IPI Annex
Regarding the application of an IPI Measure (made pursuant to Regulation 2022/1031 – the International Procurement Instrument) to the Competition

Regulation 2022/1031 – the International Procurement Instrument (the IPI Instrument) applies to procurements subject to the application of Directives 2014/23/EU, 2014/24/EU and 2014/25/EU. Pursuant to the IPI Regulation, the European Commission may adopt "IPI measures" (being measures limiting the access of businesses, goods or services originating in a third country to the EU public procurement or concession markets by means of an implementing act).

Where an IPI measure is in force at the launch of a Competition, Contracting Authorities shall have regard to the scope of the IPI measure and the estimated value of the Contract (IPI measures are applicable to works contract greater than €15m and services contracts greater than €5m in value) to ascertain whether the IPI measure applies to the Competition.

Where an IPI measure applies to Applicants/Tenderers originating in a third country, complete and issue this Annex with the Suitability Assessment Questionnaire.

Contracting Authorities may establish whether an IPI measure is in force that applies to Applicants/Tenderers originating in a third country by consulting the Official Journal of the European Union.

Applicant/Tenderer Note: Where the Particulars state that an IPI measure applies to the Competition, this Annex forms part of the Suitability Assessment Questionnaire.

EU Regulation 2022/1031 – the International Procurement Instrument

Pursuant to EU Regulation 2022/1031 on the International Procurement Instrument (the 'IPI Regulation'), the European Commission may adopt implementing measures known as "IPI measures" which affect tenderers from third countries[1]. Contracting Authorities are obliged to follow any IPI measure that has been put in place by the European Commission.

[1] Third country means countries that are not in either the EU, the World Trade Organisation GPA, or that do not have a bilateral or multilateral treaty with the EU with regard to procurement. An Applicant's/ Tenderer's origins are determined as follows:

a) For natural persons, the country of which they are a national, or where they have a right of permanent residence.
b) For legal persons, the country under the laws of which the legal entity is constituted or otherwise organised and in the territory of which the legal person is engaged in substantive business operations.
c) For legal persons who are not engaged in substantive business operations in the country in which they are constituted or organised, the country of origin is that of the person/persons who directly or indirectly have a dominant influence over the economic operator by virtue of ownership, financial participation or the governing rules of the economic operator. A dominant influence is presumed where a person or persons holds the majority of the economic operator's subscribed capital, controls the majority of the votes attaching to issued shares, or can appoint more than half of the administrative, supervisory or management body.
d) Where a Tenderer is a group or consortium and at least one of the members of the group or consortium originates from a country which is subject to an IPI measure, the IPI measure shall apply to the whole group or consortium. This will not be the case where the participation of the entity subject to the IPI amounts to less than 15 % of the value of the tender submitted by the group or consortium, save where the entity subject to the IPI measure is necessary to fulfil the majority of at least one selection criterion.

Where an IPI measure applies to the Competition (having regard to the estimated value of the contract[2], the scope of application of the IPI measure, or the date on which the IPI measure was made[3]), the Contracting Authority may be obliged to give effect to that IPI measure by way of:

(a) imposing a score adjustment on a Tenderer which originates in a country which is subject to an IPI measure;
(b) excluding a Tenderer which originates in a country which is subject to an IPI measure; and/or
(c) such other steps as may be determined by the European Commission and set out in the relevant IPI measure.

Where the Contract is subject to an IPI measure the following obligations shall apply to the successful tenderer:

(i) the successful Tenderer may not subcontract more than 50% of the total value of the contract to economic operators originating in a country which is subject to an IPI measure;
(ii) for contracts whose subject matter covers the supply of goods, the successful Tenderer shall ensure for the duration of the contract that goods or services supplied or provided in the execution of the contract and originating in the third country which is subject to the IPI measure represent no more than 50 % of the total value of the contract, irrespective of whether such goods or services are supplied or provided directly by the successful Tenderer or by a subcontractor;
(iii) the successful Tenderer shall provide to the Contracting Authority upon request adequate evidence corresponding to point (i) or (ii), at the latest upon completion of the execution of the contract;
(iv) the successful Tenderer will be obliged to pay a proportionate charge in the event of non-observance of the obligations referred in point (i) or (ii) of between 10 % and 30 % of the total value of the contract.

The Contracting Authority may, on an exceptional basis, decide not to apply an IPI measure where:

(i) Only tenderers originating in countries subject to an IPI measure meet the tender requirements; or
(ii) Justified for overriding reasons relating to the public interest.

IPI measures applicable to the Competition

Where an IPI measure applies to the Competition, **all Applicants/Tenderers** are obliged to declare (by way of the Applicant Declaration in Part 2 of the Questionnaire) whether they originate in a country that is subject to the IPI measure(s) listed above.

The Contracting Authority may also seek information from Applicants/Tenderers, should it deem appropriate to do so, to ascertain the country of origin of any Applicant/Tenderer (pursuant to the rules on determining origin set out in the IPI Instrument) for the purposes of verifying whether it is subject to an IPI measure.

[END]

[2] Where the estimated value of the contract is above €5m (Services) and €15m (Works).
[3] Relevant IPI measures are those which were in force at the time the competition was launched.