. Subject to the cases provided by law, Law No. 14.133/2021 prohibits differentiated treatment of a commercial, legal, labor, social-security or other nature between Brazilian and foreign companies, including with regard to currency, form and place of payment⁶.

This rule already provided a domestic legal basis for foreign participation in Brazilian *licitações* before Chapter 12; in covered procurements, the iTA adds a treaty-based layer to that domestic framework.

Law No. 14.133/2021 also regulates international *licitações*. In these procedures, the *edital* must observe monetary and foreign trade policy guidelines, comply with the requirements of the competent authorities and subject all bidders to the same rules and conditions set out in the *edital*⁷. The statute also provides that the *edital* may not establish qualification, classification or award conditions that create barriers to access for foreign bidders⁸.

For *licitações* governed by Law No. 14.133/2021, publication occurs, as a rule, through the PNCP. The Law

⁵Law No. 14.133/2021, art. 1, caput and items I and II: "This Law establishes general rules on *licitações* and contracting for the direct public administrations, autarchies and foundations of the Federal Government, the States, the Federal District and the Municipalities, and covers: I - the bodies of the Legislative and Judicial Branches of the Federal Government, the States and the Federal District, and the bodies of the Legislative Branch of the Municipalities, when performing administrative functions; II - special funds and other entities directly or indirectly controlled by the Public Administration."

⁶Law No. 14.133/2021, art. 9, item II: "It is prohibited for a public official designated to act in the area of *licitações* and contracts, except in the cases provided by law: [...] II - to establish differentiated treatment of a commercial, legal, labour, social security or any other nature between Brazilian and foreign companies, including with respect to currency, form and place of payment, even when financing from an international agency is involved."

⁷Law No. 14.133/2021, art. 52, caput and paragraph 5: "In international *licitações*, the *edital* must conform to monetary and foreign trade policy guidelines and comply with the requirements of the competent authorities." "The tenders of all bidders shall be subject to the same rules and conditions, as established in the *edital*."

⁸Law No. 14.133/2021, art. 52, paragraph 6: "Subject to the terms of this Law, the *edital* may not provide for qualification, classification and award conditions that constitute barriers to access for foreign bidders, without prejudice to the possibility of providing for a preference margin for goods produced in Brazil and national services that comply with Brazilian technical standards, as defined in art. 26 of this Law."

requires the *edital* and its annexes to be disclosed and maintained in full on the portal⁹.

For European companies, consultation of the PNCP should cover the *edital* and its annexes, especially the *termo de referência, projeto básico*, risk matrix, draft contract, technical annexes, qualification criteria, award criteria, deadlines and conditions for submitting the tender.

The *edital* is the document that structures the tendering process. It defines the object of the contract, the procurement method, the platform through which the procedure will be processed, the deadlines, the conditions for participation, the qualification documents, the award criterion, the form for submitting tenders, the bidding rules, the draft contract, guarantees, sanctions and performance conditions. For foreign suppliers, the *edital* must be read together with its annexes, since those documents usually contain the technical, operational and documentary requirements that condition participation.

Law No. 14.133/2021 organises the *licitação* into successive phases. The procedure goes through a preparatory phase, publication of the *edital*, submission of tenders, evaluation, qualification, appeal phase and approval of the result¹⁰.

This sequence defines the logic of the Brazilian procedure. First, the Administration structures the procurement and publishes its rules. Suppliers then submit tenders. The Administration evaluates the tenders, verifies qualification requirements, deals with any administrative appeals and, at the end, approves the result.

Electronic procedures are the preferred rule for Brazilian *licitações*. In-

person procedures are allowed only with justification, with registration in the minutes and audio and video recording¹¹. At the federal level, electronic procedures are generally conducted through *Compras.gov.br*, integrated with SIASG.

In practical terms, participation in federal *licitações* tends to require operation in an electronic environment, including registration, accreditation, electronic signature, compliance with the official time indicated in the *edital* and monitoring of communications recorded on the platform.

Habilitação is the phase in which the Administration verifies whether the bidder has the legal, technical, tax, labour and economic-financial conditions required to perform the contract. Law No. 14.133/2021 divides this analysis into legal, technical, tax, social and labour, and economic-financial qualification¹².

Legal qualification demonstrates the company's existence and representation; technical qualification proves experience, operational capacity or professional qualification, when required; tax, social and labour compliance verifies the bidder's standing before public authorities; and economic-financial qualification assesses the bidder's equity or financial capacity to assume the contractual obligation.

For foreign companies, qualification documentation requires specific attention. Law No. 14.133/2021 allows foreign companies that do not operate in Brazil to submit equivalent documents, pursuant to the applicable regulations. At the federal level, submission of these documents may take place through the Unified Supplier Registration System, *SICAF*, subject to the registration and qualification rules

applicable to foreign suppliers.

In practical terms, the *edital* may require corporate documents, constitutional documents, proof of representation, identification documents of partners, shareholders or managers, proof of tax and labour compliance in the country of origin, financial statements, a certificate of absence of bankruptcy or equivalent proceeding, technical certificates, certifications, professional registrations and guarantees.

For European companies, the analysis must verify how these documents are to be submitted, including translation, apostille, local representation, electronic signature and compatibility between foreign documents and Brazilian qualification categories.

The award criteria indicate how the Administration will choose the winning tender. Law No. 14.133/2021 allows lowest price, highest discount, best technique or artistic content, technique and price, highest bid in the case of auction, and highest economic return¹³.

The choice of criterion changes the structure of the tender. *Licitações* based on lowest price or highest discount concentrate the competition on the economic variable. *Licitações* based on technique and price combine technical evaluation and commercial proposal, according to the weights defined in the *edital*.

Before the tender is opened, the *edital* may be subject to requests for clarification or *impugnação*. Law No. 14.133/2021 allows any person to challenge the *edital* for irregularity or request clarification on its terms up to three business days before the opening date¹⁴.

A request for clarification seeks the Administration's official interpretation

⁹Law No. 14.133/2021, art. 54, caput: "Publication of the *edital de licitação* shall be carried out by disclosing and maintaining the full text of the call instrument and its annexes on the National Public Procurement Portal (PNCP)."

¹⁰Law No. 14.133/2021, art. 17, caput: "The *licitação* process shall observe the following phases, in sequence: I - preparatory; II - publication of the *edital de licitação*; III - submission of proposals and bids, where applicable; IV - judgment; V - qualification; VI - appeal; VII - approval."

¹¹Law No. 14.133/2021, art. 17, paragraph 2: "*Licitações* shall preferably be conducted in electronic form. The in-person form is permitted, if it is duly justified, and the public session must be recorded in the minutes and by audio and video recording."

¹²Law No. 14.133/2021, art. 62: "*Habilitação* is the phase of the *licitação* in which the set of information and documents necessary and sufficient to demonstrate the bidder's capacity to perform the object of the *licitação* is verified, and is divided into: I - legal; II - technical; III - tax, social and labour; IV - economic-financial."

¹³Law No. 14.133/2021, art. 33: "Tenders shall be evaluated in accordance with the following criteria: I - lowest price; II - highest discount; III - best technique or artistic content; IV - technique and price; V - highest bid, in the case of an auction; VI - highest economic return."

¹⁴Law No. 14.133/2021, art. 164, caput: "Any person has standing to challenge the *edital de licitação* for irregularity in the application of this Law or to request clarification on its terms, provided that the request is filed up to three business days before the opening date of the tendering procedure."

of rules in the *edital*, documents, platform, object or form of submission of the tender. *Impugnação* has a different function: to prompt the Administration to correct a clause considered irregular or incompatible with the applicable legislation.

After the procedure has begun, certain administrative decisions may be subject to an administrative appeal. Law No. 14.133/2021 provides for administrative appeals, within three business days, against decisions concerning pre-qualification, registration in a registry, amendment or cancellation of registry registration, evaluation of tenders, qualification or disqualification of a bidder, annulment or revocation of the *licitação*, and unilateral termination of the contract¹⁵. These appeals are the ordinary administrative mechanism for challenging decisions that affect the bidder's continued participation in the procedure or the outcome of the *licitação*.

Law No. 14.133/2021 also allows public policy instruments in Brazilian procurements. These include preference margins for nationally manufactured goods and national services that comply with Brazilian technical standards, as well as for recycled, recyclable or biodegradable goods, pursuant to regulation¹⁶.

In certain cases, commercial, industrial or technological offset measures may also be required¹⁷.

These instruments may affect foreign companies because they influence the comparison of tenders, price formation, supply structure and the local organization of operations. For European suppliers, identifying them in the *edital* is part of the feasibility assessment of participation.

Law No. 14.133/2021 provides the procedural framework for Brazilian administrative *licitações*. For European suppliers, this regime defines the legal and operational environment in which the opportunity will be accessed, competed for and, where applicable, challenged. The next step is to identify which procurements are also covered by Chapter 12.

¹⁵Law No. 14.133/2021, art. 165, item I: "Acts of the Administration arising from the application of this Law shall be subject to: I - an administrative appeal, within three business days, counted from the date of notice or from the drawing up of the minutes, against: a) an act granting or denying a request for pre-qualification by an interested party, or for registration in a registry, or the amendment or cancellation of such registration; b) judgment of the proposals; c) an act of qualification or disqualification of a bidder; d) annulment or revocation of the *licitação*; e) termination of the contract, when determined by a unilateral and written act of the Administration."

¹⁶Law No. 14.133/2021, art. 26, items I and II: "In the *licitação* process, a preference margin may be established for: I - manufactured goods and national services that comply with Brazilian technical standards; II - recycled, recyclable or biodegradable goods, pursuant to regulation."

¹⁷Law No. 14.133/2021, art. 26, paragraph 6: "The *editais de licitação* for the procurement of goods, services and works may, upon prior justification by the competent authority, require the contractor to promote, in favor of a body or entity that forms part of the Public Administration, or of those indicated by it through an equal-treatment process, commercial, industrial or technological offset measures, or access to advantageous financing conditions, cumulatively or not, as established by the Federal Executive Branch."

5. Chapter 12 of the EU-Mercosur Interim Trade Agreement

Chapter 12 of the EU-Mercosur interim Trade Agreement (iTA) governs reciprocal access by the Parties to covered public procurement. Its function is to establish common parameters for public procurement procedures, based on transparency, competition, non-discrimination and treatment no less favourable.

Chapter 12 must be read together with each Party's offer. The text of Chapter 12 defines concepts, methods of procurement, publication rules, conditions for participation, technical specifications, time limits, treatment of tenders, award and review procedures. The offer defines which entities, goods, services, construction services, works concessions, thresholds, exclusions and reservations are subject to those disciplines. In Brazil's case, this delimitation is set out in Annex 12-C.

For European companies, this structure turns the analysis of a Brazilian opportunity into a cumulative verification: identifying the applicable rule in the text of Chapter 12 and confirming whether the procurement falls within the limits undertaken by Brazil in Annex 12-C.

5.1. Structure and logic of application of Chapter 12

Chapter 12 starts with the premise that opening government procurement markets depends on procedures that are intelligible, accessible and subject to control. The Parties stated objective is to promote the effective opening of their government procurement markets through transparent, competitive and open procedures¹⁸.

The chapter sets the conditions for suppliers of the other Party to identify opportunities, understand the rules of the tender, prepare tenders, compete for award and respond to restrictions incompatible with Chapter 12.

The structure of the chapter can be read through three groups of provisions. The first defines the scope of application of Chapter 12 and establishes the prohibition of discriminatory treatment in relation to goods, services and suppliers of the other Party. The second governs the conduct of procurement procedures, covering publication, conditions for participation, documentation, technical specifications, time limits, treatment of tenders and award. The third deals with post-award transparency and administrative or judicial mechanisms for challenge.

This structure frames Chapter 12 as a regime directed at opening government procurement markets, with common parameters for access, conduct of tendering procedures and control of decisions by procuring entities.

This architecture addresses a typical problem in international government procurement: barriers to entry rarely appear as an express prohibition on foreign participation.

They may arise from documentation requirements incompatible with the circumstances of foreign companies, local experience requirements, technical specifications designed around a supplier, trademark, origin or specific solution, insufficient time limits for preparing a tender, unclear award criteria or awards issued without reasons capable of being reviewed. Chapter 12 regulates these stages to reduce the scope for indirect restrictions on access.

The first group is non-discriminatory

treatment. In covered procurements conducted by Mercosur States Parties, goods, services and suppliers of the European Union must receive no less favorable treatment than that accorded to domestic goods, services and suppliers¹⁹.

Chapter 12 also protects locally established suppliers against less favorable treatment by reason of the degree of foreign affiliation or ownership by persons of the other Party, or by reason of the origin of the goods or services offered²⁰. This rule has a direct impact on market-entry strategies through a subsidiary, consortium, local partner or other form of presence in Brazil.

This protection covers both direct discrimination and indirect restrictions. Direct discrimination occurs when the foreign origin of the good, service or supplier is used as an express criterion for less favorable treatment. Indirect discrimination may result from an apparently neutral requirement that, in practice, has a disproportionate effect on suppliers of the other Party, such as requirements for exclusively local experience, certifications with no possibility of equivalence, or technical specifications that reproduce a solution available only in the domestic market.

The second group concerns the way in which the procurement opportunity becomes effectively accessible to the market. Under Chapter 12, transparency operates as a condition for competition, since it requires relevant information on the applicable regime and on covered procurements to be published through accessible means, including electronic means, and not merely by formal publication of procedural acts²¹.

Chapter 12 thereby reduces the information asymmetry that often affects foreign suppliers, allowing them

to identify opportunities, understand the applicable requirements in advance and assess, on comparable terms, the legal, technical and economic feasibility of their participation.

Transparency also concerns the international intelligibility of the opportunity. For each covered procurement, Chapter 12 requires publication of a summary of the notice in one of the official languages of the WTO in which the WTO Agreement is authentic²². This summary must include at least the object of the procurement, the time limit for the submission of tenders or, where applicable, requests for participation, and the address from which the tender documentation may be requested²³.

The notice of intended procurement must also contain minimum information enabling the supplier to assess the opportunity in a timely manner. This includes the name and address of the procuring entity, a description of the covered procurement, the method of procurement to be used, any indication that negotiation or an electronic auction is expected, the address and final date for the submission of tenders and, where applicable, the language in which tenders or requests for participation may be submitted²⁴.

The third group concerns the conditions for participation. Chapter 12 allows the procuring entity to require legal, financial, commercial and technical capacities, provided that those requirements are linked to the supplier's ability to fulfil the contract. The assessment of those capacities must consider the supplier's business activities both inside and outside the territory of the Party or the procuring entity²⁵.

Accordingly, international experience, contracts performed in other markets

and capacities demonstrated outside Brazil must be considered in the qualification analysis when relevant to the object of the procurement. This discipline is directly relevant to European companies with strong technical and operational track records in other countries but no previous contracting history with Brazilian entities.

Documentation and technical specifications also concentrate on relevant barriers to access. Chapter 12 allows the conditions for participation to be satisfied by the documentation required in the procedure or by equivalent documentation, which permits foreign documents that are functionally equivalent to those required in the procedure to be considered²⁶.

At the same time, Chapter 12 prohibits technical specifications and conformity assessment procedures from being prepared, adopted or applied with the purpose or effect of creating unnecessary obstacles to international trade, limiting competition or discriminating against suppliers²⁷. This covers requirements relating to technical certificates, certifications, technical standards, trademarks, origin, manufacturer, production method and acceptance of equivalent solutions.

The timing and decision-making design of the procedure is also part of the discipline established by Chapter 12. Tender documentation must enable the supplier to understand the object of the procurement, the conditions for participation, the award criteria and the way the tender must be submitted²⁸.

Time limits follow the minimum parameters set out in Annex 12-M. As a rule, the time limit for the submission of tenders may not be less than 40 days²⁹. In selective tendering, the time limit for the submission of requests for participation may not, in principle, be less than 25 days³⁰.

¹⁸Chapter 12, preamble and art. 12.1.

¹⁹Art. 12.6, paragraph 1(b).

²⁰Art. 12.6, paragraph 2.

²¹Art. 12.12 and Annex 12-H.

²²EU-Mercosur Agreement, Chapter 12, art. 12.13, item 2.

²³Annex 12-K.

²⁴Annex 12-O, Notices of Intended Procurement.

²⁵Art. 12.14, paragraphs 2 and 3.

²⁶EU-Mercosur Agreement Art. 12.14, paragraph 6. "The conditions for participation established by a procuring entity as set out in paragraphs 1, 2 and 3 shall be fulfilled by the suppliers of the Parties through the presentation of the documentation required by the tender or through equivalent documentation."

²⁷EU-Mercosur Agreement Art. 12.16, paragraph 1. "A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of limiting competition, creating unnecessary obstacles to international trade, or discriminating between suppliers."

²⁸EU-Mercosur Agreement, Chapter 12, art. 12.17.

²⁹EU-Mercosur Agreement, Annex 12-M, item 2: "Except as provided for in paragraphs 3, 4, 6 and 7, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 (forty) days."

³⁰EU-Mercosur Agreement, Annex 12-M, item 1: "A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 (twenty-five) days from the date of publication of the notice of intended procurement."

These time limits may be reduced in specific cases, such as duly substantiated urgency, prior publication of planned procurement, use of electronic means and procurement of commercial goods or services, subject to the limits set out in Annex 12-M³¹.

At the decision stage, tenders must be received, opened and treated under procedures that preserve fairness, impartiality and confidentiality³². Awards must be made in accordance with the criteria previously set out in the tender documentation, on the basis of the most advantageous tender or, where price is the sole criterion, the lowest price³³.

Post-award transparency completes this logic. Publication of information on the awarded contract and the possibility of obtaining explanations of the decision allow the supplier to understand the outcome of the procedure and assess whether there is a basis for challenge³⁴. This connects the evaluation stage to review mechanisms: a challenge depends on sufficient information about the criteria applied and the reasons for the decision.

The chapter also recognizes that the opening of government procurement markets operates within legal limits. Competition may be restricted in certain cases, such as limited tendering, provided that the exception is not used to avoid competition or to protect domestic suppliers. There are also general and security exceptions for situations justified by interests such as defense, public order, health, the environment and intellectual property³⁵.

The logic of Chapter 12 is completed by review procedures. The Parties must maintain timely, effective, transparent

and non-discriminatory administrative or judicial procedures through which suppliers may challenge breaches of the chapter or of the domestic measures implementing it³⁶.

Chapter 12 states that the supplier must have a sufficient period to prepare and submit a challenge, which may not be less than 10 days from the date on which the supplier became aware, or reasonably should have become aware, of the basis for the challenge³⁷.

The possibility of challenge depends, first, on access to the reasons for decisions that restrict the supplier's participation. Article 12.15 provides that, when a supplier submits a request to participate in a tender or a request for inclusion on a multi-use list, the procuring entity must promptly inform the supplier of its decision. If the request is rejected, if the supplier ceases to be recognized as qualified or if the supplier is removed from the list, the procuring entity must inform the supplier and, upon request, promptly provide written reasons for the decision³⁸.

Publication, participation, documentation, technical specifications, time limits, award and post-award transparency therefore do not operate as isolated commands; they form a sequence that can be reviewed. Chapter 12 establishes an integrated procedural discipline for covered public procurement. European companies should read it as a regime of access, participation and control: access to the opportunity, participation under non-discriminatory conditions, evaluation according to previously disclosed criteria and the possibility of review of requirements or decisions incompatible with Chapter 12.

From this logic, the analysis turns to the central question for any European

company interested in the Brazilian market: when is a Brazilian public procurement effectively covered by Chapter 12?

5.2. Brazil's coverage — Annex 12-C

Annex 12-C is the instrument that defines Brazil's offer in government procurement. While Chapter 12 sets out the general rules applicable to covered public procurement, Annex 12-C determines which Brazilian procurements fall within that regime. Brazil's coverage results from the combination of a covered procuring entity, a covered object, a value equal to or above the applicable threshold, and the absence of an exclusion or reservation.

Brazil's offer combines market opening with the preservation of policy space. Brazil undertook access commitments for covered procurements, while maintaining exclusions and reservations in Annex 12-C itself. The analysis now turns to identifying which Brazilian procurements were brought within the coverage of Chapter 12 and which conditions must be met for a procurement to be treated as covered.

Annex 12-C is organised into seven appendices. The first three deal with procuring entities: central government entities, sub-central government entities and other entities. The following four address the objects and cross-cutting conditions of coverage: goods, services, construction services and works concessions, and the general notes to Brazil's offer.

Appendix 12-C-1 deals with central government entities, that is, the federal entities included in Brazil's offer. Coverage extends to bodies of the federal Executive, Judicial and Legislative Branches, including their related agencies. For this purpose, the Annex itself clarifies that "related agencies" comprise subordinate bodies and public-law entities with their

³¹*EU-Mercosur Agreement, Annex 12-M, items 3, 4, 5, 6 and 7. Item 3 allows the time limit for the submission of tenders to be reduced to not less than 10 days in cases such as prior publication of planned procurement, recurring procurements and duly substantiated urgency. Item 4 allows a reduction of five days for each circumstance related to the use of electronic means: electronic publication of the notice, electronic availability of the tender documentation and electronic receipt of tenders. Item 5 preserves the minimum floor of 10 days where these reductions are combined. Item 6 provides for reduced time limits for the procurement of commercial goods or services. Item 7 deals with the setting of the time limit where qualified suppliers are selected.*

³²*EU-Mercosur Agreement, Chapter 12, art. 12.22, item 2.*

³³*EU-Mercosur Agreement, Chapter 12, art. 12.22, item 4.*

³⁴*EU-Mercosur Agreement, Chapter 12, arts. 12.23 and 12.24.*

³⁵*EU-Mercosur Agreement, Chapter 12, art. 12.5.*

³⁶*EU-Mercosur Agreement, Chapter 12, art. 12.25.*

³⁷*EU-Mercosur Agreement, Chapter 12, art. 12.25, item 3.*

³⁸*EU-Mercosur Agreement, Chapter 12, art. 12.15, items 10 and 11.*

own legal personality that form part of the structure of the listed entities.

Appendix 12-C-1 also sets the thresholds applicable to central government entities, meaning the minimum values from which a procurement may fall within the coverage of Chapter 12. For goods and services, the threshold is SDR 216,000 from the entry into force of the iTA until the end of the

seventh year, and SDR 130,000 from the eighth year onwards. For construction services, the threshold is SDR 8,000,000 until the end of the seventh year, and SDR 5,000,000 from the eighth year onwards.

The table below consolidates the federal entities covered by Appendix 12-C-1, as well as the entities expressly excluded from that coverage:

Group	Federal entities covered by Appendix 12-C-1
Federal Executive Branch	Advocacia-Geral da União; Casa Civil da Presidência da República; Controladoria-Geral da União; Gabinete de Segurança Institucional da Presidência da República; Presidência da República; Secretaria de Comunicação Social da Presidência da República; Secretaria de Relações Institucionais da Presidência da República; Secretaria-Geral da Presidência da República; Vice-Presidência da República; Ministério da Agricultura e Pecuária; Ministério da Ciência, Tecnologia e Inovação; Ministério da Cultura; Ministério da Defesa; Ministério da Educação; Ministério da Fazenda; Ministério da Gestão e da Inovação em Serviços Públicos; Ministério da Igualdade Racial; Ministério da Integração e do Desenvolvimento Regional; Ministério da Justiça e Segurança Pública; Ministério da Pesca e Aquicultura; Ministério da Previdência Social; Ministério da Saúde; Ministério das Cidades; Ministério das Comunicações; Ministério das Mulheres; Ministério das Relações Exteriores; Ministério de Minas e Energia; Ministério de Portos e Aeroportos; Ministério do Desenvolvimento Agrário e Agricultura Familiar; Ministério do Desenvolvimento e Assistência Social, Família e Combate à Fome; Ministério do Desenvolvimento, Indústria, Comércio e Serviços; Ministério do Empreendedorismo, da Microempresa e da Empresa de Pequeno Porte; Ministério do Esporte; Ministério do Meio Ambiente e Mudança do Clima; Ministério do Planejamento e Orçamento; Ministério do Trabalho e Emprego; Ministério do Turismo; Ministério dos Direitos Humanos e da Cidadania; Ministério dos Povos Indígenas; Ministério dos Transportes.
Federal Judicial Branch and related institutions	Conselho Nacional de Justiça; Defensoria Pública da União; Justiça do Distrito Federal e dos Territórios; Justiça do Trabalho, Tribunais Regionais do Trabalho; Justiça Eleitoral, Tribunais Regionais Eleitorais; Justiça Federal, Tribunais Regionais Federais; Ministério Público da União; Superior Tribunal de Justiça; Superior Tribunal Militar; Supremo Tribunal Federal; Tribunal Superior do Trabalho; Tribunal Superior Eleitoral.
Federal Legislative Branch and external control	Câmara dos Deputados; Senado Federal; Tribunal de Contas da União.
Entities excluded from Appendix 12-C-1	INCRA, Agência Espacial Brasileira, Comissão Nacional de Energia Nuclear e Instituto Nacional da Propriedade Industrial.

Appendix 12-C-2 deals with sub-central government entities, that is, the state and Federal District entities included in Brazil's offer. The Annex does not adopt a single formula for all federative units. In some States, coverage extends to all entities of the Executive Branch and their related agencies; in others, the Appendix itself lists the covered bodies and entities. There are also federative units that were not included in sub-central coverage.

For the sub-central government entities included in Appendix 12-C-2, the thresholds are uniform: SDR 216,000 for goods, SDR 216,000 for services and SDR 8,000,000 for construction services. This means that

state or Federal District procurements below those values do not fall within the coverage of Chapter 12, even if conducted by an entity listed in Annex 12-C.

The map below summarizes the coverage of sub-central government entities in Appendix 12-C-2. Brazil's offer does not adopt a uniform formula for all federative units. In some States, coverage extends to all entities of the state Executive Branch and their related agencies; in others, coverage is based on a specific list of bodies or entities. There are also federative units included with their own exclusions and States that were not incorporated into sub-central coverage.

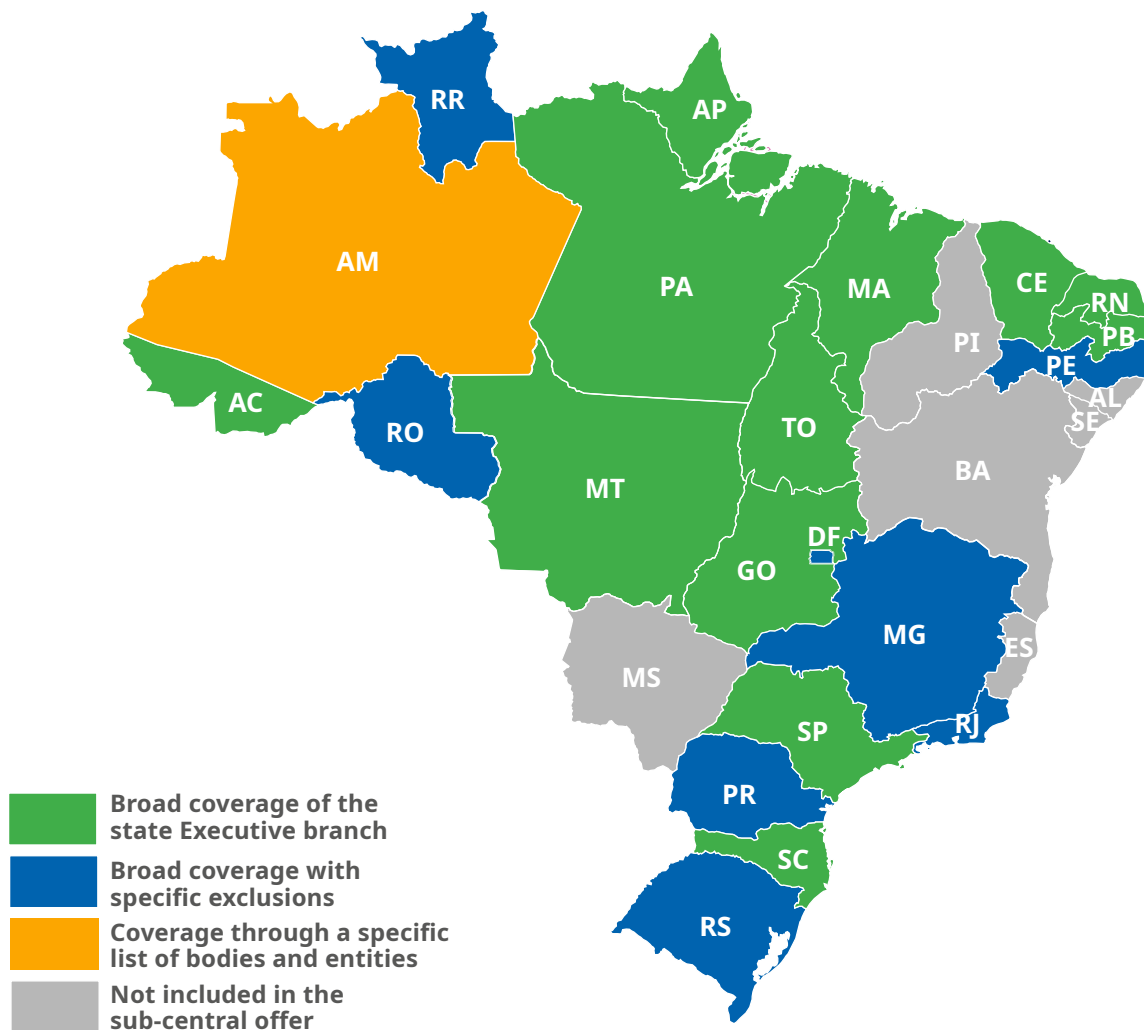


Figure 1 Sub-central entities covered under Annex 12-C

In the States shown in green, all entities of the state Executive Branch and their related agencies are covered. In the States shown in grey, there is no sub-

central coverage. The table below focuses on the cases that require additional review because they involve nominal lists of entities or specific exclusions.

Federative unit (UF)	What is covered	Reservations / limitations
Amazonas	All entities of the Executive Branch and their subordinate agencies.	Artistic or cultural goods or services; goods and services related to the environmental economy of the Amazon rainforest.
Distrito Federal	Bodies and entities listed in Appendix 12-C-2, including regional administrations, secretariats, security bodies, <i>Procuradoria-Geral do Distrito Federal</i> and <i>Tribunal de Contas do Distrito Federal</i> .	Cultural or artistic services procured by the <i>Secretaria de Cultura e Economia Criativa</i> ; information technology, communication, management consulting and research and development services procured by the <i>Procuradoria-Geral do Distrito Federal</i> .
Minas Gerais	Bodies and entities listed in Appendix 12-C-2, including Executive Branch entities, <i>Tribunal de Contas do Estado de Minas Gerais</i> and <i>Defensoria Pública do Estado</i> .	Services and construction services procured by the <i>Secretaria de Agricultura, Pecuária e Abastecimento</i> .
Pernambuco	<i>Secretaria de Administração</i> and <i>Central de Licitações do Estado</i> ; <i>Secretaria da Controladoria-Geral do Estado</i> ; <i>Procuradoria-Geral do Estado</i> .	Other state bodies and entities not listed in Appendix 12-C-2.
Rondônia	<i>Secretaria de Desenvolvimento Econômico</i> .	Other state bodies and entities not listed in Appendix 12-C-2.
Roraima	Tender committees listed in Appendix 12-C-2 and <i>Tribunal de Justiça do Estado de Roraima</i> .	Other state bodies and entities not listed in Appendix 12-C-2.
Rio Grande do Sul	Executive Branch bodies and entities listed in Appendix 12-C-2.	Procurement of food for the prison system; vehicles procured by the <i>Secretaria de Segurança Pública</i> ; procurements by the <i>Secretaria da Fazenda</i> involving sensitive data, information protected by confidentiality or national security rules; transport services for public authorities.

The table does not replace verification of the other criteria for application. Even in these cases, the procurement will be covered only if the object is covered, the value reaches the applicable threshold, and no specific exclusion or reservation applies.

Appendix 12-C-3 closes the list of covered Brazilian entities. Outside Appendices 12-C-1 and 12-C-2, there is no residual coverage for state-owned enterprises, public companies, mixed-capital companies or other unlisted entities. The procuring entity is therefore the first filter for applying Annex 12-C coverage.

Once the procuring entity has been confirmed in Appendix 12-C-1 or Appendix 12-C-2, the next step is to verify the value of the procurement. That verification considers the real value of the contract, not only the form chosen to present it in the procedure. Chapter 12 prevents the procuring entity from dividing the contract into separate procurements or choosing a valuation method for the purpose of avoiding, in whole or in part, the application of Chapter 12³⁹.

The relevant value is the maximum estimated total value over the entire term of the contract, including all forms of remuneration and, where applicable, any contractual options.

Procurements organized into lots, phases, supply orders or separate instruments must therefore be assessed according to their economic substance. Where those divisions correspond to the same contractual need or artificially reduce the value considered, the parameter for analysis becomes the estimated global value, not the isolated value of each portion.

For goods, Appendix 12-C-4 works through express exclusions. Instead of listing all covered goods, the Annex starts from the coverage of goods procured by the entities listed in Appendices 12-C-1 and 12-C-2 and excludes certain groups of materials⁴⁰.

To identify those items, the Annex uses CATMAT, the materials catalogue used in Brazilian public procurement to classify goods acquired by the Administration.

The goods excluded from the coverage of Chapter 12 are the following:

CATMAT code	Good excluded from coverage
3695 / 06786	Specialized wood working equipment
3710	Soil preparation equipment
3720	Harvesting equipment
3740 / 11339	Spraying equipment
3805	Excavating and earthmoving equipment
3810	Cranes and excavators
3820	Mining, rock and soil drilling, and related equipment
3825	Road cleaning and clearing equipment
3830	Truck and tractor attachments
3895 / 06670	Asphalt compaction equipment
4120 / 13768	Air conditioning equipment
6670	Scales
6810	Chemicals
6820	Dyes
6830	Compressed and liquefied gases
6840	Pesticides and disinfectants
6850	Miscellaneous chemical specialties
8820 / 47643	Live animals not intended for food

³⁹EU-Mercosur Agreement, Chapter 12, art. 12.4, item 1.

⁴⁰Annex 12-C, Appendix 12-C-4.

Accordingly, where the good to be procured falls within one of these groups, the procurement remains outside Chapter 12, even if it is conducted by a covered entity and its value exceeds the applicable threshold.

For services, Appendix 12-C-5 sets out a closed list. A services procurement by a covered entity falls within Chapter 12 only where the service appears on that list, identified by reference to the WTO sectoral classification and the United Nations Provisional Central Product Classification, or CPC⁴¹.

The services covered are the following:

CPC	Covered service
8671	Architectural services
8672	Engineering services
8673	Integrated engineering services
8674	Urban planning and landscape architectural services
864	Market research and public opinion polling services
865	Management consulting services
86601	Project management services, other than construction
8676	Technical testing and analysis services
881	Services incidental to agriculture, hunting and forestry
8811	Services incidental to agriculture
8812	Services incidental to animal husbandry
8813	Services incidental to hunting
8814	Services incidental to forestry and logging
882	Services incidental to fishing
8740	Building-cleaning services
8760	Packaging services
87909	Convention services
9401	Sewage services

Appendix 12-C-5 also contains a specific reservation for certain services supplied by bodies or entities of the Public Administration itself. In that case, Brazil may use limited tendering to procure services supplied by a body or entity forming part of the Public Administration, an expression that, under Decree-Law No. 200/1967, covers the direct administration and the indirect administration, including autarchies, public companies, mixed-capital companies and public foundations⁴².

The reservation applies only if the body or entity was created for the purpose of supplying the contracted service before the entry into force of Law No. 14.133/2021, and if the price is consistent with market prices⁴³.

Construction services and works concessions appear in Appendix 12-C-6. For construction services, Brazil included all services classified under Division 51 of the United Nations Central Product Classification, or CPC. This division covers services linked to the material execution of works, such as site preparation, construction of buildings, civil engineering works, assembly and installation, completion and finishing work, specialized construction services, and rental services related to equipment for construction or demolition with operator⁴⁴.

Brazil's offer therefore treats technical services and material construction services separately. Services such as architecture, engineering, integrated engineering, urban planning, landscape architecture, technical testing and analysis, and project management services other than construction appear in Appendix 12-C-5. The execution of works and material construction activities fall under Appendix 12-C-6, by reference to CPC Division 51.

In both cases, coverage depends on the other criteria in Annex 12-C: a procuring entity included in Appendix 12-C-1 or Appendix 12-C-2, a value equal to or above the applicable threshold, and the absence of a specific exclusion or reservation.

Works concessions were given separate treatment. Where they are awarded by entities listed in Appendix 12-C-1 or Appendix 12-C-2 and meet the threshold applicable to construction services, they are subject only to Article 12.6 of Chapter 12, on non-discrimination⁴⁵.

For this purpose, the Annex defines a works concession as a contract whose main objective is the construction or rehabilitation of physical infrastructure, facilities, buildings, plants or other government-owned works, under which the supplier is granted, for a specified period, temporary possession or the right to control, operate and charge for the use of those works⁴⁶.

Construction services and works concessions are not treated in the same way under Annex 12-C. In construction services, the object of the contract is the execution of the work or of material activities linked to construction. Where the procurement is covered, the procedural rules of Chapter 12 apply. In works concessions, the company constructs or rehabilitates the infrastructure and receives, for a specified period, the right to control, operate or charge for the use of the work. For those concessions, the Annex limits the application of Chapter 12 to Article 12.6, on non-discrimination⁴⁷.

Appendix 12-C-7 sets out the general notes to Annex 12-C. They operate as a final layer in the coverage analysis: even where the entity, object and value of the procurement indicate that Chapter 12 may apply, the general notes may exclude the procurement, preserve specific public policies or establish a specific treatment for certain cases. The following table summarizes those cases.

⁴¹Annex 12-C, Appendix 12-C-5.

⁴²Decree-Law No. 200/1967, art. 4.

⁴³EU-Mercosur Agreement, Annex 12-C, Appendix 12-C-5, Note to Appendix 12-C-5.

⁴⁴Annex 12-C, Appendix 12-C-6, item 1.

⁴⁵EU-Mercosur Agreement, Annex 12-C, Appendix 12-C-6, item 2.

⁴⁶EU-Mercosur Agreement, Annex 12-C, Appendix 12-C-6, item 2 "For the purpose of this offer, a works concession contract means a contract which has as its main objective the construction or rehabilitation of physical infrastructures, plants, buildings, facilities or other government-owned works, under which, as a consideration for a supplier's execution of a contractual arrangement, a procuring entity grants the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of those works."

⁴⁷EU-Mercosur Agreement, Annex 12-C, Appendix 12-C-6, items 1 and 2.

Topic	Rule in Appendix 12-C-7	Effect on coverage
Procurement outside Brazil	Chapter 12 does not apply to procurements conducted outside the territory of Brazil for consumption outside Brazil.	External procurements intended for use outside Brazil remain outside coverage.
Delegation of services	Chapter 12 does not apply to procurements related to the delegation of services, such as authorizations, permits and concessions, except for works concessions covered by Appendix 12-C-6.	Ordinary concessions, permits and authorizations remain outside coverage. Works concessions follow the specific rule in Appendix 12-C-6.
Food security and school meals	Chapter 12 does not apply to the procurement of goods and services under food security and school meal programs that support family farmers or family farming cooperatives registered in accordance with Brazilian legislation.	Procurements linked to those programs remain outside coverage.
Unified Health System (<i>Sistema Único de Saúde — SUS</i>)	Chapter 12 does not apply to procurements related to the Unified Health System.	The exclusion covers procurements related to the SUS, even when conducted by a federal, state or Federal District entity included in Annex 12-C.
Offsets	Brazil preserves the possibility of requiring commercial, industrial or technological offset measures, provided that the conditions are non-discriminatory, are clearly set out in the tender documentation and are indicated in the notice of intended procurement.	The procurement may remain covered, but Brazil retains room to require offsets under Brazil's reservation.
National preference margins	Brazil reserves the right to apply preference margins to nationally manufactured goods and national services, in accordance with Brazilian federal legislation.	The procurement may remain covered, but Brazil's offer preserves the application of the margin under federal legislation and the reservation in the Annex.

Topic	Rule in Appendix 12-C-7	Effect on coverage
Micro and small enterprises	Brazil reserves the right to apply price preference margins and set-aside policies of up to 25% of the object in favor of micro and small enterprises.	The Agreement's coverage coexists with those policies, within the limits of Brazil's reservation.
Brazilian non-profit institutions	Brazil reserves the right to use limited tendering to procure goods and services from Brazilian non-profit institutions dedicated to social assistance, public services or social services of public interest.	The procurement may be directed to those institutions where the terms of the reservation are met.
Innovative solutions	Brazil may use limited tendering for subsequent purchases of the same goods or services developed by a national supplier under a previous procurement of a prototype or first solution.	The subsequent purchase may remain with the national developer, under the terms of the reservation.
Summary of the notice	The obligation to publish a summary of the notice of intended procurement in one of the official languages of the WTO will apply to Brazil only three years after the entry into force of the iTA.	The obligation to publish the summary notice will apply to Brazil only three years after the entry into force of the iTA.

Brazil's coverage must be read through the combination of these elements. The procuring entity must be included in Appendix 12-C-1 or Appendix 12-C-2; the object to be procured must be covered by Appendix 12-C-4, Appendix 12-C-5 or Appendix 12-C-6; the value must meet the applicable threshold; and the general notes in Appendix 12-C-7 must not exclude or limit the application of Chapter 12.

The application of these criteria produces different outcomes depending on the case. An engineering service procured by a listed ministry, above the threshold and with no specific exclusion, will generally be covered.

A good listed among the CATMAT

exclusions remains outside coverage, even if procured by a covered entity. A works concession awarded by a covered entity and above the threshold triggers only the non-discrimination rule. A procurement related to the Unified Health System (*Sistema Único de Saúde — SUS*) remains outside Annex 12-C coverage, even when conducted by an entity included in Annex 12-C.

Once coverage is established, the analysis turns to how Chapter 12 operates within the Brazilian procedure: publication of the opportunity, time limits, equivalent documentation, prior experience, technical specifications, *impugnações*, administrative appeals and review mechanisms.

5.3. Operation of Chapter 12 within the Brazilian procedure

Once a procurement covered by Annex 12-C has been identified, the analysis turns from coverage to procedure. At that stage, Chapter 12 has its most direct effect for European Union companies: participation in a covered Brazilian *licitação* becomes subject to treaty-based parameters on access, publication, documentation, evaluation and review.

Chapter 12 does not replace Law No. 14.133/2021, nor does it create an autonomous procurement regime for European suppliers. The *licitação* remains subject to Brazilian law, the Brazilian procuring entity and the platform applicable to the procedure.

What changes, in covered procurements, is the existence of an additional layer of treaty-based standards undertaken by Brazil for the benefit of European Union suppliers, goods and services. This treatment distinguishes European companies from suppliers from countries that do not have an equivalent government procurement commitment with Brazil.

The first point of contact between Chapter 12 and the Brazilian procedure is the publication of the opportunity. Chapter 12 requires that, for each covered procurement, the procuring entity publishes a notice of intended procurement that is accessible by electronic means, free of charge and through a single point of access at national level, except in cases of limited tendering⁴⁸.

In Brazil, this obligation connects with the role of the National Public Procurement Portal, the PNCP, which already centralizes the publication of *editais* and annexes for *licitações* governed by Law No. 14.133/2021.

For European companies, publication

must do more than formally identify the *licitação*. The notice and the procurement documents must provide enough information for the supplier to understand the object, assess its eligibility, organize its documentation and prepare its tender.

Chapter 12 requires the tender documentation to include the description of the object, the conditions for participation, the documents required, the evaluation criteria, the rules for submitting the tender, the terms of payment and the relevant dates for delivery or performance.

For that reason, the analysis should not stop at the *edital*. In covered procurements, the annexes to the tender show where restrictions on foreign access may arise: in the *termo de referência* or *projeto básico*, through the definition of scope; in the risk matrix and draft contract, through the allocation of obligations; in the technical annexes, through the specifications and standards required; and in the qualification and award rules, through the entry and evaluation criteria. It is in these documents that one verifies, in concrete terms, whether the procurement structure complies with Chapter 12 rules on non-discrimination, equivalent documentation, technical specifications, time limits and award.

Time limits are another point requiring attention. Chapter 12 requires the procuring entity to allow sufficient time for suppliers to prepare and submit requests for participation and tenders, considering the nature and complexity of the procurement, any subcontracting involved and the time required to transmit tenders, including from abroad where electronic means are not used⁴⁹.

In Brazil, this rule interacts with the legal preference for electronic procedures in *licitações* governed

by Law No. 14.133/2021. In practice, federal procurements tend to take place through electronic platforms, especially *Compras.gov.br*, but the *edital* must always be reviewed to identify the applicable platform, the form for submitting documentation and the time limits granted to suppliers.

Annex 12-M establishes minimum parameters for tendering time limits. As a rule, the time limit for submitting tenders must not be less than 40 days. That period may be reduced in specific cases, such as prior publication of planned procurement, recurring procurements, duly substantiated urgency, use of electronic means for publication, availability of the tender documentation or receipt of tenders, and procurement of commercial goods or services⁵⁰.

For European suppliers, the sufficiency of the time limit must be read together with those minimum parameters and the concrete requirements of the *edital*. A company without an operational presence in Brazil may need to translate documents, arrange apostille, organize representation, obtain certifications, understand the platform used and adapt foreign documents to Brazilian qualification categories.

In covered procurements, a time limit below the parameters in Annex 12-M, or formally consistent with the minimum period but insufficient considering the complexity of the procurement, may support a request for clarification, an *impugnação* of the *edital* or another review mechanism available in the Brazilian procedure.

Conditions for participation also take on a different significance. Chapter 12 allows requirements relating to legal, financial, commercial and technical capacities, but limits those requirements to what is necessary to demonstrate that the supplier can perform the contract⁵¹.

⁴⁸EU-Mercosur Agreement, Chapter 12, art. 12.13, item 1. "For each covered procurement, except in the circumstances described in Article 12.20, a procuring entity shall publish a notice of intended procurement, which shall be directly accessible by electronic means, free of charge, through a single point of access, for the European Union at European level and for Signatory MERCOSUR States at national level or once such single point of access is established at the MERCOSUR level. The notice of intended procurement shall remain readily accessible to the public, at least until the expiration of the time-period indicated in the notice. The electronic medium shall be listed by each Party in its Appendices to Annexes 12-F to 12-J. Each such notice shall include the information set out in Annex 12-O."

⁴⁹EU-Mercosur Agreement, Chapter 12, art. 12.18. "A procuring entity shall, in accordance with its own needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as the nature and complexity of the procurement, the extent of subcontracting anticipated, and the time for transmitting tenders from foreign as well as domestic points where electronic means are not used. Such time periods, including any extension thereof, shall be the same for all interested or participating suppliers. The applicable time periods are set out in Annex 12-M."

⁵⁰EU-Mercosur Agreement, Annex 12-M, items 2 to 7.

⁵¹EU-Mercosur Agreement, Chapter 12, art. 12.14, item 1.

The procuring entity may require relevant prior experience, but it must assess the supplier's capacities based on its business activities both inside and outside the territory of the Party of the procuring entity⁵².

This point connects directly with the Brazilian practice of requiring legal qualification, tax and labor compliance, economic-financial qualification and technical qualification. The *edital* may still require experience compatible with the object, technical certificates, balance sheets, certifications and registrations.

The limit lies in how those requirements are drafted. In a covered procurement, a requirement for prior experience in Brazil, a previous contract with a Brazilian entity, a certificate issued only by a domestic authority or a local certification without acceptance of equivalent documentation may create grounds for challenge.

Equivalent documentation is another point where the Agreement and Brazilian law converge. Law No. 14.133/2021 already allows foreign companies that do not operate in Brazil to submit equivalent documents, pursuant to the applicable regulations⁵³. Chapter 12 also provides that the conditions for participation may be satisfied by means of the documentation required in the *edital* or by equivalent documentation⁵⁴.

This includes corporate, tax, labor, accounting, technical and regulatory documents issued abroad. The analysis should not turn on the name of the document required by the Brazilian *edital*, but on the condition it proves. If the foreign document proves the same condition required by the domestic supplier, refusal to accept it must be assessed with particular care in covered procurements.

Technical specifications are another field of possible impact. Chapter 12

prohibits technical specifications and conformity assessment procedures from being prepared, adopted or applied with the purpose or effect of limiting competition, creating unnecessary obstacles to international trade or discriminating against suppliers⁵⁵.

Where appropriate, technical specifications must be set out in terms of performance and functional requirements and based on international standards where they exist. Where reference is made to national standards, technical regulations or building codes, that reference must be accompanied by an expression equivalent to "or equivalent"⁵⁶.

This rule covers both explicit barriers and technical requirements that appear neutral. References to a trademark, trade name, patent, design, type, specific origin, producer or supplier are permitted only where there is no sufficiently precise way to describe the object of the procurement, and provided that the tender documentation allows for an equivalent solution.

The same care applies to requirements involving certifications, professional registrations, national technical standards or registration with Brazilian bodies, such as CREA, CAU or sectoral professional councils.

These requirements may be legitimate where they are necessary for performance of the contract or required by applicable Brazilian regulation. In covered procurements, however, they must be framed in a manner compatible with the participation of European suppliers, with acceptance of equivalent documentation, regularization at the appropriate stage or proof through a duly qualified technical professional, where that is sufficient for the object of the procurement.

The analysis must therefore distinguish a necessary regulatory requirement from

a restrictive requirement. An *edital* may require the performance of works or technical services to comply with Brazilian rules on professional responsibility. What requires scrutiny is a requirement for a prior Brazilian credential as a condition for access to the tender, where technical capacity could be demonstrated by experience, certification, professional registration or equivalent documentation issued abroad, without prejudice to any regularization required for contract performance.

Evaluation and award must also follow criteria previously disclosed. The tender documentation must indicate all evaluation criteria and their relative importance, except where price is the sole criterion⁵⁷.

At the end of the procedure, award must be made in accordance with the criteria and requirements set out in the notice and in the tender documentation, on the basis of the most advantageous tender or, where price is the sole criterion, the lowest price⁵⁸.

In Brazilian *licitações*, this point connects with the criteria of lowest price, highest discount, technique and price, best technique, highest economic return and other criteria allowed under Law No. 14.133/2021. In covered procurements, vague technical criteria, unclear weights, evaluation factors introduced at a late stage or requirements favoring a specific local standard may also be examined under Chapter 12.

Changes to the *edital* or to the tender documentation require the same attention. Chapter 12 provides that, if the procuring entity modifies criteria or requirements before the evaluation of tenders, it must communicate the modification in writing to participating suppliers or, where those suppliers are not known, through the same means used to provide the original information. The change must be made at a time that allows suppliers to modify and resubmit their tenders, where appropriate⁵⁹.

⁵²EU-Mercosur Agreement, Chapter 12, art. 12.14, items 2 and 3.

⁵³Law No. 14.133/2021, art. 70, sole paragraph.

⁵⁴EU-Mercosur Agreement, Chapter 12, art. 12.14, item 6.

⁵⁵EU-Mercosur Agreement, Chapter 12, art. 12.16, item 1.

⁵⁶EU-Mercosur Agreement, Chapter 12, art. 12.16, item 2.

⁵⁷EU-Mercosur Agreement, Chapter 12, art. 12.17, item 1(c).

⁵⁸EU-Mercosur Agreement, Chapter 12, art. 12.22, item 4.

⁵⁹EU-Mercosur Agreement, Chapter 12, art. 12.17, item 5.

In the Brazilian procedure, this rule reinforces the need for proper publication of changes affecting qualification, technical specifications, the commercial tender, the form of evaluation or performance conditions. For European companies, the central question will be whether the change was published in an accessible manner and with sufficient time for documentary, technical or economic adjustment.

The final point is review of the procedure. Law No. 14.133/2021 already provides for requests for clarification, *impugnações* of the *edital* and administrative appeals against relevant decisions in the procedure⁶⁰.

Chapter 12 adds the obligation to maintain timely, effective, transparent and non-discriminatory administrative or judicial review procedures through which a supplier may challenge a breach of the obligations under the chapter in a covered procurement⁶².

Chapter 12 also requires a sufficient period for the preparation and submission of the challenge, never less than 10 days from the time when the basis of the challenge became known, or reasonably should have become known, to the supplier⁶².

The review mechanisms provided for in Chapter 12 must allow a response in useful time, including suspension of the procedure where that measure is necessary to preserve the supplier's ability to participate⁶³.

In Brazil, this function is likely to be performed through the administrative, control and judicial instruments already available, depending on the stage of the procurement: request for clarification, *impugnação* of the *edital*, administrative appeal, representation

to a control body, request for interim relief or judicial measure.

Correction of the irregularity will depend on the moment at which the problem is identified. Before submission of tenders, it may involve amendment of the *edital*, binding clarification, acceptance of equivalent documentation or reopening of the time limit. During evaluation or qualification, it may involve review of an administrative decision, annulment of an act, reclassification of a tender or return of the procedure to the appropriate phase. After award, the available path tends to be narrower and will depend on the administrative, control or judicial avenue available under Brazilian law.

Two forms of protection then operate together. The first is Brazilian: clarification, *impugnação*, administrative appeal, representation to control bodies and judicial measure, as applicable. The second is treaty-based: verification of the compatibility of the *edital* and of the procedure with the treaty-based standards undertaken by Brazil in Chapter 12. Effective use of these avenues will depend on identifying the procurement as covered, documenting the restriction and choosing the appropriate moment to challenge it.

The following table summarizes the main points of contact between the Brazilian procedure and the additional parameters established by Chapter 12 in covered procurements.

⁶⁰Law No. 14.133/2021, arts. 164 and 165.

⁶¹EU-Mercosur Agreement, Chapter 12, art. 12.25, item 1.

⁶²EU-Mercosur Agreement, Chapter 12, art. 12.25, item 3.

⁶³EU-Mercosur Agreement, Chapter 12, art. 12.25, item 5.

Topic	Brazilian regime	Additional Chapter 12 parameter in covered procurements
Publication of the opportunity	Law No. 14.133/2021 requires the <i>edital</i> and its annexes to be published on the PNCP. At the federal level, the procedure is usually operated through <i>Compras.gov.br</i> .	Chapter 12 requires a notice of intended procurement to be accessible electronically, free of charge and through a single point of access at national level.
Access to tender documentation	The <i>edital</i> and its annexes structure the object, the conditions for participation, the documents required, the award criteria and the performance rules.	The tender documentation must contain sufficient information to allow suppliers to prepare and submit an appropriate tender.
Time limits	Law No. 14.133/2021 sets time limits according to the procurement method, the award criterion and the nature of the procurement.	Annex 12-M establishes minimum time limits, with a general rule of 40 days for the submission of tenders and specific cases in which that period may be reduced.
Conditions for participation	The Administration may require legal, technical, tax, labour and economic-financial qualification compatible with the object.	Requirements must be limited to what is necessary to verify the supplier's legal, financial, commercial and technical capacities.
Prior experience	Brazilian law allows requirements for prior experience and technical certificates, if they are compatible with the object.	The entity may require relevant experience, but it may not condition participation on a previous contract with a Brazilian entity or prior experience in Brazil.
Equivalent documentation	Law No. 14.133/2021 allows equivalent documents for foreign companies that do not operate in Brazil.	Chapter 12 also allows the conditions for participation to be satisfied by equivalent documentation.
Technical specifications	The <i>edital</i> defines technical standards, certifications, performance requirements and, in some cases, references to standards, trademarks or models.	Technical specifications with the purpose or effect of limiting competition, creating unnecessary obstacles to trade or discriminating against suppliers are prohibited.

Topic	Brazilian regime	Additional Chapter 12 parameter in covered procurements
Trademarks and technical equivalence	Brazilian law allows reference to a trademark in justified cases.	References to a trademark, trade name, patent, design, type, specific origin, producer or supplier are permitted only where there is no sufficiently precise way to describe the object, with acceptance of an equivalent.
Award criteria	The <i>edital</i> defines the award criterion and, where applicable, the technical and economic evaluation factors.	The evaluation criteria and their relative importance must be disclosed in advance, except where price is the sole criterion.
Changes to the <i>edital</i>	Relevant changes must be properly published and may require reopening of the time limit, under Law No. 14.133/2021.	Changes to criteria or requirements must be communicated at a time that allows suppliers to modify and resubmit their tenders, where applicable.
<i>Impugnações</i>, administrative appeals and review	Law No. 14.133/2021 provides for requests for clarification, <i>impugnações</i> and administrative appeals, in addition to external control and judicial review.	The Agreement requires timely, effective, transparent and non-discriminatory review procedures to challenge breaches of the standards under Chapter 12.
Preservation and corrective measures	Brazilian law allows administrative, control and judicial measures to prevent or correct illegalities.	Review mechanisms must allow a response in useful time, including suspension of the procedure where necessary to preserve the supplier's ability to participate.

The main effect of Chapter 12 lies in the legal characterization of issues that already arise within the Brazilian procedure. In covered procurements, insufficient publication, inadequate time limits, refusal to accept equivalent

documentation, requirements for local experience, closed technical specifications or insufficiently transparent award criteria may also be assessed considering the treaty-based standards undertaken by Brazil.

6. Where Opportunities for European Companies are Located in the Brazilian Market

The figures in this section are used as indicators of market size, budgetary capacity and project pipeline, not as direct measures of the Chapter 12-covered market. PNCP data were taken from the PNCP in Numbers Panel as a dynamic snapshot of awarded procurements registered for 2025; LOA figures refer to federal budgetary authorizations under Law No. 15,346/2026 and do not correspond, by themselves, to contractable procurement opportunities; Novo PAC and PPI data refer to official project portfolios and may include projects at different stages of maturity.

In all cases, Chapter 12 coverage depends on the separate legal filter of procuring entity, object, value and applicable exclusions or reservations under Annex 12-C.

6.1. The market published on the PNCP: size and distribution of procurements

Brazil holds a relevant position among major emerging economies, due to the scale of its domestic market and the continuing need for public and private investment in infrastructure, public services, technology, sanitation, energy, mobility and social facilities⁶⁴.

This combination places the country on the radar of foreign companies seeking opportunities in large public procurement markets, especially in sectors where public demand is linked to capacity expansion, modernization of assets and the implementation of long-term public policies.

In government procurement, this scale

appears in the data from the National Public Procurement Portal, the PNCP. Created by Law No. 14.133/2021, the PNCP is the official electronic website for the centralized and mandatory publication of the acts required under Brazilian public procurement and contract legislation.

The Portal gathers information on procurement plans, *editais*, price registration minutes, contracts and other acts in the public procurement cycle, operating as an instrument of transparency, standardization and public access to opportunities published by the bodies and entities that form part of the system.

In 2025, procurements registered on the PNCP exceeded BRL 1 trillion in awarded values, covering federal, state and municipal bodies⁶⁵. This figure indicates the scale of published PNCP procurements, but it does not, in itself, indicate which opportunities are covered by Chapter 12.

Identifying opportunities for European companies requires combining two readings. The first is economic: in which sectors, entities and types of procurement the Brazilian public sector concentrates the largest volume of expenditure, planned investments and future projects. The second is legal: which of those opportunities fall within the coverage undertaken by Brazil in Annex 12-C.

⁶⁴WORLD BANK. *Brazil overview*. Washington, DC: World Bank Group, 2025. Available at: <https://www.worldbank.org/ext/en/country/brazil>. Acesso em: 19 maio 2026; ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. *OECD Economic Surveys: Brazil 2023*. Paris: OECD Publishing, 2023. Available at: https://www.oecd.org/en/publications/oecd-economic-surveys-brazil-2023_a2d6acac-en.html. Accessed on: 19 May 2026.

⁶⁵BRAZIL. *National Public Procurement Portal – PNCP. PNCP in Numbers Panel: awarded procurements*. Available at: <https://www.gov.br/pncp/pt-br/aceso-a-informacao/painel-pncp-em-numeros> Accessed on: 19 May 2026.

Commercial interest may exist outside Chapter 12, but treaty protection under Chapter 12 depends on the cumulative presence of the criteria already examined: covered entity, covered object, value equal to or above the applicable threshold, and absence of an exclusion or reservation.

The first reading shows a broad set of published procurement opportunities, with large expenditure blocks in health, infrastructure and works, housing, defense, energy, state-owned companies and other

administrative sectors. This overview is useful to measure the scale of published procurement activity and the intensity of public demand, but it does not yet indicate which procurements may be covered under Chapter 12.

The sectoral distribution below was built from the PNCP dataset consulted for procurements published in 2025. The classification was made based on the fields available in the export, especially system, body and procuring unit.

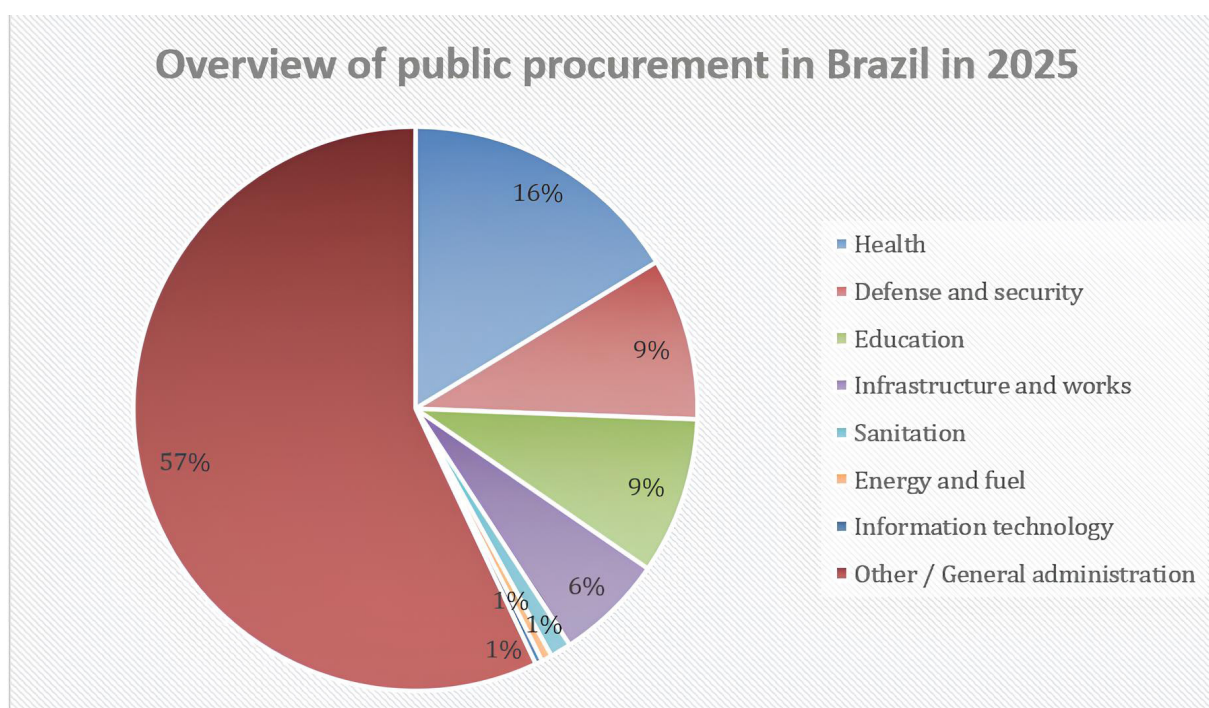


Figure 2 Indicative distribution of the main blocks of contractable public expenditure in Brazil, before application of the legal filter under Annex 12-C.

The “Other / General Administration” block accounts for the largest share of the dataset because it brings together bodies and units with no specific sectoral identification in the fields consulted. This group includes generic state and municipal administrations, secretariats for administration, finance, planning and management, bodies of the Judiciary, the Legislature, external control, social security, social assistance, agriculture, culture, tourism, economic development and multi-sector units. Part of the procurement of information technology, energy, fuels, works and general services may fall within this residual block when carried out by non-specialized bodies.

From this initial snapshot of published PNCP procurements, the analysis moves to the legal filter under Annex 12-C. This filter first considers the procuring entity: Chapter 12 covers the central government entities listed in Appendix 12-C-1 and the sub-central government entities included in Appendix 12-C-2, subject to the respective thresholds, covered objects and applicable exclusions.

In Brazil's case, central government coverage includes bodies of the federal Executive, Judicial and Legislative Branches, including their related agencies, with the specific exclusions set out in the notes to the Appendix itself.

The data extracted from the PNCP allows the body or procuring unit to be identified with greater certainty. This information helps apply the first filter under Annex 12-C, but it does not complete the analysis. The data set used did not provide, in a standardized manner, the description of the object procured, the item, CATMAT, CATSER or any other category that would allow confirmation, contract by contract, of whether the object was a covered good, a listed service, a construction service or an excluded item.

For that reason, the reading below should be treated as an estimate of alignment with Chapter 12 and Annex 12-C, built based on the procuring entity and sectoral indicators.

With that caveat, the procurements were grouped into four categories. The first is identifiable high alignment, comprising works, infrastructure, sanitation, engineering services, architecture, technical consulting and sewage services.

The second brings together potentially

covered procurements conducted by ministries, autarchies, foundations, bodies of the Judiciary, the Legislature, external control, General Administration and state or Federal District entities included in Appendix 12-C-2, but without a confirmable object in the dataset.

The third covers sectors requiring caution, such as health, defense, security, agriculture, food and social assistance, where reservations, exclusions or exceptions may apply. The fourth comprises procurements outside coverage by reason of the entity, such as Municipalities, public companies, mixed-capital companies, state-owned enterprises, private concessionaires and unlisted entities.

Figure 3 organizes this estimate of alignment. Its purpose is to show the distribution of the dataset analyzed according to proximity to the coverage of Annex 12-C, without replacing the individual analysis of the *editais*, the items procured and the respective objects.

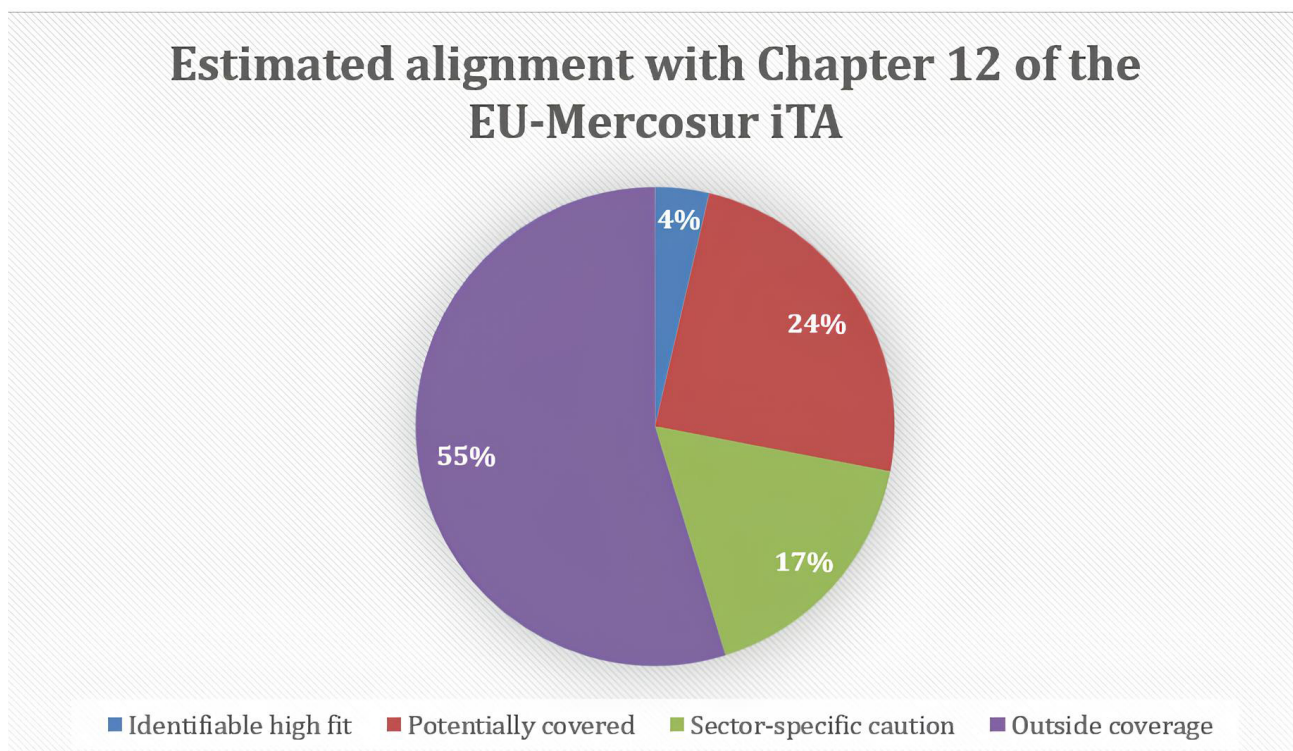


Figure 3 Estimated alignment with Chapter 12 of the EU-Mercosur interim Trade Agreement

The figure shows that the largest share of the dataset remains outside coverage because of the procuring entity. This result is mainly due to the presence of Municipalities, state-owned enterprises, mixed-capital companies, public companies, private concessionaires and unlisted entities, which appear on the PNCP but are not included in Brazil's offer in Annex 12-C.

For European companies, the most relevant reading lies in the combination of the identifiable high-alignment and potentially covered blocks. The first points to opportunities with stronger preliminary alignment, associated with works, infrastructure, sanitation, engineering, architecture, technical consulting and sewage services. The second concentrates procurements by covered entities where the object still requires verification, through analysis of the *edital*, CATMAT, CATSER or description of the object.

The sectoral caution category should be assessed case by case. Health, defense, security, agriculture, food and social assistance may involve covered entities, but they concentrate objects subject to exclusions, reservations or exceptions, especially procurements related to the SUS, national security, food security, family farming and public policies preserved by Brazil's offer.

6.2. Public budget and pipeline: where public expenditure is likely to expand

Analysis of the PNCP makes it possible to view published procurement activity through procurements already registered or published. That snapshot, however, does not exhaust the assessment of future opportunities.

In Brazil, public demand is also organized through budget planning instruments, investment programmes and official project portfolios, which indicate where the State intends to allocate resources, structure works, induce private investment

and prepare new *licitações*.

The first of these instruments is the Annual Budget Law (*Lei Orçamentária Anual — LOA*). The LOA estimates federal revenues and sets federal expenditure for each fiscal year, covering the Fiscal Budget, the Social Security Budget and the Investment Budget of federal state-owned companies.

For opportunity analysis, it helps identify the fiscal scale of the Federal Government, the bodies with the largest budgetary allocations, priority programmes and expenditure classified as investment.

Even so, the authorized budget does not automatically correspond to contractable procurement opportunities: a significant part of the LOA consists of financial expenditure, social security expenditure, personnel costs, mandatory transfers, debt amortization and other budget lines that do not translate directly into *licitações* open to private suppliers.

The second instrument is *Novo PAC*. Unlike the LOA, which organizes budgetary allocations, the PAC brings together a portfolio of public projects and investments, classified by axis, implementation stage, estimated value, location and entity responsible for execution. This source helps identify projects under execution, completed projects, projects in preparatory action, in *licitação* or in auction.

For prospecting purposes, projects in preparatory action, study, licensing, engineering design, *licitação* or auction are the most relevant, because they indicate contracts and procedures still under formation.

The third instrument is the portfolio of the Investment Partnerships Programme (*Programa de Parcerias de Investimentos — PPI*). The PPI organizes projects involving concessions, PPPs, leases, auctions and other partnership models with the private

sector. This portfolio shows the part of Brazil's infrastructure expansion that is expected to move forward through regulated private investment, rather than through direct budget execution.

When cross-checked with Chapter 12, the PPI portfolio indicates commercial opportunities that may fall within the coverage of Chapter 12 when conducted by a covered entity, involving an object covered by Annex 12-C, with a value above the applicable threshold and no specific exclusion or reservation.

These three sources are connected, but they do not measure the same thing. An infrastructure project may appear in the LOA as a budgetary allocation, be part of the Novo PAC portfolio as a project, and at the same time appear in the PPI as a project structured for partnership with the private sector. This overlap is natural because each instrument records a different stage of the same public policy: expenditure authorization, organization of the investment portfolio and structuring of the procurement or partnership model.

To advance the identification of future opportunities in Brazil, these three official sources were reviewed: the 2026 LOA, Novo PAC and the PPI portfolio. The guiding question was where there are resources, projects or structuring processes under way that may generate new procurements in the coming years, after applying the Chapter 12 filter.

In the 2026 LOA, the Federal Government estimates revenues and sets expenditure at BRL 6.54 trillion, covering the Fiscal Budget, the Social Security Budget and the Investment Budget of federal state-owned companies⁶⁶. This figure indicates the fiscal scale of the Federal Government but includes budget lines that do not translate into licitações, such as debt refinancing, social security, personnel, administrative costs, mandatory transfers and financial expenditure.

The first relevant exclusion is the refinancing of the federal public debt, which amounts to BRL 1.82 trillion within the Fiscal and Social Security Budgets⁶⁷.

For procurement-opportunity purposes, the closest figures are the budget lines capable of becoming works, services, supplies, projects and investments. In the Fiscal and Social Security Budgets, the 2026 LOA provides for BRL 80.9 billion in investments⁶⁸.

This amount should be read as a starting point: it indicates the portion of the federal budget most closely associated with works, facilities, equipment and the formation of public infrastructure, but still depends on the actual opening of *licitações*, the procuring entity and the object procured.

In the subset analyzed of federal budget allocations with greater potential to generate procurements, the largest amounts appear in the Ministries of Transport, Cities, Health, Defense and Education. For purposes of Chapter 12, the reading is not uniform across these sectors.

Transport and Cities tend to concentrate opportunities with stronger preliminary alignment with Chapter 12, especially in infrastructure, mobility, sanitation, works and engineering services. Education may also generate relevant opportunities in works, equipment and technical services.

⁶⁶Law No. 15.346/2026, art. 1.

⁶⁷Law No. 15.346/2026, arts. 2 and 3.

⁶⁸Annual Budget Law 2026 (*Lei Orçamentária Anual — LOA*), Volume I, Table 1C, "Revenue and Expenditure of the Fiscal and Social Security Budgets by Economic Category."

Health and Defense carry significant budgetary weight, but require a more selective reading, due to the exclusions and reservations related to the SUS, national security and public policies preserved by Brazil's offer.

The LOA therefore shows where there are fiscal capacity and budgetary priority. To identify future opportunities with greater specificity, Novo PAC brings the analysis closer to projects under formation. In the dataset analyzed, projects in preparatory action, *licitação* or auction amount to approximately BRL 242.1 billion. This is the most relevant subset for prospecting, because it brings together projects still under formation, with potential to generate new procurements in the coming years.

Within this pipeline, the largest amounts appear in Sustainable and Resilient Cities, Energy Transition and Security, Efficient and Sustainable Transport, Health, Education, Science and Technology, and Water for All. For European companies, the sectors of greatest legal and commercial interest tend to be infrastructure, mobility, sanitation, construction works, engineering, architecture, technical consulting, environmental equipment and certain goods with higher technological density.

The PPI portfolio reinforces this reading by identifying projects structured for concessions, PPPs, leases and auctions in transport, energy, sanitation, ports, airports, urban infrastructure and social infrastructure⁶⁹.

Read together with the LOA and *Novo PAC*, these data show that future procurement opportunities and project pipelines in Brazil

are likely to concentrate in logistics infrastructure, mobility, sanitation, energy, public facilities and social infrastructure. For European companies, this shifts the analysis toward sectors of greater technical complexity, where works, engineering, projects, equipment, environmental solutions and technology appear more frequently.

The PPI is primarily a source of commercial pipeline intelligence: many of its projects involve concessions, PPPs, leases or auctions that do not fall within ordinary Chapter 12 coverage and covered works concessions are subject only to the non-discrimination rule in Article 12.6.

⁶⁹PPI. *Project Portfolio*. Available at: <https://ppi.gov.br/projetos/> - Accessed on: 20 May 2026.

7. Conclusion

The Agreement changes the conditions of participation, not just the possibility of participating. In covered procurements, European companies no longer depend solely on what each *edital* establishes. They can rely on treaty-based standards, covering publication, documentation, technical specifications, time limits and review, that can be invoked regardless of the practice of each contracting entity.

The analysis developed in this guide shows that the most relevant opportunities are in the segments where the public investment pipeline and Annex 12-C coverage overlap. Identifying them requires individual verification of entity, object, threshold and any applicable exclusions. Pursuing them requires knowledge of the Brazilian procurement procedure and the ability to apply Chapter 12 standards at each stage.

For companies seeking to move forward, the starting point is the PNCP. The Annex 12-C filter comes next. And the analysis of the *edital*, against Chapter 12 rules on qualification, technical specifications, time limits and award criteria, is what converts an identified opportunity into effective participation.

Chapter 12 does not guarantee contract award or replace price competitiveness. Its value lies in giving European companies a defined legal basis to operate in the Brazilian market on more predictable terms than those available before May 2026.

