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Price: EUR 10

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<sup>(1)</sup> Text with EEA relevance

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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## I

(Legislative acts)

## DIRECTIVES

## DIRECTIVE 2014/23/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 February 2014

on the award of concession contracts

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Articles 62 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

(1) The absence of clear rules at Union level governing the award of concession contracts gives rise to legal uncertainty and to obstacles to the free provision of services

and causes distortions in the functioning of the internal market. As a result, economic operators, in particular small and medium-sized enterprises (SMEs), are being deprived of their rights within the internal market and miss out on important business opportunities, while public authorities may not find the best use of public money so that Union citizens benefit from quality services at best prices. An adequate, balanced and flexible legal framework for the award of concessions would ensure effective and non-discriminatory access to the market to all Union economic operators and legal certainty, favouring public investments in infrastructures and strategic services to the citizen. Such a legal framework would also afford greater legal certainty to economic operators and could be a basis for and means of further opening up international public procurement markets and boosting world trade. Particular importance should be given to improving the access opportunities of SMEs throughout the Union concession markets.

(2) The rules of the legislative framework applicable to the award of concessions should be clear and simple. They should duly reflect the specificity of concessions as compared to public contracts and should not create an excessive amount of bureaucracy.

(3) Public procurement plays a key role in the Europe 2020 strategy, set out in the Commission Communication of 3 March 2010 entitled 'Europe 2020, a strategy for smart, sustainable and inclusive growth' (the 'Europe 2020 strategy'), as one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. In this context, concession contracts represent important instruments in the long-term structural development of infrastructure and strategic services, contributing to the progress of competition within the internal market, making it possible to benefit from private sector expertise and helping to achieve efficiency and innovation.

<sup>(1)</sup> OJ C 191, 29.6.2012, p. 84.

<sup>(2)</sup> OJ C 391, 18.12.2012, p. 49.

<sup>(3)</sup> Position of the European Parliament of 15 January 2014 (not yet published in the Official Journal) and decision of the Council of 11 February 2014.

- (4) The award of public works concessions is presently subject to the basic rules of Directive 2004/18/EC of the European Parliament and of the Council <sup>(1)</sup>; while the award of services concessions with a cross-border interest is subject to the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the principles of free movement of goods, freedom of establishment and freedom to provide services, as well as to the principles deriving therefrom such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. There is a risk of legal uncertainty related to divergent interpretations of the principles of the Treaty by national legislators and of wide disparities among the legislations of various Member States. Such risk has been confirmed by the extensive case law of the Court of Justice of the European Union which has, nevertheless, only partially addressed certain aspects of the award of concession contracts.

A uniform application of the principles of the TFEU across all Member States and the elimination of discrepancies in the understanding of those principles is necessary at Union level in order to eliminate persisting distortions of the internal market. That would also favour the efficiency of public spending, facilitate equal access and fair participation of SMEs in the award of concession contracts, both at local and Union level, and support the achievement of sustainable public policy objectives.

- (5) This Directive recognises and reaffirms the right of Member States and public authorities to decide the means of administration they judge to be most appropriate for performing works and providing services. In particular, this Directive should not in any way affect the freedom of Member States and public authorities to perform works or provide services directly to the public or to outsource such provision by delegating it to third parties. Member States or public authorities should remain free to define and specify the characteristics of the services to be provided, including any conditions regarding the quality or price of the services, in accordance with Union law, in order to pursue their public policy objectives.
- (6) It should be recalled that Member States are free to decide, in compliance with the principles of the TFEU on equal treatment, non-discrimination, transparency and the free movement of persons to organise the provision of services either as services of general economic interest or as non-economic services of general interest or as a mixture thereof. It should also be recalled that this Directive is without prejudice to the freedom of national, regional and local authorities to define, in conformity with Union law, services of

general economic interest, their scope and the characteristics of the service to be provided, including any conditions regarding the quality of the service, in order to pursue their public policy objectives. It should also be without prejudice to the power of national, regional and local authorities to provide, commission and finance services of general economic interest in accordance with Article 14 TFEU and Protocol No 26 annexed to the TFEU and to the Treaty on European Union (TEU). In addition, this Directive does not deal with the funding of services of general economic interest or with systems of aid granted by Member States, in particular in the social field, in accordance with Union rules on competition. It is appropriate to clarify that non-economic services of general interest should not fall within the scope of this Directive.

- (7) It is also appropriate to recall that this Directive should not affect the social security legislation of the Member States. Nor should it entail the liberalisation of services of general economic interest, reserved to public or private entities, or the privatisation of public entities providing services.
- (8) For concessions equal to or above a certain value, it is appropriate to provide for a minimum coordination of national procedures for the award of such contracts based on the principles of the TFEU so as to guarantee the opening-up of concessions to competition and adequate legal certainty. Those coordinating provisions should not go beyond what is necessary in order to achieve the aforementioned objectives and to ensure a certain degree of flexibility. Member States should be allowed to complete and develop further those provisions if they find it appropriate, in particular to better ensure compliance with the principles set out above.
- (9) It should be clarified that groups of economic operators, including where they have come together in the form of a temporary association, may participate in award procedures without it being necessary for them to take on a specific legal form. To the extent that that is necessary, for instance where joint and several liability is required, a specific form may be required when such groups are awarded the concession. It should also be clarified that contracting authorities or contracting entities should be able to set out explicitly how groups of economic operators are to meet the requirements concerning economic and financial standing, or the criteria relating to technical and professional ability which are required of economic operators participating on their own. The performance of concession contracts by groups of economic operators may necessitate setting conditions which are not imposed on individual participants. Such conditions, which should be justified by objective reasons and be proportionate, could for instance include requiring the appointment of a joint representation or a lead partner for the purposes of the concession award procedure or requiring information on their constitution.

<sup>(1)</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

- (10) Certain coordination provisions should also be introduced for the award of works and services concessions in the energy, transport and postal services sectors, given that national authorities may influence the behaviour of entities operating in those sectors, and taking into account the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the services concerned.
- (11) Concessions are contracts for pecuniary interest by means of which one or more contracting authorities or contracting entities entrusts the execution of works, or the provision and the management of services, to one or more economic operators. The object of such contracts is the procurement of works or services by means of a concession, the consideration of which consists in the right to exploit the works or services or in that right together with payment. Such contracts may, but do not necessarily, involve a transfer of ownership to contracting authorities or contracting entities, but contracting authorities or contracting entities always obtain the benefits of the works or services in question.
- (12) For the purpose of this Directive, it should be clarified that the mere financing, in particular through grants, of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not fall under the scope of this Directive.
- (13) Furthermore, arrangements where all operators fulfilling certain conditions are entitled to perform a given task, without any selectivity, such as customer choice and service voucher systems, should not qualify as concessions, including those based on legal agreements between the public authority and the economic operators. Such systems are typically based on a decision by a public authority defining the transparent and non-discriminatory conditions on the continuous access of economic operators to the provision of specific services, such as social services, allowing customers to choose between such operators.
- (14) In addition, certain Member State acts such as authorisations or licences, whereby the Member State or a public authority thereof establishes the conditions for the exercise of an economic activity, including a condition to carry out a given operation, granted, normally, on request of the economic operator and not on the initiative of the contracting authority or the contracting entity and where the economic operator remains free to withdraw from the provision of works or services, should not qualify as concessions. In the case of those Member State acts, the specific provisions of Directive 2006/123/EC of the European Parliament and of the Council<sup>(1)</sup> apply. In contrast to those Member State acts, concession contracts provide for mutually binding obligations where the execution of the works or services are subject to specific requirements defined by the contracting authority or the contracting entity, which are legally enforceable.
- (15) In addition, certain agreements having as their object the right of an economic operator to exploit certain public domains or resources under private or public law, such as land or any public property, in particular in the maritime, inland ports or airports sector, whereby the State or contracting authority or contracting entity establishes only general conditions for their use without procuring specific works or services, should not qualify as concessions within the meaning of this Directive. This is normally the case with public domain or land lease contracts which generally contain terms concerning entry into possession by the tenant, the use to which the property is to be put, the obligations of the landlord and tenant regarding the maintenance of the property, the duration of the lease and the giving up of possession to the landlord, the rent and the incidental charges to be paid by the tenant.
- (16) In addition, agreements that grant rights of way covering the utilisation of public immovable property for the provision or operation of fixed lines or networks intended to provide a service to the public should also not be considered to be concessions within the meaning of this Directive, in so far as those agreements neither impose an obligation of supply nor involve any acquisition of services by a contracting authority or contracting entity to itself or to end users.
- (17) Contracts not involving payments to the contractor and where the contractor is remunerated on the basis of the regulated tariffs, calculated so as to cover all costs and investments borne by the contractor for providing the service, should not be covered by this Directive.
- (18) Difficulties related to the interpretation of the concepts of concession and public contract have generated continued legal uncertainty among stakeholders and have given rise to numerous judgments of the Court of Justice of the European Union. Therefore, the definition of concession should be clarified, in particular by referring to the concept of operating risk. The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of an operating risk of economic nature involving the possibility that it will not recoup the investments made and the costs incurred in operating the works or services awarded under normal operating conditions even if a part of the risk remains with the contracting authority or contracting entity. The application of specific rules governing the award of concessions would not be justified if the contracting authority or contracting entity relieved the economic operator of any potential

<sup>(1)</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

loss, by guaranteeing a minimal revenue, equal or higher to the investments made and the costs that the economic operator has to incur in relation with the performance of the contract. At the same time it should be made clear that certain arrangements which are exclusively remunerated by a contracting authority or a contracting entity should qualify as concessions where the recoupment of the investments and costs incurred by the operator for executing the work or providing the service depends on the actual demand for or the supply of the service or asset.

- (19) Where sector-specific regulation eliminates the risk by providing for a guarantee to the concessionaire on breaking even on investments and costs incurred for operating the contract, such contract should not qualify as a concession within the meaning of this Directive. The fact that the risk is limited from the outset should not preclude the qualification of the contract as a concession. This can be the case for instance in sectors with regulated tariffs or where the operating risk is limited by means of contractual arrangements providing for partial compensation including compensation in the event of early termination of the concession for reasons attributable to the contracting authority or contracting entity or for reasons of force majeure.
- (20) An operating risk should stem from factors which are outside the control of the parties. Risks such as those linked to bad management, contractual defaults by the economic operator or to instances of force majeure are not decisive for the purpose of classification as a concession, since those risks are inherent in every contract, whether it be a public procurement contract or a concession. An operating risk should be understood as the risk of exposure to the vagaries of the market, which may consist of either a demand risk or a supply risk, or both a demand and supply risk. Demand risk is to be understood as the risk on actual demand for the works or services which are the object of the contract. Supply risk is to be understood as the risk on the provision of the works or services which are the object of the contract, in particular the risk that the provision of the services will not match demand. For the purpose of assessment of the operating risk the net present value of all the investment, costs and revenues of the concessionaire should be taken into account in a consistent and uniform manner.
- (21) The notion of 'bodies governed by public law' has been examined repeatedly in the case-law of the Court of

Justice of the European Union. A number of clarifications are key to the full understanding of this concept. It should therefore be clarified that a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity should not be considered to be a 'body governed by public law', since the needs in the general interest, that it has been set up to meet or been given the task of meeting, can be deemed to have an industrial or commercial character. Similarly, the condition relating to the origin of the funding of the body considered, has also been examined by the Court, which has clarified that financed for 'the most part' means for more than half and that such financing may include payments from users which are imposed, calculated and collected in accordance with rules of public law.

- (22) It is appropriate to define 'exclusive rights' and 'special rights' as these notions are crucial to the scope of this Directive and the notion of contracting entities. It should be clarified that entities which are neither contracting entities pursuant to point (a) of Article 7(1) nor public undertakings are subject to its provisions only to the extent that they exercise one of the activities covered on the basis of such rights. However, they will not be considered to be contracting entities if such rights have been granted by means of a procedure based on objective criteria, in particular pursuant to Union legislation, and for which adequate publicity has been ensured. That legislation should include Directive 2009/73/EC of the European Parliament and of the Council <sup>(1)</sup>, Directive 2009/72/EC of the European Parliament and of the Council <sup>(2)</sup>, Directive 97/67/EC of the European Parliament and of the Council <sup>(3)</sup>, Directive 94/22/EC of the European Parliament and of the Council <sup>(4)</sup> and Regulation (EC) No 1370/2007 of the European Parliament and of the Council <sup>(5)</sup>. It should also be clarified that that listing of legislation is not exhaustive and that rights in any form, which have been granted by means of other procedures based on objective criteria and for which
- <sup>(1)</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).
- <sup>(2)</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).
- <sup>(3)</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).
- <sup>(4)</sup> Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospecting, exploration and production of hydrocarbons (OJ L 164, 30.6.1994, p. 3).
- <sup>(5)</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).



adequate publicity has been ensured are not relevant for the purposes of determining the contracting entities covered by this Directive.

- (23) This Directive should apply only to concession contracts whose value is equal to or greater than a certain threshold, which should reflect the clear cross-border interest of concessions to economic operators located in Member States other than that of the contracting authority or contracting entity. Consequently, the method of calculating the estimated value of a concession needs to be set out, and should be identical for works and services concessions, as both contracts often cover elements of works and services. The calculation should refer to the total turnover of the concessionaire in consideration of the works and services being the object of the concession, as estimated by the contracting authority or the contracting entity, excluding VAT, over the duration of the contract.
- (24) To ensure a real opening up of the market and a fair balance in the application of concession award rules in the energy, transport and postal services sectors, it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not jeopardised. It is also necessary to ensure, in keeping with Article 345 TFEU, that the rules governing the system of property ownership in Member States are not prejudiced. For this reason, specific and uniform rules should apply to concessions awarded by entities exercising one of the abovementioned activities for purposes of pursuing such activities, independently of whether they are state, local or regional authorities, bodies governed by public law, public undertakings or other entities enjoying special or exclusive rights. Entities which are responsible, under national law, for the provision of services related to one of the activities referred to in Annex II, should be presumed to pursue such activities.
- (25) It should be clarified that the relevant activity in the field of airports also covers services provided to passengers which contribute to the smooth functioning of the airport facilities and which are expected of a well-functioning modern airport, such as retailing, public catering and car parking.
- (26) Certain entities are active in the fields of production, transmission or distribution of both heat and cooling. There may be some uncertainty as to which rules apply to respectively heat and cooling related activities.

It should therefore be clarified that the transmission and/or distribution of heat is an activity covered by Annex II and thus entities which are active in the heating sector are subject to the rules of this Directive applicable to contracting entities in so far as they qualify as such. On the other hand, entities operating in the cooling field are subject to the rules of this Directive applicable to contracting authorities in so far as they qualify as such. It should finally be clarified that concessions awarded for the pursuit of both heating and cooling contracts should be examined under the provisions on contracts for the pursuit of several activities to determine which procurement rules, if any, will govern their award.

- (27) Before envisaging any change to the scope of this Directive for the cooling sector, the situation of that sector should be examined in order to obtain sufficient information, in particular in respect of the competitive situation, the degree of cross-border procurement and the views of stakeholders. Given that the application of this Directive to the sector could have a substantial impact in terms of market-opening, that examination should be conducted when assessing the impact of this Directive.
- (28) It should be clarified that for the purposes of paragraphs 1 and 2 of Annex II, 'supply' includes generation/production, wholesale and retail sale. However, production of gas in the form of extraction falls within the scope of paragraph 6 of that Annex.
- (29) In the case of mixed contracts, the applicable rules should be determined with respect to the main subject of the contract, if the different parts which constitute the contract are objectively not separable. It should therefore be clarified how contracting authorities and contracting entities should determine whether the different parts are separable or not. Such clarification should be based on the relevant case-law of the Court of Justice of the European Union. The determination should be carried out on a case-by-case basis, in which the expressed or presumed intentions of the contracting authority or a contracting entity to regard the various aspects making up a mixed contract as indivisible should not be sufficient, but should be supported by objective evidence capable of justifying them and of establishing the need to conclude a single contract. Such a justified need to conclude a single contract could for instance be present in the case of the construction of one single building, a part of which is to be used directly by the contracting authority concerned and another part to be operated on a concession basis, for instance to provide parking facilities to the public. It should be clarified that the need to conclude a single contract may be due to reasons both of a technical nature and of an economic nature.

- (30) In the case of mixed contracts which can be separated, contracting authorities and contracting entities are always free to award separate contracts for the separate parts of the mixed contract, in which case the provisions applicable to each separate part should be determined exclusively with respect to the characteristics of that specific contract. On the other hand, where contracting authorities and contracting entities choose to award a contract including both elements of a concession and other elements, whatever their value and whatever the legal regime these elements would otherwise have been subject to, the rules applicable to such cases should be indicated. Special provision should be made for mixed contracts involving defence or security aspects or certain parts not falling within the scope of the TFEU.
- (31) Concessions might be awarded by contracting entities for the purpose of meeting the requirements of several activities, possibly subject to different legal regimes. It should be clarified that the legal regime applicable to a single concession intended to cover several activities should be subject to the rules applicable to the activity for which it is principally intended. Determination of the activity for which the concession is principally intended can be based on an analysis of the requirements which the specific concession must meet, carried out by the contracting entity for the purposes of estimating the concession value and drawing up the concession award documents. In certain cases, it might be objectively impossible to determine for which activity the concession is principally intended. The rules applicable to such cases should be indicated.
- (32) In certain cases, a given contracting authority or contracting entity which is a State, regional or local authority or body governed by public law or a given association thereof might be the sole source for a given service, for the provision of which it enjoys an exclusive right pursuant to national laws, regulations or published administrative provisions which are compatible with the TFEU. It should be clarified that in those situations a contracting authority or contracting entity as referred to in this recital or association thereof may award concessions to such bodies without this Directive being applied.
- (33) It is also appropriate to exclude from the scope of this Directive certain services concessions awarded to economic operators, where they are awarded on the basis of an exclusive right which that operator enjoys under national laws, regulations or published administrative provisions and which has been granted in accordance with the TFEU and Union acts laying down common rules on access to the market applicable to activities referred to in Annex II, since such exclusive right makes it impossible to follow a competitive procedure for the award. By way of derogation and without prejudice to the legal consequences of the general exclusion from the scope of this Directive, concessions as referred to in the second subparagraph of Article 10(1) should be subject to the obligation to publish a concession award notice in view of ensuring basic transparency unless the conditions of such transparency are provided for in sectoral legislation. In order to reinforce transparency, where a Member State grants an exclusive right to an economic operator for the exercise of one of the activities referred to in Annex II, it should inform the Commission thereof.
- (34) For the purposes of this Directive, the notions of essential security interests, military equipment, sensitive equipment, sensitive works and sensitive services should be understood within the meaning of Directive 2009/81/EC of the European Parliament and of the Council <sup>(1)</sup>.
- (35) This Directive should not affect the freedom of Member States to choose, in accordance with Union law, methods for organising and controlling the operation of gambling and betting, including by means of authorisations. It is appropriate to exclude from the scope of this Directive concessions relating to the operation of lotteries awarded by a Member State to an economic operator on the basis of an exclusive right granted by means of a procedure without publicity pursuant to applicable national laws, regulations or published administrative provisions in accordance with the TFEU. That exclusion is justified by the granting of an exclusive right to an economic operator, making a competitive procedure inapplicable, as well as by the need to retain the possibility for Member States to regulate the gambling sector at national level in view of their obligations in terms of protecting public and social order.
- (36) This Directive should not apply to certain emergency services where they are performed by non-profit organisations or associations, since the particular nature of those organisations would be difficult to preserve if the service providers had to be chosen in accordance with the procedures set out in this Directive. However, the exclusion should not be extended beyond that strictly necessary. It should therefore be set out explicitly that patient transport ambulance services should not be excluded. In that context it is furthermore necessary to clarify that CPV Group 601 'Land Transport Services' does not cover ambulance services, to be found in CPV class 8514. It should therefore be clarified that services which are covered by CPV code 85143000-3, consisting exclusively of patient transport ambulance services should be subject to the special regime set out for social and other specific services (the 'light regime'). Consequently, mixed concession contracts for the provision of ambulance services in general would also be subject to the light regime if the value of the patient transport ambulance services were greater than the value of other ambulance services.

<sup>(1)</sup> Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).



- (37) It is appropriate to recall that this Directive applies only to contracting authorities and contracting entities of Member States. Consequently, political parties, not being contracting authorities or contracting entities are not subject to its provisions. However, political parties in some Member States might fall within the notion of bodies governed by public law. However, certain services (such as propaganda film production and propaganda video-tape production) are so inextricably connected to the political views of the service provider when provided in the context of an election campaign, that the service providers are normally selected in a manner which cannot be governed by concession rules. Finally it should be recalled that the statute and funding of European political parties and European Political foundations are subject to rules other than those laid down in this Directive.
- (38) Many contracting entities are organised as an economic group which may comprise a series of separate undertakings; often each of those undertakings has a specialised role in the overall context of the economic group. It is therefore appropriate to exclude certain service and works concessions awarded to an affiliated undertaking having as its principal activity the provision of such services or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service and works concessions awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is also appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded concessions without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.
- (39) Undertakings should be considered to be affiliated where a direct or indirect dominant influence exists between the contracting entity and the undertaking concerned or where both are subject to the dominant influence of another undertaking; in this context, private participation should, per se, not be relevant. The verification of whether an undertaking is affiliated to a given contracting entity should be as easy to perform as possible. Consequently, and given that the possible existence of such direct or indirect dominant influence would already have had to be verified for the purposes of deciding whether the annual accounts of the undertakings and entities concerned should be consolidated, undertakings should be considered to be affiliated where their annual accounts are consolidated. However, Union rules on consolidated accounts are not applicable in a certain number of cases, for instance because of the size of the undertakings involved or because certain conditions relating to their legal form are not met. In such cases, where Directive 2013/34/EU of the European Parliament and of the Council <sup>(1)</sup> is not applicable, it will be necessary to examine whether a direct or indirect dominant influence is present taking into account ownership, financial participation or the rules governing the undertakings.
- (40) Concessions in the water sector are often subject to specific and complex arrangements which require a particular consideration given the importance of water as a public good of fundamental value to all Union citizens. The special features of those arrangements justify exclusions in the field of water from the scope of this Directive. The exclusion covers works and services concessions to provide or operate fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or the supply of drinking water to such networks. Concessions for the disposal or treatment of sewage and for hydraulic engineering projects, irrigation or land drainage (provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations) should also be excluded in so far as they are connected with an excluded activity.
- (41) This Directive should not apply to concessions awarded by contracting entities and intended to permit the performance of an activity referred to in Annex II if, in the Member State in which that activity is carried out, it is directly exposed to competition on markets to which access is not limited, as established following a procedure provided for to this purpose in Directive 2014/25/EU of the European Parliament and of the Council <sup>(2)</sup>. It is therefore appropriate to maintain the procedure, applicable to all sectors, or parts thereof, covered by this Directive that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, the uniform application of Union law in this area. For the sake of legal certainty, it should be clarified that all Decisions adopted prior to the entry
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- <sup>(1)</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).
- <sup>(2)</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (see page 243 of this Official Journal).

into force of this Directive adopted on the basis of Article 30 of Directive 2004/17/EC of the European Parliament and of the Council <sup>(1)</sup> will continue to apply.

- (42) Being addressed to Member States, this Directive does not apply to the award of concessions by international organisations on their own behalf and for their own account. There is, however, a need to clarify to what extent this Directive should be applied to concession awards governed by specific international rules.
- (43) The awarding of concessions for certain audiovisual and radio media services by media providers should allow aspects of cultural or social significance to be taken into account, which renders the application of rules on the award of concessions inappropriate. For those reasons, an exception should therefore be made for service concessions, awarded by the media service providers themselves, for the purchase, development, production or co-production of off-the-shelf programmes and other preparatory services, such as those relating to scripts or artistic performances necessary for the production of the programme. It should also be clarified that that exclusion should apply equally to broadcast media services and on-demand services (non-linear services). However, that exclusion should not apply to the supply of technical equipment necessary for the production, co-production and broadcasting of such programmes.
- (44) This Directive is without prejudice to the Member States' competence to provide for the funding of public service broadcasting in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State in accordance with Protocol No 29 on the system of public broadcasting in Member States annexed to the TFEU and the TEU.
- (45) There is considerable legal uncertainty as to how far contracts concluded between entities within the public sector should be covered by the rules on concessions. The relevant case-law of the Court of Justice of the European Union is interpreted differently between Member States and even between contracting authorities or contracting entities. It is therefore necessary to clarify in which cases contracts concluded within the public sector are not subject to the application of the rules laid down in this Directive. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice of the European Union. The sole

fact that both parties to an agreement are themselves public authorities does not as such rule out the application of the rules laid down in this Directive. However, the application of the rules laid down in this Directive should not interfere with the freedom of public authorities to perform the public service tasks conferred on them by using their own resources, which includes the possibility of cooperation with other public authorities. It should be ensured that any exempted public-public cooperation does not result in a distortion of competition in relation to private economic operators in so far as it places a private provider of services in a position of advantage vis-à-vis its competitors.

- (46) Concessions awarded to controlled legal persons should not be subject to the application of the procedures provided for by this Directive if the contracting authority or contracting entity as referred to point (a) of Article 7(1) exercises a control over the legal person concerned which is similar to that which it exercises over its own departments provided that the controlled legal person carries out more than 80 % of its activities in the performance of tasks entrusted to it by the controlling contracting authority or contracting entity or by other legal persons controlled by that contracting authority or contracting entity, regardless of the beneficiary of the contract performance. The exemption should not extend to situations where there is direct participation by a private economic operator in the capital of the controlled legal person since, in such circumstances, the award of a concession without a competitive procedure would provide the private economic operator with a capital participation in the controlled legal person an undue advantage over its competitors. However, in view of the particular characteristics of public bodies with compulsory membership, such as organisations responsible for the management or exercise of certain public services, this should not apply in cases where the participation of specific private economic operators in the capital of the controlled legal person is made compulsory by a national legislative provision in conformity with the Treaties, provided that such participation is non-controlling and non-blocking and does not confer a decisive influence on the decisions of the controlled legal person. It should further be clarified that the decisive element is only the direct private participation in the controlled legal person.

Therefore, where there is private capital participation in the controlling contracting authority or contracting entity or in the controlling contracting authorities or contracting entities, this does not preclude the award of public contracts to the controlled legal person, without applying the procedures provided for by this Directive, as such participations do not adversely affect competition between private economic operators. It should also be clarified that contracting authorities or contracting entities such as bodies governed by public law, that may have private capital participation, should be in a position to avail themselves of the exemption for horizontal cooperation. Consequently, where all other

<sup>(1)</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1).

conditions in relation to horizontal cooperation are met, the horizontal cooperation exemption should extend to such contracting authorities or contracting entities where the contract is concluded exclusively between contracting authorities or contracting entities.

- (47) Contracting authorities or contracting entities as referred to in point (a) of Article 7(1) should be able to choose to provide their public services jointly by way of cooperation without being obliged to use any particular legal form. Such cooperation might cover all types of activities related to the performance of services and responsibilities assigned to or assumed by the participating authorities, such as mandatory or voluntary tasks of local or regional authorities or services conferred upon specific bodies by public law. The services provided by the various participating authorities or entities need not necessarily be identical; they might also be complementary. Contracts for the joint provision of public services should not be subject to this Directive provided that they are concluded exclusively between contracting authorities or contracting entities, that the implementation of that cooperation is governed solely by considerations relating to the public interest and that no private service provider is placed in a position of advantage vis-à-vis its competitors.

In order to fulfil those conditions, the cooperation should be based on a cooperative concept. Such cooperation does not require all participating authorities to assume the performance of main contractual obligations, provided there are commitments to contribute towards the cooperative performance of the public service in question. In addition, the implementation of the cooperation, including any financial transfers between the participating contracting authorities, should be governed solely by considerations relating to the public interest.

- (48) Certain cases exist where a legal entity acts, under the relevant provisions of national law, as an instrument or technical service to determined contracting authorities or contracting entities, and is obliged to carry out orders given to it by those contracting authorities or contracting entities and has no influence on the remuneration for its performance. In view of its non-contractual nature, such a purely administrative relationship should not fall within the scope of concession award procedures.
- (49) It should be clarified that the notion of 'economic operators' should be interpreted in a broad manner so as to include any persons and/or entities which offer the execution of works, the supply of products or the provision of services on the market, irrespective of the legal form under which they have chosen to operate. Thus, firms, branches, subsidiaries, partnerships, cooperative societies, limited companies, universities, public or private, and other forms of entities should all

fall within the notion of economic operator, whether or not they are 'legal persons' in all circumstances.

- (50) In order to ensure adequate advertising of works and services concessions equal to or above a certain threshold awarded by contracting entities and by the contracting authorities the award of such concessions should be preceded by the compulsory publication of a concession notice in the *Official Journal of the European Union*.
- (51) In view of the detrimental effects on competition, the award of concessions without prior publication should only be permitted in very exceptional circumstances. This exception should be limited to cases in which it is clear from the outset that a publication would not trigger more competition, in particular because there is objectively only one economic operator who can perform the concession. The impossibility of awarding the concession to any other economic operator should not have been created by the contracting authority or contracting entity itself in view of the future award procedure. Furthermore, the availability of adequate substitutes should be assessed thoroughly.
- (52) The duration of a concession should be limited in order to avoid market foreclosure and restriction of competition. In addition, concessions of a very long duration are likely to result in the foreclosure of the market, and may thereby hinder the free movement of services and the freedom of establishment. However, such a duration may be justified if it is indispensable to enable the concessionaire to recoup investments planned to perform the concession, as well as to obtain a return on the invested capital. Consequently, for concessions with a duration greater than five years the duration should be limited to the period in which the concessionaire could reasonably be expected to recoup the investment made for operating the works and services together with a return on invested capital under normal operating conditions, taking into account specific contractual objectives undertaken by the concessionaire in order to deliver requirements relating to, for example, quality or price for users. The estimation should be valid at the moment of the award of the concession. It should be possible to include initial and further investments deemed necessary for the operating of the concession in particular expenditure on infrastructure, copyrights, patents, equipment, logistics, hiring, training of personnel and initial expenses. The maximum duration of the concession should be indicated in the concession documents unless duration is used as an award criterion of the contract. Contracting authorities and contracting entities should always be able to award a concession for a period shorter than the time necessary to recoup the investments, provided that the related compensation does not eliminate the operating risk.

- (53) It is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border dimension, such as certain social, health, or educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for concessions for these services, which takes into account the fact that they are newly regulated. An obligation to publish a prior information notice and a concession award notice of any concession with a value equal to or greater than the threshold established in this Directive is an adequate way to provide information to potential tenderers on business opportunities, as well as to provide information to all interested parties on the number and type of contracts awarded. Furthermore, Member States should put in place appropriate measures with reference to the award of concession contracts for those services, aimed at ensuring compliance with the principles of transparency and equal treatment of economic operators, while allowing contracting authorities and contracting entities to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities are allowed to take into account the need to ensure innovation and, in accordance with Article 14 TFEU and Protocol No 26, a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of users' rights.
- (54) Given the importance of the cultural context and the sensitivity of those services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. This Directive does not prevent Member States from applying specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of concessions, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority or contracting entity, without any limits or quotas, provided such systems ensure sufficient advertising and complies with the principles of transparency and non-discrimination.
- (55) With a view to the appropriate integration of environmental, social and labour requirements into concession award procedures, it is of particular importance that Member States and contracting authorities or contracting entities take relevant measures to ensure compliance with obligations in the fields of environmental, social and labour law that apply at the place where the works are executed or the services provided and result from laws, regulations or administrative provisions, at national and Union level, as well as from collective agreements, provided that such rules, and their application, comply with Union law. Equally, obligations stemming from international agreements ratified by all Member States and listed in this Directive should apply during concession performance. However, this should in no way prevent the application of terms and conditions of employment which are more favourable to workers. The relevant measures should be applied in conformity with the basic principles of Union law, in particular with a view to ensuring equal treatment. Such relevant measures should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council <sup>(1)</sup>, and in a way that ensures equal treatment and does not discriminate directly or indirectly against economic operators and workers from other Member States.
- (56) Services should be considered to be provided at the place where the characteristic performances are executed. When services are provided at a distance, for example services provided by call centres, those services should be considered to be provided at the place where the services are executed, irrespective of the places and Member States to which the services are directed.
- (57) The relevant obligations could be mirrored in concession clauses. It should also be possible to include clauses ensuring compliance with collective agreements in compliance with Union law in concessions. Non-compliance with the relevant obligations could be considered to be grave misconduct on the part of the economic operator concerned, liable to exclusion of that economic operator from the procedure for the award of a concession.
- (58) Control of the observance of the environmental, social and labour law provisions should be performed at the relevant stages of the concession award procedure, when applying the general principles governing the choice of participants and the award of contracts, and when applying the exclusion criteria.
- (59) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public policy, public morality, public security, health, human and animal life, the preservation of plant life or other environmental measures, in particular with a view to sustainable development, provided that those measures are in conformity with the TFEU.

<sup>(1)</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).



- (60) In order to ensure confidentiality during the procedure, contracting authorities and contracting entities, as well as economic operators should not disclose information that has been designated as confidential. Non-compliance with this obligation should trigger the application of adequate sanctions, as and where provided for under the civil or administrative law of the Member States.
- (61) In order to combat fraud, favouritism and corruption and prevent conflicts of interest, Member States should take appropriate measures to ensure the transparency of the award procedure and the equal treatment of all candidates and tenderers. Such measures should in particular aim at eliminating conflicts of interest and other serious irregularities.
- (62) In order to make it possible for all interested operators to submit applications and tenders, contracting authorities and contracting entities should be obliged to respect a minimum time limit for the receipt of such applications and tenders.
- (63) The choice of proportionate, non-discriminatory and fair selection criteria, and their application to economic operators is crucial for the operators' effective access to the economic opportunities related to concessions. In particular, the possibility for a candidate to rely on the capacities of other entities can be decisive to enable the participation of SMEs. Therefore, it is appropriate to provide that the selection criteria should relate exclusively to the professional and technical ability and the financial and economic standing of operators, and be linked to the subject-matter of the contract, should be announced in the concession notice and cannot preclude an economic operator, save in exceptional circumstances, from relying on the capacities of other entities, regardless of the legal nature of its links with those entities, if the latter proves to the contracting authority or contracting entity that it will have at its disposal the necessary resources.
- (64) Furthermore, with a view to the better integration of social and environmental considerations in the concession award procedures, contracting authorities or contracting entities should be allowed to use award criteria or concession performance conditions relating to the works or services to be provided under the concession contract in any respect and at any stage of their life cycles from extraction of raw materials for the product to the stage of disposal of the product, including factors involved in the specific process of production, provision or trading of those works or services or a specific process during a later stage of their life cycle, even where such factors do not form part of their material substance. Criteria and conditions referring to such a production or provision process are for example that services being the object of the concession are provided using energy-efficient machines. In accordance with the case-law of the Court of Justice of the European Union, this also includes award criteria or concession performance conditions relating to the utilisation of fair trade products in the course of the performance of the concession to be awarded. Criteria and conditions relating to trading and its conditions can for instance refer the requirement to pay a minimum price and price premium to subcontractors. Concession performance conditions pertaining to environmental considerations might include, for example, waste minimisation or resource efficiency.
- (65) Award criteria or concession performance conditions concerning social aspects of the production process should be applied in accordance with Directive 96/71/EC, as interpreted by the Court of Justice of the European Union, and should not be chosen or applied in a way that discriminates directly or indirectly against economic operators from other Member States or from third countries parties to the World Trade Organisation Agreement on Government Procurement (the 'GPA') or to Free Trade Agreements to which the Union is party. Thus, requirements concerning the basic working conditions regulated in Directive 96/71/EC, such as minimum rates of pay, should remain at the level set by national legislation or by collective agreements applied in accordance with Union law in the context of that Directive. Concession performance conditions might also be intended to favour the implementation of measures for the promotion of equality of women and men at work, the increased participation of women in the labour market and the reconciliation of work and private life, the protection of the environment or animal welfare and to comply in substance with fundamental International Labour Organisation (ILO) Conventions, and to recruit more disadvantaged persons than are required under national legislation.
- (66) Measures aiming at the protection of health of the staff involved in the process of performance of the concession, the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the concession or training in the skills needed for the concession in question can also be the subject of award criteria or concession performance conditions provided that they relate to the works or services to be provided under the concession. For instance, such criteria or conditions might refer, amongst other things, to the employment of long-term job-seekers, the implementation of training measures for the unemployed or young persons in the course of the performance of the concession to be awarded. In technical specifications contracting authorities can provide such social requirements which directly characterise the product or service in question, such as accessibility for persons with disabilities or design for all users.



- (67) The technical and functional requirements drawn up by contracting authorities and contracting entities need to allow concession award to be opened up to competition. Those requirements should define the characteristics required of works and/or services covered by the concession, and might refer to the specific process of production or provision of the requested works or services, provided that they are linked to the subject-matter of the concession and proportionate to its value and objectives. The specific process of production might include requirements concerning accessibility for people with disabilities, or environmental performance levels. Those technical and functional requirements should be included in the concession documents and should comply with the principles of equal treatment and transparency. They should be drafted such as to avoid artificially narrowing down competition, in particular through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. In any case, tenders comprising works and/or services, including supplies which are incidental to such works and services, complying in an equivalent manner with the characteristics required should be considered by contracting authorities or contracting entities.
- (68) Concessions are usually long-term, complex arrangements where the concessionaire assumes responsibilities and risks traditionally borne by the contracting authorities and contracting entities and normally falling within their remit. For that reason, subject to compliance with this Directive and with the principles of transparency and equal treatment, contracting authorities and contracting entities should be allowed considerable flexibility to define and organise the procedure leading to the choice of concessionaire. However, in order to ensure equal treatment and transparency throughout the awarding process, it is appropriate to provide for basic guarantees as to the awarding process, including information on the nature and scope of the concession, limitation of the number of candidates, the dissemination of information to candidates and tenderers and the availability of appropriate records. It is also necessary to provide that the initial terms of the concession notice should not be deviated from, in order to prevent unfair treatment of any potential candidates.
- (69) Concessions should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests, terrorist offences, money laundering, terrorist financing or trafficking in human beings. Member States should, however, be able to provide for a derogation from these mandatory exclusions in exceptional situations where overriding requirements in the general interest make a contract award indispensable. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union.
- (70) Furthermore, contracting authorities and contracting entities should be given the possibility to exclude economic operators which have proven unreliable, for instance because of serious or repeated violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights. It should be clarified that grave professional misconduct can render an economic operator's integrity questionable and thus render the economic operator unsuitable to receive the award of a concession contract irrespective of whether the economic operator would otherwise have the technical and economical capacity to perform the contract. Bearing in mind that the contracting authority or contracting entity is responsible for the consequences of possible erroneous decisions, contracting authorities and contracting entities should also remain free to consider that there has been grave professional misconduct, where, before a final and binding decision on the presence of mandatory exclusion grounds has been rendered, they can demonstrate by any appropriate means that an economic operator has violated its obligations, including obligations relating to the payment of taxes or social security contributions, unless otherwise provided by national law. Contracting authorities and contracting entities should also be able to exclude candidates or tenderers whose performance in earlier concessions or other contracts with contracting authorities or contracting entities has shown major deficiencies with regard to substantive requirements, for instance failure to deliver or perform, significant shortcomings of the product or service delivered, making it unusable for the intended purpose, or misbehaviour that casts serious doubts as to the reliability of the economic operator. National law should provide for a maximum duration for such exclusions.
- (71) Allowance should, however, be made for the possibility that economic operators can adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour. Those measures might consist in particular of personnel and organisational measures such as the severance of all links with persons or organisations involved in the misbehaviour, appropriate staff reorganisation measures, the implementation of reporting and control systems, the creation of an internal audit structure to monitor compliance and the adoption of internal liability and compensation rules. Where such measures offer sufficient guarantees, the economic operator in question should no longer be excluded on those grounds alone. Economic operators should have the possibility to request that compliance measures taken with a view to possible admission to the concession award procedure be examined. However, it should be left to Member States to determine the exact procedural and substantive conditions applicable in such cases. They should, in particular, be free to decide whether to allow the individual contracting authorities or contracting entities to

carry out the relevant assessments or to entrust other authorities on a central or decentralised level with that task.

- (72) It is important that the observance by subcontractors of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in this Directive provided that such rules, and their application, comply with Union law, be ensured through appropriate actions by the competent national authorities within the scope of their responsibilities and remit, such as labour inspection agencies or environmental protection agencies. It is also necessary to ensure some transparency in the subcontracting chain, as this gives contracting authorities and contracting entities information on who is present at building sites on which works are being performed for them, or on which undertakings are providing services in or at buildings, infrastructures or areas, such as town halls, municipal schools, sports facilities, ports or motorways, for which the contracting authorities are responsible or over which they have an oversight. It should be clarified that the obligation to deliver the required information is in any case incumbent upon the concessionaire, either on the basis of specific clauses, that each contracting authority or contracting entity would have to include in all award procedures, or on the basis of obligations which Member States would impose on the concessionaire by means of generally applicable provisions.

It should also be clarified that the conditions relating to the enforcement of observance of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in this Directive, provided that such rules and their application comply with Union law, should be applied whenever the national law of a Member State provides for a mechanism of joint liability between subcontractors and the concessionaire. Furthermore, it should be stated explicitly that Member States should be able to go further, for instance by extending the transparency obligations or by enabling or requiring contracting authorities or contracting entities to verify that subcontractors are not in any of the situations in which exclusion of economic operators would be warranted. Where such measures are applied to subcontractors, coherence with the provisions applicable to the concessionaire should be ensured so that existence of compulsory exclusion grounds would be followed by a requirement that the concessionaire replace the subcontractor concerned. Where such verification shows the presence of non-compulsory grounds for exclusion, it should be clarified that contracting authorities or contracting entities are able to require the replacement. It should, however, also be set out explicitly that contracting authorities or

contracting entities may be obliged to require the replacement of the subcontractor concerned where exclusion of the concessionaire would be obligatory in such cases. It should also be set out explicitly that Member States remain free to provide for more stringent liability rules under national law.

- (73) Contracting authorities or contracting entities should assess tenders on the basis of one or several award criteria. In order to ensure transparency and equal treatment, criteria for the award of concessions should always comply with some general standards. Those standards may refer to factors which are not purely economic, but influence the value of a tender from the point of view of the contracting authority or contracting entity and permit it to identify an overall economic advantage to the contracting authority or the contracting entity. The criteria should be disclosed in advance to all potential candidates or tenderers, be related to the subject-matter of the contract and should not offer to the contracting authority or contracting entity an unrestricted freedom of choice. They should permit effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. It should be possible to include in award criteria, *inter alia*, environmental, social or innovation-related criteria. Contracting authorities or contracting entities should also indicate award criteria in descending order of importance so as to ensure the equal treatment of potential tenderers by allowing them to be aware of all the elements to be taken into account when they prepare their tenders.

In exceptional cases where the contracting authority or contracting entity receives a tender which proposes an innovative solution with an exceptional level of functional performance which could not have foreseen by a diligent contracting authority or contracting entity, the contracting authority or contracting entity should, exceptionally, be able to modify the order of the award criteria to take into account the new possibilities brought about by that innovative solution, provided such a modification ensures equal treatment of all actual or potential tenderers by issuing a new invitation to tender or, where appropriate, publishing a new concession notice.

- (74) Electronic means of information and communication can greatly simplify the publication of concessions and increase the efficiency, speed and transparency of concession award processes. They could become the standard means of communication and information exchange in concession award procedures, as they greatly enhance the possibilities of economic operators to participate in concession award procedures across the internal market.

- (75) Concession contracts typically involve long-term and complex technical and financial arrangements which are often subject to changing circumstances. It is therefore necessary to clarify the conditions under which modifications of a concession during its performance require a new concession award procedure, taking into account the relevant case-law of the Court of Justice of the European Union. A new concession procedure is required in the case of material changes to the initial concession, in particular to the scope and content of the mutual rights and obligations of the parties, including the distribution of intellectual property rights. Such changes demonstrate the parties' intention to renegotiate essential terms or conditions of that concession. This is the case in particular if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure. Modifications of the concession resulting in a minor change of the contract value up to a certain level value should always be possible without the need to carry out a new concession procedure. To that effect and in order to ensure legal certainty, this Directive should provide for *de minimis* thresholds, below which a new award procedure is not required. Modifications of the concession above those thresholds should be possible without the need to carry out a new award procedure, to the extent that such modifications comply with certain conditions. That might be, for instance, the case of modifications which have become necessary following the need to accommodate requests from contracting authorities or contracting entities, with regard to security requirements and taking into account specificities of such activities as, for instance, operation of mountain sport and touristic facilities, where legislation might evolve to address the related hazards, to the extent such modifications comply with the relevant conditions laid down in this Directive.
- (76) Contracting authorities and contracting entities can be faced with external circumstances that they could not foresee when they awarded the concession, in particular when the performance of the concession covers a long period. In those cases, a certain degree of flexibility is needed to adapt the concession to the circumstances without a new award procedure. The notion of unforeseeable circumstances refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting authority or contracting entity, taking into account its available means, the nature and characteristics of the specific project, good practices in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value. However, this cannot apply in cases where a modification results in an alteration of the nature of the overall concession, for instance by replacing the works to be executed or the services to be provided by something different or by fundamentally changing the type of concession since, in such a situation, a hypothetical influence on the outcome may be assumed. For concessions awarded for purposes of pursuing an activity other than those referred to in Annex II, any increase in value not requiring a new award procedure should not be higher than 50 % of the value of the original concession. Where several successive modifications are made, that limitation should apply to the value of each modification. Such consecutive modifications should not be aimed at circumventing this Directive.
- (77) In line with the principles of equal treatment and transparency, the successful tenderer should not, for instance where a concession is terminated because of deficiencies in the performance, be replaced by another economic operator without reopening the concession to competition. However, the successful tenderer performing the concession should be able, in particular where the concession has been awarded to a group of economic operators, to undergo certain structural changes during the performance of the concession, such as purely internal reorganisations, takeovers, mergers and acquisitions or insolvency. Such structural changes should not automatically require new award procedures for the concession performed by that tenderer.
- (78) Contracting authorities and contracting entities should have the possibility to provide for modifications to a concession by way of review or option clauses, but such clauses should not give them unlimited discretion. This Directive should therefore set out to what extent modifications may be provided for in the initial concession. It should consequently be clarified that sufficiently clearly drafted review or option clauses may for instance provide for price indexations or ensure that, for example, communication equipment to be delivered over a given period continues to be suitable, also in the case of changing communications protocols or other technological changes. It should also be possible under sufficiently clear clauses to provide for adaptations of the concession which are rendered necessary by technical difficulties which have appeared during operation or maintenance. It should also be recalled that concessions could, for instance, include both ordinary maintenance as well as provide for extraordinary maintenance interventions that might become necessary in order to ensure continuation of a public service.
- (79) Contracting authorities and contracting entities might be faced with situations where additional works or services become necessary. In such cases, provided that the conditions set out in this Directive are fulfilled, a modification of the initial concession without a new concession award procedure should be considered to be justified.

- (80) Contracting authorities and contracting entities are sometimes faced with circumstances that require the early termination of the concession in order to comply with obligations under Union law in the field of concessions. Member States should therefore ensure that contracting authorities and contracting entities have the possibility, under the conditions determined by national law, to terminate a concession during its term if so required by Union law.
- (81) In order to ensure adequate judicial protection of candidates and tenderers in the concession award procedures, as well as to make effective the enforcement of this Directive and of the principles of the TFEU, Council Directive 89/665/EEC <sup>(1)</sup> and Council Directive 92/13/EEC <sup>(2)</sup> should also apply to services concessions and to works concessions awarded by both contracting authorities and contracting entities. Directives 89/665/EEC and 92/13/EEC should, therefore, be amended accordingly.
- (82) The processing of personal data pursuant to this Directive should be governed by Directive 95/46/EC of the European Parliament and of the Council <sup>(3)</sup>.
- (83) Member States are required to consistently and systematically monitor the implementation and functioning of rules on the award of concession contracts in order to ensure the efficient and uniform application of Union law.
- (84) The Commission should assess the economic effects on the internal market, in particular in terms of factors such as the cross-border award of contracts, SME participation and transaction costs, resulting from the application of the thresholds set out in this Directive, and from the exclusion set out in Article 12 taking into account the specific structures of the water sector. The Commission should report thereon to the European Parliament and the Council by 18 April 2019. In accordance with Article XXIV(7) of the GPA, the GPA will be the subject of further negotiations three years after its entry into force and periodically thereafter. In that context, the appropriateness of the level of thresholds should be examined in the context of negotiations under the GPA bearing in mind the impact of inflation and transaction costs. The Commission should, where possible and appropriate, consider suggesting an increase of the thresholds applicable under the GPA during the next round of negotiations. In the event of any change to those thresholds, the report made by the Commission should, where appropriate, be followed by a legislative proposal modifying the threshold set out in this Directive.
- (85) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of reviewing the list of acts set out in Annex III, reviewing the technical procedures for the calculation methods concerning the threshold as well as to periodically revise the threshold itself, amending references to the CPV nomenclature and adapting the list of acts set out in Annex X. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (86) In order to ensure uniform conditions concerning the procedure for drawing up and transmission of notices and for sending and publishing data referred to in Annexes V, VII and VIII, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(4)</sup>. The advisory procedure should be used for the adoption of implementing acts, which have an impact neither on the financial situation nor on the nature and scope of the obligations stemming from this Directive. On the contrary, those acts are characterised by a mere administrative purpose and serve to facilitate the application of this Directive.
- (87) Since the objective of this Directive, namely the coordination of laws, regulations and administrative provisions of the Member States applying to certain concession procedures cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
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- <sup>(1)</sup> Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33).
- <sup>(2)</sup> Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14).
- <sup>(3)</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).
- <sup>(4)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).



(88) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a Directive and the corresponding parts

of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I: SUBJECT MATTER, SCOPE, PRINCIPLES AND DEFINITIONS

CHAPTER I: Scope, general principles and definitions

SECTION I: SUBJECT-MATTER, SCOPE, GENERAL PRINCIPLES, DEFINITIONS AND THRESHOLD

Article 1: Subject-matter and scope

Article 2: Principle of free administration by public authorities

Article 3: Principle of equal treatment, non-discrimination and transparency

Article 4: Freedom to define services of general economic interest

Article 5: Definitions

Article 6: Contracting authorities

Article 7: Contracting entities

Article 8: Threshold and methods for calculating the estimated value of concessions

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SECTION II: EXCLUSIONS

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Article 15: Notification of information by contracting entities

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Article 17: Concessions between entities within the public sector

SECTION III: GENERAL PROVISIONS

Article 18: Duration of the concession

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Article 21: Mixed procurement contracts involving defence or security aspects



Article 22: Contracts covering both activities referred to in Annex II and other activities

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#### SECTION IV: SPECIFIC SITUATIONS

Article 24: Reserved concessions

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Article 28: Confidentiality

Article 29: Rules applicable to communication

#### TITLE II: RULES ON THE AWARD OF CONCESSIONS: GENERAL PRINCIPLES AND PROCEDURAL GUARANTEES

##### CHAPTER I: General principles

Article 30: General principles

Article 31: Concession notices

Article 32: Concession award notices

Article 33: Form and manner of publication of notices

Article 34: Electronic availability of concession documents

Article 35: Combating corruption and preventing conflicts of interest

##### CHAPTER II: Procedural guarantees

Article 36: Technical and functional requirements

Article 37: Procedural guarantees

Article 38: Selection of and qualitative assessment of candidates

Article 39: Time limits for receipt of applications and tenders for the concession

Article 40: Provision of information to candidates and tenderers

Article 41: Award criteria

#### TITLE III: RULES ON PERFORMANCE OF CONCESSIONS

Article 42: Subcontracting

Article 43: Modification of contracts during their term

- Article 44: Termination of concessions
- Article 45: Monitoring and Reporting
- TITLE IV: AMENDMENTS OF DIRECTIVES 89/665/EEC AND 92/13/EEC
- Article 46: Amendments to Directive 89/665/EEC
- Article 47: Amendments to Directive 92/13/EEC
- TITLE V: DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS
- Article 48: Exercise of the delegation
- Article 49: Urgency procedure
- Article 50: Committee Procedure
- Article 51: Transposition
- Article 52: Transitional provisions
- Article 53: Monitoring and reporting
- Article 54: Entry into force
- Article 55: Addressees
- ANNEXES:
- ANNEX I: LIST OF THE ACTIVITIES REFERRED TO IN POINT (7) OF ARTICLE 5
- ANNEX II: ACTIVITIES EXERCISED BY CONTRACTING ENTITIES AS REFERRED TO IN ARTICLE 7
- ANNEX III: LIST OF LEGAL ACTS OF THE UNION REFERRED TO IN POINT (B) OF ARTICLE 7(2)
- ANNEX IV: SERVICES REFERRED TO IN ARTICLE 19
- ANNEX V: INFORMATION TO BE INCLUDED IN CONCESSION NOTICES REFERRED TO IN ARTICLE 31
- ANNEX VI: INFORMATION TO BE INCLUDED IN PRIOR INFORMATION NOTICES CONCERNING CONCESSIONS FOR SOCIAL AND OTHER SPECIFIC SERVICES, AS REFERRED TO IN ARTICLE 31(3)
- ANNEX VII: INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES, AS REFERRED TO IN ARTICLE 32
- ANNEX VIII: INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES CONCERNING CONCESSIONS FOR SOCIAL AND OTHER SPECIFIC SERVICES, AS REFERRED TO IN ARTICLE 32
- ANNEX IX: FEATURES CONCERNING PUBLICATION
- ANNEX X: LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN ARTICLE 30(3)
- ANNEX XI: INFORMATION TO BE INCLUDED IN NOTICES OF MODIFICATIONS OF A CONCESSION DURING ITS TERM ACCORDING TO ARTICLE 43

## TITLE I

**SUBJECT-MATTER, SCOPE, PRINCIPLES AND DEFINITIONS**

## CHAPTER I

**Scope, general principles and definitions**

## Section I

**Subject-matter, scope, general principles, definitions and threshold**

## Article 1

**Subject-matter and scope**

1. This Directive establishes rules on the procedures for procurement by contracting authorities and contracting entities by means of a concession, whose value is estimated to be not less than the threshold laid down in Article 8.

2. This Directive applies to the award of works or services concessions, to economic operators by:

(a) Contracting authorities; or

(b) Contracting entities, provided that the works or services are intended for the pursuit of one of the activities referred to in Annex II.

3. The application of this Directive is subject to Article 346 TFEU.

4. Agreements, decisions or other legal instruments that organise the transfer of powers and responsibilities for the performance of public tasks between contracting authorities or contracting entities or groupings of contracting authorities or contracting entities, and which do not provide for remuneration to be given for contractual performance, are considered to be a matter of internal organisation of the Member State concerned and, as such, are not affected in any way by this Directive.

## Article 2

**Principle of free administration by public authorities**

1. This Directive recognises the principle of free administration by national, regional and local authorities in conformity with national and Union law. Those authorities are free to decide how best to manage the execution of works or the provision of services, to ensure in particular a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights in public services.

Those authorities may choose to perform their public interest tasks with their own resources, or in cooperation with other authorities or to confer them upon economic operators.

2. This Directive does not affect Member States' systems of property ownership. In particular it does not require the privatisation of public enterprises providing services to the public.

## Article 3

**Principle of equal treatment, non-discrimination and transparency**

1. Contracting authorities and contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

The design of the concession award procedure, including the estimate of the value, shall not be made with the intention of excluding it from the scope of this Directive or of unduly favouring or disadvantaging certain economic operators or certain works, supplies or services.

2. Contracting authorities and contracting entities shall aim at ensuring the transparency of the award procedure and of the performance of the contract, while complying with Article 28.

## Article 4

**Freedom to define services of general economic interest**

1. This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to. Equally, this Directive does not affect the way in which the Member States organise their social security systems.

2. Non-economic services of general interest shall fall outside the scope of this Directive.

## Article 5

**Definitions**

For the purposes of this Directive the following definitions apply:

(1) 'concessions' means works or services concessions, as defined in points (a) and (b):

(a) 'works concession' means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the execution of works to one or more economic operators the consideration for which consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment;

(b) 'services concession' means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the provision and the management of services other than the execution of works referred to in point (a) to one or more economic operators, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment.

The award of a works or services concession shall involve the transfer to the concessionaire of an operating risk in exploiting those works or services encompassing demand or supply risk or both. The concessionaire shall be deemed to assume operating risk where, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession. The part of the risk transferred to the concessionaire shall involve real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire shall not be merely nominal or negligible;

(2) 'economic operator' means any natural or legal person, or public entity, or a group of such persons or entities, including temporary associations of undertakings, which offers the execution of works and/or a work, the supply of products or the provision of services on the market;

(3) 'candidate' means an economic operator that has sought an invitation or has been invited to take part in a concession award procedure;

(4) 'tenderer' means an economic operator which has submitted a tender;

(5) 'concessionaire' means an economic operator which has been awarded a concession;

(6) 'written' or 'in writing' means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information which is transmitted and stored by electronic means;

(7) 'execution of works' means the execution, or both the design and execution, of works related to one of the activities referred to in Annex I or of a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority or contracting entity exercising a decisive influence on the type or design of the work;

(8) 'a work' means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;

(9) 'electronic means' means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

(10) 'exclusive right' means a right granted by a competent authority of a Member State by means of any law, regulation or published administrative provision which is compatible with the Treaties the effect of which is to limit the exercise of an activity to a single economic operator and which substantially affects the ability of other economic operators to carry out such an activity;

(11) 'special right' means a right granted by a competent authority of a Member State by means of any law, regulation or published administrative provision which is compatible with the Treaties the effect of which is to limit the exercise of an activity to two or more economic operators and which substantially affects the ability of other economic operators to carry out such an activity;

(12) 'concession document' means any document produced or referred to by the contracting authority or contracting entity to describe or determine elements of the concession or the procedure, including the concession notice, the technical and functional requirements, proposed conditions of concession, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;

(13) 'innovation' means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes a new marketing method, or a new organisational method in business practices, workplace organisation or external relations, inter alia, with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy.

## Article 6

**Contracting authorities**

1. For the purposes of this Directive, 'contracting authorities' means State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law other than those authorities, bodies or associations which pursue one of the activities referred to in Annex II and award a concession for the pursuit of one of those activities.

2. 'Regional authorities' includes all authorities of the administrative units listed non-exhaustively in NUTS 1 and 2, as referred to in Regulation (EC) No 1059/2003 of the European Parliament and of the Council <sup>(1)</sup>.

3. 'Local authorities' includes all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to in Regulation (EC) No 1059/2003.

4. 'Bodies governed by public law' means bodies that have all of the following characteristics:

- (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) they have legal personality; and
- (c) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those bodies or authorities; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

## Article 7

**Contracting entities**

1. For the purposes of this Directive, 'contracting entities' means entities which pursue one of the activities referred to in Annex II and award a concession for the pursuit of one of those activities, and which are one of the following:

- (a) State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;

<sup>(1)</sup> Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1).

(b) public undertakings as defined in paragraph 4 of this Article;

(c) entities other than those referred to in points (a) and (b) of this paragraph, but which operate on the basis of special or exclusive rights, granted for the exercise of one of the activities referred to in Annex II.

2. Entities which have been granted special or exclusive rights by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute 'contracting entities' within the meaning of point (c) of paragraph 1. Such procedures shall include:

(a) procurement procedures with a prior call for competition in conformity with Directive 2014/24/EU of the European Parliament and of the Council <sup>(2)</sup> and Directive 2014/25/EU, Directive 2009/81/EC or this Directive;

(b) procedures pursuant to other legal acts of the Union listed in Annex III, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 48 concerning amendments to the list of the Union legal acts set out in Annex III where necessary because of the repeal or amendment of those acts, or because of the adoption of new acts.

4. 'Public undertaking' means any undertaking over which the contracting authorities may exercise, directly or indirectly, a dominant influence by virtue of their ownership thereof, their financial participation therein, or the rules which govern it.

A dominant influence on the part of the contracting authorities shall be presumed in any of the following cases, in which those authorities, directly or indirectly:

(a) hold the majority of the undertaking's subscribed capital;

(b) control the majority of the votes attaching to shares issued by the undertaking;

(c) can appoint more than half of the undertaking's administrative, management or supervisory body.

<sup>(2)</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (see page 65 of this Official Journal).



*Article 8***Threshold and methods for calculating the estimated value of concessions**

1. This Directive shall apply to concessions the value of which is equal to or greater than EUR 5 186 000.

2. The value of a concession shall be the total turnover of the concessionaire generated over the duration of the contract, net of VAT, as estimated by the contracting authority or the contracting entity, in consideration for the works and services being the object of the concession, as well as for the supplies incidental to such works and services.

That estimate shall be valid at the moment at which the concession notice is sent or, in cases where such notice is not provided for, at the moment at which the contracting authority or the contracting entity commences the concession award procedure, for instance by contacting economic operators in relation to the concessions.

For the purpose of paragraph 1, if the value of the concession at the time of the award is more than 20 % higher than its estimated value, the valid estimate shall be the value of the concession at the time of the award.

3. The estimated value of the concession shall be calculated using an objective method specified in the concession documents. When calculating the estimated value of the concession, contracting authorities and contracting entities shall, where applicable, take into account in particular:

- (a) the value of any form of option and any extension of the duration of the concession;
- (b) revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the contracting authority or contracting entity;
- (c) payments or any financial advantage in any form whatsoever made by the contracting authority or contracting entity or any other public authority to the concessionaire, including compensation for compliance with a public service obligation and public investment subsidies;
- (d) the value of grants or any other financial advantages, in any form, from third parties for the performance of the concession;
- (e) revenue from sales of any assets which are part of the concession;

(f) the value of all the supplies and services that are made available to the concessionaire by the contracting authorities or contracting entities, provided that they are necessary for executing the works or providing the services;

(g) any prizes or payments to candidates or tenderers.

4. The choice of the method used to calculate the estimated value of a concession shall not be made with the intention of excluding it from the scope of this Directive. A concession shall not be subdivided with the effect of preventing it from falling within the scope of this Directive, unless justified by objective reasons.

5. Where a proposed work or service may result in concessions being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots.

6. Where the aggregate value of the lots is equal to or exceeds the threshold laid down in this Article, this Directive shall apply to the awarding of each lot.

*Article 9***Revision of the threshold**

1. Every two years from 30 June 2013, the Commission shall verify that the threshold set out in Article 8(1) corresponds to the threshold established in the World Trade Organisation Agreement on Government Procurement (the 'GPA') for works concessions and shall, where necessary, revise that threshold in accordance with this Article.

In accordance with the calculation method set out in the GPA, the Commission shall calculate the value of the threshold on the basis of the average daily value of the euro in terms of the special drawing rights (SDRs), over a period of 24 months terminating on 31 August preceding the revision with effect from 1 January. The value of the threshold thus revised shall, where necessary, be rounded down to the nearest thousand euros so as to ensure that the threshold in force provided for by the GPA, expressed in SDRs, is observed.

2. Every two years from 1 January 2014, the Commission shall determine the values, in the national currencies of the Member States whose currency is not the euro, of the threshold referred to in Article 8(1), revised pursuant to paragraph 1 of this Article.

In accordance with the calculation method set out in the GPA, the determination of such values shall be based on the average daily values of those currencies corresponding to the applicable threshold expressed in euro over the 24 months terminating on 31 August preceding the revision with effect from 1 January.

3. The Commission shall publish the revised threshold referred to in paragraph 1, its corresponding value in the national currencies referred to in the first subparagraph of paragraph 2, and the value determined in accordance with the second subparagraph of paragraph 2, in the *Official Journal of the European Union* at the beginning of the month of November following their revision.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 48 to adapt the methodology set out in the second subparagraph of paragraph 1 of this Article to any change in the methodology provided in the GPA for the revision of the threshold referred to in Article 8(1) and for the determination of the corresponding values in the national currencies of the Member States whose currency is not the euro, as referred to in paragraph 2 of this Article.

The Commission shall also be empowered to adopt delegated acts in accordance with Article 48 to revise the threshold referred to in Article 8(1) pursuant to paragraph 1 of this Article.

5. Where it is necessary to revise that threshold and time constraints prevent use of the procedure set out in Article 48 and therefore imperative grounds of urgency so require, the procedure provided for in Article 49 shall apply to delegated acts adopted pursuant to the second subparagraph of paragraph 4 of this Article.

## Section II

### Exclusions

#### Article 10

#### **Exclusions applicable to concessions awarded by contracting authorities and contracting entities**

1. This Directive shall not apply to services concessions awarded to a contracting authority or to a contracting entity as referred to in point (a) of Article 7(1) or to an association thereof on the basis of an exclusive right.

This Directive shall not apply to services concessions awarded to an economic operator on the basis of an exclusive right which has been granted in accordance with the TFEU and Union legal acts laying down common rules on access to the market applicable to activities referred to in Annex II.

2. By way of derogation from the second subparagraph of paragraph 1 of this Article, where Union sectoral legislation referred to in that subparagraph does not provide for sector-specific transparency obligations, Article 32 shall apply.

Where a Member State grants an exclusive right to an economic operator for the exercise of one of the activities referred to in Annex II, it shall inform the Commission thereof within one month after the award of that exclusive right.

3. This Directive shall not apply to concessions for air transport services based on the granting of an operating licence within the meaning of Regulation (EC) No 1008/2008 of the European Parliament and of the Council<sup>(1)</sup> or to concessions for public passenger transport services within the meaning of Regulation (EC) No 1370/2007.

4. This Directive shall not apply to concessions which the contracting authority or contracting entity is obliged to award or organise in accordance with procedures different from those laid down in this Directive established by any of the following:

(a) a legal instrument creating international law obligations, such as an international agreement concluded in conformity with the TFEU between a Member State and one or more third countries or subdivisions thereof and covering works, supplies or services intended for the joint implementation or exploitation of a project by their signatories;

(b) an international organisation.

This Directive shall not apply to concessions which the contracting authority or contracting entity awards in accordance with procurement rules provided by an international organisation or international financing institution, where the concessions concerned are fully financed by that organisation or institution. In the case of concessions co-financed for the most part by an international organisation or international financing institution, the parties shall agree on applicable procurement procedures.

The Member States shall communicate all legal instruments referred to in point (a) of the first subparagraph of this paragraph to the Commission, which may consult the Advisory Committee on Public Procurement referred to in Article 50.

This paragraph shall not apply to concessions in the fields of defence and security as referred to in Directive 2009/81/EC.

5. This Directive shall not apply to concessions in the fields of defence and security as referred to in Directive 2009/81/EC, which are governed by:

(a) specific procedural rules pursuant to an international agreement or arrangement concluded between one or more Member States and one or more third countries;

<sup>(1)</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

(b) specific procedural rules pursuant to a concluded international agreement or arrangement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;

(c) specific procedural rules of an international organisation purchasing for its purposes, or to concessions which must be awarded by a Member State in accordance with those rules.

6. This Directive shall apply to the awarding of concessions in the fields of defence and security as referred to in Directive 2009/81/EC with the exception of the following:

(a) concessions for which the application of this Directive would oblige a Member State to supply information the disclosure of which it considers contrary to the essential interests of its security; or where the procurement and performance of the concession are declared to be secret or must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in a Member State provided that the Member State has determined that the essential interests concerned cannot be guaranteed by less intrusive measures, such as those referred to in paragraph 7;

(b) concessions awarded in the framework of a cooperative programme referred to in point (c) of Article 13 of Directive 2009/81/EC;

(c) concessions awarded by a government to another government relating to works and services directly linked to military equipment or sensitive equipment, or works and services specifically for military purposes, or sensitive works and sensitive services;

(d) concessions awarded in a third country, carried out when forces are deployed outside the territory of the Union where operational needs require those concessions to be concluded with economic operators located in the area of operations; and

(e) concessions otherwise exempted under this Directive.

7. This Directive shall not apply to concessions not otherwise exempted under paragraph 6 to the extent that the protection of the essential security interests of a Member State cannot be guaranteed by less intrusive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the contracting authority or

contracting entity makes available in a concession award procedure as provided for in this Directive.

8. This Directive shall not apply to service concessions for:

(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;

(b) the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services, that are awarded by audiovisual or radio media service providers, or concessions for broadcasting time or programme provision, that are awarded to audiovisual or radio media service providers. For the purposes of this point, 'audiovisual media services' and 'media service providers' shall, respectively, have the same meaning as in points (a) and (d) of Article 1(1) of Directive 2010/13/EU of the European Parliament and of the Council<sup>(1)</sup>. 'Programme' shall have the same meaning as in point (b) Article 1(1) of that Directive, but shall also include radio programmes and radio programme materials. Furthermore, for the purposes of this provision, 'programme material' shall have the same meaning as 'programme';

(c) arbitration and conciliation services;

(d) any of the following legal services:

(i) legal representation of a client by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC<sup>(2)</sup> in:

— an arbitration or conciliation held in a Member State, a third country or before an international arbitration or conciliation instance, or

— judicial proceedings before the courts, tribunals or public authorities of a Member State or a third country or before international courts, tribunals or institutions;

(ii) legal advice given in preparation of any of the proceedings referred to in point (i) of this point or where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;

<sup>(1)</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

<sup>(2)</sup> Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, 26.3.1977, p. 17).

(iii) document certification and authentication services which must be provided by notaries;

(iv) legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;

(v) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority;

(e) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council<sup>(1)</sup>, central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;

(f) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;

(g) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes: 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 except patient transport ambulance services;

(h) political campaign services, which are covered by CPV codes 79341400-0, 92111230-3 and 92111240-6, when awarded by a political party in the context of an election campaign.

9. This Directive shall not apply to service concessions for lottery services, which are covered by CPV code 92351100-7, awarded by a Member State to an economic operator on the basis of an exclusive right. For the purpose of this paragraph, the notion of exclusive right does not cover exclusive rights as referred to in Article 7(2).

<sup>(1)</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

The grant of such an exclusive right shall be subject to publication in the *Official Journal of the European Union*.

10. This Directive shall not apply to concessions awarded by contracting entities for the pursuit of their activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union.

#### Article 11

##### Specific exclusions in the field of electronic communications

This Directive shall not apply to concessions for the principal purpose of permitting the contracting authorities to provide or exploit public communications networks, or to provide to the public one or more electronic communications services.

For the purposes of this Article, 'public communications network' and 'electronic communications service' shall have the same meaning as in Directive 2002/21/EC of the European Parliament and of the Council<sup>(2)</sup>.

#### Article 12

##### Specific exclusions in the field of water

1. This Directive shall not apply to concessions awarded to:

(a) provide or operate fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water;

(b) supply drinking water to such networks.

2. This Directive shall also not apply to concessions with one, or both of the following subject-matters when they are connected with an activity referred to in paragraph 1:

(a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations; or

(b) the disposal or treatment of sewage.

<sup>(2)</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

### Article 13

#### **Concessions awarded to an affiliated undertaking**

1. For the purposes of this Article, 'affiliated undertaking' means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Directive 2013/34/EU.

2. In the case of entities, which are not subject to Directive 2013/34/EU, 'affiliated undertaking' shall mean any undertaking that:

- (a) may be, directly or indirectly, subject to a dominant influence by the contracting entity;
- (b) may exercise a dominant influence over the contracting entity; or
- (c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

For the purposes of this paragraph, 'dominant influence' shall have the same meaning as in the second subparagraph of Article 7(4).

3. Notwithstanding Article 17 and provided that the conditions in paragraph 4 of this Article are met, this Directive shall not apply to concessions awarded:

- (a) by a contracting entity to an affiliated undertaking; or
- (b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities referred to in Annex II, to an undertaking which is affiliated with one of those contracting entities.

4. Paragraph 3 shall apply to:

- (a) service concessions provided that at least 80 % of the average total turnover of the affiliated undertaking over the preceding three years, taking into account all services provided by that undertaking, derives from the provision of services to the contracting entity or other undertakings with which it is affiliated;
- (b) works concessions provided that at least 80 % of the average total turnover of the affiliated undertaking over

the preceding three years taking into account all works provided by that undertaking, derives from the provision of works to the contracting entity or other undertakings with which it is affiliated.

5. Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it shall be sufficient for that undertaking to show that the turnover referred to in points (a) or (b) of paragraph 4 is credible, in particular by means of business projections.

6. Where more than one undertaking affiliated with the contracting entity with which they form an economic group provides the same or similar services or works, the percentages referred to in paragraph 4 shall be calculated taking into account the total turnover deriving respectively from the provision of services or works by those affiliated undertakings.

### Article 14

#### **Concessions awarded to a joint venture or to a contracting entity forming part of a joint venture**

Notwithstanding Article 17, and provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, this Directive shall not apply to concessions awarded by any of the following:

- (a) a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities referred to in Annex II, to one of these contracting entities; or
- (b) a contracting entity to such a joint venture of which it forms part.

### Article 15

#### **Notification of information by contracting entities**

Contracting entities shall notify to the Commission, if so requested, the following information regarding the application of Article 13(2) and (3) and Article 14:

- (a) the names of the undertakings or joint ventures concerned;
- (b) the nature and value of the concessions involved;



- (c) proof, deemed necessary by the Commission, that the relationship between the undertaking or joint venture to which the concessions are awarded and the contracting entity complies with the requirements of Article 13 or Article 14.

#### Article 16

### Exclusion of activities which are directly exposed to competition

This Directive shall not apply to concessions awarded by contracting entities where, for the Member State in which such concessions are to be performed, it has been established pursuant to Article 35 of Directive 2014/25/EU that the activity is directly exposed to competition in accordance with Article 34 of that Directive.

#### Article 17

### Concessions between entities within the public sector

1. A concession awarded by a contracting authority or a contracting entity as referred to in point (a) of Article 7(1) to a legal person governed by private or public law shall fall outside the scope of this Directive where all of the following conditions are fulfilled:

- (a) the contracting authority or contracting entity exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;
- (b) more than 80 % of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or contracting entity or by other legal persons controlled by that contracting authority or contracting entity; and
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

A contracting authority or contracting entity as referred to in point (a) of Article 7(1) shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph of this paragraph, where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. That control may also be exercised by another legal person, which is itself controlled in the same way by the contracting authority or contracting entity.

2. Paragraph 1 also applies where a controlled legal person which is a contracting authority or contracting entity as referred to in point (a) of Article 7(1) awards a concession to its controlling contracting authority or contracting entity, or to another legal person controlled by the same contracting authority or contracting entity, provided that there is no direct private capital participation in the legal person being awarded the concession with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

3. A contracting authority or a contracting entity as referred to in point (a) of Article 7(1), which does not exercise over a legal person governed by private or public law control within the meaning of paragraph 1 of this Article, may nevertheless award a concession to that legal person without applying this Directive where all of the following conditions are fulfilled:

- (a) the contracting authority or contracting entity as referred to in point (a) of Article 7(1) exercises jointly with other contracting authorities or contracting entities a control over that legal person which is similar to that which they exercise over their own departments;
- (b) more than 80 % of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or contracting entities or by other legal persons controlled by the same contracting authorities or contracting entities; and
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

For the purposes of point (a) of the first subparagraph of this paragraph, contracting authorities or contracting entities as referred to in point (a) of Article 7(1) exercise joint control over a legal person where all of the following conditions are fulfilled:

- (i) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities or contracting entities. Individual representatives may represent several or all of the participating contracting authorities or contracting entities;

(ii) those contracting authorities or contracting entities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person; and

(iii) the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities or contracting entities.

4. A contract concluded exclusively between two or more contracting authorities or contracting entities as referred to in point (a) of Article 7(1) shall fall outside the scope of this Directive where all of the following conditions are fulfilled:

(a) the contract establishes or implements a cooperation between the participating contracting authorities or contracting entities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;

(b) the implementation of that cooperation is governed solely by considerations relating to the public interest; and

(c) the participating contracting authorities or contracting entities perform on the open market less than 20 % of the activities concerned by the cooperation;

5. For the determination of the percentage of activities referred to in point (b) of the first subparagraph of paragraph 1, point (b) of the first subparagraph of paragraph 3 and point (c) of paragraph 4, the average total turnover or an appropriate alternative activity based measure such as costs incurred by the relevant legal person, contracting authority or contracting entity as referred to point (a) of Article 7(1) with respect to services, supplies and works for the three years preceding the concession award shall be taken into consideration.

Where, because of the date on which the relevant legal person, contracting authority or contracting entity was created or commenced activities or because of a reorganisation of its activities, the turnover, or alternative activity based measure such as costs, are either not available for the preceding three years or no longer relevant, it shall be sufficient to show that the measurement of activity is credible, particularly by means of business projections.

### Section III

## General provisions

### Article 18

#### Duration of the concession

1. The duration of concessions shall be limited. The contracting authority or contracting entity shall estimate the duration on the basis of the works or services requested.

2. For concessions lasting more than five years, the maximum duration of the concession shall not exceed the time that a concessionaire could reasonably be expected to take to recoup the investments made in operating the works or services together with a return on invested capital taking into account the investments required to achieve the specific contractual objectives.

The investments taken into account for the purposes of the calculation shall include both initial investments and investments during the life of the concession.

### Article 19

#### Social and other specific services

Concessions for social and other specific services listed in Annex IV falling within the scope of this Directive shall be subject only to the obligations arising from Article 31(3) and Articles 32, 46 and 47.

### Article 20

#### Mixed contracts

1. Concessions which have as their subject-matter both works and services shall be awarded in accordance with the provisions applicable to the type of concession that characterises the main subject-matter of the contract in question.

In the case of mixed concessions consisting partly of social and other specific services listed in Annex IV and partly of other services, the main subject-matter shall be determined according to which of the estimated values of the respective services is the higher.

2. Where the different parts of a given contract are objectively separable, paragraphs 3 and 4 shall apply. Where the different parts of a given contract are objectively not separable, paragraph 5 shall apply.

Where part of a given contract is covered by Article 346 TFEU or Directive 2009/81/EC, Article 21 of this Directive shall apply.

In the case of contracts intended to cover several activities, one of them being subject either to Annex II of this Directive or to Directive 2014/25/EU, the applicable provisions shall be established in accordance with Article 22 of this Directive and Article 6 of Directive 2014/25/EU, respectively.

3. In the case of contracts which have as their subject-matter elements covered by this Directive as well as other elements, contracting authorities and contracting entities may choose to award separate contracts for the separate parts. Where contracting authorities or contracting entities choose to award separate contracts for separate parts, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

Where contracting authorities or contracting entities choose to award a single contract, this Directive shall, unless otherwise provided in paragraph 4 of this Article or in Article 21, apply to the ensuing mixed contract, irrespective of the value of the parts that would otherwise fall under a different legal regime and irrespective of which legal regime those parts would otherwise have been subject to.

4. In the case of mixed contracts containing elements of concessions as well as elements of public contracts covered by Directive 2014/24/EU or contracts covered by Directive 2014/25/EU, the mixed contract shall be awarded in accordance with Directive 2014/24/EU or Directive 2014/25/EU, respectively.

5. Where the different parts of a given contract are objectively not separable, the applicable legal regime shall be determined on the basis of the main subject-matter of that contract.

In the event such contracts involve both elements of a services concession and of a supply contract, the main subject-matter shall be determined according to which of the estimated values of the respective services or supplies is the higher.

#### Article 21

##### **Mixed procurement contracts involving defence or security aspects**

1. In the case of mixed contracts which have as their subject-matter elements of a concession covered by this Directive and procurement or other elements covered by Article 346 TFEU or Directive 2009/81/EC this Article shall apply.

In the case of contracts intended to cover several activities, one of them being subject either to Annex II of this Directive or to Directive 2014/25/EU, and another being covered by Article 346 TFEU or Directive 2009/81/EC, the applicable provisions shall

be established in accordance with, Article 23 of this Directive and Article 26 of 2014/25/EU, respectively.

2. Where the different parts of a given contract are objectively separable, contracting authorities or contracting entities may choose to award separate contracts for the separate parts or to award a single contract.

Where contracting authorities or contracting entities choose to award separate contracts for separate parts, the decision of the legal regime applicable to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

Where contracting authorities or contracting entities choose to award a single contract, the following criteria shall apply to determine the applicable legal regime:

- (a) where part of a given contract is covered by Article 346 TFEU, or different parts are covered by Article 346 TFEU and Directive 2009/81/EC respectively, the contract may be awarded without applying this Directive, provided that the award of a single contract is justified for objective reasons;
- (b) where part of a given contract is covered by Directive 2009/81/EC, the contract may be awarded in accordance with this Directive or in accordance with Directive 2009/81/EC, provided that the award of a single contract is justified for objective reasons.

The decision to award a single contract shall not, however, be taken for the purpose of excluding contracts from the application of either this Directive or Directive 2009/81/EC.

3. Where the different parts of a given contract are objectively not separable, the contract may be awarded without applying this Directive where it includes elements to which Article 346 TFEU applies. Otherwise the contracting authority or contracting entity may choose to award a contract in accordance with this Directive or in accordance with this Directive or in accordance with Directive 2009/81/EC.

#### Article 22

##### **Contracts covering both activities referred to in Annex II and other activities**

1. By way of derogation from Article 20, in the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for the purposes of each separate activity or to award a single contract. Where contracting entities choose to award a separate contract, the decision of which rules apply to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

Notwithstanding Article 20, where contracting entities choose to award a single contract, paragraphs 2 and 3 of this Article shall apply. However, where one of the activities concerned is covered by Article 346 TFEU or Directive 2009/81/EC, Article 23 of this Directive shall apply.

The choice between awarding a single contract or awarding a number of separate contracts shall not be made with the objective of excluding the contract or contracts from the scope of this Directive or, where applicable, from the scope of Directive 2014/24/EU or 2014/25/EU.

2. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.

3. In the case of contracts for which it is objectively impossible to determine for which activity the contract is principally intended, the applicable rules shall be determined in accordance with the following:

- (a) the concession shall be awarded in accordance with the provisions of this Directive applicable to concessions awarded by contracting authorities, if one of the activities for which the contract is intended is subject to the provisions of this Directive applicable to concessions awarded by contracting authorities and the other is subject to the provisions of this Directive applicable to concessions awarded by contracting entities;
- (b) the contract shall be awarded in accordance with Directive 2014/24/EU, if one of the activities for which the contract is intended is subject to this Directive and the other to Directive 2014/24/EU;
- (c) the contract shall be awarded in accordance with this Directive, if one of the activities for which the contract is intended is subject to this Directive and the other is not subject to either this Directive, Directive 2014/24/EU or Directive 2014/25/EU.

#### Article 23

### Concessions covering both activities referred to in Annex II and activities involving defence or security aspects

1. In the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for the purposes of each separate activity or to award a single contract. Where contracting entities choose to award separate contracts for separate parts, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

Notwithstanding Article 21, where contracting entities choose to award a single contract, paragraph 2 of this Article shall apply.

The choice between awarding a single contract or awarding a number of separate contracts shall not, however, be made with the objective of excluding the contract or contracts from the scope of application either of this Directive or Directive 2009/81/EC.

2. In the case of contracts intended to cover an activity which is subject to this Directive and another which is:

(a) covered by Article 346 TFEU; or

(b) subject to Directive 2009/81/EC,

the contracting entity may:

(i) award a contract without applying this Directive in the cases set out under point (a); or

(ii) award a contract either in accordance with this Directive or in accordance with Directive 2009/81/EC, in the cases set out under point (b). The first subparagraph of this paragraph is without prejudice to the thresholds and exclusions provided for by Directive 2009/81/EC.

Contracts referred to in point (b), which also include procurement or other elements which are covered by Article 346 TFEU, may be awarded without applying this Directive.

However, it shall be a condition for the application of this paragraph that the award of a single contract is justified for objective reasons and the decision to award a single contract is not taken for the purpose of excluding contracts from the application of this Directive.

## Section IV

### Specific situations

#### Article 24

### Reserved concessions

Member States may reserve the right to participate in concession award procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such concessions to be performed in the context of sheltered employment programmes, provided that at least 30 % of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers. The concession notice or, in the case of services concessions as defined in Article 19, prior information notice shall make reference to this Article.

*Article 25***Research and development services**

This Directive shall only apply to service concessions for research and development services which are covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 provided that both the following conditions are fulfilled:

- (a) the benefits accrue exclusively to the contracting authority or contracting entity for its use in the conduct of its own affairs; and
- (b) the service provided is wholly remunerated by the contracting authority or contracting entity.

## CHAPTER II

**Principles***Article 26***Economic operators**

1. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the contract is awarded, they would be required to be either natural or legal persons.

Legal persons may be required to indicate, in the tender or in the application, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

2. Groups of economic operators, including temporary associations, may participate in concession award procedures. They shall not be required by contracting authorities or contracting entities to have a specific legal form in order to submit a tender or a request to participate.

Where necessary, contracting authorities or contracting entities may clarify in the concession documents how groups of economic operators shall meet the requirements as to economic and financial standing or technical and professional ability referred to in Article 38 provided that this is justified by objective reasons and is proportionate. Member States may establish standard terms for how groups of economic operators are to meet those requirements. Any conditions for the performance of a concession by such groups of economic

operators, which are different from those imposed on individual participants, shall also be justified by objective reasons and shall be proportionate.

3. Notwithstanding paragraphs 1 and 2, contracting authorities or contracting entities may require groups of economic operators to assume a specific legal form once they have been awarded the contract, to the extent that that change is necessary for the satisfactory performance of the contract.

*Article 27***Nomenclatures**

1. Any references to nomenclatures in the context of the award of concessions shall be made using the 'Common Procurement Vocabulary (CPV)' as adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council <sup>(1)</sup>.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 48 to adapt the CPV codes referred to in this Directive, where changes in the CPV nomenclature must be reflected in this Directive and they do not imply a modification of the scope of this Directive.

*Article 28***Confidentiality**

1. Unless otherwise provided in this Directive or in the national law to which the contracting authority is subject, in particular legislation concerning access to information, and without prejudice to the obligations relating to the advertising of awarded concession contracts and to the information to candidates and tenderers set out in Articles 32 and 40, the contracting authority or contracting entity shall not disclose information forwarded to it by economic operators which they have designated as confidential, including but not limited to, technical or trade secrets and the confidential aspects of tenders.

This Article shall not prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes.

2. The contracting authority or contracting entity may impose on economic operators requirements aimed at protecting the confidential nature of information which it makes available throughout the concession award procedure.

<sup>(1)</sup> Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L 340, 16.12.2002, p. 1).



*Article 29***Rules applicable to communication**

1. Except where use of electronic means is mandatory pursuant to Article 33(2) and Article 34, Member States or contracting authorities and contracting entities may choose one or more of the following means of communication for all communication and information exchange:

- (a) electronic means;
- (b) post or fax;
- (c) oral communication, including telephone, in respect of communications other than the essential elements of a concession award procedure, and provided that the content of the oral communication is documented to a sufficient degree on a durable medium;
- (d) hand delivery certified by an acknowledgement of receipt.

Member States may make mandatory the use of electronic means of communication for concessions, going beyond the obligations established in Article 33(2) and Article 34.

2. The means of communication chosen shall be generally available and non-discriminatory, and shall not restrict economic operators' access to the concession award procedure. The tools and devices to be used for communicating by electronic means, as well as their technical characteristics shall be interoperable with the information and communication technology products in general use.

In all communication, exchange and storage of information, contracting authorities and contracting entities shall ensure that the integrity of data and the confidentiality of applications and tenders are preserved. They shall examine the content of applications and tenders only after the time limit set for submitting them has expired.

## TITLE II

**RULES ON THE AWARD OF CONCESSIONS:****GENERAL PRINCIPLES AND PROCEDURAL GUARANTEES**

## CHAPTER I

**General principles***Article 30***General principles**

1. The contracting authority or contracting entity shall have the freedom to organise the procedure leading to the choice of concessionaire subject to compliance with this Directive.

2. The design of the concession award procedure shall respect the principles laid down in Article 3. In particular during the concession award procedure, the contracting authority or contracting entity shall not provide information in a discriminatory manner which may give some candidates or tenderers an advantage over others.

3. Member States shall take appropriate measures to ensure that in the performance of concession contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 48 to amend the list in Annex X, where necessary, to add new international agreements that have been ratified by all Member States or where the existing international agreements referred to are no longer ratified by all Member States or they are otherwise changed, for instance in respect of their scope, content or denomination.

*Article 31***Concession notices**

1. Contracting authorities and contracting entities wishing to award a concession shall make known their intention by means of a concession notice.

2. Concession notices shall contain the information referred to in Annex V and, where appropriate, any other information deemed useful by the contracting authority or entity, in accordance with the format of standard forms.

3. Contracting authorities and contracting entities wishing to award a concession for social and other specific services listed in Annex IV shall make known their intention of planned concession award through the publication of a prior information notice. Those notices shall contain the information set out in Annex VI.

4. By way of derogation from paragraph 1, contracting authorities or contracting entities shall not be required to publish a concession notice where the works or services can be supplied only by a particular economic operator for any of the following reasons:

- (a) the aim of the concession is the creation or acquisition of a unique work of art or artistic performance;
- (b) the absence of competition for technical reasons;
- (c) the existence of an exclusive right;
- (d) the protection of intellectual property rights and exclusive rights other than those defined in point (10) of Article 5.

The exceptions set out in points (b), (c) and (d) of the first subparagraph only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the concession award.

5. By way of derogation from paragraph 1, the contracting authority or contracting entity shall not be required to publish a new concession notice where no applications, no tenders, no suitable tenders or no suitable applications have been submitted in response to a prior concession procedure, provided that the initial conditions of the concession contract are not substantially altered and that a report is sent to the Commission, where it so requests;

For the purposes of the first subparagraph, a tender shall be considered not to be suitable where it is irrelevant to the concession, being manifestly incapable, without substantial changes, of meeting the contracting authority or contracting entity's needs and requirements as specified in the concession documents.

For the purposes of the first subparagraph, an application shall be considered not to be suitable:

- (a) where the applicant concerned shall or may be excluded pursuant to Article 38(5) to (9) or does not meet the

selection criteria set out by the contracting authority or the contracting entity pursuant to Article 38(1);

- (b) where applications include tenders which are not suitable within the meaning of the second subparagraph.

#### Article 32

##### Concession award notices

1. Not later than 48 days after the award of a concession, the contracting authorities and contracting entities shall, in accordance with the procedures laid down in Article 33, send a concession award notice on the results of the concession award procedure. For social and other specific services listed in Annex IV, such notices may however be grouped on a quarterly basis. In that case they shall send the grouped notices within 48 days of the end of each quarter.

2. Concession award notices shall contain the information set out in Annex VII, or in relation to concessions for social and other specific services listed in Annex IV, the information set out in Annex VIII, and shall be published in accordance with Article 33.

#### Article 33

##### Form and manner of publication of notices

1. Concession notices, concession award notices and the notice referred to in the second subparagraph of Article 43(1) shall include the information set out in Annexes V, VII and VIII and in the format of standard forms, including standard forms for corrigenda.

The Commission shall establish those standard forms by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 50.

2. The notices referred to in paragraph 1 shall be drawn up, transmitted by electronic means to the Publications Office of the European Union and published in accordance with Annex IX. The Publications Office of the European Union shall give the contracting authority or contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of publication which shall constitute proof of publication. Notices shall be published not later than five days after they are sent. The costs of publication of the notices by the Publications Office of the European Union shall be borne by the Union.

3. Concession notices shall be published in full in one or more of the official languages of the institutions of the Union as chosen by the contracting authority or contracting entity. That language version or those language versions shall constitute the sole authentic text or texts. A summary of the important elements of each notice shall be published in the other official languages of the institutions of the Union.

4. Concession notices and concession award notices shall not be published at national level before publication by the Publications Office of the European Union unless publication at Union level does not take place 48 hours after the Publications Office of the European Union confirms receipt by the contracting authority or the contracting entity of the notice as referred to in paragraph 2. Concession notices and concession award notices published at national level shall not contain information other than that contained in the notices dispatched to the Publications Office of the European Union but shall indicate the date of dispatch of the notice to the Publications Office of the European Union.

#### Article 34

##### **Electronic availability of concession documents**

1. Contracting authorities and contracting entities shall offer by electronic means unrestricted and full direct access free of charge to the concession documents from the date of publication of a concession notice or, where the concession notice does not include the invitation to submit tenders, from the date on which an invitation to submit tenders was sent. The text of the concession notice or of these invitations shall specify the internet address at which the concession documents are accessible.

2. Where, in duly justified circumstances, due to exceptional security, or technical reasons or due to the particularly sensitive nature of commercial information requiring a very high level of protection, unrestricted and full direct access free of charge by electronic means to certain concession documents cannot be offered, contracting authorities or contracting entities shall indicate in the notice or the invitation to submit a tender that the concession documents concerned will be transmitted by other means than electronic means and the time limit for the receipt of tenders shall be prolonged.

3. Provided that it has been requested in good time, the contracting authorities and contracting entities or competent departments shall supply to all applicants or tenderers taking part in the concession award procedure additional information relating to the concession documents not later than six days before the deadline fixed for the receipt of tenders.

#### Article 35

##### **Combating corruption and preventing conflicts of interest**

Member States shall require contracting authorities and contracting entities to take appropriate measures to combat

fraud, favouritism and corruption and to effectively prevent, identify and remedy conflicts of interest arising in the conduct of concession award procedures, so as to avoid any distortion of competition and to ensure the transparency of the award procedure and the equal treatment of all candidates and tenderers.

The concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or entity who are involved in the conduct of the concession award procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the concession award procedure.

With regard to conflicts of interest, the measures adopted shall not go beyond what is strictly necessary to prevent a potential conflict of interest or eliminate a conflict of interest that has been identified.

#### CHAPTER II

##### **Procedural guarantees**

#### Article 36

##### **Technical and functional requirements**

1. Technical and functional requirements shall define the characteristics required of the works or services that are the subject-matter of the concession. They shall be set out in the concession documents.

Those characteristics may also refer to the specific process of production or provision of the requested works or services provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives. The characteristics may for instance include quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, terminology, symbols, testing and test methods, marking and labelling, or user instructions.

2. Unless justified by the subject-matter of the contract, technical and functional requirements shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific production with the effect of favouring or eliminating certain undertakings or certain products. Such a reference shall be permitted, on an exceptional basis, where a sufficiently

precise and intelligible description of the subject-matter of the contract is not possible. Such reference shall be accompanied by the words 'or equivalent'.

3. A contracting authority or contracting entity shall not reject a tender on the grounds that the works and services tendered for do not comply with the technical and functional requirements to which it has referred, once the tenderer proves in its tender, by any appropriate means, that the solutions it has proposed satisfied in an equivalent manner the technical and functional requirements.

#### Article 37

##### Procedural guarantees

1. Concessions shall be awarded on the basis of the award criteria set out by the contracting authority or contracting entity in accordance with Article 41, provided that all of the following conditions are fulfilled:

- (a) the tender complies with the minimum requirements set, where applicable, by the contracting authority or contracting entity;
- (b) the tenderer complies with the conditions for participation as referred to in Article 38(1); and
- (c) the tenderer is not excluded from participating in the award procedure in accordance with Article 38(4) to (7), and subject to Article 38(9).

The minimum requirements referred to in point (a) shall contain conditions and characteristics (particularly technical, physical, functional and legal) that any tender should meet or possess.

2. The contracting authority or contracting entity shall provide:

- (a) in the concession notice, a description of the concession and of the conditions of participation;
- (b) in the concession notice, in the invitation to submit a tender or in other concession documents, a description of the award criteria and, where applicable, the minimum requirements to be met.

3. The contracting authority or contracting entity may limit the number of candidates or tenderers to an appropriate level,

on condition that this is done in a transparent manner and on the basis of objective criteria. The number of candidates or tenderers invited shall be sufficient to ensure genuine competition.

4. The contracting authority or contracting entity shall communicate the description of the envisaged organisation of the procedure and an indicative completion deadline to all participants. Any modification shall be communicated to all participants and, to the extent that they concern elements disclosed in the concession notice, advertised to all economic operators.

5. The contracting authority or contracting entity shall provide for appropriate recording of the stages of the procedure using the means it judges appropriate, subject to compliance with Article 28(1).

6. The contracting authority or contracting entity may hold negotiations with candidates and tenderers. The subject-matter of the concession, the award criteria and the minimum requirements shall not be changed during the course of the negotiations.

#### Article 38

##### Selection and qualitative assessment of candidates

1. Contracting authorities and contracting entities shall verify the conditions for participation relating to the professional and technical ability and the financial and economic standing of the candidates or tenderers, on the basis of self-declarations, reference or references to be submitted as proof in accordance with the requirements specified in the concession notice that shall be non-discriminatory and proportionate to the subject-matter of the concession. The conditions for participation shall be related and proportionate to the need to ensure the ability of the concessionaire to perform the concession, taking into account the subject-matter of the concession and the purpose of ensuring genuine competition.

2. With a view to meeting the conditions for participation laid down in paragraph 1, an economic operator may, where appropriate and for a particular concession, rely on the capacities of other entities, regardless of the legal nature of its links with them. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority or the contracting entity that it will have at its disposal, throughout the period of the concession, the necessary resources, for example, by producing a commitment by those entities to that effect. With regard to financial standing, the contracting authority or the contracting entity may require that the economic operator and those entities are jointly liable for the execution of the contract.

3. Under the same conditions, a group of economic operators as referred to in Article 26 may rely on the capacities of participants in the group or of other entities.

4. Contracting authorities and contracting entities as referred to in point (a) of Article 7(1) shall exclude an economic operator from participation in a concession award procedure where they have established that that economic operator has been the subject of a conviction by final judgment for one of the following reasons:

- (a) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA <sup>(1)</sup>;
- (b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union <sup>(2)</sup> and Article 2(1) of Council Framework Decision 2003/568/JHA <sup>(3)</sup>, as well as corruption as defined in the national law of the contracting authority or entity or the economic operator;
- (c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests' <sup>(4)</sup>;
- (d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA <sup>(5)</sup> respectively, or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;
- (e) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council <sup>(6)</sup>;

- (f) child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council <sup>(7)</sup>.

The obligation to exclude an economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.

Contracting entities other than those referred to in point (a) of Article 7(1) may exclude an economic operator from participation in a concession award procedure where they are aware that that economic operator has been the subject of a conviction by a final judgment for any of the reasons listed in the first subparagraph of this paragraph.

5. Contracting authorities and contracting entities as referred to in point (a) of Article 7(1) shall exclude the economic operator from participation in a concession award procedure where it is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority or contracting entity.

Furthermore, contracting authorities and contracting entities as referred to in point (a) of Article 7(1) may exclude or may be required by Member States to exclude from participation in a concession award procedure an economic operator where the contracting authority or entity can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.

This paragraph shall no longer apply when the economic operator has fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

6. Member States may provide for a derogation from the mandatory exclusion provided for in paragraphs 4 and 5, on an exceptional basis, for overriding reasons relating to the public interest such as public health or protection of the environment.

<sup>(1)</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

<sup>(2)</sup> OJ C 195, 25.6.1997, p. 1.

<sup>(3)</sup> Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).

<sup>(4)</sup> OJ C 316, 27.11.1995, p. 48.

<sup>(5)</sup> Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

<sup>(6)</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

<sup>(7)</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).



Member States may also provide for a derogation from the mandatory exclusion provided for in paragraph 5, where an exclusion would be clearly disproportionate, in particular where only minor amounts of taxes or social security contributions are unpaid or where the economic operator was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions at such time that it did not have the possibility to take measures as provided for in the third subparagraph of paragraph 5 before expiration of the deadline for submitting its application.

7. Contracting authorities or contracting entities may exclude or may be required by Member State to exclude from participation in a concession award any economic operator if one of the following conditions is fulfilled:

- (a) where it can demonstrate by any appropriate means any violation of applicable obligations referred to in Article 30(3);
- (b) where the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws and regulations; the contracting authority or the contracting entity may, however, decide not to exclude or be required by the Member State not to so exclude an economic operator which is in one of the above situations where it has established that the economic operator in question will be able to perform the concession, taking into account the applicable national rules and measures on the continuation of business in the case of those situations;
- (c) where the contracting authority can demonstrate by any appropriate means that the economic operator is guilty of a grave professional misconduct, which renders its integrity questionable;
- (d) where a conflict of interest within the meaning of the second paragraph of Article 35, cannot be effectively remedied by any other less intrusive measure;
- (e) where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;
- (f) where the economic operator has shown significant or persistent deficiencies in the performance of a substantive

requirement under a prior concession or a prior contract with a contracting authority or with a contracting entity as defined in this Directive or in Directive 2014/25/EU which led to early termination of that prior contract, damages or other comparable sanctions;

- (g) where the economic operator has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, has withheld such information or is unable to submit the required documents supporting such information;
- (h) where the economic operator has undertaken to unduly influence the decision-making process of the contracting authority or contracting entity, to obtain confidential information that may confer upon it undue advantages in the concession award procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award;
- (i) in the case of concessions in the fields of defence and security as referred to in Directive 2009/81/EC, where the economic operator has been found, on the basis of any means of evidence, including protected data sources, not to possess the reliability necessary to exclude risks to the security of the Member State.

8. Contracting authorities and contracting entities as referred to in point (a) of Article 7(1) shall at any time during the procedure exclude an economic operator where it turns out that the economic operator in question is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraph 4 of this Article and the first subparagraph of paragraph 5 of this Article.

At any time during the procedure, contracting authorities and contracting entities may exclude or may be required by Member States to exclude an economic operator where it turns out that the economic operator in question is, in view of acts committed or omitted either before or during procedure, in one of the situations referred to in the second subparagraph of paragraph 5 and in paragraph 7.

9. Any economic operator that is in one of the situations referred to in paragraphs 4 and 7 may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of the relevant ground for exclusion. If such evidence is considered to be sufficient, the economic operator concerned shall not be excluded from the procedure.

For this purpose, the economic operator shall prove that it has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct. The measures taken by the economic operators shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered to be insufficient, the economic operator concerned shall receive a statement of the reasons for that decision.

An economic operator which has been excluded by a final judgment from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided under this paragraph during the period of exclusion resulting from that judgment in the Member States where the judgment is effective.

10. By law, regulation or administrative provision and having regard for Union law, Member States shall specify, the implementing conditions for this Article. They shall in particular, determine the maximum period of exclusion if no measures as specified in paragraph 9 are taken by the economic operator to demonstrate its reliability. Where the period of exclusion has not been set by final judgment, that period shall not exceed five years from the date of the conviction by final judgment in the cases referred to in paragraph 4 and three years from the date of the relevant event in the cases referred to in paragraph 7.

#### Article 39

#### **Time limits for receipt of applications and tenders for the concession**

1. When fixing the time limits for the receipt of applications or of tenders contracting authorities or contracting entities shall take account in particular of the complexity of the concession and the time required for drawing up tenders or applications without prejudice to the minimum time limits set out in this Article.

2. Where applications or tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the concession award documents, the time limits for the receipt of applications for the concession or for the receipt of tenders, shall be fixed so that all economic operators concerned may be aware of all the information needed to produce applications or tenders and, in any event, shall be longer than the minimum time limits set out in paragraphs 3 and 4.

3. The minimum time limit for the receipt of applications whether or not including tenders for the concession shall be 30 days from the date on which the concession notice was sent.

4. Where the procedure takes place in successive stages the minimum time limit for the receipt of initial tenders shall be 22 days from the date on which the invitation to tender is sent.

5. The time limit for receipt of tenders may be reduced by five days where the contracting authority or contracting entity accepts that tenders may be submitted by electronic means in conformity with Article 29.

#### Article 40

#### **Provision of information to candidates and tenderers**

1. The contracting authority or contracting entity shall as soon as possible inform each candidate and tenderer of decisions taken concerning the award of a concession, including the name of the successful tenderer, the grounds for any decision to reject his application or tender and the grounds for any decision not to award a contract for which there has been publication of a concession notice or to recommence the procedure.

Moreover, on request from the party concerned, the contracting authority or contracting entity shall as quickly as possible, and in any case within 15 days from receipt of a written request inform any tenderers that have made an admissible tender of the characteristics and relative advantages of the tender selected.

2. The contracting authority or contracting entity may decide to withhold certain information referred to in paragraph 1, regarding the contract, where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between such operators.

#### Article 41

#### **Award criteria**

1. Concessions shall be awarded on the basis of objective criteria which comply with the principles set out in Article 3 and which ensure that tenders are assessed in conditions of effective competition so as to identify an overall economic advantage for the contracting authority or the contracting entity.

2. The award criteria shall be linked to the subject-matter of the concession, and shall not confer an unrestricted freedom of choice on the contracting authority or the contracting entity. They may include, inter alia, environmental, social or innovation-related criteria.

Those criteria shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified.

The contracting authority or the contracting entity shall verify whether tenders properly meet the award criteria.

3. The contracting authority or the contracting entity shall list the criteria in descending order of importance.

Notwithstanding the first subparagraph, where the contracting authority or contracting entity receive a tender which proposes an innovative solution with an exceptional level of functional performance which could not have been foreseen by a diligent contracting authority or contracting entity, the contracting authority or contracting entity may, exceptionally, modify the ranking order of the award criteria to take into account that innovative solution. In that case, the contracting authority or the contracting entity shall inform all tenderers about the modification of the order of importance and shall issue a new invitation to submit tenders, in respect of the minimal time limits referred to in Article 39(4). Where the award criteria have been published at the moment of the publication of the concession notice, the contracting authority or entity shall publish a new concession notice, in respect of the minimum time limits referred to in Article 39(3).

The modification of the ranking order shall not result in discrimination.

### TITLE III

## RULES ON PERFORMANCE OF CONCESSIONS

### Article 42

#### Subcontracting

1. Observance of the obligations referred to in Article 30(3) by subcontractors shall be ensured through appropriate action by the competent national authorities acting within the scope of their responsibility and remit.

2. In the concession documents, the contracting authority or the contracting entity may ask or may be required by a Member State to ask the tenderer or the applicant to indicate in its tender any share of the concession it may intend to subcontract to third parties and any proposed subcontractors. This paragraph shall be without prejudice to the question of the main concessionaire's liability.

3. In the case of works concessions and in respect of services to be provided at the facility under the oversight of the contracting authority or the contracting entity, after the award of the concession and at the latest when the performance of the concession commences, the contracting authority or the contracting entity shall require the concessionaire to indicate to the contracting authority or the contracting entity the name, contact details and legal representatives of its subcontractors, involved in such works or services, insofar as known at that point in time. The contracting authority or the contracting entity shall require the concessionaire to notify it of any changes to that information during the course of the

concession as well as of the required information for any new subcontractors which it subsequently involves in such works or services.

Notwithstanding the first subparagraph Member States may impose the obligation to deliver the required information directly on the concessionaire.

The first and second subparagraphs shall not apply to suppliers.

Contracting authorities and contracting entities may extend or may be required by Member States to extend the obligations provided for in the first subparagraph to for instance:

- (a) services concessions other than those concerning services to be provided at the facilities under the oversight of the contracting authority or the contracting entity or to suppliers involved in works or services concessions;
- (b) subcontractors of the concessionaire's subcontractors or further down the subcontracting chain.

4. With the aim of avoiding breaches of the obligations referred to in Article 30(3), appropriate measures may be taken, such as:

- (a) Where the national law of a Member State provides for a mechanism of joint liability between subcontractors and the concessionaire, the Member State concerned shall ensure that the relevant rules are applied in compliance with the conditions set out in Article 30(3).
- (b) Contracting authorities and contracting entities may verify or may be required by Member States to verify whether there are grounds for exclusion of subcontractors pursuant to Article 38(4) to (10). In such cases, the contracting authority or the contracting entity shall require the economic operator to replace a subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion. The contracting authority or the contracting entity may require or may be required by a Member State to require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion.

5. Member States may provide for more stringent liability rules under national law.

6. Member States having chosen to provide for measures pursuant to paragraphs 1 and 3 shall, by law, regulation or administrative provisions and having regard to Union law, specify the implementing conditions for those measures. In so doing, Member States may limit their applicability, for instance in respect of certain types of contracts, certain categories of contracting authorities, contracting entities or economic operators or as of certain amounts.

#### Article 43

##### Modification of contracts during their term

1. Concessions may be modified without a new concession award procedure in accordance with this Directive in any of the following cases:

- (a) where the modifications, irrespective of their monetary value, have been provided for in the initial concession documents in clear, precise and unequivocal review clauses, which may include value revision clauses, or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the concession;
- (b) for additional works or services by the original concessionaire that have become necessary and that were not included in the initial concession where a change of concessionaire:
  - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial concession; and
  - (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority or contracting entity.

However, in the case of concessions awarded by a contracting authority, for the purposes of pursuing an activity other than those referred to in Annex II, any increase in value shall not exceed 50 % of the value of the original concession. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive;

- (c) where all of the following conditions are fulfilled:
  - (i) the need for modification has been brought about by circumstances which a diligent contracting authority or contracting entity could not foresee;

- (ii) the modification does not alter the overall nature of the concession;

- (iii) in the case of concessions awarded by contracting authority, for the purposes of pursuing an activity other than those referred to in Annex II, any increase in value is not higher than 50 % of the value of the initial concession. Where several successive modifications are made, this limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive;

- (d) where a new concessionaire replaces the one to which the contracting authority or the contracting entity had initially awarded the concession as a consequence of either:

- (i) an unequivocal review clause or option in conformity with point (a);

- (ii) universal or partial succession into the position of the initial concessionaire, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive; or

- (iii) in the event that the contracting authority or contracting entity itself assumes the main concessionaire's obligations towards its subcontractors where this possibility is provided for under national legislation;

- (e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph 4.

Contracting authorities or contracting entities having modified a concession in the cases set out under points (b) and (c) of this paragraph shall publish a notice to that effect in the *Official Journal of the European Union*. Such notice shall contain the information set out in Annex XI and shall be published in accordance with Article 33.

2. Furthermore, and without any need to verify whether the conditions set out under points (a) to (d) of paragraph 4 are met, concessions may equally be modified without a new concession award procedure in accordance with this Directive being necessary where the value of the modification is below both of the following values:

- (i) the threshold set out in Article 8; and

(ii) 10 % of the value of the initial concession.

However, the modification may not alter the overall nature of the concession. Where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications.

3. For the purpose of the calculation of the value referred to in paragraph 2 and points (b) and (c) of paragraph 1, the updated value shall be the reference value when the concession includes an indexation clause. If the concession does not include an indexation clause, the updated value shall be calculated taking into account the average inflation in the Member State of the contracting authority or of the contracting entity.

4. A modification of a concession during its term shall be considered to be substantial within the meaning of point (e) of paragraph 1, where it renders the concession materially different in character from the one initially concluded. In any event, without prejudice to paragraphs 1 and 2, a modification shall be considered to be substantial where one or more of the following conditions is met:

- (a) the modification introduces conditions which, had they been part of the initial concession award procedure, would have allowed for the admission of applicants other than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the concession award procedure;
- (b) the modification changes the economic balance of the concession in favour of the concessionaire in a manner which was not provided for in the initial concession;
- (c) the modification extends the scope of the concession considerably;
- (d) where a new concessionaire replaces the one to which the contracting authority or contracting entity had initially awarded the concession in other cases than those provided for under point (d) of paragraph 1.

5. A new concession award procedure in accordance with this Directive shall be required for other modifications of the provisions of a concession during its term than those provided for under paragraphs 1 and 2.

#### Article 44

##### Termination of concessions

Member States shall ensure that contracting authorities and contracting entities have the possibility, under the conditions

determined by the applicable national law, to terminate a concession during its term, where one or more of the following conditions is fulfilled:

- (a) a modification of the concession has taken place, which would have required a new concession award procedure pursuant to Article 43;
- (b) the concessionaire has been, at the time of concession award, in one of the situations referred to in Article 38(4) and should therefore have been excluded from the concession award procedure;
- (c) the Court of Justice of the European Union finds, in a procedure pursuant to Article 258 TFEU, that a Member State has failed to fulfil its obligations under the Treaties by the fact that a contracting authority or contracting entity belonging to that Member State has awarded the concession in question without complying with its obligations under the Treaties and this Directive.

#### Article 45

##### Monitoring and reporting

1. In order to ensure correct and efficient implementation, Member States shall ensure that at least the tasks set out in this Article are performed by one or more authorities or structures. They shall indicate to the Commission all authorities, or structures competent for these tasks.

2. Member States shall ensure that the application of rules for the award of concession contracts is monitored. Where monitoring authorities or structures identify specific violations, such as fraud, corruption, conflict of interest and other serious irregularities, or systemic problems, they shall be empowered to indicate those violations or problems to national auditing authorities, courts or tribunals or other appropriate authorities or structures, such as the ombudsman, national parliaments or committees thereof.

3. The results of the monitoring activities pursuant to paragraph 2 shall be made available to the public through appropriate means of information.

The Commission may, at the most every three years, request that Member States transmit to the Commission a monitoring report covering an overview of the most frequent causes of incorrect application of the rules for the award of concession contracts, including possible structural or recurring problems in the application of the rules, including possible cases of fraud and other illegal behaviour.



4. Member States shall ensure that information and guidance on the interpretation and application of Union law for the award of concession contracts is available free of charge to assist contracting authorities and entities and economic operators in correctly applying the Union rules.

#### TITLE IV

### AMENDMENTS TO DIRECTIVES 89/665/EEC AND 92/13/EEC

#### Article 46

#### Amendments to Directive 89/665/EEC

Directive 89/665/EEC is amended as follows:

(1) in Article 1, paragraph 1 is replaced by the following:

‘1. This Directive applies to contracts referred to in Directive 2014/24/EU of the European Parliament and of the Council (\*) unless such contracts are excluded in accordance with Articles 7, 8, 9, 10, 11, 12, 15, 16, 17 and 37 of that Directive.

This Directive also applies to concessions awarded by contracting authorities, referred to in Directive 2014/23/EU of the European Parliament and of the Council (\*\*) unless such concessions are excluded in accordance with Articles 10, 11, 12, 17 and 25 of that Directive.

Contracts within the meaning of this Directive include public contracts, framework agreements, works and services concessions and dynamic purchasing systems.

Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2014/24/EU or Directive 2014/23/EU, decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Union law in the field of public procurement or national rules transposing that law.

(\*) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (OJ L 94, 28.3.2014, p. 65).

(\*\*) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contract (OJ L 94, 28.3.2014, p. 1).;

(2) in Article 2a, paragraph 2 is amended as follows:

(a) the first subparagraph is replaced by the following:

‘A contract may not be concluded following the decision to award a contract falling within the scope of Directive 2014/24/EU or Directive 2014/23/EU before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.’;

(b) in the fourth subparagraph, the first indent is replaced by the following:

‘— a summary of the relevant reasons as set out in Article 55(2) of Directive 2014/24/EU, subject to Article 55(3) of that Directive, or in the second subparagraph of Article 40(1) of Directive 2014/23/EU, subject to Article 40(2) of that Directive, and’;

(3) Article 2b is amended as follows:

(a) in the first paragraph:

(i) point (a) is replaced by the following:

‘(a) if Directive 2014/24/EU or, where relevant, Directive 2014/23/EU does not require prior publication of a contract notice in the *Official Journal of the European Union*;’;

(ii) point (c) is replaced by the following:

‘(c) in the case of a contract based on a framework agreement as provided for in Article 33 of Directive 2014/24/EU and in the case of a specific contract based on a dynamic purchasing system as provided for in Article 34 of that Directive.’;

(b) in the second paragraph, the first and the second indent are replaced by the following:

‘— there is an infringement of point (c) of Article 33(4) or of Article 34(6) of Directive 2014/24/EU, and

- the contract value is estimated to be equal to or to exceed the thresholds set out in Article 4 of Directive 2014/24/EU;
- (4) in Article 2c, the words ‘Directive 2004/18/EC’ are replaced by the words ‘Directive 2014/24/EU or Directive 2014/23/EU’;
- (5) Article 2d is amended as follows:
- (a) in paragraph 1:
- (i) point (a) is replaced by the following:
- ‘(a) if the contracting authority has awarded a contract without prior publication of a contract notice in the *Official Journal of the European Union* without this being permissible in accordance with Directive 2014/24/EU or Directive 2014/23/EU’;
- (ii) in point (b) the words ‘Directive 2004/18/EC’ are replaced by the words ‘Directive 2014/24/EU or Directive 2014/23/EU’;
- (b) in paragraph 4, the first indent is replaced by the following:
- ‘— the contracting authority considers that the award of a contract without prior publication of a contract notice in the *Official Journal of the European Union* is permissible in accordance with Directive 2014/24/EU or Directive 2014/23/EU’;
- (c) in paragraph 5, the first indent is replaced by the following:
- ‘— the contracting authority considers that the award of a contract is in accordance with point (c) of Article 33(4) or with Article 34(6) of Directive 2014/24/EU’;
- (6) in Article 2f(1), point (a) is replaced by the following:
- ‘(a) before the expiry of at least 30 calendar days with effect from the day following the date on which:
- the contracting authority published a contract award notice in accordance with Articles 50 and 51 of Directive 2014/24/EU or with Articles 31 and 32 of Directive 2014/23/EU, provided that this notice includes justification of the decision of the contracting authority to award the contract without prior publication of a contract notice in the *Official Journal of the European Union*, or
- the contracting authority informed the tenderers and candidates concerned of the conclusion of the contract, provided that this information contains a summary of the relevant reasons as set out in Article 55(2) of Directive 2014/24/EU, subject to Article 55(3) of that Directive or in the second subparagraph of Article 40(1) of Directive 2014/23/EU, subject to Article 40(2) of that Directive. This option also applies to the cases referred to in point (c) of the first paragraph of Article 2b of this Directive’;
- (7) in Article 3, paragraph 1 is replaced by the following:
- ‘1. The Commission may invoke the procedure provided for in paragraphs 2 to 5 when, prior to a contract being concluded, it considers that a serious infringement of Union law in the field of public procurement has been committed during a contract award procedure falling within the scope of Directive 2014/24/EU or Directive 2014/23/EU.’.

#### Article 47

#### Amendments to Directive 92/13/EEC

Directive 92/13/EEC is amended as follows:

(1) in Article 1, paragraph 1 is replaced by the following:

‘1. This Directive applies to contracts referred to in Directive 2014/25/EU of the European Parliament and of the Council (\*) unless such contracts are excluded in accordance with Articles 18 to 24, 27 to 30, 34 or 55 of that Directive.

Contracts within the meaning of this Directive include supply, works and service contracts, works and services concessions, framework agreements and dynamic purchasing systems.

This Directive also applies to concessions awarded by contracting entities, referred to in Directive 2014/23/EU of the European Parliament and of the Council (\*\*), unless such contracts are excluded in accordance with Articles 10, 12, 13, 14, 16, 17 and 25 of that Directive.

Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2014/25/EU or Directive 2014/23/EU, decisions taken by contracting entities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Union law in the field of procurement or national rules transposing that law.

(\*) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 94, 28.3.2014, p. 243).

(\*\*) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concessions contract (OJ L 94, 28.3.2014, p. 1).;

(2) in Article 2a, paragraph 2 is amended as follows:

(a) the first subparagraph is replaced by the following:

‘A contract may not be concluded following the decision to award a contract falling within the scope of Directive 2014/25/EU or Directive 2014/23/EU before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.’;

(b) in the fourth subparagraph, the first indent is replaced by the following:

‘— a summary of the relevant reasons as set out in Article 75(2) of Directive 2014/25/EU, subject to the provisions of Article 75(3) of that Directive or in the second subparagraph of Article 40(1) of Directive 2014/23/EU, subject to the provisions of Article 40(2) of that Directive, and’;

(3) Article 2b is amended as follows:

(a) in the first paragraph:

(i) point (a) is replaced by the following:

‘(a) if Directive 2014/25/EU or, where relevant, Directive 2014/23/EU does not require prior publication of a notice in the *Official Journal of the European Union*;’;

(ii) point (c) is replaced by the following:

‘(c) in the case of specific contracts based on a dynamic purchasing system as provided for in Article 52 of Directive 2014/25/EU.’;

(b) in the second paragraph, the first and the second indent are replaced by the following:

‘— there is an infringement of Article 52(6) of Directive 2014/25/EU, and

— the contract value is estimated to be equal to or to exceed the thresholds set out in Article 15 of Directive 2014/25/EU.’;

(4) in Article 2c, the words ‘Directive 2004/17/EC’ are replaced by the words ‘Directive 2014/25/EU or Directive 2014/23/EU’;

(5) Article 2d is amended as follows:

(a) in paragraph 1,

(i) point (a) is replaced by the following:

‘(a) if the contracting entity has awarded a contract without prior publication of a notice in the *Official Journal of the European Union* without this being permissible in accordance with Directive 2014/25/EU or Directive 2014/23/EU’;

(ii) in point (b), the words ‘Directive 2004/17/EC’ are replaced by the words ‘Directive 2014/25/EU or Directive 2014/23/EU’;

(b) in paragraph 4, the first indent is replaced by the following:

‘— the contracting entity considers that the award of a contract without prior publication of a notice in the *Official Journal of the European Union* is permissible in accordance with Directive 2014/25/EU or Directive 2014/23/EU.’;

(c) in paragraph 5, the first indent is replaced by the following:

‘— the contracting entity considers that the award of a contract is in accordance with Article 52(6) of Directive 2014/25/EU;’

(6) in Article 2f(1), point (a) is replaced by the following:

‘(a) before the expiry of at least 30 calendar days with effect from the day following the date on which:

— the contracting entity published a contract award notice in accordance with Articles 70 and 71 of Directive 2014/25/EU or with Articles 31 and 32 of Directive 2014/23/EU, provided that this notice includes the justification of the decision of the contracting entity to award the contract without prior publication of a notice in the *Official Journal of the European Union*, or

— the contracting entity informed the tenderers and candidates concerned of the conclusion of the contract, provided that this information contains a summary of the relevant reasons as set out in Article 75(2) of 2014/25/EU subject to Article 75(3) of that Directive or in the second subparagraph of Article 40(1) of Directive 2014/23/EU, subject to Article 40(2) of that Directive. This option also applies to the cases referred to in point (c) of the first paragraph of Article 2b of this Directive;’

(7) in Article 8, paragraph 1 is replaced by the following:

‘1. The Commission may invoke the procedure provided for in paragraphs 2 to 5 when, prior to a contract being concluded, it considers that a serious infringement of Union law in the field of procurement has been committed during a contract award procedure falling within the scope of Directive 2014/25/EU or Directive 2014/23/EU, or in relation to Article 26(1) of Directive 2014/25/EU in the case of contracting entities to which that provision applies.’

## TITLE V

### DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS

#### Article 48

##### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 7(3), Article 9(4), Article 27(2) and Article 30(4) shall be conferred on the Commission for an indeterminate period of time from 17 April 2014.

3. The delegation of power referred to in Article 7(3), Article 9(4), Article 27(2) and Article 30(4) may be revoked at any time by the European Parliament or by the Council. A decision of to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 7(3), Article 9(4), Article 27(2) and Article 30(4) shall enter into force only where no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of the act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### Article 49

##### Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 48(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

#### Article 50

##### Committee Procedure

1. The Commission shall be assisted by the Advisory Committee for Public Procurement established by Council Decision 71/306/EEC<sup>(1)</sup>. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

<sup>(1)</sup> Council Decision 71/306/EEC of 26 July 1971 setting up an Advisory Committee for Public Works Contracts (OJ L 185, 16.8.1971, p. 15).

2. Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.

#### Article 51

##### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 18 April 2016. They shall forthwith communicate to the Commission the text thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

#### Article 52

##### Transitional provisions

References to points (a) and (b) of Article 1(3) of Directive 2004/17/EC and to Article 1(3) and (4) and Title III of Directive 2004/18/EC Directive shall be construed as references to this Directive.

#### Article 53

##### Monitoring and reporting

The Commission shall assess the economic effects on the internal market, in particular in terms of factors such as cross-border award of contracts and transaction costs, resulting from the application of the thresholds set out in Article 8, and report thereon to the European Parliament and the Council by 18 April 2019. The appropriateness of the level of thresholds shall be examined in the context of negotiations under the GPA taking into account the impact of inflation and transaction costs. The Commission shall, where possible and appropriate, consider suggesting an increase of the threshold amounts applicable under the GPA during the next round of negotiations.

In the event of any change to the threshold amounts applicable under the GPA, the report shall, where appropriate, be followed by a legislative proposal amending the thresholds set out in this Directive.

The Commission shall also assess the economic effects on the internal market of the exclusions set out in Article 12 taking into account the specific structures of the water sector, and report thereon to the European Parliament and the Council by 18 April 2019.

The Commission shall review the functioning of this Directive and shall report to the European Parliament and to the Council by 18 April 2021, and every five years thereafter, based on information that Member States shall provide in accordance with Article 45(3).

The Commission shall make the results of the review carried out in accordance with the fourth paragraph publicly available.

#### Article 54

##### Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Directive shall not apply to the award of concessions tendered or awarded before 17 April 2014.

#### Article 55

##### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 26 February 2014.

For the European Parliament  
The President  
M. SCHULZ

For the Council  
The President  
D. KOURKOULAS



## ANNEX I

LIST OF THE ACTIVITIES REFERRED TO IN POINT (7) OF ARTICLE 5 <sup>(1)</sup>

NACE Rev. 1 <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures, — clearing of building sites, — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc., — site preparation for mining, — overburden removal and other development and preparation of mineral properties and sites.  This class also includes: — building site drainage, — drainage of agricultural or forestry land.	45110000
		45.12	Test drilling and boring	This class includes: — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes.  This class excludes: — drilling of production oil or gas wells, see 11.20, — water well drilling, see 45.25, — shaft sinking, see 45.25, — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000

<sup>(1)</sup> In the event of any difference of interpretation between the CPV and the NACE, the CPV nomenclature will apply.

NACE Rev. 1 <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of all types of buildings</li> <li>— construction of civil engineering constructions,</li> <li>— bridges, including those for elevated highways, viaducts, tunnels and subways,</li> <li>— long-distance pipelines, communication and power lines,</li> <li>— urban pipelines, urban communication and power lines,</li> <li>— ancillary urban works,</li> <li>— assembly and erection of prefabricated constructions on the site.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— service activities incidental to oil and gas extraction, see 11.20,</li> <li>— erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23,</li> <li>— building installation, see 45.3,</li> <li>— building completion, see 45.4,</li> <li>— architectural and engineering activities, see 74.20,</li> <li>— project management for construction, see 74.20.</li> </ul>	<p>45210000</p> <p>Except:</p> <ul style="list-style-type: none"> <li>– 45213316</li> <li>45220000</li> <li>45231000</li> <li>45232000</li> </ul>
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— erection of roofs,</li> <li>— roof covering,</li> <li>— waterproofing.</li> </ul>	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of highways, streets, roads, other vehicular and pedestrian ways,</li> <li>— construction of railways,</li> <li>— construction of airfield runways,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations,</li> </ul>	<p>45212212 and DA03</p> <p>45230000</p> <p>except:</p> <ul style="list-style-type: none"> <li>– 45231000</li> <li>– 45232000</li> <li>– 45234115</li> </ul>

NACE Rev. 1 <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				<ul style="list-style-type: none"> <li>— painting of markings on road surfaces and car parks.</li> </ul> This class excludes: <ul style="list-style-type: none"> <li>— preliminary earth moving, see 45.11.</li> </ul>	
		45.24	Construction of water projects	This class includes construction of: <ul style="list-style-type: none"> <li>— waterways, harbour and river works, pleasure ports (marinas), locks, etc.,</li> <li>— dams and dykes,</li> <li>— dredging,</li> <li>— subsurface work.</li> </ul>	45240000
		45.25	Other construction work involving special trades	This class includes: <ul style="list-style-type: none"> <li>— construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment,</li> <li>— construction of foundations, including pile driving,</li> <li>— water well drilling and construction, shaft sinking,</li> <li>— erection of non-self-manufactured steel elements,</li> <li>— steel bending,</li> <li>— bricklaying and stone setting,</li> <li>— scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms,</li> <li>— erection of chimneys and industrial ovens.</li> </ul> This class excludes: <ul style="list-style-type: none"> <li>— renting of scaffolds without erection and dismantling, see 71.32.</li> </ul>	45250000 45262000
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	This class includes: <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of:               <ul style="list-style-type: none"> <li>— electrical wiring and fittings,</li> <li>— telecommunications systems,</li> <li>— electrical heating systems,</li> <li>— residential antennas and aerials,</li> </ul> </li> </ul>	45213316 45310000 Except: – 45316000

NACE Rev. 1 <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				<ul style="list-style-type: none"> <li>— fire alarms,</li> <li>— burglar alarm systems,</li> <li>— lifts and escalators,</li> <li>— lightning conductors, etc.</li> </ul>	
		45.32	Insulation work activities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of thermal, sound or vibration insulation.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— waterproofing, see 45.22.</li> </ul>	45320000
		45.33	Plumbing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of:</li> <li>— plumbing and sanitary equipment,</li> <li>— gas fittings,</li> <li>— heating, ventilation, refrigeration or air-conditioning equipment and ducts,</li> <li>— sprinkler systems.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— installation of electrical heating systems, see 45.31.</li> </ul>	45330000
		45.34	Other building installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of illumination and signalling systems for roads, railways, airports and harbours,</li> <li>— installation in buildings or other construction projects of fittings and fixtures n.e.c.</li> </ul>	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.</li> </ul>	45410000
		45.42	Joinery installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials,</li> </ul>	45420000

NACE Rev. 1 <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				<ul style="list-style-type: none"> <li>— interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</li> </ul> This class excludes: <ul style="list-style-type: none"> <li>— laying of parquet and other wood floor coverings, see 45.43.</li> </ul>	
		45.43	Floor and wall covering	This class includes: <ul style="list-style-type: none"> <li>— laying, tiling, hanging or fitting in buildings or other construction projects of:               <ul style="list-style-type: none"> <li>— ceramic, concrete or cut stone wall or floor tiles,</li> <li>— parquet and other wood floor coverings carpets and linoleum floor coverings,</li> <li>— including of rubber or plastic,</li> <li>— terrazzo, marble, granite or slate floor or wall coverings,</li> <li>— wallpaper.</li> </ul> </li> </ul>	45430000
		45.44	Painting and glazing	This class includes: <ul style="list-style-type: none"> <li>— interior and exterior painting of buildings,</li> <li>— painting of civil engineering structures,</li> <li>— installation of glass, mirrors, etc.</li> </ul> This class excludes: <ul style="list-style-type: none"> <li>— installation of windows, see 45.42.</li> </ul>	45440000
		45.45	Other building completion	This class includes: <ul style="list-style-type: none"> <li>— installation of private swimming pools,</li> <li>— steam cleaning, sand blasting and similar activities for building exteriors,</li> <li>— other building completion and finishing work n.e.c.</li> </ul> This class excludes: <ul style="list-style-type: none"> <li>— interior cleaning of buildings and other structures, see 74.70.</li> </ul>	45212212 and DA04 45450000
	45.5		Renting of construction or demolition equipment with operator		45500000



NACE Rev. 1 <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.50	Renting of construction or demolition equipment with operator	This class excludes: — renting of construction or demolition machinery and equipment without operators, see 71.32.	45500000

<sup>(1)</sup> Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1).

## ANNEX II

**ACTIVITIES EXERCISED BY CONTRACTING ENTITIES AS REFERRED TO IN ARTICLE 7**

The provisions of this Directive governing concessions awarded by contracting entities shall apply to the following activities:

1. As far as gas and heat are concerned:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;
- (b) the supply of gas or heat to such fixed networks.

The supply by a contracting entity referred to in points (b) and (c) of Article 7(1) of gas or heat to fixed networks which provide a service to the public shall not be considered to be a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

- (i) the production of gas or heat by that contracting entity is the unavoidable consequence of carrying out an activity other than those referred to in this paragraph or in paragraphs 2 and 3 of this Annex;
- (ii) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of that contracting entity's turnover on the basis of the average for the preceding three years, including the current year.

For the purposes of this Directive, 'supply' includes the generation/production, wholesale and retail sale of gas. However, production of gas in the form of extraction falls within the scope of paragraph 4 of this Annex.

2. As far as electricity is concerned:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;
- (b) the supply of electricity to such fixed networks.

For the purposes of this Directive, supply of electricity includes generation/production, wholesale and retail sale of electricity.

The supply by a contracting entity referred to in points (b) and (c) of Article 7(1) of electricity to networks which provide a service to the public shall not be considered to be a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

- (a) the production of electricity by that contracting entity takes place because its consumption is necessary for carrying out an activity other than those referred to in this paragraph or in paragraphs 1 and 3 of this Annex;
- (b) supply to the public network depends only on that contracting entity's own consumption and has not exceeded 30 % of that contracting entity's total production of energy, on the basis of the average for the preceding three years, including the current year.

3. Activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

4. Activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

5. Activities relating to the provision of:

- (a) postal services;
- (b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (ii) of the second subparagraph of this paragraph and provided that the conditions set out in Article 34(1) of Directive 2014/25/EU are not satisfied in respect of the services falling within point (ii) of the second subparagraph.

For the purpose of this Directive and without prejudice to Directive 97/67/EC:

- (i) 'postal item' means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;
  - (ii) 'postal services': means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;
  - (iii) 'other services than postal services': means services provided in the following areas:
    - mail service management services (services both preceding and subsequent to despatch, including 'mailroom management services'),
    - services concerning postal items not included in point (a), such as direct mail bearing no address.
6. Activities relating to the exploitation of a geographical area for the purpose of:
- (a) extracting oil or gas;
  - (b) exploring for, or extracting, coal or other solid fuels.
-

## ANNEX III

**LIST OF LEGAL ACTS OF THE UNION REFERRED TO IN POINT (B) OF ARTICLE 7(2)**

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute 'special or exclusive rights' within the meaning of this Directive. The following lists procedures, ensuring adequate prior transparency, for granting authorisations on the basis of other legislative acts of the Union which do not constitute 'special or exclusive rights' within the meaning of this Directive:

- (a) Granting authorisation to operate natural gas installations in accordance with the procedures laid down in Article 4 of Directive 2009/73/EC;
  - (b) Authorisation or an invitation to tender for the construction of new electricity production installations in accordance with Directive 2009/72/EC;
  - (c) The granting in accordance with the procedures laid down in Article 9 of Directive 97/67/EC of authorisations in relation to a postal service which is not or shall not be reserved;
  - (d) A procedure for granting an authorisation to carry on an activity involving the exploitation of hydrocarbons in accordance with Directive 94/22/EC;
  - (e) Public service contracts within the meaning of Regulation (EC) No 1370/2007 for the provision of public passenger transport services by bus, tramway, rail or metro, which have been awarded on the basis of a competitive tendering procedure in accordance with its Article 5(3), provided that its length is in conformity with Article 4(3) or (4) of that Regulation.
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## ANNEX IV

## SERVICES REFERRED TO IN ARTICLE 19

Description	CPV Code
79611000-0; 75200000-8; 75231200-6; 75231240-8; 79622000-0 [Supply services of domestic help personnel]; 79624000-4 [Supply services of nursing personnel] and 79625000-1 [Supply services of medical personnel] from 85000000-9 to 85323000-9; 85143000-3,  98133100-5, 98133000-4 and 98200000-5 and 98500000-8 [Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services],	Health, social and related services
85321000-5 and 85322000-2, 75000000-6 [Administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92342200-2; from 92360000-2 to 92700000-8;  79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3 [Fashion shows organisation services], 79956000-0 [Fair and exhibition organisation services]	Administrative, social, educational, healthcare and cultural services
75300000-9	Compulsory social security services <sup>(1)</sup>
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services.
98131000-0	Religious services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service].  55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services  55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services	Hotel and restaurant services
79100000-5 to 79140000-7; 75231100-5;	Legal services, to the extent not excluded pursuant to Article 10(8)(d)



Description	CPV Code
75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3	Other administrative services and government services
75200000-8 to 75231000-4	Provision of services to the community
75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services, to the extent not excluded pursuant to point (g) of Article 10(8)
79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1 [Graphology services], 79723000-8 [Waste analysis services]	Investigation and security services
64000000-6 [Postal and telecommunications services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services], 64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]	Postal Services
50116510-9 [Tyre-remoulding services], 71550000-8 [Blacksmith services]	Miscellaneous services
98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]	International services

(<sup>1</sup>) These services are not covered by the present Directive where they are organised as non-economic services of general interest. Member States are free to organise the provision of compulsory social services or of other services as services of general interest or as non-economic services of general interest.

## ANNEX V

**INFORMATION TO BE INCLUDED IN CONCESSION NOTICES REFERRED TO IN ARTICLE 31**

1. Name, identification number (where provided for in national legislation), address, including NUTS code, telephone, fax number, e-mail and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.
  2. Type of contracting authority or entity and main activity exercised.
  3. If the applications are to contain tenders, e-mail or internet address at which the concession documents will be available for unrestricted and full direct access, free of charge. Where unrestricted and full direct access, free of charge, is not available in the cases referred to in Article 34(2) an indication of how the procurement documents can be accessed.
  4. Description of the concession: nature and extent of works, nature and extent of services, order of magnitude or indicative value and, where possible, duration of the contract. Where the concession is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
  5. CPV codes. Where the concession is divided into lots, this information shall be provided for each lot.
  6. NUTS code for the main location of works in case of works concessions or NUTS code for the main place of performance service concessions; where the concession is divided into lots, this information shall be provided for each lot.
  7. Conditions for participation, including:
    - (a) where appropriate, indication whether the concession is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes;
    - (b) where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession; reference to the relevant law, regulation or administrative provision;
    - (c) a list and brief description of selection criteria where applicable; minimum level(s) of standards possibly required; indication of required information (self-declarations, documentation).
  8. Time limit for the submission of applications or receipt of tenders.
  9. Criteria which will be applied in the award of the concession where they do not appear in other concession documents.
  10. Date of dispatch of the notice.
  11. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  12. Where appropriate, particular conditions to which performance of the concession is subject.
  13. Address where applications or tenders shall be transmitted.
  14. Where appropriate, indication of requirements and conditions related to the use of electronic means of communication.
  15. Information as to whether the concession is related to a project and/or programme financed by Union funds.
  16. For works concessions, indication as to whether the concession is covered by the GPA.
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## ANNEX VI

**INFORMATION TO BE INCLUDED IN PRIOR INFORMATION NOTICES CONCERNING CONCESSIONS FOR SOCIAL AND OTHER SPECIFIC SERVICES, AS REFERRED TO IN ARTICLE 31(3)**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting authority or contracting entity and, where different, of the service from which additional information may be obtained.
  2. Where appropriate, e-mail or internet address at which the specifications and any supporting documents will be available.
  3. Type of contracting authority or contracting entity and main activity exercised.
  4. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.
  5. NUTS code for the main place of delivery or performance of service concessions.
  6. Description of the services, indicative order of magnitude or value.
  7. Conditions for participation.
  8. Where applicable, time limit(s) for contacting the contracting authority or contracting entity in view of participation.
  9. Where applicable, brief description of the main features of the award procedure to be applied.
  10. Any other relevant information.
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## ANNEX VII

**INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES, AS REFERRED TO IN ARTICLE 32**

1. Name, identification number (where provided for in national legislation), address including NUTS code and, where appropriate, telephone, fax number, e-mail and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.
  2. Type of contracting authority or entity and main activity exercised.
  3. CPV codes.
  4. NUTS code for the main location of works in case of works concessions or NUTS code for the main place of performance in case of service concessions;
  5. Description of the concession: nature and extent of works, nature and extent of services, duration of the contract. Where the concession is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
  6. Description of award procedure used, in the case of award without prior publication, justification.
  7. Criteria referred to in Article 41 which were used for award of the concession or concessions.
  8. Date of concession award decision or decisions.
  9. Number of tenders received with respect of each award, including:
    - (a) number of tenders received from economic operators which are small and medium enterprises;
    - (b) number of tenders received from abroad;
    - (c) number of tenders received electronically.
  10. For each award, name, address including NUTS code and, where applicable, telephone, fax number, e-mail address and internet address of the successful tenderer(s) including:
    - (a) information whether the successful tenderer is small and medium enterprise;
    - (b) information whether the concession was awarded to a consortium.
  11. Value and main financial terms of the awarded concession, including:
    - (a) fees prices and fines if any;
    - (b) prizes and payments if any;
    - (c) any other details relevant to the value of the concession as laid down in Article 8(3).
  12. Information whether the concession is related to a project and/or programme financed by Union funds.
  13. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  14. Date(s) and reference(s) of previous publications in the *Official Journal of the European Union* relevant to the concession(s) advertised in this notice.
  15. Date of dispatch of the notice.
  16. Method used to calculate the estimated value of the concession, if not specified in other concession documents in accordance with Article 8.
  17. Any other relevant information.
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## ANNEX VIII

**INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES CONCERNING CONCESSIONS FOR SOCIAL AND OTHER SPECIFIC SERVICES, AS REFERRED TO IN ARTICLE 32**

1. Name, identification number (where provided for in national legislation), address including NUTS code, where applicable, telephone, fax number, e-mail and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.
  2. Type of contracting authority or entity and main activity exercised.
  3. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.
  4. Summary indication of the subject of the concession.
  5. Number of tenders received.
  6. Value of the successful tender, including fees and prices.
  7. Name and address including NUTS code, telephone, fax number, e-mail address and internet address of the successful economic operator(s).
  8. Any other relevant information.
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## ANNEX IX

**FEATURES CONCERNING PUBLICATION**

## 1. Publication of notices

The notices referred to in Articles 31 and 32 shall be sent by the contracting authorities or contracting entities to the Publications Office of the European Union and published in accordance with the following rules:

Notices referred to in Articles 31 and 32 shall be published by the Publications Office of the European Union

The Publications Office of the European Union shall give the contracting authority or entity the confirmation referred to in Article 33(2).

## 2. Format and procedures for sending notices electronically

The format and procedure for sending notices electronically as established by the Commission are made accessible at the internet address '<http://simap.europa.eu>'

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## ANNEX X

**LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN  
ARTICLE 30(3)**

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- ILO Convention 98 on the Right to Organise and Collective Bargaining;
- ILO Convention 29 on Forced Labour;
- ILO Convention 105 on the Abolition of Forced Labour;
- ILO Convention 138 on Minimum Age;
- ILO Convention 111 on Discrimination (Employment and Occupation);
- ILO Convention 100 on Equal Remuneration;
- ILO Convention 182 on Worst Forms of Child Labour;
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (PIC Convention) and its 3 regional Protocols.
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## ANNEX XI

**INFORMATION TO BE INCLUDED IN NOTICES OF MODIFICATIONS OF A CONCESSION DURING ITS TERM ACCORDING TO ARTICLE 43**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting authority or entity and, where different, of the service from which additional information may be obtained.
  2. CPV codes.
  3. NUTS code for the main location of works in case of works concessions or NUTS code for the main place of performance in service concessions.
  4. Description of the concession before and after the modification: nature and extent of the works, nature and extent of services.
  5. Where applicable, modification of value of the concession, including increase in prices or fees caused by the modification.
  6. Description of the circumstances which have rendered necessary the modification.
  7. Date of concession award decision.
  8. Where applicable, the name, address including NUTS code telephone, fax number, e-mail address and internet address of the new economic operator or operators.
  9. Information whether the concession is related to a project and/or programme financed by Union funds.
  10. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  11. Date(s) and reference(s) of previous publications in the *Official Journal of the European Union* relevant to the contract(s) concerned by this notice.
  12. Date of dispatch of the notice.
  13. Any other relevant information.
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**DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 26 February 2014****on public procurement and repealing Directive 2004/18/EC****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1), Article 62 and Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) The award of public contracts by or on behalf of Member States' authorities has to comply with the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the free movement of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that those principles are given practical effect and public procurement is opened up to competition.
- (2) Public procurement plays a key role in the Europe 2020 strategy, set out in the Commission Communication of 3 March 2010 entitled 'Europe 2020, a strategy for smart, sustainable and inclusive growth' ('Europe 2020 strategy for smart, sustainable and inclusive growth'), as one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while

ensuring the most efficient use of public funds. For that purpose, the public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council <sup>(4)</sup> and Directive 2004/18/EC of the European Parliament and of the Council <sup>(5)</sup> should be revised and modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises (SMEs) in public procurement, and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

- (3) When implementing this Directive, the United Nations Convention on the Rights of Persons with Disabilities <sup>(6)</sup> should be taken into account, in particular in connection with the choice of means of communications, technical specifications, award criteria and contract performance conditions.
- (4) The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself; that clarification should not however broaden the scope of this Directive compared to that of Directive 2004/18/EC. The Union rules on public procurement are not intended to cover all forms of disbursement of public funds, but only those aimed at the acquisition of works, supplies or services for consideration by means of a public contract. It should be clarified that such acquisitions of works, supplies or services should be subject to this Directive whether they are implemented through purchase, leasing or other contractual forms.

The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works, supplies or services in question, not necessarily requiring a transfer of ownership to the contracting authorities. Furthermore, the mere financing, in particular through grants, of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes

<sup>(1)</sup> OJ C 191, 29.6.2012, p. 84.

<sup>(2)</sup> OJ C 391, 18.12.2012, p. 49.

<sup>(3)</sup> Position of the European Parliament of 15 January 2014 (not yet published in the Official Journal), and decision of the Council of 11 February 2014.

<sup>(4)</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1).

<sup>(5)</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

<sup>(6)</sup> Approved by Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L 23, 27.1.2010, p. 35).

intended, does not usually fall within the scope of the public procurement rules. Similarly, situations where all operators fulfilling certain conditions are entitled to perform a given task, without any selectivity, such as customer choice and service voucher systems, should not be understood as being procurement but simple authorisation schemes (for instance licences for medicines or medical services).

- (5) It should be recalled that nothing in this Directive obliges Member States to contract out or externalise the provision of services that they wish to provide themselves or to organise by means other than public contracts within the meaning of this Directive. The provision of services based on laws, regulations or employment contracts should not be covered. In some Member States, this might for example be the case for certain administrative and government services such as executive and legislative services or the provision of certain services to the community, such as foreign affairs services or justice services or compulsory social security services.
- (6) It is also appropriate to recall that this Directive should not affect the social security legislation of the Member States. Nor should it deal with the liberalisation of services of general economic interest, reserved to public or private entities, or with the privatisation of public entities providing services.

It should equally be recalled that Member States are free to organise the provision of compulsory social services or of other services such as postal services either as services of general economic interest or as non-economic services of general interest or as a mixture thereof. It is appropriate to clarify that non-economic services of general interest should not fall within the scope of this Directive.

- (7) It should finally be recalled that this Directive is without prejudice to the freedom of national, regional and local authorities to define, in conformity with Union law, services of general economic interest, their scope and the characteristics of the service to be provided, including any conditions regarding the quality of the service, in order to pursue their public policy objectives. This Directive should also be without prejudice to the power of national, regional and local authorities to provide, commission and finance services of general economic interest in accordance with Article 14 TFEU and Protocol No 26 on Services of General Interest annexed to the TFEU and to the Treaty on European Union (TEU). In addition, this Directive does not deal with the funding of services of general economic

interest or with systems of aid granted by Member States, in particular in the social field, in accordance with Union rules on competition.

- (8) A contract should be deemed to be a public works contract only if its subject-matter specifically covers the execution of activities listed in Annex II, even if the contract covers the provision of other services necessary for the execution of such activities. Public service contracts, in particular in the sphere of property management services, may, in certain circumstances, include works. However, in so far as such works are incidental to the principal subject-matter of the contract, and are a possible consequence thereof or a complement thereto, the fact that such works are included in the contract does not justify the qualification of the public service contract as a public works contract.

However, in view of the diversity of public works contracts, contracting authorities should be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. This Directive is not intended to prescribe either joint or separate contract awards.

- (9) The realisation of a work corresponding to the requirements specified by a contracting authority requires that the authority in question must have taken measures to define the type of the work or, at the very least, have had a decisive influence on its design. Whether the contractor realises all or part of the work by his own means or ensures their realisation by other means should not change the classification of the contract as a works contract, as long as the contractor assumes a direct or indirect obligation that is legally enforceable to ensure that the works will be realised.
- (10) The notion of 'contracting authorities' and in particular that of 'bodies governed by public law' have been examined repeatedly in the case-law of the Court of Justice of the European Union. To clarify that the scope of this Directive *ratione personae* should remain unaltered, it is appropriate to maintain the definitions on which the Court based itself and to incorporate a certain number of clarifications given by that case-law as a key to the understanding of the definitions themselves, without the intention of altering the understanding of the concepts as elaborated by the case-law. For that purpose, it should be clarified that a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity should not be considered as being a 'body governed by public law' since the needs in the general interest, that it has been set up to meet or been given the task of meeting, can be deemed to have an industrial or commercial character.

Similarly, the condition relating to the origin of the funding of the body considered, has also been examined in the case-law, which has clarified *inter alia* that being financed for 'the most part' means for more than half, and that such financing may include payments from users which are imposed, calculated and collected in accordance with rules of public law.

- (11) In the case of mixed contracts, the applicable rules should be determined with respect to the main subject of the contract where the different parts which constitute the contract are objectively not separable. It should therefore be clarified how contracting authorities should determine whether the different parts are separable or not. Such clarification should be based on the relevant case-law of the Court of Justice of the European Union.

The determination should be carried out on a case-by-case basis, in which the expressed or presumed intentions of the contracting authority to regard the various aspects making up a mixed contract as indivisible should not be sufficient, but should be supported by objective evidence capable of justifying them and of establishing the need to conclude a single contract. Such a justified need to conclude a single contract could for instance be present in the case of the construction of one single building, a part of which is to be used directly by the contracting authority concerned and another part to be operated on a concessions basis, for instance to provide parking facilities to the public. It should be clarified that the need to conclude a single contract may be due to reasons both of a technical nature and of an economic nature.

- (12) In the case of mixed contracts which can be separated, contracting authorities are always free to award separate contracts for the separate parts of the mixed contract, in which case the provisions applicable to each separate part should be determined exclusively with respect to the characteristics of that specific contract. On the other hand, where contracting authorities choose to include other elements in the procurement, whatever their value and whatever the legal regime the added elements would otherwise have been subject to, the main principle should be that, where a contract should be awarded pursuant to the provisions of this Directive, if awarded on its own, then this Directive should continue to apply to the entire mixed contract.

- (13) However, special provision should be made for mixed contracts involving defence or security aspects or parts not falling within the scope of the TFEU. In such cases, non-application of this Directive should be possible provided that the award of a single contract is justified

for objective reasons and that the decision to award a single contract is not taken for the purpose of excluding contracts from the application of this Directive or of Directive 2009/81/EC of the European Parliament and of the Council <sup>(1)</sup>. It should be clarified that contracting authorities should not be prevented from choosing to apply this Directive to certain mixed contracts instead of applying Directive 2009/81/EC.

- (14) It should be clarified that the notion of 'economic operators' should be interpreted in a broad manner so as to include any persons and/or entities which offer the execution of works, the supply of products or the provision of services on the market, irrespective of the legal form under which they have chosen to operate. Thus, firms, branches, subsidiaries, partnerships, cooperative societies, limited companies, universities, public or private, and other forms of entities than natural persons should all fall within the notion of economic operator, whether or not they are 'legal persons' in all circumstances.

- (15) It should be clarified that groups of economic operators, including where they have come together in the form of a temporary association, may participate in award procedures without it being necessary for them to take on a specific legal form. To the extent this is necessary, for instance where joint and several liability is required, a specific form may be required when such groups are awarded the contract.

It should also be clarified that contracting authorities should be able to set out explicitly how groups of economic operators are to meet the requirements concerning economic and financial standing as set out in this Directive, or the criteria relating to technical and professional ability, which are required of economic operators participating on their own.

The performance of contracts by groups of economic operators may necessitate setting conditions which are not imposed on individual participants. Such conditions, which should be justified by objective reasons and be proportionate, could for instance include requiring the appointment of a joint representation or a lead partner for the purposes of the procurement procedure or requiring information on their constitution.

<sup>(1)</sup> Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).



- (16) Contracting authorities should make use of all possible means at their disposal under national law in order to prevent distortions in public procurement procedures stemming from conflicts of interest. This could include procedures to identify, prevent and remedy conflicts of interests.
- (17) Council Decision 94/800/EC <sup>(1)</sup> approved in particular the World Trade Organisation Agreement on Government Procurement (the 'GPA'). The aim of the GPA is to establish a multilateral framework of balanced rights and obligations relating to public contracts with a view to achieving the liberalisation and expansion of world trade. For contracts covered by Annexes 1, 2, 4 and 5 and the General Notes to the European Union's Appendix I to the GPA, as well as by other relevant international agreements by which the Union is bound, contracting authorities should fulfil the obligations under those agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.
- (18) The GPA applies to contracts above certain thresholds, set in the GPA and expressed as special drawing rights. The thresholds laid down by this Directive should be aligned to ensure that they correspond to the euro equivalents of the thresholds of the GPA. Provision should also be made for periodic reviews of the thresholds expressed in euros so as to adjust them, by means of a purely mathematical operation, to possible variations in the value of the euro in relation to those special drawing rights. Apart from those periodic mathematical adjustments, an increase in the thresholds set in the GPA should be explored during the next round of negotiations thereof.
- (19) It should be clarified that, for the estimation of the value of a contract, all revenues have to be taken into account, whether received from the contracting authority or from third parties. It should also be clarified that, for the purpose of estimating the thresholds, the notion of similar supplies should be understood as products which are intended for identical or similar uses, such as supplies of a range of foods or of various items of office furniture. Typically, an economic operator active in the field concerned would be likely to carry such supplies as part of his normal product range.
- (20) For the purposes of estimating the value of a given procurement, it should be clarified that it should be allowed to base the estimation of the value on a subdivision of the procurement only where justified by objective reasons. For instance, it could be justified to estimate contract values at the level of a separate operational unit of the contracting authority, such as for instance schools or kindergartens, provided that the unit in question is independently responsible for its procurement. This can be assumed where the separate operational unit independently runs the procurement procedures and makes the buying decisions, has a separate budget line at its disposal for the procurements concerned, concludes the contract independently and finances it from a budget which it has at its disposal. A subdivision is not justified where the contracting authority merely organises a procurement in a decentralised way.
- (21) Public contracts that are awarded by contracting authorities operating in the water, energy, transport and postal services sectors and that fall within the scope of those activities are covered by Directive 2014/25/EU of the European Parliament and of the Council <sup>(2)</sup>. However, contracts awarded by contracting authorities in the context of their operation of maritime, coastal or river transport services fall within the scope of this Directive.
- (22) Being addressed to Member States, this Directive does not apply to procurement carried out by international organisations on their own behalf and for their own account. There is, however, a need to clarify to what extent this Directive should be applied to procurement governed by specific international rules.
- (23) The awarding of public contracts for certain audiovisual and radio media services by media providers should allow aspects of cultural or social significance to be taken into account, which renders the application of procurement rules inappropriate. For those reasons, an exception should therefore be made for public service contracts, awarded by the media service providers themselves, for the purchase, development, production or co-production of off-the-shelf programmes and other preparatory services, such as those relating to scripts or artistic performances necessary for the production of the programme. It should also be clarified that that exclusion should apply equally to broadcast media services and on-demand services (non-linear services). However, that exclusion should not apply to the supply of technical equipment necessary for the production, co-production and broadcasting of such programmes.
- (24) It should be recalled that arbitration and conciliation services and other similar forms of alternative dispute resolution are usually provided by bodies or individuals which are agreed on, or selected, in a manner which cannot be governed by procurement rules. It should be clarified that this Directive does not apply to service contracts for the provision of such services, whatever their denomination under national law.

<sup>(1)</sup> Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) (OJ L 336, 23.12.1994, p. 1).

<sup>(2)</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (see page 243 of this Official Journal).

- (25) A certain number of legal services are rendered by service providers that are designated by a court or tribunal of a Member State, involve representation of clients in judicial proceedings by lawyers, must be provided by notaries or are connected with the exercise of official authority. Such legal services are usually provided by bodies or individuals designated or selected in a manner which cannot be governed by procurement rules, such as for instance the designation of State Attorneys in certain Member States. Those legal services should therefore be excluded from the scope of this Directive.
- (26) It is appropriate to specify that the notion of financial instruments as referred to in this Directive is given the same meaning as in other internal market legislation and, in view of the recent creation of the European Financial Stability Facility and the European Stability Mechanism, it should be stipulated that operations conducted with that Facility and that Mechanism should be excluded from the scope of this Directive. It should finally be clarified that loans, whether or not they are in connection with the issuing of securities or other financial instruments or other operations therewith, should be excluded from the scope of this Directive.
- (27) It should be recalled that Article 5(1) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council <sup>(1)</sup> explicitly provides that Directives 2004/17/EC and 2004/18/EC apply, respectively, to service contracts and public service contracts for public passenger transport services by bus or tramway, whereas Regulation (EC) No 1370/2007 applies to service concessions for public passenger transport by bus or tramway. It should furthermore be recalled that that Regulation continues to apply to public service contracts as well as to service concessions for public passenger transport by rail or metro. To clarify the relationship between this Directive and Regulation (EC) No 1370/2007, it should be provided explicitly that this Directive should not be applicable to public service contracts for the provision of public passenger transport services by rail or metro, the award of which should continue to be subject to that Regulation. In so far as Regulation (EC) No 1370/2007 leaves it to national law to depart from the rules laid down in that Regulation, Member States should be able to continue to provide in their national law that public service contracts for public passenger transport services by rail or metro are to be awarded by a contract award procedure following their general public procurement rules.
- (28) This Directive should not apply to certain emergency services where they are performed by non-profit organisations or associations, since the particular nature of those organisations would be difficult to preserve if the service providers had to be chosen in accordance with
- the procedures set out in this Directive. However, the exclusion should not be extended beyond that strictly necessary. It should therefore be set out explicitly that patient transport ambulance services should not be excluded. In that context it is furthermore necessary to clarify that CPV Group 601 'Land Transport Services' does not cover ambulance services, to be found in CPV class 8514. It should therefore be clarified that services, which are covered by CPV code 85143000-3, consisting exclusively of patient transport ambulance services should be subject to the special regime set out for social and other specific services (the 'light regime'). Consequently, mixed contracts for the provision of ambulance services in general would also be subject to the light regime if the value of the patient transport ambulance services were greater than the value of other ambulance services.
- (29) It is appropriate to recall that this Directive applies only to contracting authorities of Member States. Consequently, political parties in general, not being contracting authorities, are not subject to its provisions. However, political parties in some Member States might fall within the notion of bodies governed by public law.
- However, certain services (such as propaganda film and video-tape production) are so inextricably connected to the political views of the service provider when provided in the context of an election campaign, that the service providers are normally selected in a manner which cannot be governed by procurement rules.
- Finally, it should be recalled that the statute and funding of European political parties and European political foundations are subject to rules other than those laid down in this Directive.
- (30) In certain cases, a contracting authority or an association of contracting authorities may be the sole source for a particular service, in respect of the provision of which it enjoys an exclusive right pursuant to laws, regulations or published administrative provisions which are compatible with the TFEU. It should be clarified that this Directive need not apply to the award of public service contracts to that contracting authority or association.
- (31) There is considerable legal uncertainty as to how far contracts concluded between entities in the public sector should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted differently between Member States and even between contracting authorities. It is therefore necessary to clarify in which cases contracts concluded within the public sector are not subject to the application of public procurement rules.

<sup>(1)</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice of the European Union. The sole fact that both parties to an agreement are themselves public authorities does not as such rule out the application of procurement rules. However, the application of public procurement rules should not interfere with the freedom of public authorities to perform the public service tasks conferred on them by using their own resources, which includes the possibility of cooperation with other public authorities.

It should be ensured that any exempted public-public cooperation does not result in a distortion of competition in relation to private economic operators in so far as it places a private provider of services in a position of advantage vis-à-vis its competitors.

- (32) Public contracts awarded to controlled legal persons should not be subject to the application of the procedures provided for by this Directive if the contracting authority exercises a control over the legal person concerned which is similar to that which it exercises over its own departments, provided that the controlled legal person carries out more than 80 % of its activities in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority, regardless of the beneficiary of the contract performance.

The exemption should not extend to situations where there is direct participation by a private economic operator in the capital of the controlled legal person since, in such circumstances, the award of a public contract without a competitive procedure would provide the private economic operator with a capital participation in the controlled legal person an undue advantage over its competitors. However, in view of the particular characteristics of public bodies with compulsory membership, such as organisations responsible for the management or exercise of certain public services, this should not apply in cases where the participation of specific private economic operators in the capital of the controlled legal person is made compulsory by a national legislative provision in conformity with the Treaties, provided that such participation is non-controlling and non-blocking and does not confer a decisive influence on the decisions of the controlled legal person. It should further be clarified that the decisive element is only the direct private participation in the controlled legal person. Therefore, where there is private capital participation in the controlling contracting authority or in the controlling contracting authorities, this does not preclude the award of public contracts to the controlled legal person, without applying the procedures provided for by this Directive as such participations do not adversely affect competition between private economic operators.

It should also be clarified that contracting authorities such as bodies governed by public law, that may have private capital participation, should be in a position to avail themselves of the exemption for horizontal cooperation. Consequently, where all other conditions in relation to horizontal cooperation are met, the horizontal cooperation exemption should extend to such contracting authorities where the contract is concluded exclusively between contracting authorities.

- (33) Contracting authorities should be able to choose to provide jointly their public services by way of cooperation without being obliged to use any particular legal form. Such cooperation might cover all types of activities related to the performance of services and responsibilities assigned to or assumed by the participating authorities, such as mandatory or voluntary tasks of local or regional authorities or services conferred upon specific bodies by public law. The services provided by the various participating authorities need not necessarily be identical; they might also be complementary.

Contracts for the joint provision of public services should not be subject to the application of the rules set out in this Directive provided that they are concluded exclusively between contracting authorities, that the implementation of that cooperation is governed solely by considerations relating to the public interest and that no private service provider is placed in a position of advantage vis-à-vis its competitors.

In order to fulfil those conditions, the cooperation should be based on a cooperative concept. Such cooperation does not require all participating authorities to assume the performance of main contractual obligations, as long as there are commitments to contribute towards the cooperative performance of the public service in question. In addition, the implementation of the cooperation, including any financial transfers between the participating contracting authorities, should be governed solely by considerations relating to the public interest.

- (34) Certain cases exist where a legal entity acts, under the relevant provisions of national law, as an instrument or technical service to determined contracting authorities, is obliged to carry out orders given to it by those contracting authorities and has no influence on the remuneration for its performance. In view of its non-contractual nature, such a purely administrative relationship should not fall within the scope of public procurement procedures.

- (35) The co-financing of research and development (R&D) programmes by industry sources should be encouraged. It should consequently be clarified that this Directive applies only where there is no such co-financing and where the outcome of the R&D activities go to the contracting authority concerned. This should not exclude the possibility that the service provider, having carried out those activities, could publish an account thereof as long as the contracting authority retains the exclusive right to use the outcome of the R&D in the conduct of its own affairs. However fictitious sharing of the results of the R&D or purely symbolic participation in the remuneration of the service provider should not prevent the application of this Directive.
- (36) Employment and occupation contribute to integration in society and are key elements in guaranteeing equal opportunities for all. In this context, sheltered workshops can play a significant role. The same is true for other social businesses whose main aim is to support the social and professional integration or reintegration of disabled and disadvantaged persons, such as the unemployed, members of disadvantaged minorities or otherwise socially marginalised groups. However, such workshops or businesses might not be able to obtain contracts under normal conditions of competition. Consequently, it is appropriate to provide that Member States should be able to reserve the right to participate in award procedures for public contracts or for certain lots thereof to such workshops or businesses or reserve performance of contracts to the context of sheltered employment programmes.
- (37) With a view to an appropriate integration of environmental, social and labour requirements into public procurement procedures it is of particular importance that Member States and contracting authorities take relevant measures to ensure compliance with obligations in the fields of environmental, social and labour law that apply at the place where the works are executed or the services provided and result from laws, regulations, decrees and decisions, at both national and Union level, as well as from collective agreements, provided that such rules, and their application, comply with Union law. Equally, obligations stemming from international agreements ratified by all Member States and listed in Annex X should apply during contract performance. However, this should in no way prevent the application of terms and conditions of employment which are more favourable to workers.
- and does not discriminate directly or indirectly against economic operators and workers from other Member States.
- (38) Services should be considered to be provided at the place at which the characteristic performances are executed. When services are provided at a distance, for example services provided by call centres, those services should be considered to be provided at the place where the services are executed, irrespective of the places and Member States to which the services are directed.
- (39) The relevant obligations could be mirrored in contract clauses. It should also be possible to include clauses ensuring compliance with collective agreements in compliance with Union law in public contracts. Non-compliance with the relevant obligations could be considered to be grave misconduct on the part of the economic operator concerned, liable to exclusion of that economic operator from the procedure for the award of a public contract.
- (40) Control of the observance of the environmental, social and labour law provisions should be performed at the relevant stages of the procurement procedure, when applying the general principles governing the choice of participants and the award of contracts, when applying the exclusion criteria and when applying the provisions concerning abnormally low tenders. The necessary verification for that purpose should be carried out in accordance with the relevant provisions of this Directive, in particular those governing means of proof and self-declarations.
- (41) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public policy, public morality, public security, health, human and animal life, the preservation of plant life or other environmental measures, in particular with a view to sustainable development, provided that those measures are in conformity with the TFEU.
- (42) There is a great need for contracting authorities to have additional flexibility to choose a procurement procedure, which provides for negotiations. A greater use of those procedures is also likely to increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate of cross-border tenders. Member States should be able to provide for the use of the competitive procedure with negotiation or the competitive dialogue, in various situations where open or restricted procedures without negotiations are not likely to lead to satisfactory procurement outcomes. It should be recalled that use of the competitive dialogue has significantly increased in terms of contract values

The relevant measures should be applied in conformity with the basic principles of Union law, in particular with a view to ensuring equal treatment. Such relevant measures should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council <sup>(1)</sup> and in a way that ensures equal treatment

<sup>(1)</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).



over the past years. It has shown itself to be of use in cases where contracting authorities are unable to define the means of satisfying their needs or of assessing what the market can offer in terms of technical, financial or legal solutions. This situation may arise in particular with innovative projects, the implementation of major integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing. Where relevant, contracting authorities should be encouraged to appoint a project leader to ensure good cooperation between the economic operators and the contracting authority during the award procedure.

- (43) For works contracts, such situations include works that are not standard buildings or where works includes design or innovative solutions. For services or supplies that require adaptation or design efforts, the use of a competitive procedure with negotiation or competitive dialogue is likely to be of value. Such adaptation or design efforts are particularly necessary in the case of complex purchases such as sophisticated products, intellectual services, for example some consultancy services, architectural services or engineering services, or major information and communications technology (ICT) projects. In those cases, negotiations may be necessary to guarantee that the supply or service in question corresponds to the needs of the contracting authority. In respect of off-the-shelf services or supplies that can be provided by many different operators on the market, the competitive procedure with negotiation and competitive dialogue should not be used.
- (44) The competitive procedure with negotiation should also be available in cases where an open or restricted procedure resulted only in irregular or unacceptable tenders. In such cases, contracting authorities should be allowed to conduct negotiations with the aim of obtaining regular and acceptable tenders.
- (45) The competitive procedure with negotiation should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. In particular, contracting authorities should indicate beforehand the minimum requirements which characterise the nature of the procurement and which should not be changed in the negotiations. Award criteria and their weighting should remain stable throughout the entire procedure and should not be subject to negotiations, in order to guarantee equal treatment of all economic operators. Negotiations should aim at improving the tenders so as to allow contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. Negotiations may concern all characteristics of the purchased works, supplies and services including, for instance, quality, quantities, commercial clauses as well as social, environmental and innovative aspects, in so far as they do not constitute minimum requirements.

It should be clarified that the minimum requirements to be set by the contracting authority are those conditions and characteristics (particularly physical, functional and legal) that any tender should meet or possess in order to allow the contracting authority to award the contract in accordance with the chosen award criteria. In order to ensure transparency and traceability of the process, all stages should be duly documented. Furthermore, all tenders throughout the procedure should be submitted in writing.

- (46) Contracting authorities should be allowed to shorten certain deadlines applicable to open and restricted procedures and to competitive procedures with negotiation where the deadlines in question would be impracticable because of a state of urgency which should be duly substantiated by the contracting authorities. It should be clarified that this need not be an extreme urgency brought about by events unforeseeable for and not attributable to the contracting authority.
- (47) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Public authorities should make the best strategic use of public procurement to spur innovation. Buying innovative products, works and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for public money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth.

It should be recalled that a series of procurement models have been outlined in the Commission Communication of 14 December 2007 entitled 'Pre-commercial Procurement: Driving innovation to ensure sustainable high quality public services in Europe', which deals with the procurement of those R&D services not falling within the scope of this Directive. Those models would continue to be available, but this Directive should also contribute to facilitating public procurement of innovation and help Member States in achieving the Innovation Union targets.

- (48) Because of the importance of innovation, contracting authorities should be encouraged to allow variants as often as possible. The attention of those authorities should consequently be drawn to the need to define the minimum requirements to be met by variants before indicating that variants may be submitted.

(49) Where a need for the development of an innovative product or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be met by solutions already available on the market, contracting authorities should have access to a specific procurement procedure in respect of contracts falling within the scope of this Directive. This specific procedure should allow contracting authorities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided that such innovative product or service or innovative works can be delivered to agreed performance levels and costs, without the need for a separate procurement procedure for the purchase. The innovation partnership should be based on the procedural rules that apply to the competitive procedure with negotiation and contracts should be awarded on the sole basis of the best price-quality ratio, which is most suitable for comparing tenders for innovative solutions. Whether in respect of very large projects or smaller innovative projects, the innovation partnership should be structured in such a way that it can provide the necessary 'market-pull', incentivising the development of an innovative solution without foreclosing the market.

Contracting authorities should therefore not use innovation partnerships in such a way as to prevent, restrict or distort competition. In certain cases, setting up innovation partnerships with several partners could contribute to avoiding such effects.

(50) In view of the detrimental effects on competition, negotiated procedures without prior publication of a contract notice should be used only in very exceptional circumstances. This exception should be limited to cases where publication is either not possible, for reasons of extreme urgency brought about by events unforeseeable for and not attributable to the contracting authority, or where it is clear from the outset that publication would not trigger more competition or better procurement outcomes, not least because there is objectively only one economic operator that can perform the contract. This is the case for works of art, where the identity of the artist intrinsically determines the unique character and value of the art object itself. Exclusivity can also arise from other reasons, but only situations of objective exclusivity can justify the use of the negotiated procedure without publication, where the situation of exclusivity has not been created by the contracting authority itself with a view to the future procurement procedure.

Contracting authorities relying on this exception should provide reasons why there are no reasonable alternatives or substitutes such as using alternative distribution

channels including outside the Member State of the contracting authority or considering functionally comparable works, supplies and services.

Where the situation of exclusivity is due to technical reasons, they should be rigorously defined and justified on a case-by-case basis. They could include, for instance, near technical impossibility for another economic operator to achieve the required performance or the necessity to use specific know-how, tools or means which only one economic operator has at its disposal. Technical reasons may also derive from specific interoperability requirements which must be fulfilled in order to ensure the functioning of the works, supplies or services to be procured.

Finally, a procurement procedure is not useful where supplies are purchased directly on a commodity market, including trading platforms for commodities such as agricultural products, raw materials and energy exchanges, where the regulated and supervised multi-lateral trading structure naturally guarantees market prices.

(51) It should be clarified that the provisions concerning protection of confidential information do not in any way prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes.

(52) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures, as they greatly enhance the possibilities of economic operators to participate in procurement procedures across the internal market. For that purpose, transmission of notices in electronic form, electronic availability of the procurement documents and – after a transition period of 30 months – fully electronic communication, meaning communication by electronic means at all stages of the procedure, including the transmission of requests for participation and, in particular, the transmission of the tenders (electronic submission) should be made mandatory. Member States and contracting authorities should remain free to go further if they so wish. It should also be clarified that mandatory use of electronic means of communications pursuant to this Directive should not, however, oblige contracting authorities to carry out electronic processing of tenders, nor should it mandate electronic evaluation or automatic processing. Furthermore, pursuant to this Directive, no elements of the public procurement process after the award of the contract should be covered by the obligation to use electronic means of communication, nor should internal communication within the contracting authority.



- (53) Contracting authorities should, except in certain specific situations, use electronic means of communication which are non-discriminatory, generally available and interoperable with the ICT products in general use and which do not restrict economic operators' access to the procurement procedure. The use of such means of communication should also take accessibility for persons with disabilities into due account. It should be clarified that the obligation to use electronic means at all stages of the public procurement procedure would be appropriate neither where the use of electronic means would require specialised tools or file formats that are not generally available nor where the communications concerned could only be handled using specialised office equipment. Contracting authorities should therefore not be obliged to require the use of electronic means of communication in the submission process in certain cases, which should be listed exhaustively. This Directive stipulates that such cases should include situations which would require the use of specialised office equipment not generally available to the contracting authorities such as wide-format printers. In some procurement procedures the procurement documents might require the submission of a physical or scale model which cannot be submitted to the contracting authorities using electronic means. In such situations, the model should be transmitted to the contracting authorities by post or other suitable carrier.

It should however be clarified that the use of other means of communication should be limited to those elements of the tender for which electronic means of communications are not required.

It is appropriate to clarify that, where necessary for technical reasons, contracting authorities should be able to set a maximum limit to the size of the files that may be submitted.

- (54) There can be exceptional cases in which contracting authorities should be allowed not to use electronic means of communication where not using such means of communication is necessary in order to protect the particularly sensitive nature of information. It should be clarified that, where the use of electronic tools which are not generally available can offer the necessary level of protection, such electronic tools should be used. Such might for instance be the case where contracting authorities require the use of dedicated secure means of communication to which they offer access.
- (55) Differing technical formats or processes and messaging standards could potentially create obstacles to interoperability, not only within each Member State but also and

especially between the Member States. For example, in order to participate in a procurement procedure in which use of electronic catalogues, which is a format for the presentation and organisation of information in a manner that is common to all the participating bidders and which lends itself to electronic treatment, is permitted or required, economic operators would, in the absence of standardisation, be required to customise their own catalogues to each procurement procedure, which would entail providing very similar information in different formats depending on the specifications of the contracting authority concerned. Standardising the catalogue formats would thus improve the level of interoperability, enhance efficiency and would also reduce the effort required of economic operators.

- (56) When considering whether there is a need to ensure or enhance interoperability between differing technical formats or process and messaging standards by rendering the use of specific standards mandatory, and if so which standards to impose, the Commission should take the utmost account of the opinions of the stakeholders concerned. It should also consider the extent to which a given standard has already been used in practice by economic operators and contracting authorities and how well it has worked. Before making the use of any particular technical standard mandatory, the Commission should also carefully consider the costs that this might entail, in particular in terms of adaptations to existing e-procurement solutions, including infrastructure, processes or software. Where the standards concerned are not developed by an international, European or national standardisation organisation, they should meet the requirements applicable to ICT standards as set out in Regulation (EU) 1025/2012 of the European Parliament and of the Council<sup>(1)</sup>.
- (57) Before specifying the level of security required for the electronic means of communications to be used at the various stages of the award procedure, Member States and contracting authorities should evaluate the proportionality between on the one hand the requirements aimed at ensuring correct and reliable identification of the senders of the communication concerned as well as the integrity of its content, and on the other hand the risk of problems such as in situations where messages are sent by a different sender than that indicated. All other things being equal, this would mean that the level of security required of, for instance, an email requesting confirmation of the exact address at which an

<sup>(1)</sup> Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

information meeting will be held would not need to be set at the same level as for the tender itself which constitutes a binding offer for the economic operator. Similarly, the evaluation of proportionality could result in lower levels of security being required in connection with the resubmission of electronic catalogues or the submission of tenders in the context of mini-competitions under a framework agreement or the access to procurement documents.

(58) While essential elements of a procurement procedure such as the procurement documents, requests for participation, confirmation of interest and tenders should always be made in writing, oral communication with economic operators should otherwise continue to be possible, provided that its content is documented to a sufficient degree. This is necessary to ensure an adequate level of transparency that allows for a verification of whether the principle of equal treatment has been adhered to. In particular, it is essential that oral communications with tenderers which could have an impact on the content and assessment of the tenders be documented to a sufficient extent and by appropriate means, such as written or audio records or summaries of the main elements of the communication.

(59) There is a strong trend emerging across Union public procurement markets towards the aggregation of demand by public purchasers, with a view to obtaining economies of scale, including lower prices and transaction costs, and to improving and professionalising procurement management. This can be achieved by concentrating purchases either by the number of contracting authorities involved or by volume and value over time. However, the aggregation and centralisation of purchases should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, as well as market access opportunities for SMEs.

(60) The instrument of framework agreements has been widely used and is considered as an efficient procurement technique throughout Europe. It should therefore be maintained largely as it is. However, certain aspects need to be clarified, in particular that framework agreements should not be used by contracting authorities which are not identified in them. For that purpose, the contracting authorities that are parties to a specific framework agreement from the outset should be clearly indicated, either by name or by other means, such as a reference to a given category of contracting authorities within a clearly delimited geographical area, so that the contracting authorities concerned can be easily and unequivocally identified. Likewise, a framework

agreement should not be open to entry of new economic operators once it has been concluded. This implies for instance that where a central purchasing body uses an overall register of the contracting authorities or categories thereof, such as the local authorities in a given geographical area, that are entitled to have recourse to framework agreements it concludes, that central purchasing body should do so in a way that makes it possible to verify not only the identity of the contracting authority concerned but also the date from which it acquires the right to have recourse to the framework agreement concluded by the central purchasing body as that date determines which specific framework agreements that contracting authority should be allowed to use.

(61) The objective conditions for determining which of the economic operators party to the framework agreement should perform a given task, such as supplies or services intended for use by natural persons, may, in the context of framework agreements setting out all the terms, include the needs or the choice of the natural persons concerned.

Contracting authorities should be given additional flexibility when procuring under framework agreements, which are concluded with more than one economic operator and which set out all the terms.

In such cases, contracting authorities should be allowed to obtain specific works, supplies or services, that are covered by the framework agreement, either by requiring them from one of the economic operators, determined in accordance with objective criteria and on the terms already set out, or by awarding a specific contract for the works, supplies or services concerned following a mini-competition among the economic operators parties to the framework agreement. To ensure transparency and equal treatment, contracting authorities should indicate in the procurement documents for the framework agreement the objective criteria that will govern the choice between those two methods of performing the framework agreement. Such criteria could for instance relate to the quantity, value or characteristics of the works, supplies or services concerned, including the need for a higher degree of service or an increased security level, or to developments in price levels compared to a predetermined price index. Framework agreements should not be used improperly or in such a way as to prevent, restrict or distort competition. Contracting authorities should not be obliged pursuant to this Directive to procure works, supplies or services that are covered by a framework agreement, under that framework agreement.

- (62) It should also be clarified that, while contracts based on a framework agreement are to be awarded before the end of the term of the framework agreement itself, the duration of the individual contracts based on a framework agreement does not need to coincide with the duration of that framework agreement, but might, as appropriate, be shorter or longer. In particular, it should be allowed to set the length of individual contracts based on a framework agreement taking account of factors such as the time needed for their performance, where maintenance of equipment with an expected useful life of more than four years is included or where extensive training of staff to perform the contract is needed.

It should also be clarified that there might be exceptional cases in which the length of the framework agreements themselves should be allowed to be longer than four years. Such cases, which should be duly justified, in particular by the subject of the framework agreement, might for instance arise where economic operators need to dispose of equipment the amortisation period of which is longer than four years and which must be available at any time over the entire duration of the framework agreement.

- (63) In view of the experience acquired, there is also a need to adjust the rules governing dynamic purchasing systems to enable contracting authorities to take full advantage of the possibilities afforded by that instrument. The systems need to be simplified; in particular they should be operated in the form of a restricted procedure, hence eliminating the need for indicative tenders, which have been identified as one of the major burdens associated with dynamic purchasing systems. Thus any economic operator that submits a request to participate and meets the selection criteria should be allowed to take part in procurement procedures carried out through the dynamic purchasing system over its period of validity. This purchasing technique allows the contracting authority to have a particularly broad range of tenders and hence to ensure optimum use of public funds through broad competition in respect of commonly used or off-the-shelf products, works or services which are generally available on the market.
- (64) The examination of those requests to participate should normally be performed within a maximum of 10 working days, given that the evaluation of the selection criteria will take place on the basis of the simplified requirements for documentation that are set out in this Directive. However, when a dynamic purchasing system is first set up, contracting authorities might, in response to the first publication of the contract notice or the invitation to confirm interest, be faced with such a large number of requests for participation that they would need more time to examine the requests. That should be admissible, provided that no specific procurement is launched before all the requests have been examined. Contracting authorities should be free to organise the way in which they intend to examine the requests for participation, for instance by deciding

to conduct such examinations only once a week, provided the deadlines for the examination of each request of admission are observed.

- (65) At any time during the period of validity of the dynamic purchasing system, contracting authorities should be free to require economic operators to submit a renewed and updated self-declaration on the fulfilment of criteria for qualitative selection, within an adequate time limit. It should be recalled that the possibility foreseen in the general provisions on means of proof of this Directive to ask economic operators to submit supporting documents and the obligation to do so of the tenderer to which it has decided to award the contract also apply in the particular context of dynamic purchasing systems.
- (66) In order to further the possibilities of SMEs to participate in a large-scale dynamic purchasing system, for instance one that is operated by a central purchasing body, the contracting authority concerned should be able to articulate the system in objectively defined categories of products, works or services. Such categories should be defined by reference to objective factors which might for instance include the maximum allowable size of specific contracts to be awarded within the category concerned or a specific geographic area in which specific contracts are to be performed. Where a dynamic purchasing system is divided into categories, the contracting authority should apply selection criteria that are proportionate to the characteristics of the category concerned.
- (67) It should be clarified that electronic auctions are typically not suitable for certain public works contracts and certain public service contracts having as their subject-matter intellectual performances, such as the design of works, because only the elements suitable for automatic evaluation by electronic means, without any intervention or appreciation by the contracting authority, namely elements which are quantifiable so that they can be expressed in figures or percentages, may be the object of electronic auctions.
- It should, however, also be clarified that electronic auctions may be used in a procurement procedure for the purchase of a specific intellectual property right. It is also appropriate to recall that while contracting authorities remain free to reduce the number of candidates or tenderers as long as the auction has not yet started, no further reduction of the number of tenderers participating in the electronic auction should be allowed after the auction has started.
- (68) New electronic purchasing techniques are constantly being developed, such as electronic catalogues. Electronic catalogues are a format for the presentation and organisation of information in a manner that is common to all the participating bidders and which lends itself to electronic treatment. An example could be tenders presented

in the form of a spreadsheet. Contracting authorities should be able to require electronic catalogues in all available procedures where the use of electronic means of communication is required. Electronic catalogues help to increase competition and streamline public purchasing, particularly in terms of savings in time and money. Certain rules should however be laid down to ensure that the use of the new techniques complies with this Directive and with the principles of equal treatment, non-discrimination and transparency. Thus, the use of electronic catalogues for the presentation of tenders should not entail the possibility of economic operators limiting themselves to the transmission of their general catalogue. Economic operators should still have to adapt their general catalogues in view of the specific procurement procedure. Such adaptation ensures that the catalogue that is transmitted in response to a given procurement procedure contains only products, works or services that the economic operators estimated - after an active examination - correspond to the requirements of the contracting authority. In so doing, economic operators should be allowed to copy information contained in their general catalogue, but they should not be allowed to submit the general catalogue as such.

Furthermore, where sufficient guarantees are offered in respect of ensuring traceability, equal treatment and predictability, contracting authorities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues, in particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used.

Where tenders have been generated by the contracting authority, the economic operator concerned should be given the possibility to verify that the tender thus constituted by the contracting authority does not contain any material errors. Where material errors are present, the economic operator should not be bound by the tender generated by the contracting authority unless the error is corrected.

In line with the requirements of the rules for electronic means of communication, contracting authorities should avoid unjustified obstacles to economic operators' access to procurement procedures in which tenders are to be presented in the form of electronic catalogues and which guarantee compliance with the general principles of non-discrimination and equal treatment.

(69) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions, managing dynamic

purchasing systems or awarding public contracts/framework agreements for other contracting authorities, with or without remuneration. The contracting authorities for whom a framework agreement is concluded should be able to use it for individual or repetitive purchases. In view of the large volumes purchased, such techniques may help increase competition and should help to professionalise public purchasing. Provision should therefore be made for a Union definition of central purchasing bodies dedicated to contracting authorities and it should be clarified that central purchasing bodies operate in two different manners.

Firstly, they should be able to act as wholesalers by buying, stocking and reselling or, secondly, they should be able to act as intermediaries by awarding contracts, operating dynamic purchasing systems or concluding framework agreements to be used by contracting authorities. Such an intermediary role might in some cases be carried out by conducting the relevant award procedures autonomously, without detailed instructions from the contracting authorities concerned; in other cases, by conducting the relevant award procedures under the instructions of the contracting authorities concerned, on their behalf and for their account.

Furthermore, rules should be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, as between the central purchasing body and the contracting authorities procuring from or through it. Where the central purchasing body has sole responsibility for the conduct of the procurement procedures, it should also be solely and directly responsible for the legality of the procedures. Where a contracting authority conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.

(70) Contracting authorities should be allowed to award a public service contract for the provision of centralised purchasing activities to a central purchasing body without applying the procedures provided for in this Directive. It should also be permitted for such public service contracts to include the provision of ancillary purchasing activities. Public service contracts for the provision of ancillary purchasing activities should, when performed otherwise than by a central purchasing body in connection with its provision of central purchasing activities to the contracting authority concerned, be awarded in accordance with this Directive. It should also be recalled that this Directive should not apply where centralised or ancillary purchasing activities are provided other than through a contract for pecuniary interest which constitutes procurement within the meaning of this Directive.



- (71) Strengthening the provisions concerning central purchasing bodies should in no way prevent the current practices of occasional joint procurement, i.e. less institutionalised and systematic common purchasing or the established practice of having recourse to service providers that prepare and manage procurement procedures on behalf and for the account of a contracting authority and under its instructions. On the contrary, certain features of joint procurement should be clarified because of the important role joint procurement may play, not least in connection with innovative projects.

Joint procurement can take many different forms, ranging from coordinated procurement through the preparation of common technical specifications for works, supplies or services that will be procured by a number of contracting authorities, each conducting a separate procurement procedure, to situations where the contracting authorities concerned jointly conduct one procurement procedure either by acting together or by entrusting one contracting authority with the management of the procurement procedure on behalf of all contracting authorities.

Where several contracting authorities are jointly conducting a procurement procedure, they should be jointly responsible for fulfilling their obligations under this Directive. However, where only parts of the procurement procedure are jointly conducted by the contracting authorities, joint responsibility should apply only to those parts of the procedure that have been carried out together. Each contracting authority should be solely responsible in respect of procedures or parts of procedures it conducts on its own, such as the awarding of a contract, the conclusion of a framework agreement, the operation of a dynamic purchasing system, the reopening of competition under a framework agreement or the determination of which of the economic operators party to a framework agreement shall perform a given task.

- (72) Electronic means of communication are particularly well suited to supporting centralised purchasing practices and tools because of the possibility they offer to re-use and automatically process data and to minimise information and transaction costs. The use of such electronic means of communication should therefore, as a first step, be rendered compulsory for central purchasing bodies, while also facilitating converging practices across the Union. This should be followed by a general obligation to use electronic means of communication in all procurement procedures after a transition period of 30 months.
- (73) Joint awarding of public contracts by contracting authorities from different Member States currently encounters specific legal difficulties concerning conflicts of national laws. Despite the fact that Directive 2004/18/EC

implicitly allowed for cross-border joint public procurement, contracting authorities are still facing considerable legal and practical difficulties in purchasing from central purchasing bodies in other Member States or jointly awarding public contracts. In order to allow contracting authorities to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting authority, those difficulties should be remedied. Therefore new rules on cross-border joint procurement should be established in order to facilitate cooperation between contracting authorities and enhancing the benefits of the internal market by creating cross-border business opportunities for suppliers and service providers. Those rules should determine the conditions for cross-border utilisation of central purchasing bodies and designate the applicable public procurement legislation, including the applicable legislation on remedies, in cases of cross-border joint procedures, complementing the conflict of law rules of Regulation (EC) No 593/2008 of the European Parliament and the Council<sup>(1)</sup>. In addition, contracting authorities from different Member States should be able to set up joint entities established under national or Union law. Specific rules should be established for such forms of joint procurement.

However, contracting authorities should not make use of the possibilities for cross-border joint procurement for the purpose of circumventing mandatory public law rules, in conformity with Union law, which are applicable to them in the Member State where they are located. Such rules might include, for example, provisions on transparency and access to documents or specific requirements for the traceability of sensitive supplies.

- (74) The technical specifications drawn up by public purchasers need to allow public procurement to be open to competition as well as to achieve objectives of sustainability. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions standards and technical specifications in the marketplace, including those drawn up on the basis of performance criteria linked to the life cycle and the sustainability of the production process of the works, supplies and services.

Consequently, technical specifications should be drafted in such a way as to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows that objective to be achieved in the best way possible. Functional and performance-related requirements are also appropriate

<sup>(1)</sup> Regulation (EC) No 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

means to favour innovation in public procurement and should be used as widely as possible. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements should be considered by contracting authorities. It should be the responsibility of the economic operator to prove equivalence with the requested label.

To prove equivalence, it should be possible to require tenderers to provide third-party verified evidence. However, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits, provided that the economic operator concerned thereby proves that the works, supplies or services meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

- (75) Contracting authorities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-)national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations, can participate, and that the label is accessible and available to all interested parties. It should be clarified that stakeholders could be public or private bodies, businesses or any sort of non-governmental organisation (an organisation that is not a part of a government and is not a conventional business).

It should equally be clarified that specific national or government bodies or organisations can be involved in setting up label requirements that may be used in connection with procurement by public authorities without those bodies or organisations losing their status as third parties.

References to labels should not have the effect of restricting innovation.

- (76) For all procurement intended for use by persons, whether general public or staff of the contracting authority, it is necessary for contracting authorities to lay down technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users, except in duly justified cases.

- (77) When drawing up technical specifications, contracting authorities should take into account requirements ensuing from Union law in the field of data protection law, in particular in relation to the design of the processing of personal data (data protection by design).

- (78) Public procurement should be adapted to the needs of SMEs. Contracting authorities should be encouraged to make use of the Code of Best Practices set out in the Commission Staff Working Document of 25 June 2008 entitled 'European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts', providing guidance on how they may apply the public procurement framework in a way that facilitates SME participation. To that end and to enhance competition, contracting authorities should in particular be encouraged to divide large contracts into lots. Such division could be done on a quantitative basis, making the size of the individual contracts better correspond to the capacity of SMEs, or on a qualitative basis, in accordance with the different trades and specialisations involved, to adapt the content of the individual contracts more closely to the specialised sectors of SMEs or in accordance with different subsequent project phases.

The size and subject-matter of the lots should be determined freely by the contracting authority, which, in accordance with the relevant rules on the calculation of the estimated value of procurement, should also be allowed to award some of the lots without applying the procedures of this Directive. The contracting authority should have a duty to consider the appropriateness of dividing contracts into lots while remaining free to decide autonomously on the basis of any reason it deems relevant, without being subject to administrative or judicial supervision. Where the contracting authority decides that it would not be appropriate to divide the contract into lots, the individual report or the procurement documents should contain an indication of the main reasons for the contracting authority's choice. Such reasons could for instance be that the contracting authority finds that such division could risk restricting competition, or risk rendering the execution of the contract excessively technically difficult or expensive, or that the need to coordinate the different contractors for the lots could seriously risk undermining the proper execution of the contract.

Member States should remain free to go further in their efforts to facilitate the involvement of SMEs in the public procurement market, by extending the scope of the obligation to consider the appropriateness of dividing contracts into lots to smaller contracts, by requiring contracting authorities to provide a justification for a decision not to divide contracts into lots or by rendering a division into lots obligatory under certain conditions. With the same purpose, Member States should also be free to provide mechanisms for direct payments to subcontractors.



- (79) Where contracts are divided into lots, contracting authorities should, for instance in order to preserve competition or to ensure reliability of supply, be allowed to limit the number of lots for which an economic operator may tender; they should also be allowed to limit the number of lots that may be awarded to any one tenderer.

However, the objective of facilitating greater access to public procurement by SMEs might be hampered if contracting authorities would be obliged to award the contract lot by lot even where this would entail having to accept substantially less advantageous solutions compared to an award grouping several or all of the lots. Where the possibility to apply such a method has been clearly indicated beforehand, it should therefore be possible for contracting authorities to conduct a comparative assessment of the tenders in order to establish whether the tenders submitted by a particular tenderer for a specific combination of lots would, taken as whole, fulfil the award criteria laid down in accordance with this Directive with regard to those lots better than the tenders for the individual lots concerned seen in isolation. If so, the contracting authority should be allowed to award a contract combining the lots in question to the tenderer concerned. It should be clarified that contracting authorities should conduct such a comparative assessment by first determining which tenders best fulfil the award criteria laid down for each individual lot and then comparing it with the tenders submitted by a particular tenderer for a specific combination of lots, taken as a whole.

- (80) In order to make procedures faster and more efficient, time limits for participation in procurement procedures should be kept as short as possible without creating undue barriers to access for economic operators from across the internal market and in particular SMEs. It should therefore be kept in mind that, when fixing the time limits for the receipt of tenders and requests to participate, contracting authorities should take account in particular of the complexity of the contract and the time required to draw up tenders, even if this entails setting time limits that are longer than the minima provided for under this Directive. The use of electronic means of information and communication, in particular full electronic availability to economic operators, tenderers and candidates of procurement documents and electronic transmission of communications leads, on the other hand, to increased transparency and time savings. Therefore, provision should be made for reducing the minimum time limits in line with the rules set by the GPA and subject to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Furthermore, contracting authorities should have the opportunity to further shorten the time limits for receipt of requests to participate and of tenders in cases where a state of urgency renders the regular time limits impracticable, but does not make a regular procedure with publication impossible. Only in exceptional situations where

extreme urgency brought about by events unforeseeable by the contracting authority concerned that are not attributable to that contracting authority makes it impossible to conduct a regular procedure even with shortened time limits, contracting authorities should, in so far as strictly necessary, have the possibility to award contracts by negotiated procedure without prior publication. This might be case where natural catastrophes require immediate action.

- (81) It should be clarified that the need to ensure that economic operators have sufficient time in which to draw up responsive tenders may entail that the time limits which were set initially may have to be extended. This would, in particular, be the case where significant changes are made to the procurement documents. It should also be specified that, in that case, significant changes should be understood as covering changes, in particular to the technical specifications, in respect of which economic operators would need additional time in order to understand and respond appropriately. It should, however, be clarified that such changes should not be so substantial that the admission of candidates other than those initially selected would have been allowed for or additional participants in the procurement procedure would have been attracted. That could, in particular, be the case where the changes render the contract or the framework agreement materially different in character from the one initially set out in the procurement documents.
- (82) It should be clarified that the information concerning certain decisions taken during a procurement procedure, including the decision not to award a contract or not to conclude a framework agreement, should be sent by the contracting authorities, without candidates or tenderers having to request such information. It should also be recalled that Council Directive 89/665/EEC<sup>(1)</sup> provides for an obligation for contracting authorities, again without candidates or tenderer having to request it, to provide the candidates and tenderers concerned with a summary of the relevant reasons for some of the central decisions that are taken in the course of a procurement procedure. It should finally be clarified that candidates and tenderers should be able to request more detailed information concerning those reasons, which contracting authorities should be required to give except where there would be serious grounds for not doing so. Those grounds should be set out in this Directive. To ensure the necessary transparency in the context of procurement procedures involving negotiations and dialogues with tenderers, tenderers having made an admissible tender should, except where there would be serious grounds for not doing so, also be enabled to request information on the conduct and progress of the procedure.

<sup>(1)</sup> Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33).

- (83) Overly demanding requirements concerning economic and financial capacity frequently constitute an unjustified obstacle to the involvement of SMEs in public procurement. Any such requirements should be related and proportionate to the subject-matter of the contract. In particular, contracting authorities should not be allowed to require economic operators to have a minimum turnover that would be disproportionate to the subject-matter of the contract; the requirement should normally not exceed at the most twice the estimated contract value. However, in duly justified circumstances, it should be possible to apply higher requirements. Such circumstances might relate to the high risks attached to the performance of the contract or the fact that its timely and correct performance is critical, for instance because it constitutes a necessary preliminary for the performance of other contracts.

In such duly justified cases contracting authorities should remain free to decide autonomously whether higher minimum turnover requirements would be appropriate and pertinent without being subject to administrative or judicial supervision. Where higher minimum turnover requirements are to be applied, contracting authorities should remain free to set the level as long as it is related and proportionate to the subject-matter of the contract. Where the contracting authority decides that the minimum turnover requirement should be set at a level higher than twice the estimated contract value, the individual report or the procurement documents should contain an indication of the main reasons for the contracting authority's choice.

Contracting authorities should also be able to request information on the ratios, for instance, between assets and liabilities in the annual accounts. A positive ratio showing higher levels of assets than of liabilities could provide additional evidence that the financial capacity of economic operators is sufficient.

- (84) Many economic operators, and not least SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example through use of a European Single Procurement Document (ESPD) consisting of an updated self-declaration, could result in considerable simplification for the benefit of both contracting authorities and economic operators.

The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers unable to do so. Contracting authorities should also be entitled to request all or part of the supporting documents at any moment where they consider this to be necessary in view of the proper conduct of the procedure. This might in

particular be the case in two-stage procedures – restricted procedures, competitive procedures with negotiation, competitive dialogues and innovation partnerships - in which the contracting authorities make use of the possibility to limit the number of candidates invited to submit a tender. Requiring submission of the supporting documents at the moment of selection of the candidates to be invited could be justified to avoid that contracting authorities invite candidates which later prove unable to submit the supporting documents at the award stage, depriving otherwise qualified candidates from participation.

It should be set out explicitly that the ESPD should also provide the relevant information in respect of entities on whose capacities an economic operator relies, so that the verification of the information regarding such entities can be carried out together with and on the same conditions as the verification in respect of the main economic operator.

- (85) It is important that the decisions of contracting authorities should be based on recent information, in particular as regards exclusion grounds, given that important changes can intervene quite rapidly, for instance in the event of financial difficulties which would render the economic operator unsuitable or, conversely, because an outstanding debt on social contributions would meanwhile have been paid. It is therefore preferable that, whenever possible, contracting authorities should verify such information by accessing relevant databases, which should be national in the sense of being administered by public authorities. At the current stage of development, there might still be cases where doing so is not yet possible because of technical reasons. The Commission should therefore envisage promoting measures that could facilitate easy recourse to up-to-date information electronically, such as strengthening tools offering access to virtual company dossiers, or means of facilitating interoperability between databases or other such flanking measures.

It should also be provided that contracting authorities should not ask for still up-to-date documents, which they already possess from earlier procurement procedures. However, it should also be ensured that contracting authorities will not be faced with disproportionate archiving and filing burdens in this context. Consequently, implementation of this duty should only be applicable once the use of electronic means of communication is obligatory, as electronic document management will render the task much easier for contracting authorities.

- (86) Further simplification for both economic operators and contracting authorities could be obtained by means of a standard form for self-declarations, which could reduce problems linked to the precise drafting of formal statements and declarations of consent as well as language issues.

- (87) The Commission provides and manages an electronic system, e-Certis, which is currently updated and verified on a voluntary basis by national authorities. The aim of e-Certis is to facilitate the exchange of certificates and other documentary evidence frequently required by contracting authorities. Experience acquired so far indicates that voluntary updating and verification is insufficient to ensure that e-Certis can deliver its full potential for simplifying and facilitating documentary exchanges for the benefit of SMEs in particular. Maintenance should therefore be rendered obligatory in a first step. Recourse to e-Certis will be made mandatory at a later stage.
- (88) Contracting authorities should be able to require that environmental management measures or schemes be applied during the performance of a public contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council<sup>(1)</sup>, can demonstrate that the economic operator has the technical capability to perform the contract. This includes Ecolabel certificates involving environmental management criteria. Where an economic operator has no access to such environmental management registration schemes or no possibility of obtaining them within the relevant time limits, it should be allowed to submit a description of the environmental management measures implemented, provided that the economic operator concerned demonstrates that those measures ensure the same level of environmental protection as the measures required under the environmental management.
- (89) The notion of award criteria is central to this Directive. It is therefore important that the relevant provisions be presented in as simple and streamlined a way as possible. This can be obtained by using the terminology 'most economically advantageous tender' as the overriding concept, since all winning tenders should finally be chosen in accordance with what the individual contracting authority considers to be the economically best solution among those offered. In order to avoid confusion with the award criterion that is currently known as the 'most economically advantageous tender' in Directives 2004/17/EC and 2004/18/EC, a different terminology should be used to cover that concept, the 'best price-quality ratio'. Consequently, it should be interpreted in accordance with the case-law relating to those Directives, except where there is a clearly materially different solution in this Directive.
- (90) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment, with a view to ensuring an objective comparison of the

relative value of the tenders in order to determine, in conditions of effective competition, which tender is the most economically advantageous tender. It should be set out explicitly that the most economically advantageous tender should be assessed on the basis of the best price-quality ratio, which should always include a price or cost element. It should equally be clarified that such assessment of the most economically advantageous tender could also be carried out on the basis of either price or cost effectiveness only. It is furthermore appropriate to recall that contracting authorities are free to set adequate quality standards by using technical specifications or contract performance conditions.

In order to encourage a greater quality orientation of public procurement, Member States should be permitted to prohibit or restrict use of price only or cost only to assess the most economically advantageous tender where they deem this appropriate.

To ensure compliance with the principle of equal treatment in the award of contracts, contracting authorities should be obliged to create the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied in the contract award decision. Contracting authorities should therefore be obliged to indicate the contract award criteria and the relative weighting given to each of those criteria. Contracting authorities should, however, be permitted to derogate from that obligation to indicate the weighting of the criteria in duly justified cases for which they must be able to give reasons, where the weighting cannot be established in advance, in particular because of the complexity of the contract. In such cases, they should indicate the criteria in decreasing order of importance.

- (91) Article 11 TFEU requires that environmental protection requirements be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting authorities can contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts.
- (92) When assessing the best price-quality ratio contracting authorities should determine the economic and qualitative criteria linked to the subject-matter of the contract that they will use for that purpose. Those criteria should thus allow for a comparative assessment of the level of performance offered by each tender in the light of the subject-matter of the contract, as defined in the technical specifications. In the context of the best price-quality ratio, a non-exhaustive list of possible award criteria which include environmental and social aspects is set out in this Directive. Contracting authorities should be encouraged to choose award criteria that allow them to obtain high-quality works, supplies and services that are optimally suited to their needs.

<sup>(1)</sup> Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

The chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective and fair competition and be accompanied by arrangements that allow the information provided by the tenderers to be effectively verified.

To identify the most economically advantageous tender, the contract award decision should not be based on non-cost criteria only. Qualitative criteria should therefore be accompanied by a cost criterion that could, at the choice of the contracting authority, be either the price or a cost-effectiveness approach such as life-cycle costing. However, the award criteria should not affect the application of national provisions determining the remuneration of certain services or setting out fixed prices for certain supplies.

- (93) Where national provisions determine the remuneration of certain services or set out fixed prices for certain supplies, it should be clarified that it remains possible to assess value for money on the basis of other factors than solely the price or remuneration. Depending on the service or product concerned, such factors could, for instance, include conditions of delivery and payment, aspects of after-sale service (e.g. the extent of advisory and replacement services) or environmental or social aspects (e.g. whether books were stamped on recycled paper or paper from sustainable timber, the cost imputed to environmental externalities or whether the social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract has been furthered). Given the numerous possibilities of evaluating value for money on the basis of substantive criteria, recourse to drawing of lots as the sole means of awarding the contract should be avoided.
- (94) Wherever the quality of the staff employed is relevant to the level of performance of the contract, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this can affect the quality of contract performance and, as a result, the economic value of the tender. This might be the case, for example, in contracts for intellectual services such as consultancy or architectural services. Contracting authorities which make use of this possibility should ensure, by appropriate contractual means, that the staff assigned to contract performance effectively fulfil the specified quality standards and that such staff can only be replaced with the consent of the contracting authority which verifies that the replacement staff affords an equivalent level of quality.
- (95) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth. In this context, it should be recalled that public procurement is crucial to driving innovation, which is of great importance for future growth in Europe. In view of

the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement.

The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council<sup>(1)</sup>) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council<sup>(2)</sup>). In addition, the definition of common methodologies for life cycle costing has significantly advanced.

It therefore appears appropriate to continue on that path, leaving it to sector-specific legislation to set mandatory objectives and targets in function of the particular policies and conditions prevailing in the relevant sector and to promote the development and use of European approaches to life-cycle costing as a further underpinning for the use of public procurement in support of sustainable growth.

- (96) Those sector-specific measures should be complemented by an adaptation of Directives 2004/17/EC and 2004/18/EC empowering contracting authorities to pursue the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth in their purchasing strategies. It should hence be made clear that, except where it is assessed on the basis of price only, contracting authorities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services.

This means internal costs, such as research to be carried out, development, production, transport, use, maintenance and end-of-life disposal costs but can also include costs imputed to environmental externalities, such as pollution caused by extraction of the raw materials used in the product or caused by the product itself or its manufacturing, provided they can be monetised and monitored. The methods which contracting authorities use for assessing costs imputed to environmental externalities should be established in advance in an objective and non-discriminatory manner and be accessible to all interested parties. Such methods can be established at national, regional or local level, but they should, to avoid distortions of competition through tailor-made methodologies, remain general in the sense that they should not be set up specifically for a particular public procurement procedure.

<sup>(1)</sup> Directive 2009/33/EC of the European Parliament and the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (OJ L 120, 15.5.2009, p. 5).

<sup>(2)</sup> Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment (OJ L 39, 13.2.2008, p. 1).



Common methodologies should be developed at Union level for the calculation of life-cycle costs for specific categories of supplies or services. Where such common methodologies are developed, their use should be made compulsory.

Furthermore, the feasibility of establishing a common methodology on social life cycle costing should be examined, taking into account existing methodologies such as the Guidelines for Social Life Cycle Assessment of Products adopted within the framework of the United Nations Environment Programme.

- (97) Furthermore, with a view to the better integration of social and environmental considerations in the procurement procedures, contracting authorities should be allowed to use award criteria or contract performance conditions relating to the works, supplies or services to be provided under the public contract in any respect and at any stage of their life cycles from extraction of raw materials for the product to the stage of disposal of the product, including factors involved in the specific process of production, provision or trading and its conditions of those works, supplies or services or a specific process during a later stage of their life cycle, even where such factors do not form part of their material substance. Criteria and conditions referring to such a production or provision process are for example that the manufacturing of the purchased products did not involve toxic chemicals, or that the purchased services are provided using energy-efficient machines. In accordance with the case-law of the Court of Justice of the European Union, this also includes award criteria or contract performance conditions relating to the supply or utilisation of fair trade products in the course of the performance of the contract to be awarded. Criteria and conditions relating to trading and its conditions can for instance refer to the fact that the product concerned is of fair trade origin, including the requirement to pay a minimum price and price premium to producers. Contract performance conditions pertaining to environmental considerations might include, for example, the delivery, package and disposal of products, and in respect of works and services contracts, waste minimisation or resource efficiency.

However, the condition of a link with the subject-matter of the contract excludes criteria and conditions relating to general corporate policy, which cannot be considered as a factor characterising the specific process of production or provision of the purchased works, supplies or services. Contracting authorities should hence not be allowed to require tenderers to have a certain corporate social or environmental responsibility policy in place.

- (98) It is essential that award criteria or contract performance conditions concerning social aspects of the production process relate to the works, supplies or services to be

provided under the contract. In addition, they should be applied in accordance with Directive 96/71/EC, as interpreted by the Court of Justice of the European Union and should not be chosen or applied in a way that discriminates directly or indirectly against economic operators from other Member States or from third countries parties to the GPA or to Free Trade Agreements to which the Union is party. Thus, requirements concerning the basic working conditions regulated in Directive 96/71/EC, such as minimum rates of pay, should remain at the level set by national legislation or by collective agreements applied in accordance with Union law in the context of that Directive.

Contract performance conditions might also be intended to favour the implementation of measures for the promotion of equality of women and men at work, the increased participation of women in the labour market and the reconciliation of work and private life, the protection of the environment or animal welfare and, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, and to recruit more disadvantaged persons than are required under national legislation.

- (99) Measures aiming at the protection of health of the staff involved in the production process, the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract or training in the skills needed for the contract in question can also be the subject of award criteria or contract performance conditions provided that they relate to the works, supplies or services to be provided under the contract. For instance, such criteria or conditions might refer, amongst other things, to the employment of long-term job-seekers, the implementation of training measures for the unemployed or young persons in the course of the performance of the contract to be awarded. In technical specifications contracting authorities can provide such social requirements which directly characterise the product or service in question, such as accessibility for persons with disabilities or design for all users.
- (100) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests, terrorist offences, money laundering or terrorist financing. The non-payment of taxes or social security contributions should also lead to mandatory exclusion at the level of the Union. Member States should, however, be able to provide for a derogation from those mandatory exclusions in exceptional situations where overriding requirements in the general interest make a contract award indispensable. This might, for example, be the case where urgently needed vaccines or emergency equipment can only be purchased from an economic operator to whom one of the mandatory grounds for exclusion otherwise applies.

- (101) Contracting authorities should further be given the possibility to exclude economic operators which have proven unreliable, for instance because of violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights. It should be clarified that grave professional misconduct can render an economic operator's integrity questionable and thus render the economic operator unsuitable to receive the award of a public contract irrespective of whether the economic operator would otherwise have the technical and economical capacity to perform the contract.

Bearing in mind that the contracting authority will be responsible for the consequences of its possible erroneous decision, contracting authorities should also remain free to consider that there has been grave professional misconduct, where, before a final and binding decision on the presence of mandatory exclusion grounds has been rendered, they can demonstrate by any appropriate means that the economic operator has violated its obligations, including obligations relating to the payment of taxes or social security contributions, unless otherwise provided by national law. They should also be able to exclude candidates or tenderers whose performance in earlier public contracts has shown major deficiencies with regard to substantive requirements, for instance failure to deliver or perform, significant shortcomings of the product or service delivered, making it unusable for the intended purpose, or misbehaviour that casts serious doubts as to the reliability of the economic operator. National law should provide for a maximum duration for such exclusions.

In applying facultative grounds for exclusion, contracting authorities should pay particular attention to the principle of proportionality. Minor irregularities should only in exceptional circumstances lead to the exclusion of an economic operator. However repeated cases of minor irregularities can give rise to doubts about the reliability of an economic operator which might justify its exclusion.

- (102) Allowance should, however, be made for the possibility that economic operators can adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour. Those measures might consist in particular of personnel and organisational measures such as the severance of all links with persons or organisations involved in the misbehaviour, appropriate staff reorganisation measures, the implementation of reporting and control systems, the creation of an internal audit structure to monitor compliance and the adoption of internal liability and compensation rules. Where such measures offer sufficient guarantees, the economic operator in question should no longer be excluded on those grounds alone. Economic operators should have the possibility to request that compliance measures taken with a view to possible admission to the procurement procedure be examined.

However, it should be left to Member States to determine the exact procedural and substantive conditions applicable in such cases. They should, in particular, be free to decide whether to allow the individual contracting authorities to carry out the relevant assessments or to entrust other authorities on a central or decentralised level with that task.

- (103) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. Where the tenderer cannot provide a sufficient explanation, the contracting authority should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting authority has established that the abnormally low price or costs proposed results from non-compliance with mandatory Union law or national law compatible with it in the fields of social, labour or environmental law or international labour law provisions.
- (104) Contract performance conditions are for laying down specific requirements relating to the performance of the contract. Unlike contract award criteria which are the basis for a comparative assessment of the quality of tenders, contract performance conditions constitute fixed objective requirements that have no impact on the assessment of tenders. Contract performance conditions should be compatible with this Directive provided that they are not directly or indirectly discriminatory and are linked to the subject-matter of the contract, which comprises all factors involved in the specific process of production, provision or commercialisation. This includes conditions concerning the process of performance of the contract, but excludes requirements referring to a general corporate policy.

The contract performance conditions should be indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents.

- (105) It is important that observance by subcontractors of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in this Directive, provided that such rules, and their application, comply with Union law, be ensured through appropriate actions by the competent national authorities within the scope of their responsibilities and remit, such as labour inspection agencies or environmental protection agencies.

It is also necessary to ensure some transparency in the subcontracting chain, as this gives contracting authorities information on who is present at building sites on which works are being performed for them, or on which undertakings are providing services in or at buildings, infrastructures or areas, such as town halls, municipal schools,



sports facilities, ports or motorways, for which the contracting authorities are responsible or over which they have a direct oversight. It should be clarified that the obligation to deliver the required information is in any case incumbent upon the main contractor, either on the basis of specific clauses, that each contracting authority would have to include in all procurement procedures, or on the basis of obligations which Member States would impose on main contractors by means of generally applicable provisions.

It should also be clarified that the conditions relating to the enforcement of observance of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in this Directive, provided that such rules, and their application, comply with Union law, should be applied whenever the national law of a Member State provides for a mechanism of joint liability between subcontractors and the main contractor. Furthermore, it should be stated explicitly that Member States should be able to go further, for instance by extending the transparency obligations, by enabling direct payment to subcontractors or by enabling or requiring contracting authorities to verify that subcontractors are not in any of the situations in which exclusion of economic operators would be warranted. Where such measures are applied to subcontractors, coherence with the provisions applicable to main contractors should be ensured so that the existence of compulsory exclusion grounds would be followed by a requirement that the main contractor replace the subcontractor concerned. Where such verification shows the presence of non-compulsory grounds for exclusion, it should be clarified that contracting authorities are able to require the replacement. It should, however, also be set out explicitly that contracting authorities may be obliged to require the replacement of the subcontractor concerned where exclusion of main contractors would be obligatory in such cases.

It should also be set out explicitly that Member States remain free to provide for more stringent liability rules under national law or to go further under national law on direct payments to subcontractors.

- (106) It should be recalled that Council Regulation (EEC, Euratom) No 1182/71 <sup>(1)</sup> applies to the calculation of the time limits contained in this Directive.
- (107) It is necessary to clarify the conditions under which modifications to a contract during its performance require a new procurement procedure, taking into

account the relevant case-law of the Court of Justice of the European Union. A new procurement procedure is required in case of material changes to the initial contract, in particular to the scope and content of the mutual rights and obligations of the parties, including the distribution of intellectual property rights. Such changes demonstrate the parties' intention to renegotiate essential terms or conditions of that contract. This is the case in particular if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure.

Modifications to the contract resulting in a minor change of the contract value up to a certain value should always be possible without the need to carry out a new procurement procedure. To this effect and in order to ensure legal certainty, this Directive should provide for *de minimis* thresholds, below which a new procurement procedure is not necessary. Modifications to the contract above those thresholds should be possible without the need to carry out a new procurement procedure to the extent they comply with the relevant conditions laid down in this Directive.

- (108) Contracting authorities may be faced with situations where additional works, supplies or services become necessary; in such cases a modification of the initial contract without a new procurement procedure may be justified, in particular where the additional deliveries are intended either as a partial replacements or as the extension of existing services, supplies or installations where a change of supplier would oblige the contracting authority to acquire material, works or services having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance.
- (109) Contracting authorities can be faced with external circumstances that they could not foresee when they awarded the contract, in particular when the performance of the contract covers a long period. In this case, a certain degree of flexibility is needed to adapt the contract to those circumstances without a new procurement procedure. The notion of unforeseeable circumstances refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting authority, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value. However, this cannot apply in cases where a modification results in an alteration of the nature of the overall procurement, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement since, in such a situation, a hypothetical influence on the outcome may be assumed.

<sup>(1)</sup> Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ - English special edition: Series V Volume 1952-1972 p. 88).

- (110) In line with the principles of equal treatment and transparency, the successful tenderer should not, for instance where a contract is terminated because of deficiencies in the performance, be replaced by another economic operator without reopening the contract to competition. However, the successful tenderer performing the contract should be able, in particular where the contract has been awarded to more than one undertaking, to undergo certain structural changes during the performance of the contract, such as purely internal reorganisations, take-overs, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all public contracts performed by that tenderer.
- (111) Contracting authorities should, in the individual contracts themselves, have the possibility to provide for modifications to a contract by way of review or option clauses, but such clauses should not give them unlimited discretion. This Directive should therefore set out to what extent modifications may be provided for in the initial contract. It should consequently be clarified that sufficiently clearly drafted review or option clauses may for instance provide for price indexations or ensure that, for example, communications equipment to be delivered over a given period continues to be suitable, also in the case of changing communications protocols or other technological changes. It should also be possible under sufficiently clear clauses to provide for adaptations of the contract which are rendered necessary by technical difficulties which have appeared during operation or maintenance. It should also be recalled that contracts could, for instance, include both ordinary maintenance as well as provide for extraordinary maintenance interventions that might become necessary in order to ensure continuation of a public service.
- (112) Contracting authorities are sometimes faced with circumstances that require the early termination of public contracts in order to comply with obligations under Union law in the field of public procurement. Member States should therefore ensure that contracting authorities have the possibility, under the conditions determined by national law, to terminate a public contract during its term if so required by Union law.
- (113) The results of the Commission staff working paper of 27 June 2011 entitled 'Evaluation Report: Impact and Effectiveness of EU Public Procurement Legislation' suggested that the exclusion of certain services from the full application of Directive 2004/18/EC should be reviewed. As a result, the full application of this Directive should be extended to a number of services.
- (114) Certain categories of services continue by their very nature to have a limited cross-border dimension, namely such services that are known as services to the person, such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for public contracts for those services, with a higher threshold than that which applies to other services.
- Services to the person with values below that threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for cross-border projects.
- Contracts for services to the person above that threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this Directive take account of that imperative, imposing only the observance of basic principles of transparency and equal treatment and making sure that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services, published by the Social Protection Committee. When determining the procedures to be used for the award of contracts for services to the person, Member States should take Article 14 TFEU and Protocol No 26 into account. In so doing, Member States should also pursue the objectives of simplification and of alleviating the administrative burden for contracting authorities and economic operators; it should be clarified that so doing might also entail relying on rules applicable to service contracts not subject to the specific regime.
- Member States and public authorities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas, provided that such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.
- (115) Likewise, hotel and restaurant services are typically offered only by operators located in the specific place of delivery of those services and therefore also have a limited cross-border dimension. They should therefore only be covered by the light regime, as from a threshold of EUR 750 000. Large hotel and restaurant service contracts above that threshold can be of interest for various economic operators, such as travel agencies and other intermediaries, also on a cross-border basis.

- (116) Similarly, certain legal services concern exclusively issues of purely national law and are therefore typically offered only by operators located in the Member State concerned and consequently also have a limited cross-border dimension. They should therefore only be covered by the light regime, as from a threshold of EUR 750 000. Large legal service contracts above that threshold can be of interest for various economic operators, such as international law firms, also on a cross-border basis, in particular where they involve legal issues arising from or having as its background Union or other international law or involving more than one country.
- (117) Experience has shown that a series of other services, such as rescue services, firefighting services and prison services are normally only of cross-border interest as of such time as they acquire sufficient critical mass through their relatively high value. In so far as they are not excluded from the scope of this Directive, they should be included under light regime. To the extent that their provision is actually based on contracts, other categories of services, such as government services or the provision of services to the community, they would normally only be likely to present a cross-border interest as from a threshold of EUR 750 000 and should consequently only then be subject to the light regime.
- (118) In order to ensure the continuity of public services, this Directive should allow that participation in procurement procedures for certain services in the fields of health, social and cultural services could be reserved for organisations which are based on employee ownership or active employee participation in their governance, and for existing organisations such as cooperatives to participate in delivering these services to end users. This provision is limited in scope exclusively to certain health, social and related services, certain education and training services, library, archive, museum and other cultural services, sporting services, and services for private households, and is not intended to cover any of the exclusions otherwise provided for by this Directive. Those services should only be covered by the light regime.
- (119) It is appropriate to identify those services by reference to specific positions of the Common Procurement Vocabulary (CPV) as adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council<sup>(1)</sup>, which is a hierarchically structured nomenclature, divided into divisions, groups, classes, categories and subcategories. In order to avoid legal uncertainty, it should be clarified that reference to a division does not implicitly entail a reference to subordinate subdivisions. Such comprehensive coverage should instead be set out explicitly by mentioning all the relevant positions, where appropriate as a range of codes.
- (120) Design contests have traditionally mostly been used in the fields of town and country planning, architecture and engineering or data processing. It should, however, be recalled that these flexible instruments could be used also for other purposes, such as to obtain plans for financial engineering that would optimise SME support in the context of the Joint European Resources for Micro to Medium Enterprises (JEREMIE) or other Union SME support programmes in a given Member State. The design contest used to acquire the plans for such financial engineering could also stipulate that the subsequent service contracts for the realisation of this financial engineering would be awarded to the winner or one of the winners of the design contest by a negotiated procedure without publication.
- (121) The evaluation has shown that there is still considerable room for improvement in the application of the Union public procurement rules. With a view to a more efficient and consistent application of the rules, it is essential to get a good overview on possible structural problems and general patterns in national procurement policies, in order to address possible problems in a more targeted way. That overview should be gained through appropriate monitoring, the results of which should be regularly published, in order to allow an informed debate on possible improvements of procurement rules and practice. Acquiring such a good overview could also allow insights on the application of public procurement rules in the context of the implementation of projects co-financed by the Union. Member States should remain free to decide how and by whom this monitoring should be carried out in practice; in so doing, they should also remain free to decide whether the monitoring should be based on a sample-based ex-post control or on a systematic, ex-ante control of public procurement procedures covered by this Directive. It should be possible to bring potential problems to the attention of the proper bodies; this should not necessarily require that those having performed the monitoring have standing before courts and tribunals.

Better guidance, information and support to contracting authorities and economic operators could also greatly contribute to enhancing the efficiency of public procurement, through better knowledge, increased legal certainty and professionalisation of procurement practices. Such guidance should be made available to contracting authorities and economic operators wherever it appears necessary to improve correct application of the rules. The guidance to be provided could cover all matters relevant to public procurement, such as acquisition planning, procedures, choice of techniques and instruments and good practices in the conduct of the procedures. With regard to legal questions, guidance should not necessarily amount to a complete legal analysis of the issues concerned; it could be limited to a general indication of the elements that should be taken into consideration for the subsequent detailed analysis of

<sup>(1)</sup> Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L 340, 16.12.2002, p. 1).

the questions, for instance by pointing to case-law that could be relevant or to guidance notes or other sources having examined the specific question concerned.

- (122) Directive 89/665/EEC provides for certain review procedures to be available at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement of Union law in the field of public procurement or national rules transposing that law. Those review procedures should not be affected by this Directive. However, citizens, concerned stakeholders, organised or not, and other persons or bodies which do not have access to review procedures pursuant to Directive 89/665/EEC do nevertheless have a legitimate interest, as taxpayers, in sound procurement procedures. They should therefore be given a possibility, otherwise than through the review system pursuant to Directive 89/665/EEC and without it necessarily involving them being given standing before courts and tribunals, to indicate possible violations of this Directive to a competent authority or structure. So as not to duplicate existing authorities or structures, Member States should be able to provide for recourse to general monitoring authorities or structures, sectoral oversight bodies, municipal oversight authorities, competition authorities, the ombudsman or national auditing authorities.
- (123) In order to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth, environmental, social and innovation procurement will also have to play its part. It is therefore important to obtain an overview of the developments in the field of strategic procurement so as to take an informed view on the general trends at the overall level in that area. Any already prepared, appropriate reports can of course be used in this context also.
- (124) Given the potential of SMEs for job creation, growth and innovation it is important to encourage their participation in public procurement, both through appropriate provisions in this Directive as well as through initiatives at the national level. The new provisions provided for in this Directive should contribute towards an improvement of the level of success, by which is understood the share of SMEs in the total value of contracts awarded. It is not appropriate to impose obligatory shares of success, however, the national initiatives to enhance SME participation should be closely monitored given its importance.
- (125) A series of procedures and working methods have already been established in respect of the Commission's communications and contacts with Member States, such as communications and contacts relating to the procedures provided for under Articles 258 and 260 TFEU, the Internal Market Problem Solving Network (SOLVIT) and EU Pilot, which are not modified by this Directive. They should, however, be complemented by the designation of one single point of reference in each Member State for the cooperation with the Commission, which would function as sole entry point for matters

concerning public procurement in the Member State concerned. This function may be performed by persons or structures which are already regularly in contact with the Commission on issues relating to public procurement, such as national contact points, members of the Advisory Committee on Public Procurement, Members of the Procurement Network or national coordinating instances.

- (126) The traceability and transparency of decision-making in procurement procedures is essential for ensuring sound procedures, including efficiently fighting corruption and fraud. Contracting authorities should therefore keep copies of concluded high-value contracts, in order to be able to provide access to those documents to interested parties in accordance with applicable rules on access to documents. Furthermore, the essential elements and decisions of individual procurement procedures should be documented in a procurement report. To avoid administrative burdens wherever possible, it should be permitted for the procurement report to refer to information already contained in the relevant contract award notice. The electronic systems for publication of those notices, managed by the Commission, should also be improved with a view to facilitating the entry of data while making it easier to extract global reports and exchange data between systems.
- (127) In the interests of administrative simplification and in order to lessen the burden on Member States, the Commission should periodically examine whether the quality and completeness of the information contained in the notices which are published in connection with public procurement procedures is sufficient to allow the Commission to extract the statistical information that would otherwise have to be transmitted by the Member States.
- (128) Effective administrative cooperation is necessary for the exchange of information needed for conducting award procedures in cross-border situations, in particular with regard to the verification of the grounds for exclusion and the selection criteria, the application of quality and environmental standards and of lists of approved economic operators. The exchange of information is subject to national laws on confidentiality. Hence, this Directive does not entail any obligation for Member States to exchange information that goes beyond what national contracting authorities can access. The Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council<sup>(1)</sup> could provide a useful electronic means to facilitate and enhance administrative cooperation managing the exchange of information on the basis of simple and unified procedures overcoming language barriers. A pilot project should consequently be

<sup>(1)</sup> Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (the IMI Regulation) (OJ L 316, 14.11.2012, p. 1).



launched as soon as possible to test the suitability of an expansion of IMI to cover the exchange of information under this Directive.

- (129) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of a number of non-essential elements of this Directive. Due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves and to adapt Annex X; the lists of central government authorities are subject to variations due to administrative changes at national level. These are notified to the Commission, which should be empowered to adapt Annex I; references to the CPV nomenclature may undergo regulatory changes at Union level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments; it is also necessary to empower the Commission to make mandatory technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments; the list of legal acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy those needs, the Commission should be empowered to keep the list of legal acts including life-cycle costing methodologies up-to date. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (130) In the application of this Directive the Commission should consult appropriate groups of experts in the field of e-procurement, ensuring a balanced composition of the main stakeholder groups.
- (131) In order to ensure uniform conditions for the implementation of this Directive, as for the drawing up of the standard forms for the publication of notices and a standard form for self-declarations, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>(1)</sup>.
- (132) The advisory procedure should be used for the adoption of the implementing acts concerning standard forms for the publication of notices, which do not have any impact either from the financial point of view or on the nature and scope of obligations stemming from this Directive. On the contrary, those acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set out in this Directive.
- (133) The examination procedure should be used for the adoption of the standard form for self-declarations, due to the impact of those self-declarations on procurement and because they play a central role in the simplification of the documentation requirements in the procurement procedures.
- (134) The Commission should review the effects on the internal market resulting from the application of the thresholds and report thereon to the European Parliament and the Council. In so doing, it should take into account factors such as the level of cross-border procurement, SME participation, transaction costs and the cost-benefit trade-off.
- In accordance with Article XXII(7) thereof, the GPA shall be the subject of further negotiations three years after its entry into force and periodically thereafter. In that context, the appropriateness of the level of thresholds should be examined, bearing in mind the impact of inflation in view of a long period without changes of the thresholds in the GPA; in the event that the level of thresholds should change as a consequence, the Commission should, where appropriate, adopt a proposal for a legal act amending the thresholds set out in this Directive.
- (135) Having regard to current discussions on horizontal provisions governing relations with third countries in the context of public procurement the Commission should closely monitor global trade conditions and assess the Union's competitive position.
- (136) Since the objective of this Directive, namely the coordination of laws, regulations and administrative provisions of the Member States applying to certain public procurement procedures, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

<sup>(1)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).



(137) Directive 2004/18/EC should be repealed.

(138) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more

documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

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Article 50: Contract award notices

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Article 53: Electronic availability of procurement documents

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Subsection 1: Criteria for qualitative selection

Article 57: Exclusion grounds

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Article 59: European Single Procurement Document

Article 60: Means of proof

Article 61: Online repository of certificates (e-Certis)

Article 62: Quality assurance standards and environmental management standards

Article 63: Reliance on the capacities of other entities

Article 64: Official lists of approved economic operators and certification by bodies established under public or private law

Subsection 2: Reduction of Numbers of Candidates, Tenders and Solutions

Article 65: Reduction of the number of otherwise qualified candidates to be invited to participate

Article 66: Reduction of the number of tenders and solutions

Subsection 3: Award of the Contract

Article 67: Contract award criteria

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Article 70: Conditions for performance of contracts

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Part H: INFORMATION TO BE INCLUDED IN CONTRACT NOTICES CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES (as referred to in Article 75(1))

Part I: INFORMATION TO BE INCLUDED IN PRIOR INFORMATION NOTICES FOR SOCIAL AND OTHER SPECIFIC SERVICES (as referred to in Article 75(1))

Part J: INFORMATION TO BE INCLUDED IN CONTRACT AWARD NOTICES CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES (as referred to in Article 75(2))



- ANNEX VI: INFORMATION TO BE INCLUDED IN THE PROCUREMENT DOCUMENTS RELATING TO ELECTRONIC AUCTIONS (ARTICLE 35(4))
- ANNEX VII: DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS
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## TITLE I

### SCOPE, DEFINITIONS AND GENERAL PRINCIPLES

#### CHAPTER I

#### *Scope and definitions*

##### Section 1

#### **Subject-matter and definitions**

##### *Article 1*

#### **Subject-matter and scope**

1. This Directive establishes rules on the procedures for procurement by contracting authorities with respect to public contracts as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 4.
2. Procurement within the meaning of this Directive is the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose.
3. The application of this Directive is subject to Article 346 TFEU.
4. This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to. Equally, this Directive does not affect

the decision of public authorities whether, how and to what extent they wish to perform public functions themselves pursuant to Article 14 TFEU and Protocol No 26.

5. This Directive does not affect the way in which the Member States organise their social security systems.

6. Agreements, decisions or other legal instruments that organise the transfer of powers and responsibilities for the performance of public tasks between contracting authorities or groupings of contracting authorities and do not provide for remuneration to be given for contractual performance, are considered to be a matter of internal organisation of the Member State concerned and, as such, are not affected in any way by this Directive.

##### *Article 2*

#### **Definitions**

1. For the purposes of this Directive, the following definitions apply:
  - (1) 'contracting authorities' means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;
  - (2) 'central government authorities' means the contracting authorities listed in Annex I and, in so far as corrections or amendments have been made at national level, their successor entities;
  - (3) 'sub-central contracting authorities' means all contracting authorities which are not central government authorities;

- (4) 'bodies governed by public law' means bodies that have all of the following characteristics:
- (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
  - (b) they have legal personality; and
  - (c) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;
- (5) 'public contracts' means contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services;
- (6) 'public works contracts' means public contracts having as their object one of the following:
- (a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex II;
  - (b) the execution, or both the design and execution, of a work;
  - (c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;
- (7) 'a work' means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;
- (8) 'public supply contracts' means public contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A public supply contract may include, as an incidental matter, siting and installation operations;
- (9) 'public service contracts' means public contracts having as their object the provision of services other than those referred to in point 6;
- (10) 'economic operator' means any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of works and/or a work, the supply of products or the provision of services on the market;
- (11) 'tenderer' means an economic operator that has submitted a tender;
- (12) 'candidate' means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation, in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;
- (13) 'procurement document' means any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;
- (14) 'centralised purchasing activities' means activities conducted on a permanent basis, in one of the following forms:
- (a) the acquisition of supplies and/or services intended for contracting authorities,
  - (b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;
- (15) 'ancillary purchasing activities' means activities consisting in the provision of support to purchasing activities, in particular in the following forms:
- (a) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;
  - (b) advice on the conduct or design of public procurement procedures;
  - (c) preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;
- (16) 'central purchasing body' means a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities;
- (17) 'procurement service provider' means a public or private body which offers ancillary purchasing activities on the market;

- (18) 'written' or 'in writing' means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;
- (19) 'electronic means' means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- (20) 'life cycle' means all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;
- (21) 'design contests' means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes;
- (22) 'innovation' means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations inter alia with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth;
- (23) 'label' means any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;
- (24) 'label requirements' means the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned.

2. For the purpose of this Article 'regional authorities' includes authorities listed non-exhaustively in NUTS 1 and 2, as referred to in Regulation (EC) No 1059/2003 of the European Parliament and of the Council<sup>(1)</sup>, while 'local authorities' includes all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to in Regulation (EC) No 1059/2003.

<sup>(1)</sup> Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1).

### Article 3

#### Mixed procurement

1. Paragraph 2 shall apply to mixed contracts which have as their subject-matter different types of procurement all of which are covered by this Directive.

Paragraphs 3 to 5 shall apply to mixed contracts which have as their subject-matter procurement covered by this Directive and procurement covered by other legal regimes.

2. Contracts which have as their subject two or more types of procurement (works, services or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.

In the case of mixed contracts consisting partly of services within the meaning of Chapter I of Title III and partly of other services or of mixed contracts consisting partly of services and partly of supplies, the main subject shall be determined in accordance with which of the estimated values of the respective services or supplies is the highest.

3. Where the different parts of a given contract are objectively separable, paragraph 4 shall apply. Where the different parts of a given contract are objectively not separable, paragraph 6 shall apply.

Where part of a given contract is covered by Article 346 TFEU or Directive 2009/81/EC, Article 16 of this Directive shall apply.

4. In the case of contracts which have as their subject-matter procurement covered by this Directive as well as procurement not covered by this Directive, contracting authorities may choose to award separate contracts for the separate parts or to award a single contract. Where contracting authorities choose to award separate contracts for separate parts, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

Where contracting authorities choose to award a single contract, this Directive shall, unless otherwise provided in Article 16, apply to the ensuing mixed contract, irrespective of the value of the parts that would otherwise fall under a different legal regime and irrespective of which legal regime those parts would otherwise have been subject to.

In the case of mixed contracts containing elements of supply, works and service contracts and of concessions, the mixed contract shall be awarded in accordance with this Directive, provided that the estimated value of the part of the contract which constitutes a contract covered by this Directive, calculated in accordance with Article 5, is equal to or greater than the relevant threshold set out in Article 4.

5. In the case of contracts which have as their subject both procurement covered by this Directive and procurement for the pursuit of an activity which is subject to Directive 2014/25/EU, the applicable rules shall, notwithstanding paragraph 4 of this Article, be determined pursuant to Articles 5 and 6 of Directive 2014/25/EU.

6. Where the different parts of a given contract are objectively not separable, the applicable legal regime shall be determined on the basis of the main subject-matter of that contract.

## Section 2

### Thresholds

#### Article 4

##### Threshold amounts

This Directive shall apply to procurements with a value net of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:

- (a) EUR 5 186 000 for public works contracts;
- (b) EUR 134 000 for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;
- (c) EUR 207 000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities; that threshold shall also apply to public supply contracts awarded by central government authorities that operate in the field of defence, where those contracts involve products not covered by Annex III;
- (d) EUR 750 000 for public service contracts for social and other specific services listed in Annex XIV.

#### Article 5

##### Methods for calculating the estimated value of procurement

1. The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, as estimated by the contracting authority, including any form of option and any renewals of the contracts as explicitly set out in the procurement documents.

Where the contracting authority provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the procurement.

2. Where a contracting authority is comprised of separate operational units, account shall be taken of the total estimated value for all the individual operational units.

Notwithstanding the first subparagraph, where a separate operational unit is independently responsible for its procurement or certain categories thereof, the values may be estimated at the level of the unit in question.

3. The choice of the method used to calculate the estimated value of a procurement shall not be made with the intention of excluding it from the scope of this Directive. A procurement shall not be subdivided with the effect of preventing it from falling within the scope of this Directive, unless justified by objective reasons.

4. That estimated value shall be valid at the moment at which the call for competition is sent, or, in cases where a call for competition is not foreseen, at the moment at which the contracting authority commences the procurement procedure, for instance, where appropriate, by contacting economic operators in relation to the procurement.

5. With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

6. In the case of innovation partnerships, the value to be taken into consideration shall be the maximum estimated value net of VAT of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.

7. With regard to public works contracts, the calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authority provided that they are necessary for executing the works.

8. Where a proposed work or a proposed provision of services may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 4, this Directive shall apply to the awarding of each lot.

9. Where a proposal for the acquisition of similar supplies may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying points (b) and (c) of Article 4.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 4, this Directive shall apply to the awarding of each lot.

10. Notwithstanding paragraphs 8 and 9, contracting authorities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR 80 000 for supplies or services or EUR 1 million for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed provision of services has been divided.

11. In the case of public supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:

- (a) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, where possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;
- (b) or the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year where that is longer than 12 months.

12. With regard to public supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

- (a) in the case of fixed-term public contracts, where that term is less than or equal to 12 months, the total estimated value for the term of the contract or, where the term of the contract is greater than 12 months, the total value including the estimated residual value;
- (b) in the case of public contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

13. With regard to public service contracts, the basis for calculating the estimated contract value shall, where appropriate, be the following:

- (a) insurance services: the premium payable and other forms of remuneration;
- (b) banking and other financial services: the fees, commissions payable, interest and other forms of remuneration;
- (c) design contracts: fees, commissions payable and other forms of remuneration.

14. With regard to public service contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be the following:

- (a) in the case of fixed-term contracts, where that term is less than or equal to 48 months: the total value for their full term;
- (b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.

#### Article 6

#### Revision of the thresholds and of the list of central government authorities

1. Every two years from 30 June 2013, the Commission shall verify that the thresholds set out in points (a), (b) and (c) of Article 4 correspond to the thresholds established in the World Trade Organisation Agreement on Government Procurement (GPA) and shall, where necessary, revise them in accordance with this Article.

In accordance with the calculation method set out in the GPA, the Commission shall calculate the value of these thresholds on the basis of the average daily value of the euro in terms of the special drawing rights (SDRs), over a period of 24 months terminating on 31 August preceding the revision with effect from 1 January. The value of the thresholds thus revised shall, where necessary, be rounded down to the nearest thousand euros so as to ensure that the thresholds in force provided for by the GPA, expressed in SDRs, are observed.

2. When carrying out the revision pursuant to paragraph 1 of this Article, the Commission shall, in addition, revise:

- (a) the threshold established in point (a) of the first paragraph of Article 13 by aligning it with the revised threshold applying to public works contracts;
- (b) the threshold established in point (b) of the first paragraph of Article 13 by aligning it with the revised threshold applying to public service contracts awarded by sub-central contracting authorities.

3. Every two years from 1 January 2014, the Commission shall determine the values, in the national currencies of the Member States, whose currency is not the euro, of the thresholds referred to in points (a), (b) and (c) of Article 4, revised pursuant to paragraph 1 of this Article.

At the same time, the Commission shall determine the value, in the national currencies of the Member States, whose currency is not the euro, of the threshold referred to in point (d) of Article 4.



In accordance with the calculation method set out in the GPA, the determination of such values shall be based on the average daily values of those currencies corresponding to the applicable threshold expressed in euros over the 24 months terminating on 31 August preceding the revision with effect from 1 January.

4. The Commission shall publish the revised thresholds referred to in paragraph 1, their corresponding values in the national currencies referred to in the first subparagraph of paragraph 3, and the value determined in accordance with the second subparagraph of paragraph 3 in the *Official Journal of the European Union* at the beginning of the month of November following their revision.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 to adapt the methodology set out in the second subparagraph of paragraph 1 of this Article to any change in the methodology provided in the GPA for the revision of the thresholds referred to in points (a), (b) and (c) of Article 4 and for the determination of the corresponding values in the national currencies of the Member States, whose currency is not the euro, as referred to in paragraph 3 of this Article.

The Commission shall be empowered to adopt delegated acts in accordance with Article 87 to revise the thresholds referred to in points (a), (b) and (c) of Article 4 pursuant to paragraph 1 of this Article and to revise the thresholds referred to in points (a) and (b) of the first paragraph of Article 13 pursuant to paragraph 2 of this Article.

6. Where it is necessary to revise the thresholds referred to in points (a), (b) and (c) of Article 4 and the thresholds referred to in points (a) and (b) of the first paragraph of Article 13 and time constraints prevent the use of the procedure set in Article 87 and therefore imperative grounds of urgency so require, the procedure provided for in Article 88 shall apply to delegated acts adopted pursuant to the second subparagraph of paragraph 5 of this Article.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 to amend Annex I, in order to update the list of contracting authorities following notifications from Member States, where such amendments prove necessary to correctly identify contracting authorities.

### Section 3

#### Exclusions

##### Article 7

#### **Contracts in the water, energy, transport and postal services sectors**

This Directive shall not apply to public contracts and design contests which, under Directive 2014/25/EU, are awarded or organised by contracting authorities exercising one or more of the activities referred to in Articles 8 to 14 of that Directive and are awarded for the pursuit of those activities, to public contracts excluded from the scope of that Directive under Articles 18, 23 and 34 thereof or, when awarded by a

contracting authority which provides postal services within the meaning of point (b) of Article 13(2) of that Directive, to contracts awarded for the pursuit of the following activities:

- (a) added value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);
- (b) financial services which are covered by CPV codes 66100000-1 to 66720000-3 and by point (d) of Article 21 of Directive 2014/25/EU and including in particular postal money orders and postal giro transfers;
- (c) philatelic services; or
- (d) logistics services (services combining physical delivery and/or warehousing with other non-postal functions).

#### Article 8

#### **Specific exclusions in the field of electronic communications**

This Directive shall not apply to public contracts and design contests for the principal purpose of permitting the contracting authorities to provide or exploit public communications networks or to provide to the public one or more electronic communications services.

For the purposes of this Article, 'public communications network' and 'electronic communications service' shall have the same meaning as in Directive 2002/21/EC of the European Parliament and of the Council<sup>(1)</sup>.

#### Article 9

#### **Public contracts awarded and design contests organised pursuant to international rules**

1. This Directive shall not apply to public contracts and design contests which the contracting authority is obliged to award or organise in accordance with procurement procedures different from those laid down in this Directive established by any of the following:

- (a) a legal instrument creating international law obligations, such as an international agreement, concluded in conformity with the Treaties, between a Member State and one or more third countries or subdivisions thereof and covering works, supplies or services intended for the joint implementation or exploitation of a project by their signatories;
- (b) an international organisation.

<sup>(1)</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

The Member States shall communicate all legal instruments referred to in point (a) of the first subparagraph of this paragraph to the Commission, which may consult the Advisory Committee on Public Procurement referred to in Article 89.

2. This Directive shall not apply to public contracts and design contests which the contracting authority awards or organises in accordance with procurement rules provided by an international organisation or international financing institution, where the public contracts and design contests concerned are fully financed by that organisation or institution; in the case of public contracts and design contests co-financed for the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures.

3. Article 17 shall apply to contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules. Paragraphs 1 and 2 of this Article shall not apply to those contracts and design contests.

#### Article 10

##### Specific exclusions for service contracts

This Directive shall not apply to public service contracts for:

- (a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;
- (b) the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services, that are awarded by audiovisual or radio media service providers, or contracts for broadcasting time or programme provision that are awarded to audiovisual or radio media service providers. For the purposes of this point, 'audiovisual media services' and 'media service providers' shall, respectively, have the same meaning as pursuant to points (a) and (d) of Article 1(1) of Directive 2010/13/EU of the European Parliament and of the Council<sup>(1)</sup>. 'Programme' shall have the same meaning as pursuant to point (b) of Article 1(1) of that Directive, but shall also include radio programmes and radio programme materials. Furthermore, for the purposes of this provision, 'programme material' shall have the same meaning as 'programme';
- (c) arbitration and conciliation services;

<sup>(1)</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

(d) any of the following legal services:

- (i) legal representation of a client by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC<sup>(2)</sup> in:
  - an arbitration or conciliation held in a Member State, a third country or before an international arbitration or conciliation instance; or
  - judicial proceedings before the courts, tribunals or public authorities of a Member State or a third country or before international courts, tribunals or institutions;
- (ii) legal advice given in preparation of any of the proceedings referred to in point (i) of this point or where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;
- (iii) document certification and authentication services which must be provided by notaries;
- (iv) legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;
- (v) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority;
- (e) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council<sup>(3)</sup>, central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;
- (f) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
- (g) employment contracts;

<sup>(2)</sup> Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, 26.3.1977, p. 17).

<sup>(3)</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

- (h) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 except patient transport ambulance services;
- (i) public passenger transport services by rail or metro;
- (j) political campaign services covered by CPV codes 79341400-0, 92111230-3 and 92111240-6, when awarded by a political party in the context of an election campaign.

#### Article 11

##### Service contracts awarded on the basis of an exclusive right

This Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provision which is compatible with the TFEU.

#### Article 12

##### Public contracts between entities within the public sector

1. A public contract awarded by a contracting authority to a legal person governed by private or public law shall fall outside the scope of this Directive where all of the following conditions are fulfilled:

- (a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;
- (b) more than 80 % of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled

legal person. Such control may also be exercised by another legal person, which is itself controlled in the same way by the contracting authority.

2. Paragraph 1 also applies where a controlled legal person which is a contracting authority awards a contract to its controlling contracting authority, or to another legal person controlled by the same contracting authority, provided that there is no direct private capital participation in the legal person being awarded the public contract with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

3. A contracting authority, which does not exercise over a legal person governed by private or public law control within the meaning of paragraph 1, may nevertheless award a public contract to that legal person without applying this Directive where all of the following conditions are fulfilled.

- (a) the contracting authority exercises jointly with other contracting authorities a control over that legal person which is similar to that which they exercise over their own departments;
- (b) more than 80 % of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or by other legal persons controlled by the same contracting authorities; and
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

For the purposes of point (a) of the first subparagraph, contracting authorities exercise joint control over a legal person where all of the following conditions are fulfilled:

- (i) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities. Individual representatives may represent several or all of the participating contracting authorities;
- (ii) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person; and
- (iii) the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities.

4. A contract concluded exclusively between two or more contracting authorities shall fall outside the scope of this Directive where all of the following conditions are fulfilled:

- (a) the contract establishes or implements a cooperation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
- (b) the implementation of that cooperation is governed solely by considerations relating to the public interest; and
- (c) the participating contracting authorities perform on the open market less than 20 % of the activities concerned by the cooperation.

5. For the determination of the percentage of activities referred to in point (b) of the first subparagraph of paragraph 1, point (b) of the first subparagraph of paragraph 3 and point (c) of paragraph 4, the average total turnover, or an appropriate alternative activity-based measure such as costs incurred by the relevant legal person or contracting authority with respect to services, supplies and works for the three years preceding the contract award shall be taken into consideration.

Where, because of the date on which the relevant legal person or contracting authority was created or commenced activities or because of a reorganisation of its activities, the turnover, or alternative activity based measure such as costs, are either not available for the preceding three years or no longer relevant, it shall be sufficient to show that the measurement of activity is credible, particularly by means of business projections.

#### Section 4

### Specific situations

#### Subsection 1

### Subsidised contracts and research and development services

#### Article 13

### Contracts subsidised by contracting authorities

This Directive shall apply to the awarding of the following contracts:

- (a) works contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR 5 186 000, where those contracts involve one of the following activities:
  - (i) civil engineering activities as listed in Annex II,

- (ii) building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes;

- (b) service contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR 207 000 and which are connected to a works contract as referred to in point (a).

The contracting authorities providing the subsidies referred to in points (a) and (b) of the first subparagraph shall ensure compliance with this Directive where they do not themselves award the subsidised contract or where they award that contract for and on behalf of other entities.

#### Article 14

### Research and development services

This Directive shall only apply to public service contracts for research and development services which are covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 provided that both of the following conditions are fulfilled:

- (a) the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, and
- (b) the service provided is wholly remunerated by the contracting authority.

#### Subsection 2

### Procurement involving defence or security aspects

#### Article 15

### Defence and security

1. This Directive shall apply to the awarding of public contracts and to design contests organised in the fields of defence and security, with the exception of the following contracts:

- (a) contracts falling within the scope of Directive 2009/81/EC;
- (b) contracts to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 thereof.

2. This Directive shall not apply to public contracts and design contests not otherwise exempted under paragraph 1, to the extent that the protection of the essential security interests of a Member State cannot be guaranteed by less intrusive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the contracting authority makes available in a contract award procedure as provided for in this Directive.



Furthermore, and in conformity with point (a) of Article 346(1) TFEU, this Directive shall not apply to public contracts and design contests not otherwise exempted under paragraph 1 of this Article to the extent that the application of this Directive would oblige a Member State to supply information the disclosure of which it considers contrary to the essential interests of its security.

3. Where the procurement and performance of the public contract or design contest are declared to be secret or must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in a Member State, this Directive shall not apply provided that the Member State has determined that the essential interests concerned cannot be guaranteed by less intrusive measures, such as those referred to in the first subparagraph of paragraph 2.

#### Article 16

##### **Mixed procurement involving defence or security aspects**

1. In the case of mixed contracts which have as their subject-matter procurement covered by this Directive as well as procurement covered by Article 346 TFEU or Directive 2009/81/EC, this Article shall apply.

2. Where the different parts of a given public contract are objectively separable, contracting authorities may choose to award separate contracts for the separate parts or to award a single contract.

Where contracting authorities choose to award separate contracts for separate parts, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

Where contracting authorities choose to award a single contract, the following criteria shall apply to determine the applicable legal regime:

- (a) where part of a given contract is covered by Article 346 TFEU, the contract may be awarded without applying this Directive, provided that the award of a single contract is justified for objective reasons;
- (b) where part of a given contract is covered by Directive 2009/81/EC, the contract may be awarded in accordance with that Directive, provided that the award of a single contract is justified for objective reasons. This point shall be without prejudice to the thresholds and exclusions for which that Directive provides.

The decision to award a single contract shall not, however, be taken for the purpose of excluding contracts from the application of either this Directive or Directive 2009/81/EC.

3. Point (a) of the third subparagraph of paragraph 2 shall apply to mixed contracts to which both point (a) and point (b) of that subparagraph could otherwise apply.

4. Where the different parts of a given contract are objectively not separable, the contract may be awarded without applying this Directive where it includes elements to which Article 346 TFEU applies; otherwise it may be awarded in accordance with Directive 2009/81/EC.

#### Article 17

##### **Public contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules**

1. This Directive shall not apply to public contracts and design contests involving defence or security aspects which the contracting authority is obliged to award or organise in accordance with procurement procedures different from those laid down in this Directive established by any of the following:

- (a) an international agreement or arrangement, concluded in conformity with the Treaties, between a Member State and one or more third countries or subdivisions thereof and covering works, supplies or services intended for the joint implementation or exploitation of a project by their signatories;
- (b) an international agreement or arrangement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- (c) an international organisation.

All agreements or arrangements referred to in point (a) of the first subparagraph of this paragraph shall be communicated to the Commission, which may consult the Advisory Committee on Public Procurement referred to in Article 89.

2. This Directive shall not apply to public contracts and design contests involving defence or security aspects which the contracting authority awards in accordance with procurement rules provided by an international organisation or international financing institution, where the public contracts and design contests concerned are fully financed by this organisation or institution. In the case of public contracts and design contests co-financed for the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures.

#### CHAPTER II

##### **General rules**

#### Article 18

##### **Principles of procurement**

1. Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.



The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.

2. Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.

#### Article 19

##### **Economic operators**

1. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the contract is awarded, they would be required to be either natural or legal persons.

However, in the case of public service and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

2. Groups of economic operators, including temporary associations, may participate in procurement procedures. They shall not be required by contracting authorities to have a specific legal form in order to submit a tender or a request to participate.

Where necessary, contracting authorities may clarify in the procurement documents how groups of economic operators are to meet the requirements as to economic and financial standing or technical and professional ability referred to in Article 58 provided that this is justified by objective reasons and is proportionate. Member States may establish standard terms for how groups of economic operators are to meet those requirements.

Any conditions for the performance of a contract by such groups of economic operators, which are different from those imposed on individual participants, shall also be justified by objective reasons and shall be proportionate.

3. Notwithstanding paragraph 2, contracting authorities may require groups of economic operators to assume a specific legal form once they have been awarded the contract, to the extent that such a change is necessary for the satisfactory performance of the contract.

#### Article 20

##### **Reserved contracts**

1. Member States may reserve the right to participate in public procurement procedures to sheltered workshops and

economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30 % of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

2. The call for competition shall make reference to this Article.

#### Article 21

##### **Confidentiality**

1. Unless otherwise provided in this Directive or in the national law to which the contracting authority is subject, in particular legislation concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 50 and 55, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

2. Contracting authorities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authorities make available throughout the procurement procedure.

#### Article 22

##### **Rules applicable to communication**

1. Member States shall ensure that all communication and information exchange under this Directive, in particular electronic submission, are performed using electronic means of communication in accordance with the requirements of this Article. The tools and devices to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the ICT products in general use and shall not restrict economic operators' access to the procurement procedure.

Notwithstanding the first subparagraph, contracting authorities shall not be obliged to require electronic means of communication in the submission process in the following situations:

- (a) due to the specialised nature of the procurement, the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications;
- (b) the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority;

(c) the use of electronic means of communication would require specialised office equipment that is not generally available to contracting authorities;

(d) the procurement documents require the submission of physical or scale models which cannot be transmitted using electronic means.

In respect of communications for which electronic means of communication are not used pursuant to the second subparagraph, communication shall be carried out by post or other suitable carrier or by a combination of post or other suitable carrier and electronic means.

Notwithstanding the first subparagraph of this paragraph, contracting authorities are not obliged to require electronic means of communication in the submission process to the extent that the use of means of communication other than electronic means is necessary either because of a breach of security of the electronic means of communications or for the protection of the particularly sensitive nature of information requiring such a high level of protection that it cannot be properly ensured by using electronic tools and devices that are either generally available to economic operators or can be made available to them by alternative means of access within the meaning of paragraph 5.

It shall be the responsibility of the contracting authorities requiring, in accordance with the second subparagraph of this paragraph, means of communication other than electronic means in the submission process to indicate in the individual report referred to in Article 84 the reasons for this requirement. Where applicable, contracting authorities shall indicate in the individual report the reasons why use of means of communication other than electronic means has been considered necessary in application of the fourth subparagraph of this paragraph.

2. Notwithstanding paragraph 1, oral communication may be used in respect of communications other than those concerning the essential elements of a procurement procedure, provided that the content of the oral communication is documented to a sufficient degree. For this purpose, the essential elements of a procurement procedure include the procurement documents, requests for participation, confirmations of interest and tenders. In particular, oral communications with tenderers which could have a substantial impact on the content and assessment of the tenders shall be documented to a sufficient extent and by appropriate means, such as written or audio records or summaries of the main elements of the communication.

3. In all communication, exchange and storage of information, contracting authorities shall ensure that the integrity of data and the confidentiality of tenders and

requests to participate are preserved. They shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

4. For public works contracts and design contests, Member States may require the use of specific electronic tools, such as of building information electronic modelling tools or similar. In such cases the contracting authorities shall offer alternative means of access, as provided for in paragraph 5, until such time as those tools become generally available within the meaning of the second sentence of the first subparagraph of paragraph 1.

5. Contracting authorities may, where necessary, require the use of tools and devices which are not generally available, provided that the contracting authorities offer alternative means of access.

Contracting authorities shall be deemed to offer suitable alternative means of access in any of the following situations, where they:

(a) offer unrestricted and full direct access free of charge by electronic means to those tools and devices from the date of publication of the notice in accordance with Annex VIII or from the date when the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which those tools and devices are accessible;

(b) ensure that tenderers having no access to the tools and devices concerned, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the tenderer concerned, may access the procurement procedure through the use of provisional tokens made available free of charge online; or

(c) support an alternative channel for electronic submission of tenders.

6. In addition to the requirements set out in Annex IV, the following rules shall apply to tools and devices for the electronic transmission and receipt of tenders and for the electronic receipt of requests to participate:

(a) information on specifications for the electronic submission of tenders and requests to participate, including encryption and time-stamping, shall be available to interested parties;

(b) Member States, or contracting authorities acting within an overall framework established by the Member State concerned, shall specify the level of security required for the electronic means of communication in the various stages of the specific procurement procedure; that level shall be proportionate to the risks attached;

(c) where Member States, or contracting authorities acting within an overall framework established by the Member State concerned, conclude that the level of risks, assessed under point (b) of this paragraph, is such that advanced electronic signatures as defined by Directive 1999/93/EC of the European Parliament and of the Council<sup>(1)</sup> are required, contracting authorities shall accept advanced electronic signatures supported by a qualified certificate, taking into account whether those certificates are provided by a certificate services provider, which is on a trusted list provided for in Commission Decision 2009/767/EC<sup>(2)</sup>, created with or without a secure signature creation device, subject to compliance with the following conditions:

- (i) the contracting authorities shall establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU<sup>(3)</sup> and shall put in place necessary measures to be able to process these formats technically; in case a different format of electronic signature is used, the electronic signature or the electronic document carrier shall include information on existing validation possibilities, which shall be under the responsibility of the Member State. The validation possibilities shall allow the contracting authority to validate online, free of charge and in a way that is understandable for non-native speakers, the received electronic signature as an advanced electronic signature supported by a qualified certificate.

Member States shall notify information on the provider of validation services to the Commission, which shall make the information received from the Member States available to the public on the Internet;

- (ii) where a tender is signed with the support of a qualified certificate that is included on a trusted list, the contracting authorities shall not apply additional requirements that may hinder the use of those signatures by tenderers.

In respect of documents used in the context of a procurement procedure that are signed by a competent authority of a Member State or by another issuing entity, the competent issuing authority or entity may establish the required advanced signature format in accordance with the requirements set out in Article 1(2) of Decision 2011/130/EU. They shall put in place the necessary measures to be able to process that

<sup>(1)</sup> Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

<sup>(2)</sup> Commission Decision 2009/767/EC of 16 October 2009 setting out measures facilitating the use of procedures by electronic means through the points of single contact under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (OJ L 274, 20.10.2009, p. 36).

<sup>(3)</sup> Commission Decision 2011/130/EU of 25 February 2011 establishing minimum requirements for the cross-border processing of documents signed electronically by competent authorities under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (OJ L 53, 26.2.2011, p. 66).

format technically by including the information required for the purpose of processing the signature in the document concerned. Such documents shall contain in the electronic signature or in the electronic document carrier information on existing validation possibilities that allow the validation of the received electronic signature online, free of charge and in a way that is understandable for non-native speakers.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 to amend the technical details and characteristics set out in Annex IV to take account of technical developments.

The Commission shall be empowered to adopt delegated acts in accordance with Article 87 to amend the list set out in points (a) to (d) of the second subparagraph of paragraph 1 of this Article where technological developments render continued exceptions from the use of electronic means of communication inappropriate or, exceptionally, where new exceptions must be provided for because of technological developments.

To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission shall be empowered to adopt delegated acts in accordance with Article 87 to establish the mandatory use of such specific technical standards, in particular with regard to the use of electronic submission, electronic catalogues and means for electronic authentication, only where technical standards have been thoroughly tested and proved their usefulness in practice. Before making the use of any technical standard mandatory, the Commission shall also carefully consider the costs that this may entail, in particular in terms of adaptations to existing e-procurement solutions, including infrastructure, processes or software.

#### Article 23

##### Nomenclatures

1. Any references to nomenclatures in the context of public procurement shall be made using the Common Procurement Vocabulary (CPV) as adopted by Regulation (EC) No 2195/2002.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 to adapt the CPV codes referred to in this Directive, whenever changes in the CPV nomenclature must be reflected in this Directive and they do not imply a modification of the scope of this Directive.

#### Article 24

##### Conflicts of interest

Member States shall ensure that contracting authorities take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

The concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

## TITLE II

### RULES ON PUBLIC CONTRACTS

#### CHAPTER I

#### Procedures

##### Article 25

#### Conditions relating to the GPA and other international agreements

In so far as they are covered by Annexes 1, 2, 4 and 5 and the General Notes to the European Union's Appendix I to the GPA and by the other international agreements by which the Union is bound, contracting authorities shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the Union.

##### Article 26

#### Choice of procedures

1. When awarding public contracts, contracting authorities shall apply the national procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 32, a call for competition has been published in accordance with this Directive.

2. Member States shall provide that contracting authorities may apply open or restricted procedures as regulated in this Directive.

3. Member States shall provide that contracting authorities may apply innovation partnerships as regulated in this Directive.

4. Member States shall provide that contracting authorities may apply a competitive procedure with negotiation or a competitive dialogue in the following situations:

(a) with regard to works, supplies or services fulfilling one or more of the following criteria:

(i) the needs of the contracting authority cannot be met without adaptation of readily available solutions;

(ii) they include design or innovative solutions;

(iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the

nature, the complexity or the legal and financial make-up or because of the risks attaching to them;

(iv) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference within the meaning of points 2 to 5 of Annex VII;

(b) with regard to works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted. In such situations contracting authorities shall not be required to publish a contract notice where they include in the procedure all of, and only, the tenderers which satisfy the criteria set out in Articles 57 to 64 and which, during the prior open or restricted procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

In particular, tenders which do not comply with the procurement documents, which were received late, where there is evidence of collusion or corruption, or which have been found by the contracting authority to be abnormally low, shall be considered as being irregular. In particular tenders submitted by tenderers that do not have the required qualifications, and tenders whose price exceeds the contracting authority's budget as determined and documented prior to the launching of the procurement procedure shall be considered as unacceptable.

5. The call for competition shall be made by means of a contract notice pursuant to Article 49.

Where the contract is awarded by restricted procedure or competitive procedure with negotiation, Member States may provide, notwithstanding the first subparagraph of this paragraph, that sub-central contracting authorities or specific categories thereof may make the call for competition by means of a prior information notice pursuant to Article 48(2).

Where the call for competition is made by means of a prior information notice pursuant to Article 48(2), economic operators having expressed their interest following the publication of the prior information notice shall subsequently be invited to confirm their interest in writing by means of an invitation to confirm interest in conformity with Article 54.

6. In the specific cases and circumstances referred to expressly in Article 32, Member States may provide that contracting authorities may apply a negotiated procedure without prior publication of a call for competition. Member States shall not allow the application of that procedure in any other cases than those referred to in Article 32.

##### Article 27

#### Open procedure

1. In open procedures, any interested economic operator may submit a tender in response to a call for competition.



The minimum time limit for the receipt of tenders shall be 35 days from the date on which the contract notice was sent.

The tender shall be accompanied by the information for qualitative selection that is requested by the contracting authority.

2. Where contracting authorities have published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to 15 days, provided that all of the following conditions are fulfilled:

- (a) the prior information notice included all the information required for the contract notice in section I of part B of Annex V, in so far as that information was available at the time the prior information notice was published;
- (b) the prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

3. Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limit laid down in the second subparagraph of paragraph 1, it may fix a time limit which shall be not less than 15 days from the date on which the contract notice was sent.

4. The contracting authority may reduce by five days the time limit for receipt of tenders set out in the second subparagraph of paragraph 1 of this Article where it accepts that tenders may be submitted by electronic means in accordance with the first subparagraph of Article 22(1), and Article 22(5) and (6).

#### Article 28

##### Restricted procedure

1. In restricted procedures, any economic operator may submit a request to participate in response to a call for competition containing the information set out in Annex V parts B or C as the case may be by providing the information for qualitative selection that is requested by the contracting authority.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest was sent.

2. Only those economic operators invited to do so by the contracting authority following its assessment of the information provided may submit a tender. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 65.

The minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation to tender was sent.

3. Where contracting authorities have published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may be shortened to 10 days, provided that all of the following conditions are fulfilled:

- (a) the prior information notice included all the information required in section I of part B of Annex V, in so far as that information was available at the time the prior information notice was published;
- (b) the prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

4. Member States may provide that all or specific categories of sub-central contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all selected candidates have the same time to prepare and submit their tenders. In the absence of agreement on the time limit for the receipt of tenders, the time limit shall be at least 10 days from the date on which the invitation to tender was sent.

5. The time limit for receipt of tenders provided for in paragraph 2 of this Article may be reduced by five days where the contracting authority accepts that tenders may be submitted by electronic means in conformity with Article 22(1), (5) and (6).

6. Where a state of urgency duly substantiated by the contracting authorities renders impracticable the time limits laid down in this Article, they may fix:

- (a) a time limit for the receipt of requests to participate which shall not be less than 15 days from the date on which the contract notice was sent;
- (b) a time limit for the receipt of tenders which shall not be less than 10 days from the date on which the invitation to tender was sent.

#### Article 29

##### Competitive procedure with negotiation

1. In competitive procedures with negotiation, any economic operator may submit a request to participate in response to a call for competition containing the information set out in Annex V parts B and C by providing the information for qualitative selection that is requested by the contracting authority.

In the procurement documents, contracting authorities shall identify the subject-matter of the procurement by providing a description of their needs and the characteristics required of the supplies, works or services to be procured and specify the contract award criteria. They shall also indicate which elements of the description define the minimum requirements to be met by all tenders.



The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest was sent. The minimum time limit for the receipt of initial tenders shall be 30 days from the date on which the invitation was sent. Article 28(3) to (6) shall apply.

2. Only those economic operators invited by the contracting authority following its assessment of the information provided may submit an initial tender which shall be the basis for the subsequent negotiations. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 65.

3. Unless otherwise provided for in paragraph 4, contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tenders within the meaning of paragraph 7, to improve the content thereof.

The minimum requirements and the award criteria shall not be subject to negotiations.

4. Contracting authorities may award contracts on the basis of the initial tenders without negotiation where they have indicated, in the contract notice or in the invitation to confirm interest, that they reserve the possibility of doing so.

5. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall inform all tenderers, whose tenders have not been eliminated pursuant to paragraph 6, in writing of any changes to the technical specifications or other procurement documents, other than those setting out the minimum requirements. Following these changes, contracting authorities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

In accordance with Article 21, contracting authorities shall not reveal to the other participants confidential information communicated by a candidate or a tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

6. Competitive procedures with negotiation may take place in successive stages in order to reduce the number of tenders to

be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in another procurement document. In the contract notice, the invitation to confirm interest or in another procurement document, the contracting authority shall indicate whether it will use that option.

7. Where the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders. It shall verify that the final tenders are in conformity with the minimum requirements and comply with Article 56(1), assess the final tenders on the basis of the award criteria and award the contract in accordance with Articles 66 to 69.

### Article 30

#### Competitive dialogue

1. In competitive dialogues, any economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice was sent.

Only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the dialogue. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 65. The contract shall be awarded on the sole basis of the award criterion of the best price-quality ratio in accordance with Article 67(2).

2. Contracting authorities shall set out their needs and requirements in the contract notice and they shall define these needs and requirements in that notice and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award criteria and set out an indicative timeframe.

3. Contracting authorities shall open, with the participants selected in accordance with the relevant provisions of Articles 56 to 66, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. They may discuss all aspects of the procurement with the chosen participants during this dialogue.

During the dialogue, contracting authorities shall ensure equality of treatment among all participants. To that end, they shall not provide information in a discriminatory manner which may give some participants an advantage over others.

In accordance with Article 21, contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate or tenderer participating in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

4. Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the contract notice or in the descriptive document. In the contract notice or the descriptive document, the contracting authority shall indicate whether it will use that option.

5. The contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

6. Having declared that the dialogue is concluded and having so informed the remaining participants, contracting authorities shall ask each of them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. Those tenders shall contain all the elements required and necessary for the performance of the project.

Those tenders may be clarified, specified and optimised at the request of the contracting authority. However, such clarification, specification, optimisation or additional information may not involve changes to the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.

7. Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or in the descriptive document.

At the request of the contracting authority, negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio in accordance with Article 67 may be carried out to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract provided this does not have the effect of materially modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document and does not risk distorting competition or causing discrimination.

8. Contracting authorities may specify prizes or payments to the participants in the dialogue.

#### Article 31

#### **Innovation partnership**

1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice

by providing the information for qualitative selection that is requested by the contracting authority.

In the procurement documents, the contracting authority shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. It shall indicate which elements of this description define the minimum requirements to be met by all tenders. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.

The contracting authority may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice is sent. Only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the procedure. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 65. The contracts shall be awarded on the sole basis of the award criterion of the best price-quality ratio in accordance with Article 67.

2. The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authorities and the participants.

The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of the remuneration in appropriate instalments.

Based on those targets, the contracting authority may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts, provided that the contracting authority has indicated in the procurement documents those possibilities and the conditions for their use.

3. Unless otherwise provided for in this Article, contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve the content thereof.

The minimum requirements and the award criteria shall not be subject to negotiations.

4. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall inform all tenderers whose tenders have not been eliminated, pursuant to paragraph 5, in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements. Following those changes, contracting authorities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

In accordance with Article 21, contracting authorities shall not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

5. Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting authority shall indicate whether it will use that option.

6. In selecting candidates, contracting authorities shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions.

Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions.

In the procurement documents, the contracting authority shall define the arrangements applicable to intellectual property rights. In the case of an innovation partnership with several partners, the contracting authority shall not, in accordance with Article 21, reveal to the other partners solutions proposed or other confidential information communicated by a partner in the framework of the partnership without that partner's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

7. The contracting authority shall ensure that the structure of the partnership and, in particular, the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value

of supplies, services or works shall not be disproportionate in relation to the investment required for their development.

#### Article 32

#### Use of the negotiated procedure without prior publication

1. In the specific cases and circumstances laid down in paragraphs 2 to 5, Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication.

2. The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:

(a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests.

A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned is to be or may be excluded pursuant to Article 57 or does not meet the selection criteria set out by the contracting authority pursuant to Article 58;

(b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

(ii) competition is absent for technical reasons;

(iii) the protection of exclusive rights, including intellectual property rights;

The exceptions set out in points (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority.

3. The negotiated procedure without prior publication may be used for public supply contracts:

- (a) where the products involved are manufactured purely for the purpose of research, experimentation, study or development; however, contracts awarded pursuant to this point shall not include quantity production to establish commercial viability or to recover research and development costs;
- (b) for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the duration of such contracts as well as that of recurrent contracts shall not, as a general rule, exceed three years;
- (c) for supplies quoted and purchased on a commodity market;
- (d) for the purchase of supplies or services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations.

4. The negotiated procedure without prior publication may be used for public service contracts, where the contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the rules provided for in the design contest, to the winner or one of the winners of the design contest; in the latter case, all winners must be invited to participate in the negotiations.

5. The negotiated procedure without prior publication may be used for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded pursuant to a procedure in accordance with Article 26(1). The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.

As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities when they apply Article 4.

This procedure may be used only during the three years following the conclusion of the original contract.

## CHAPTER II

### *Techniques and instruments for electronic and aggregated procurement*

#### Article 33

#### **Framework agreements**

1. Contracting authorities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.

A framework agreement means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and in paragraphs 3 and 4.

Those procedures may be applied only between those contracting authorities clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators party to the framework agreement as concluded.

Contracts based on a framework agreement may under no circumstances entail substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement.

For the award of those contracts, contracting authorities may consult the economic operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

4. Where a framework agreement is concluded with more than one economic operator, that framework agreement shall be performed in one of the following ways:



(a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents for the framework agreement;

(b) where the framework agreement sets out all the terms governing the provision of the works, services and supplies concerned, partly without reopening of competition in accordance with point (a) and partly with reopening of competition amongst the economic operators parties to the framework agreement in accordance with point (c), where this possibility has been stipulated by the contracting authorities in the procurement documents for the framework agreement. The choice of whether specific works, supplies or services shall be acquired following a reopening of competition or directly on the terms set out in the framework agreement shall be made pursuant to objective criteria, which shall be set out in the procurement documents for the framework agreement. These procurement documents shall also specify which terms may be subject to reopening of competition.

The possibilities provided for under the first paragraph of this point shall also apply to any lot of a framework agreement for which all the terms governing the provision of the works, services and supplies concerned are set out in the framework agreement, regardless of whether all the terms governing the provision of the works, services and supplies concerned under other lots have been set out.

(c) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework agreement.

5. The competitions referred to in points (b) and (c) of paragraph 4 shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the procurement documents for the framework agreement, in accordance with the following procedure:

(a) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;

(b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;

(d) contracting authorities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the procurement documents for the framework agreement.

#### Article 34

#### Dynamic purchasing systems

1. For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities, contracting authorities may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, and shall be open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria. It may be divided into categories of products, works or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned. Such characteristics may include reference to the maximum allowable size of the subsequent specific contracts or to a specific geographic area in which subsequent specific contracts will be performed.

2. In order to procure under a dynamic purchasing system, contracting authorities shall follow the rules of the restricted procedure. All the candidates satisfying the selection criteria shall be admitted to the system, and the number of candidates to be admitted to the system shall not be limited in accordance with Article 65. Where contracting authorities have divided the system into categories of products, works or services in accordance with paragraph 1 of this Article, they shall specify the applicable selection criteria for each category.

Notwithstanding Article 28, the following time limits shall apply:

(a) the minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent;

(b) the minimum time limit for receipt of tenders shall be at least 10 days from the date on which the invitation to tender is sent. Where appropriate, Article 28(4) shall apply. Article 28(3) and (5) shall not apply.

3. All communications in the context of a dynamic purchasing system shall only be made by electronic means in accordance with Article 22(1), (3), (5) and (6).



4. For the purposes of awarding contracts under a dynamic purchasing system, contracting authorities shall:

- (a) publish a call for competition making it clear that a dynamic purchasing system is involved;
- (b) indicate in the procurement documents at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including how the dynamic purchasing system operates, the electronic equipment used and the technical connection arrangements and specifications;
- (c) indicate any division into categories of products, works or services and the characteristics defining them;
- (d) offer unrestricted and full direct access, as long as the system is valid, to the procurement documents in conformity with Article 53.

5. Contracting authorities shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraph 2. Contracting authorities shall finalise their assessment of such requests in accordance with the selection criteria within 10 working days following their receipt. That deadline may be prolonged to 15 working days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met.

Notwithstanding the first subparagraph, as long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, contracting authorities may extend the evaluation period provided that no invitation to tender is issued during the extended evaluation period. Contracting authorities shall indicate in the procurement documents the length of the extended period that they intend to apply.

Contracting authorities shall inform the economic operator concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

6. Contracting authorities shall invite all admitted participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 54. Where the dynamic purchasing system has been divided into categories of works, products or services, contracting authorities shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender.

They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the

contract notice for the dynamic purchasing system or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.

7. Contracting authorities may, at any time during the period of validity of the dynamic purchasing system, require admitted participants to submit a renewed and updated self-declaration as provided for in Article 59(1), within five working days from the date on which that request is transmitted.

Article 59(4) to (6) shall apply throughout the entire period of validity of the dynamic purchasing system.

8. Contracting authorities shall indicate the period of validity of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in the period of validity, using the following standard forms:

- (a) where the period of validity is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;
- (b) where the system is terminated, a contract award notice referred to in Article 50.

9. No charges may be billed prior to or during the period of validity of the dynamic purchasing system to the economic operators interested in or party to the dynamic purchasing system.

#### Article 35

#### Electronic auctions

1. Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

For this purpose, contracting authorities shall structure the electronic auction as a repetitive electronic process, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

Certain public service contracts and certain public works contracts having as their subject-matter intellectual performances, such as the design of works, which cannot be ranked using automatic evaluation methods, shall not be the object of electronic auctions.

2. In open or restricted procedures or competitive procedures with negotiation, the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the content of the procurement documents, in particular the technical specifications, can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in points (b) or (c) of Article 33(4) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 34.

3. The electronic auction shall be based on one of the following elements of the tenders:

- (a) solely on prices where the contract is awarded on the basis of price only;
- (b) on prices and/or on the new values of the features of the tenders indicated in the procurement documents where the contract is awarded on the basis of the best price-quality ratio or to the tender with the lowest cost using a cost-effectiveness approach.

4. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice or in the invitation to confirm interest. The procurement documents shall include at least the information set out in Annex VI.

5. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.

A tender shall be considered admissible where it has been submitted by a tenderer, who has not been excluded pursuant to Article 57 and who meets the selection criteria, and whose tender is in conformity with the technical specifications without being irregular or unacceptable or unsuitable.

In particular, tenders which do not comply with the procurement documents, which were received late, where there is evidence of collusion or corruption, or which have been found by the contracting authority to be abnormally low, shall be considered as being irregular. In particular tenders submitted by tenderers that do not have the required qualifications, and tenders whose price exceeds the contracting authority's budget as determined and documented prior to the launching of the procurement procedure shall be considered as unacceptable.

A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned is to be or may be excluded pursuant to Article 57 or does not meet the selection criteria set out by the contracting authority pursuant to Article 58

All tenderers that have submitted admissible tenders shall be invited simultaneously to participate in the electronic auction

using, as of the specified date and time, the connections in accordance with the instructions set out in the invitation. The electronic auction may take place in a number of successive phases. The electronic auction shall not start sooner than two working days after the date on which invitations are sent out.

6. The invitation shall be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance with the weighting provided for in the first subparagraph of Article 67(5).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine the automatic re-rankings on the basis of the new prices and/or new values submitted. Except where the most economically advantageous offer is identified on the basis of price alone, that formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in other procurement documents. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

7. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may, where this has been previously indicated, communicate other information concerning other prices or values submitted. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

8. Contracting authorities shall close an electronic auction in one or more of the following manners:

- (a) at the previously indicated date and time;
- (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction; or
- (c) when the previously indicated number of phases in the auction has been completed.

Where the contracting authorities intend to close an electronic auction in accordance with point (c) of the first subparagraph, possibly in combination with the arrangements laid down in point (b) thereof, the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

9. After closing an electronic auction contracting authorities shall award the contract in accordance with Article 67 on the basis of the results of the electronic auction.

#### Article 36

##### Electronic catalogues

1. Where the use of electronic means of communication is required, contracting authorities may require tenders to be presented in the format of an electronic catalogue or to include an electronic catalogue.

Member States may render the use of electronic catalogues mandatory in connection with certain types of procurement.

Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.

2. Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a given procurement procedure in accordance with the technical specifications and format established by the contracting authority.

Furthermore, electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting authority in accordance with Article 22.

3. Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting authorities shall:

- (a) state so in the contract notice or in the invitation to confirm interest where a prior information notice is used as a means of calling for competition;
- (b) indicate in the procurement documents all the necessary information pursuant to Article 22(6) concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.

4. Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting authorities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such a case, contracting authorities shall use one of the following methods:

- (a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question; or
- (b) notify tenderers that they intend to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the contract in question; provided that the use of that method has been announced in the procurement documents for the framework agreement.

5. Where contracting authorities reopen competition for specific contracts in accordance with point (b) of paragraph 4, they shall notify tenderers of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question and shall give tenderers the possibility to refuse such collection of information.

Contracting authorities shall allow for an adequate period between the notification and the actual collection of information.

Before awarding the contract, contracting authorities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

6. Contracting authorities may award contracts based on a dynamic purchasing system by requiring that offers for a specific contract are to be presented in the format of an electronic catalogue.

Contracting authorities may also award contracts based on a dynamic purchasing system in accordance with point (b) of paragraph 4 and paragraph 5 provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting authority. That catalogue shall be completed subsequently by the candidates, when they are informed of the contracting authority's intention to constitute tenders by means of the procedure set out in point (b) of paragraph 4.

#### Article 37

##### Centralised purchasing activities and central purchasing bodies

1. Member States may provide that contracting authorities may acquire supplies and/or services from a central purchasing body offering the centralised purchasing activity referred to in point (a) of point (14) of Article 2(1).

Member States may also provide that contracting authorities may acquire works, supplies and services by using contracts awarded by a central purchasing body, by using dynamic purchasing systems operated by a central purchasing body or, to the extent set out in the second subparagraph of Article 33(2), by using a framework agreement concluded by a central purchasing body offering the centralised purchasing activity referred to in point (b) of point (14) of Article 2(1). Where a dynamic purchasing system which is operated by a central purchasing body may be used by other contracting authorities, this shall be mentioned in the call for competition setting up that dynamic purchasing system.

In relation to the first and second subparagraphs, Member States may provide that certain procurements are to be made by having recourse to central purchasing bodies or to one or more specific central purchasing bodies.

2. A contracting authority fulfils its obligations pursuant to this Directive when it acquires supplies or services from a central purchasing body offering the centralised purchasing activity referred to in point (a) of point (14) of Article 2(1).

Furthermore, a contracting authority also fulfils its obligations pursuant to this Directive where it acquires works, supplies or services by using contracts awarded by the central purchasing body, by using dynamic purchasing systems operated by the central purchasing body or, to the extent set out in the second subparagraph of Article 33(2), by using a framework agreement concluded by the central purchasing body offering the centralised purchasing activity referred to in point (b) of point (14) of Article 2(1).

However, the contracting authority concerned shall be responsible for fulfilling the obligations pursuant to this Directive in respect of the parts it conducts itself, such as:

- (a) awarding a contract under a dynamic purchasing system, which is operated by a central purchasing body;
- (b) conducting a reopening of competition under a framework agreement that has been concluded by a central purchasing body;
- (c) pursuant to points (a) or (b) of Article 33(4), determining which of the economic operators, party to the framework agreement, shall perform a given task under a framework agreement that has been concluded by a central purchasing body.

3. All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements set out in Article 22.

4. Contracting authorities may, without applying the procedures provided for in this Directive, award a public service contract for the provision of centralised purchasing activities to a central purchasing body.

Such public service contracts may also include the provision of ancillary purchasing activities.

#### Article 38

##### **Occasional joint procurement**

1. Two or more contracting authorities may agree to perform certain specific procurements jointly.

2. Where the conduct of a procurement procedure in its entirety is carried out jointly in the name and on behalf of all the contracting authorities concerned, they shall be jointly responsible for fulfilling their obligations pursuant to this Directive. This applies also in cases where one contracting authority manages the procedure, acting on its own behalf and on the behalf of the other contracting authorities concerned.

Where the conduct of a procurement procedure is not in its entirety carried out in the name and on behalf of the contracting authorities concerned, they shall be jointly responsible only for those parts carried out jointly. Each contracting authority shall have sole responsibility for fulfilling its obligations pursuant to this Directive in respect of the parts it conducts in its own name and on its own behalf.

#### Article 39

##### **Procurement involving contracting authorities from different Member States**

1. Without prejudice to Article 12, contracting authorities from different Member States may act jointly in the award of public contracts by using one of the means provided for in this Article.

Contracting authorities shall not use the means provided in this Article for the purpose of avoiding the application of mandatory public law provisions in conformity with Union law to which they are subject in their Member State.

2. A Member State shall not prohibit its contracting authorities from using centralised purchasing activities offered by central purchasing bodies located in another Member State.

In respect of centralised purchasing activities offered by a central purchasing body located in another Member State than the contracting authority, Member States may, however, choose to specify that their contracting authorities may only use the centralised purchasing activities as defined in either point (a) or in point (b) of point (14) of Article 2(1).

3. The provision of centralised purchasing activities by a central purchasing body located in another Member State shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

The national provisions of the Member State where the central purchasing body is located shall also apply to the following:

- (a) the award of a contract under a dynamic purchasing system;



- (b) the conduct of a reopening of competition under a framework agreement;
- (c) the determination pursuant to points (a) or (b) of Article 33(4) of which of the economic operators, party to the framework agreement, shall perform a given task.

4. Several contracting authorities from different Member States may jointly award a public contract, conclude a framework agreement or operate a dynamic purchasing system. They may also, to the extent set out in the second subparagraph of Article 33(2), award contracts based on the framework agreement or on the dynamic purchasing system. Unless the necessary elements have been regulated by an international agreement concluded between the Member States concerned, the participating contracting authorities shall conclude an agreement that determines:

- (a) the responsibilities of the parties and the relevant applicable national provisions;
- (b) the internal organisation of the procurement procedure, including the management of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

A participating contracting authority fulfils its obligations pursuant to this Directive when it purchases works, supplies or services from a contracting authority which is responsible for the procurement procedure. When determining responsibilities and the applicable national law as referred to in point (a), the participating contracting authorities may allocate specific responsibilities among them and determine the applicable provisions of the national laws of any of their respective Member States. The allocation of responsibilities and the applicable national law shall be referred to in the procurement documents for jointly awarded public contracts.

5. Where several contracting authorities from different Member States have set up a joint entity, including European Groupings of territorial cooperation under Regulation (EC) No 1082/2006 of the European Parliament and of the Council <sup>(1)</sup> or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint entity, agree on the applicable national procurement rules of one of the following Member States:

- (a) the national provisions of the Member State where the joint entity has its registered office;
- (b) the national provisions of the Member State where the joint entity is carrying out its activities.

<sup>(1)</sup> Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ L 210, 31.7.2006, p. 19).

The agreement referred to in the first subparagraph may either apply for an undetermined period, when fixed in the constitutive act of the joint entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

### CHAPTER III

## Conduct of the procedure

### Section 1

## Preparation

### Article 40

#### Preliminary market consultations

Before launching a procurement procedure, contracting authorities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.

For this purpose, contracting authorities may for example seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

### Article 41

#### Prior involvement of candidates or tenderers

Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting authority, whether in the context of Article 40 or not, or has otherwise been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.

Such measures shall include the communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition. The measures taken shall be documented in the individual report required by Article 84.



## Article 42

**Technical specifications**

1. The technical specifications as defined in point 1 of Annex VII shall be set out in the procurement documents. The technical specification shall lay down the characteristics required of a works, service or supply.

Those characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.

The technical specifications may also specify whether the transfer of intellectual property rights will be required.

For all procurement which is intended for use by natural persons, whether general public or staff of the contracting authority, the technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.

Where mandatory accessibility requirements are adopted by a legal act of the Union, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.

2. Technical specifications shall afford equal access of economic operators to the procurement procedure and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when any of those do not exist - national standards, national technical approvals or national

technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent';

(c) in terms of performance or functional requirements as referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;

(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words 'or equivalent'.

5. Where a contracting authority uses the option of referring to the technical specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender by any appropriate means, including the means of proof referred to in Article 44, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.

6. Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

In its tender, the tenderer shall prove by any appropriate means, including those referred to in Article 44, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

*Article 43***Labels**

1. Where contracting authorities intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics, provided that all of the following conditions are fulfilled:

- (a) the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;
- (b) the label requirements are based on objectively verifiable and non-discriminatory criteria;
- (c) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;
- (d) the labels are accessible to all interested parties;
- (e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

Where contracting authorities do not require the works, supplies or services to meet all of the label requirements, they shall indicate which label requirements are referred to.

Contracting authorities requiring a specific label shall accept all labels that confirm that the works, supplies or services meet equivalent label requirements.

Where an economic operator had demonstrably no possibility of obtaining the specific label indicated by the contracting authority or an equivalent label within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall accept other appropriate means of proof, which may include a technical dossier from the manufacturer, provided that the economic operator concerned proves that the works, supplies or services to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting authority.

2. Where a label fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities shall not require the label as such but may define the technical specification by reference to those of the detailed

specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

*Article 44***Test reports, certification and other means of proof**

1. Contracting authorities may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

Where contracting authorities require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by the contracting authorities.

For the purpose of this paragraph, a conformity assessment body shall be a body that performs conformity assessment activities including calibration, testing, certification and inspection accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>(1)</sup>.

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned had no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned and provided that the economic operator concerned thereby proves that the works, supplies or services provided by it meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

3. Member States shall make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with Article 42(6), Article 43 and paragraphs 1 and 2 of this Article. The competent authorities of the Member State of establishment of the economic operator shall provide this information in accordance with Article 86.

*Article 45***Variants**

1. Contracting authorities may authorise or require tenderers to submit variants. They shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest whether or not they authorise or require variants. Variants shall not be authorised without such indication. Variants shall be linked to the subject-matter of the contract.

<sup>(1)</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

2. Contracting authorities authorising or requiring variants shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation, in particular whether variants may be submitted only where a tender, which is not a variant, has also been submitted. They shall also ensure that the chosen award criteria can be applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

3. Only variants meeting the minimum requirements laid down by the contracting authorities shall be taken into consideration.

In procedures for awarding public supply or service contracts, contracting authorities that have authorised or required variants shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

#### Article 46

##### Division of contracts into lots

1. Contracting authorities may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots.

Contracting authorities shall, except in respect of contracts whose division has been made mandatory pursuant to paragraph 4 of this Article, provide an indication of the main reasons for their decision not to subdivide into lots, which shall be included in the procurement documents or the individual report referred to in Article 84.

2. Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders may be submitted for one, for several or for all of the lots.

Contracting authorities may, even where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer, provided that the maximum number of lots per tenderer is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall indicate in the procurement documents the objective and non-discriminatory criteria or rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.

3. Member States may provide that, where more than one lot may be awarded to the same tenderer, contracting authorities may award contracts combining several or all lots where they

have specified in the contract notice or in the invitation to confirm interest that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.

4. Member States may implement the second subparagraph of paragraph 1 by rendering it obligatory to award contracts in the form of separate lots under conditions to be specified in accordance with their national law and having regard for Union law. In such circumstances the first subparagraph of paragraph 2 and, where appropriate, paragraph 3 shall apply.

#### Article 47

##### Setting time limits

1. When fixing the time limits for the receipt of tenders and requests to participate, contracting authorities shall take account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set out in Articles 27 to 31.

2. Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the procurement documents, the time limits for the receipt of tenders, which shall be longer than the minimum time limits set out in Articles 27 to 31, shall be fixed so that all economic operators concerned may be aware of all the information needed to produce tenders.

3. Contracting authorities shall extend the time limits for the receipt of tenders so that all economic operators concerned may be aware of all the information needed to produce tenders in the following cases:

(a) where, for whatever reason, additional information, although requested by the economic operator in good time, is not supplied at the latest six days before the time limit fixed for the receipt of tenders. In the event of an accelerated procedure as referred to in Article 27(3) and Article 28(6), that period shall be four days;

(b) where significant changes are made to the procurement documents.

The length of the extension shall be proportionate to the importance of the information or change.

Where the additional information has either not been requested in good time or its importance with a view to preparing responsive tenders is insignificant, contracting authorities shall not be required to extend the time limits.

## Section 2

**Publication and transparency**

## Article 48

**Prior information notices**

1. Contracting authorities may make known their intentions of planned procurements through the publication of a prior information notice. Those notices shall contain the information set out in Annex V part B section I. They shall be published either by the Publications Office of the European Union or by the contracting authorities on their buyer profiles in accordance with point 2(b) of Annex VIII. Where the prior information notice is published by the contracting authorities on their buyer profile, they shall send a notice of the publication on their buyer profile to the Publications Office of the European Union in accordance with Annex VIII. Those notices shall contain the information set out in Annex V part A.

2. For restricted procedures and competitive procedures with negotiation, sub-central contracting authorities may use a prior information notice as a call for competition pursuant to Article 26(5), provided that the notice fulfils all of the following conditions:

- (a) it refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;
- (b) it indicates that the contract will be awarded by restricted procedure or competitive procedure with negotiation without further publication of a call for competition and invites interested economic operators to express their interest;
- (c) it contains, in addition to the information set out in Annex V part B section I, the information set out in Annex V part B section II;
- (d) it has been sent for publication between 35 days and 12 months prior to the date on which the invitation referred to in Article 54(1) is sent.

Such notices shall not be published on a buyer profile. However, the additional publication at national level pursuant to Article 52, if any, may be made on a buyer profile.

The period covered by the prior information notice shall be a maximum of 12 months from the date the notice is transmitted for publication. However, in the case of public contracts for social and other specific services, the prior information notice referred to in point (b) of Article 75(1) may cover a period which is longer than 12 months.

## Article 49

**Contract notices**

Contract notices shall be used as a means of calling for competition in respect of all procedures, without prejudice to

the second subparagraph of Article 26(5) and Article 32. Contract notices shall contain the information set out in Annex V part C and shall be published in accordance with Article 51.

## Article 50

**Contract award notices**

1. Not later than 30 days after the conclusion of a contract or of a framework agreement, following the decision to award or conclude it, contracting authorities shall send a contract award notice on the results of the procurement procedure.

Such notices shall contain the information set out in Annex V part D and shall be published in accordance with Article 51.

2. Where the call for competition for the contract concerned has been made in the form of a prior information notice and the contracting authority has decided that it will not award further contracts during the period covered by the prior information notice, the contract award notice shall contain a specific indication to that effect.

In the case of framework agreements concluded in accordance with Article 33, contracting authorities shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement. Member States may provide that contracting authorities shall group notices of the results of the procurement procedure for contracts based on the framework agreement on a quarterly basis. In that case, contracting authorities shall send the grouped notices within 30 days of the end of each quarter.

3. Contracting authorities shall send a contract award notice within 30 days after the award of each contract based on a dynamic purchasing system. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.

4. Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators.

## Article 51

**Form and manner of publication of notices**

1. Notices referred to in Articles 48, 49 and 50 shall include the information set out in Annex V in the format of standard forms, including standard forms for corrigenda.



The Commission shall establish those standard forms by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 89(2).

2. Notices referred to in Articles 48, 49 and 50 shall be drawn up, transmitted by electronic means to the Publications Office of the European Union and published in accordance with Annex VIII. Notices shall be published not later than five days after they are sent. The costs of publication of the notices by the Publications Office of the European Union shall be borne by the Union.

3. Notices referred to in Articles 48, 49 and 50 shall be published in full in the official language(s) of the institutions of the Union chosen by the contracting authority. That language version or those language versions shall constitute the sole authentic text(s). A summary of the important elements of each notice shall be published in the other official languages of the institutions of the Union.

4. The Publications Office of the European Union shall ensure that the full text and the summary of prior information notices referred to in Article 48(2) and calls for competition setting up a dynamic purchasing system, as referred to in point (a) of Article 34(4) continue to be published:

(a) in the case of prior information notices, for 12 months or until receipt of a contract award notice as provided for in Article 50 indicating that no further contracts will be awarded during the 12-month period covered by the call for competition. However, in the case of public contracts for social and other specific services, the prior information notice referred to in point (b) of Article 75(1) shall continue to be published until the end of its originally indicated period of validity or until receipt of a contract award notice as provided for in Article 50 indicating that no further contracts will be awarded during the period covered by the call for competition;

(b) in the case of calls for competition setting up a dynamic purchasing system, for the period of validity of the dynamic purchasing system.

5. Contracting authorities shall be able to supply proof of the dates on which notices are dispatched.

The Publications Office of the European Union shall give the contracting authority confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication.

6. Contracting authorities may publish notices for public contracts that are not subject to the publication requirement laid down in this Directive provided that those notices are sent to the Publications Office of the European Union by electronic means in accordance with the format and procedures for transmission indicated in Annex VIII.

## Article 52

### Publication at national level

1. Notices referred to in Articles 48, 49 and 50 and the information contained therein shall not be published at national level before the publication pursuant to Article 51. However, publication may in any event take place at the national level where contracting authorities have not been notified of the publication within 48 hours after confirmation of the receipt of the notice in accordance with Article 51.

2. Notices published at national level shall not contain information other than that contained in the notices dispatched to the Publications Office of the European Union or published on a buyer profile, but shall indicate the date of dispatch of the notice to the Publications Office of the European Union or its publication on the buyer profile.

3. Prior information notices shall not be published on a buyer profile before the dispatch to the Publications Office of the European Union of the notice of their publication in that form. They shall indicate the date of that dispatch.

## Article 53

### Electronic availability of procurement documents

1. Contracting authorities shall by electronic means offer unrestricted and full direct access free of charge to the procurement documents from the date of publication of a notice in accordance with Article 51 or the date on which an invitation to confirm interest was sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which the procurement documents are accessible.

Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in the second subparagraph of Article 22(1), contracting authorities may indicate in the notice or the invitation to confirm interest that the procurement documents concerned will be transmitted by other means than electronic means in accordance with paragraph 2 of this Article. In such a case, the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency referred to in Article 27(3), Article 28(6) and in the fourth subparagraph of Article 29(1).

Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because contracting authorities intend to apply Article 21(2) of this Directive, they shall indicate in the notice or the invitation to confirm interest which measures aimed at protecting the confidential nature of the information they require and how access can be obtained to the documents concerned. In such case, the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency referred to in Article 27(3), Article 28(6) and in the fourth subparagraph of Article 29(1).



2. Provided that it has been requested in good time, the contracting authorities shall supply to all tenderers taking part in the procurement procedure additional information relating to the specifications and any supporting documents not later than six days before the time limit fixed for the receipt of tenders. In the event of an accelerated procedure as referred to in Article 27(3) and Article 28(6), that period shall be four days.

#### Article 54

##### Invitations to candidates

1. In restricted procedures, competitive dialogue procedures, innovation partnerships and competitive procedures with negotiation, contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders or, in the case of a competitive dialogue, to take part in the dialogue.

Where a prior information notice is used as a call for competition pursuant to Article 48(2), contracting authorities shall simultaneously and in writing invite the economic operators which have expressed their interest to confirm their continuing interest.

2. The invitations referred to in paragraph 1 of this Article shall include a reference to the electronic address on which the procurement documents have been made directly available by electronic means. The invitations shall be accompanied by the procurement documents, where those documents have not been the subject of unrestricted and full direct access, free of charge, for the reasons set out in the second or third subparagraph of Article 53(1) and have not already been made otherwise available. In addition, the invitations referred to in paragraph 1 of this Article shall include the information set out in Annex IX.

#### Article 55

##### Informing candidates and tenderers

1. Contracting authorities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement, not to award a contract for which there has been a call for competition, to recommence the procedure or not to implement a dynamic purchasing system.

2. On request from the candidate or tenderer concerned, the contracting authority shall as quickly as possible, and in any event within 15 days from receipt of a written request, inform:

(a) any unsuccessful candidate of the reasons for the rejection of its request to participate,

(b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in Article 42(5) and (6), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements,

(c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement,

(d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

3. Contracting authorities may decide to withhold certain information referred to in paragraphs 1 and 2, regarding the contract award, the conclusion of framework agreements or admittance to a dynamic purchasing system, where the release of such information would impede law enforcement or would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or might prejudice fair competition between economic operators.

#### Section 3

##### Choice of participants and award of contracts

#### Article 56

##### General principles

1. Contracts shall be awarded on the basis of criteria laid down in accordance with Articles 67 to 69, provided that the contracting authority has verified in accordance with Articles 59 to 61 that all of the following conditions are fulfilled:

(a) the tender complies with the requirements, conditions and criteria set out in the contract notice or the invitation to confirm interest and in the procurement documents, taking into account, where applicable, Article 45;

(b) the tender comes from a tenderer that is not excluded in accordance with Article 57 and that meets the selection criteria set out by the contracting authority in accordance with Article 58 and, where applicable, the non-discriminatory rules and criteria referred to in Article 65.

Contracting authorities may decide not to award a contract to the tenderer submitting the most economically advantageous tender where they have established that the tender does not comply with the applicable obligations referred to in Article 18(2).

2. In open procedures, contracting authorities may decide to examine tenders before verifying the absence of grounds for exclusion and the fulfilment of the selection criteria in accordance with Articles 57 to 64. Where they make use of that possibility, they shall ensure that the verification of absence of grounds for exclusion and of fulfilment of the selection criteria is carried out in an impartial and transparent manner so that no contract is awarded to a tenderer that should have been excluded pursuant to Article 57 or that does not meet the selection criteria set out by the contracting authority.

Member States may exclude the use of the procedure in the first subparagraph for, or restrict it to, certain types of procurement or specific circumstances.

3. Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, contracting authorities may, unless otherwise provided by the national law implementing this Directive, request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 to amend the list in Annex X, where necessary, to add new international agreements that have been ratified by all Member States or where the existing international agreements referred to are no longer ratified by all Member States or they are otherwise changed, for instance in respect of their scope, content or denomination.

#### Subsection 1

### Criteria for qualitative selection

#### Article 57

#### Exclusion grounds

1. Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with Articles 59, 60 and 61, or are otherwise aware that that economic operator has been the subject of a conviction by final judgment for one of the following reasons:

- (a) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA <sup>(1)</sup>;
- (b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European

<sup>(1)</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

Union <sup>(2)</sup> and Article 2(1) of Council Framework Decision 2003/568/JHA <sup>(3)</sup> as well as corruption as defined in the national law of the contracting authority or the economic operator;

- (c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests <sup>(4)</sup>;
- (d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA <sup>(5)</sup> respectively, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;
- (e) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council <sup>(6)</sup>;
- (f) child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council <sup>(7)</sup>.

The obligation to exclude an economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.

2. An economic operator shall be excluded from participation in a procurement procedure where the contracting authority is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.

Furthermore, contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure an economic operator where the contracting authority can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.

<sup>(2)</sup> OJ C 195, 25.6.1997, p. 1.

<sup>(3)</sup> Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).

<sup>(4)</sup> OJ C 316, 27.11.1995, p. 48.

<sup>(5)</sup> Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

<sup>(6)</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

<sup>(7)</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

This paragraph shall no longer apply when the economic operator has fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

3. Member States may provide for a derogation from the mandatory exclusion provided for in paragraphs 1 and 2, on an exceptional basis, for overriding reasons relating to the public interest such as public health or protection of the environment.

Member States may also provide for a derogation from the mandatory exclusion provided in paragraph 2, where an exclusion would be clearly disproportionate, in particular where only minor amounts of taxes or social security contributions are unpaid or where the economic operator was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions at such time that it did not have the possibility of taking measures as provided for in the third subparagraph of paragraph 2 before expiration of the deadline for requesting participation or, in open procedures, the deadline for submitting its tender.

4. Contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure any economic operator in any of the following situations:

- (a) where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in Article 18(2);
- (b) where the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws and regulations;
- (c) where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;
- (d) where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;
- (e) where a conflict of interest within the meaning of Article 24 cannot be effectively remedied by other less intrusive measures;

- (f) where a distortion of competition from the prior involvement of the economic operators in the preparation of the procurement procedure, as referred to in Article 41, cannot be remedied by other, less intrusive measures;
- (g) where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract which led to early termination of that prior contract, damages or other comparable sanctions;
- (h) where the economic operator has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, has withheld such information or is not able to submit the supporting documents required pursuant to Article 59; or
- (i) where the economic operator has undertaken to unduly influence the decision-making process of the contracting authority, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

Notwithstanding point (b) of the first subparagraph, Member States may require or may provide for the possibility that the contracting authority does not exclude an economic operator which is in one of the situations referred to in that point, where the contracting authority has established that the economic operator in question will be able to perform the contract, taking into account the applicable national rules and measures on the continuation of business in the case of the situations referred to in point (b).

5. Contracting authorities shall at any time during the procedure exclude an economic operator where it turns out that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraphs 1 and 2.

At any time during the procedure, contracting authorities may exclude or may be required by Member States to exclude an economic operator where it turns out that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraph 4.

6. Any economic operator that is in one of the situations referred to in paragraphs 1 and 4 may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. If such evidence is considered as sufficient, the economic operator concerned shall not be excluded from the procurement procedure.

For this purpose, the economic operator shall prove that it has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the economic operators shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered to be insufficient, the economic operator shall receive a statement of the reasons for that decision.

An economic operator which has been excluded by final judgment from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided for under this paragraph during the period of exclusion resulting from that judgment in the Member States where the judgment is effective.

7. By law, regulation or administrative provision and having regard to Union law, Member States shall specify the implementing conditions for this Article. They shall, in particular, determine the maximum period of exclusion if no measures as specified in paragraph 6 are taken by the economic operator to demonstrate its reliability. Where the period of exclusion has not been set by final judgment, that period shall not exceed five years from the date of the conviction by final judgment in the cases referred to in paragraph 1 and three years from the date of the relevant event in the cases referred to in paragraph 4.

#### Article 58

##### Selection criteria

1. Selection criteria may relate to:

- (a) suitability to pursue the professional activity;
- (b) economic and financial standing;
- (c) technical and professional ability.

Contracting authorities may only impose criteria referred to in paragraphs 2, 3 and 4 on economic operators as requirements for participation. They shall limit any requirements to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded. All requirements shall be related and proportionate to the subject-matter of the contract.

2. With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled in one of the professional or trade registers kept in their Member State of establishment, as described in Annex XI, or to comply with any other request set out in that Annex.

In procurement procedures for services, in so far as economic operators have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.

3. With regard to economic and financial standing, contracting authorities may impose requirements ensuring that economic operators possess the necessary economic and financial capacity to perform the contract. For that purpose, contracting authorities may require, in particular, that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract. In addition, contracting authorities may require that economic operators provide information on their annual accounts showing the ratios, for instance, between assets and liabilities. They may also require an appropriate level of professional risk indemnity insurance.

The minimum yearly turnover that economic operators are required to have shall not exceed two times the estimated contract value, except in duly justified cases such as relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate the main reasons for such a requirement in the procurement documents or the individual report referred to in Article 84.

The ratio, for instance, between assets and liabilities may be taken into consideration where the contracting authority specifies the methods and criteria for such consideration in the procurement documents. Such methods and criteria shall be transparent, objective and non-discriminatory.

Where a contract is divided into lots this Article shall apply in relation to each individual lot. However, the contracting authority may set the minimum yearly turnover that economic operators are required to have by reference to groups of lots in the event that the successful tenderer is awarded several lots to be executed at the same time.

Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement referred to in the second subparagraph of this paragraph shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum yearly turnover requirement referred to in the second subparagraph shall be calculated on the basis of the expected maximum size of specific contracts to be awarded under that system.



4. With regard to technical and professional ability, contracting authorities may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard.

Contracting authorities may require, in particular, that economic operators have a sufficient level of experience demonstrated by suitable references from contracts performed in the past. A contracting authority may assume that an economic operator does not possess the required professional abilities where the contracting authority has established that the economic operator has conflicting interests which may negatively affect the performance of the contract.

In procurement procedures for supplies requiring siting or installation work, services or works, the professional ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency, experience and reliability.

5. Contracting authorities shall indicate the required conditions of participation which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.

#### Article 59

##### European Single Procurement Document

1. At the time of submission of requests to participate or of tenders, contracting authorities shall accept the European Single Procurement Document (ESPD), consisting of an updated self-declaration as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the relevant economic operator fulfils the following conditions:

- (a) it is not in one of the situations referred to in Article 57 in which economic operators shall or may be excluded;
- (b) it meets the relevant selection criteria that have been set out pursuant to Article 58;
- (c) where applicable, it fulfils the objective rules and criteria that have been set out pursuant to Article 65.

Where the economic operator relies on the capacities of other entities pursuant to Article 63, the ESPD shall also contain the information referred to in the first subparagraph of this paragraph in respect of such entities.

The ESPD shall consist of a formal statement by the economic operator that the relevant ground for exclusion does not apply and/or that the relevant selection criterion is fulfilled and shall

provide the relevant information as required by the contracting authority. The ESPD shall further identify the public authority or third party responsible for establishing the supporting documents and contain a formal statement to the effect that the economic operator will be able, upon request and without delay, to provide those supporting documents.

Where the contracting authority can obtain the supporting documents directly by accessing a database pursuant to paragraph 5, the ESPD shall also contain the information required for this purpose, such as the internet address of the database, any identification data and, where applicable, the necessary declaration of consent.

Economic operators may reuse an ESPD which has already been used in a previous procurement procedure, provided that they confirm that the information contained therein continues to be correct.

2. The ESPD shall be drawn up on the basis of a standard form. The Commission shall establish that standard form, by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 89(3).

The ESPD shall be provided exclusively in electronic form.

3. Notwithstanding Article 92, the Commission shall review the practical application of the ESPD taking into account the technical development of databases in the Member States and report thereon to the European Parliament and the Council by 18 April 2017.

Where appropriate, the Commission shall make proposals for solutions optimising the cross-border access to such databases and the use of certificates and attestations in the internal market.

4. A contracting authority may ask tenderers and candidates at any moment during the procedure to submit all or part of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

Before awarding the contract, the contracting authority shall, except in respect of contracts based on framework agreements where such contracts are concluded in accordance with Article 33(3) or point (a) of Article 33(4), require the tenderer to which it has decided to award the contract to submit up-to-date supporting documents in accordance with Article 60 and, where appropriate, Article 62. The contracting authority may invite economic operators to supplement or clarify the certificates received pursuant to Articles 60 and 62.



5. Notwithstanding paragraph 4, economic operators shall not be required to submit supporting documents or other documentary evidence where and in so far as the contracting authority has the possibility of obtaining the certificates or the relevant information directly by accessing a national database in any Member State that is available free of charge, such as a national procurement register, a virtual company dossier, an electronic document storage system or a prequalification system.

Notwithstanding paragraph 4, economic operators shall not be required to submit supporting documents where the contracting authority having awarded the contract or concluded the framework agreement already possesses these documents.

For the purpose of the first subparagraph, Member States shall ensure that databases which contain relevant information on economic operators and which may be consulted by their contracting authorities may also be consulted, under the same conditions, by contracting authorities of other Member States.

6. Member States shall make available and up-to-date in e-Certis a complete list of databases containing relevant information on economic operators which can be consulted by contracting authorities from other Member States. Upon request, Member States shall communicate to other Member States any information related to the databases referred to in this Article.

#### Article 60

##### Means of proof

1. Contracting authorities may require the certificates, statements and other means of proof referred to in paragraphs 2, 3 and 4 of this Article and Annex XII as evidence for the absence of grounds for exclusion as referred to in Article 57 and for the fulfilment of the selection criteria in accordance with Article 58.

Contracting authorities shall not require means of proof other than those referred to in this Article and in Article 62. In respect of Article 63, economic operators may rely on any appropriate means to prove to the contracting authority that they will have the necessary resources at their disposal.

2. Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in Article 57 apply to the economic operator:

- (a) as regards paragraph 1 of that Article, the production of an extract from the relevant register, such as judicial records or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the Member State or country of origin or the country where the economic operator is established showing that those requirements have been met;
- (b) as regards paragraph 2 and point (b) of paragraph 4 of that Article, a certificate issued by the competent authority in the Member State or country concerned.

Where the Member State or country in question does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1 and 2 and point (b) of paragraph 4 of Article 57, they may be replaced by a declaration on oath or, in Member States or countries where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the Member State or country of origin or in the Member State or country where the economic operator is established.

A Member State shall, where relevant, provide an official declaration stating that the documents or certificates referred to in this paragraph are not issued or that they do not cover all the cases specified in paragraphs 1 and 2 and point (b) of paragraph 4 of Article 57. Such official declarations shall be made available through the online repository of certificates (e-Certis) referred to in Article 61.

3. Proof of the economic operator's economic and financial standing may, as a general rule, be provided by one or more of the references listed in Annex XII Part I.

Where, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, it may prove its economic and financial standing by any other document which the contracting authority considers appropriate.

4. Evidence of the economic operators' technical abilities may be provided by one or more of the means listed in Annex XII Part II, in accordance with the nature, quantity or importance, and use of the works, supplies or services.

5. Upon request, Member States shall make available to other Member States any information relating to the grounds for exclusion listed in Article 57, the suitability to pursue the professional activity, and the financial and technical capacities of tenderers referred to in Article 58, and any information relating to the means of proof referred to in this Article.

#### Article 61

##### Online repository of certificates (e-Certis)

1. With a view to facilitating cross-border tendering, Member States shall ensure that the information concerning certificates and other forms of documentary evidence introduced in e-Certis established by the Commission is constantly kept up-to-date.

2. Contracting authorities shall have recourse to e-Certis and shall require primarily such types of certificates or forms of documentary evidence that are covered by e-Certis.

3. The Commission shall make available all language versions of the ESPD in e-Certis.

*Article 62***Quality assurance standards and environmental management standards**

1. Contracting authorities shall, where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures where the economic operator concerned had no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

2. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, they shall refer to the Eco-Management and Audit Scheme (EMAS) of the Union or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States.

Where an economic operator had demonstrably no access to such certificates, or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall also accept other evidence of environmental management measures, provided that the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.

3. Upon request, Member States shall make available to other Member States, in accordance with Article 86, any information relating to the documents produced as evidence of compliance with quality and environmental standards referred to in paragraphs 1 and 2.

*Article 63***Reliance on the capacities of other entities**

1. With regard to criteria relating to economic and financial standing as set out pursuant to Article 58(3), and to criteria relating to technical and professional ability as set out pursuant to Article 58(4), an economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. With regard to criteria relating to the educational and professional qualifications as set out in point

(f) of Annex XII Part II, or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect.

The contracting authority shall, in accordance with Articles 59, 60 and 61, verify whether the entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria and whether there are grounds for exclusion pursuant to Article 57. The contracting authority shall require that the economic operator replaces an entity which does not meet a relevant selection criterion, or in respect of which there are compulsory grounds for exclusion. The contracting authority may require or may be required by the Member State to require that the economic operator substitutes an entity in respect of which there are non-compulsory grounds for exclusion.

Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting authority may require that the economic operator and those entities be jointly liable for the execution of the contract.

Under the same conditions, a group of economic operators as referred to in Article 19(2) may rely on the capacities of participants in the group or of other entities.

2. In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, contracting authorities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in Article 19(2), by a participant in that group.

*Article 64***Official lists of approved economic operators and certification by bodies established under public or private law**

1. Member States may establish or maintain either official lists of approved contractors, suppliers or service providers or provide for a certification by certification bodies complying with European certification standards within the meaning of Annex VII.

They shall inform the Commission and the other Member States of the address of the certification body or the body responsible for the official lists, to which applications shall be sent.

2. Member States shall adapt the conditions for registration on the official lists referred to in paragraph 1 and for the issue of certificates by certification bodies to the provisions of this subsection.

Member States shall also adapt those conditions to Article 63 as regards applications for registration submitted by economic operators belonging to a group and claiming resources made available to them by the other companies in the group. In such cases, those operators shall prove to the authority establishing the official list that they will have those resources at their disposal throughout the period of validity of the certificate attesting to their registration on the official list and that throughout the same period those companies continue to fulfil the qualitative selection requirements encompassed by the official list or certificate on which operators rely for their registration.

3. Economic operators registered on the official lists or having a certificate may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority or the certificate issued by the competent certification body.

Those certificates shall state the references which enabled those economic operators to be registered on the official list or to obtain certification and the classification given in that list.

4. Certified registration on official lists by the competent bodies or a certificate issued by the certification body shall constitute a presumption of suitability with regard to requirements for qualitative selection encompassed by the official list or certificate.

5. Information that can be deduced from registration on official lists or certification shall not be questioned without justification. With regard to the payment of social security contributions and taxes, an additional certificate may be required of any registered economic operator whenever a contract is to be awarded.

The contracting authorities of other Member States shall apply paragraph 3 and the first subparagraph of this paragraph only in favour of economic operators established in the Member State holding the official list.

6. The requirements of proof for the criteria for qualitative selection encompassed by the official list or certificate shall comply with Article 60 and, where appropriate, Article 62. For any registration of economic operators of other Member States on an official list or for their certification, no further proof or statements shall be required other than those requested of national economic operators.

Economic operators may request at any time their registration on an official list or the issuance of a certificate. They shall be informed within a reasonably short period of time of the decision of the authority drawing up the official list or of the competent certification body.

7. Economic operators from other Member States shall not be obliged to undergo such registration or certification in order to participate in a public contract. The contracting authorities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other equivalent means of proof.

8. Upon request, Member States shall make available to other Member States any information relating to the documents produced as evidence that the economic operators fulfil the requirements to be registered on the official list of approved economic operators or as evidence that economic operators from another Member State possess an equivalent certification.

#### Subsection 2

### **Reduction of numbers of candidates, tenders and solutions**

#### *Article 65*

### **Reduction of the number of otherwise qualified candidates to be invited to participate**

1. In restricted procedures, competitive procedures with negotiation, competitive dialogue procedures and innovation partnerships, contracting authorities may limit the number of candidates meeting the selection criteria that they will invite to tender or to conduct a dialogue, provided the minimum number, in accordance with paragraph 2, of qualified candidates is available.

2. The contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, the objective and non-discriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite and, where appropriate, the maximum number.

In the restricted procedure the minimum number of candidates shall be five. In the competitive procedure with negotiation, in the competitive dialogue procedure and in the innovation partnership the minimum number of candidates shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.

The contracting authorities shall invite a number of candidates at least equal to the minimum number. However, where the number of candidates meeting the selection criteria and the minimum levels of ability as referred to in Article 58(5) is below the minimum number, the contracting authority may continue the procedure by inviting the candidates with the required capabilities. In the context of the same procedure, the contracting authority shall not include economic operators that did not request to participate, or candidates that do not have the required capabilities.

#### *Article 66*

### **Reduction of the number of tenders and solutions**

Where contracting authorities exercise the option of reducing the number of tenders to be negotiated as provided for in Article 29(6) or of solutions to be discussed as provided for in Article 30(4), they shall do so by applying the award criteria stated in the procurement documents. In the final stage, the number arrived at shall make for genuine competition in so far as there are enough tenders, solutions or qualified candidates.

## Subsection 3

**Award of the contract***Article 67***Contract award criteria**

1. Without prejudice to national laws, regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, contracting authorities shall base the award of public contracts on the most economically advantageous tender.

2. The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 68, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. Such criteria may comprise, for instance:

- (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- (b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- (c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.

Member States may provide that contracting authorities may not use price only or cost only as the sole award criterion or restrict their use to certain categories of contracting authorities or certain types of contracts.

3. Award criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in:

- (a) the specific process of production, provision or trading of those works, supplies or services; or
- (b) a specific process for another stage of their life cycle,

even where such factors do not form part of their material substance.

4. Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, contracting authorities shall verify effectively the accuracy of the information and proof provided by the tenderers.

5. The contracting authority shall specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone.

Those weightings may be expressed by providing for a range with an appropriate maximum spread.

Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

*Article 68***Life-cycle costing**

1. Life-cycle costing shall to the extent relevant cover parts or all of the following costs over the life cycle of a product, service or works:

- (a) costs, borne by the contracting authority or other users, such as:
  - (i) costs relating to acquisition,
  - (ii) costs of use, such as consumption of energy and other resources,
  - (iii) maintenance costs,
  - (iv) end of life costs, such as collection and recycling costs.
- (b) costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting authority will use to determine the life-cycle costs on the basis of those data.



The method used for the assessment of costs imputed to environmental externalities shall fulfil all of the following conditions:

- (a) it is based on objectively verifiable and non-discriminatory criteria. In particular, where it has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain economic operators;
- (b) it is accessible to all interested parties;
- (c) the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the GPA or other international agreements by which the Union is bound.

3. Whenever a common method for the calculation of life-cycle costs has been made mandatory by a legislative act of the Union, that common method shall be applied for the assessment of life-cycle costs.

A list of such legislative acts, and where necessary the delegated acts supplementing them, is set out in Annex XIII. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 concerning the update of that list, when an update of the list is necessary due to the adoption of new legislation making a common method mandatory or the repeal or modification of existing legal acts.

#### Article 69

##### **Abnormally low tenders**

1. Contracting authorities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.
2. The explanations referred to in paragraph 1 may in particular relate to:
  - (a) the economics of the manufacturing process, of the services provided or of the construction method;
  - (b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;
  - (c) the originality of the work, supplies or services proposed by the tenderer;
  - (d) compliance with obligations referred to in Article 18(2);

(e) compliance with obligations referred to in Article 71;

(f) the possibility of the tenderer obtaining State aid.

3. The contracting authority shall assess the information provided by consulting the tenderer. It may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in paragraph 2.

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with applicable obligations referred to in Article 18(2).

4. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 TFEU. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.

5. Upon request, Member States shall make available to other Member States by means of administrative cooperation any information at its disposal, such as laws, regulations, universally applicable collective agreements or national technical standards, relating to the evidence and documents produced in relation to details listed in paragraph 2.

#### CHAPTER IV

##### **Contract performance**

#### Article 70

##### **Conditions for performance of contracts**

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract within the meaning of Article 67(3) and indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation-related, environmental, social or employment-related considerations.

#### Article 71

##### **Subcontracting**

1. Observance of the obligations referred to in Article 18(2) by subcontractors is ensured through appropriate action by the competent national authorities acting within the scope of their responsibility and remit.
2. In the procurement documents, the contracting authority may ask or may be required by a Member State to ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.



3. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority shall transfer due payments directly to the subcontractor for services, supplies or works provided to the economic operator to whom the public contract has been awarded (the main contractor). Such measures may include appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.

4. Paragraphs 1 to 3 shall be without prejudice to the question of the main contractor's liability.

5. In the case of works contracts and in respect of services to be provided at a facility under the direct oversight of the contracting authority, after the award of the contract and at the latest when the performance of the contract commences, the contracting authority shall require the main contractor to indicate to the contracting authority the name, contact details and legal representatives of its subcontractors, involved in such works or services, in so far as known at this point in time. The contracting authority shall require the main contractor to notify the contracting authority of any changes to this information during the course of the contract as well as of the required information for any new subcontractors which it subsequently involves in such works or services.

Notwithstanding the first subparagraph, Member States may impose the obligation to deliver the required information directly on the main contractor.

Where necessary for the purposes of point (b) of paragraph 6 of this Article, the required information shall be accompanied by the subcontractors' self-declarations as provided for in Article 59. The implementing measures pursuant to paragraph 8 of this Article may provide that subcontractors which are presented after the award of the contract shall provide the certificates and other supporting documents instead of the self-declaration.

The first subparagraph shall not apply to suppliers.

Contracting authorities may extend or may be required by Member States to extend the obligations provided for in the first subparagraph to for instance:

- (a) supply contracts, to services contracts other than those concerning services to be provided at the facilities under the direct oversight of the contracting authority or to suppliers involved in works or services contracts;
- (b) subcontractors of the main contractor's subcontractors or further down the subcontracting chain.

6. With the aim of avoiding breaches of the obligations referred to in Article 18(2), appropriate measures may be taken, such as:

(a) Where the national law of a Member State provides for a mechanism of joint liability between subcontractors and the main contractor, the Member State concerned shall ensure that the relevant rules are applied in compliance with the conditions set out in Article 18(2).

(b) Contracting authorities may, in accordance with Articles 59, 60 and 61, verify or may be required by Member States to verify whether there are grounds for exclusion of subcontractors pursuant to Article 57. In such cases, the contracting authority shall require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion. The contracting authority may require or may be required by a Member State to require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion.

7. Member States may provide for more stringent liability rules under national law or to go further under national law on direct payments to subcontractors, for instance by providing for direct payments to subcontractors without it being necessary for them to request such direct payment.

8. Member States having chosen to provide for measures pursuant to paragraphs 3, 5 or 6 shall, by law, regulation or administrative provisions and having regard for Union law, specify the implementing conditions for those measures. In so doing, Member States may limit their applicability, for instance in respect of certain types of contracts, certain categories of contracting authorities or economic operators or as of certain amounts.

## Article 72

### Modification of contracts during their term

1. Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Directive in any of the following cases:

(a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses, or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;

(b) for additional works, services or supplies by the original contractor that have become necessary and that were not included in the initial procurement where a change of contractor:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority.

However, any increase in price shall not exceed 50 % of the value of the original contract. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive;

(c) where all of the following conditions are fulfilled:

(i) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;

(ii) the modification does not alter the overall nature of the contract;

(iii) any increase in price is not higher than 50 % of the value of the original contract or framework agreement. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive;

(d) where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of either:

(i) an unequivocal review clause or option in conformity with point (a);

(ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive; or

(iii) in the event that the contracting authority itself assumes the main contractor's obligations towards its subcontractors where this possibility is provided for under national legislation pursuant to Article 71;

(e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph 4.

Contracting authorities having modified a contract in the cases set out under points (b) and (c) of this paragraph shall publish a notice to that effect in the *Official Journal of the European Union*. Such notice shall contain the information set out in Annex V part G and shall be published in accordance with Article 51.

2. Furthermore, and without any need to verify whether the conditions set out under points (a) to (d) of paragraph 4 are met, contracts may equally be modified without a new procurement procedure in accordance with this Directive being necessary where the value of the modification is below both of the following values:

(i) the thresholds set out in Article 4; and

(ii) 10 % of the initial contract value for service and supply contracts and below 15 % of the initial contract value for works contracts.

However, the modification may not alter the overall nature of the contract or framework agreement. Where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications.

3. For the purpose of the calculation of the price mentioned in paragraph 2 and points (b) and (c) of paragraph 1, the updated price shall be the reference value when the contract includes an indexation clause.

4. A modification of a contract or a framework agreement during its term shall be considered to be substantial within the meaning of point (e) of paragraph 1, where it renders the contract or the framework agreement materially different in character from the one initially concluded. In any event, without prejudice to paragraphs 1 and 2, a modification shall be considered to be substantial where one or more of the following conditions is met:

(a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;

(b) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

(c) the modification extends the scope of the contract or framework agreement considerably;

(d) where a new contractor replaces the one to which the contracting authority had initially awarded the contract in other cases than those provided for under point (d) of paragraph 1.

5. A new procurement procedure in accordance with this Directive shall be required for other modifications of the provisions of a public contract or a framework agreement during its term than those provided for under paragraphs 1 and 2.

*Article 73***Termination of contracts**

Member States shall ensure that contracting authorities have the possibility, at least under the following circumstances and under the conditions determined by the applicable national law, to terminate a public contract during its term, where:

- (a) the contract has been subject to a substantial modification, which would have required a new procurement procedure pursuant to Article 72;
- (b) the contractor has, at the time of contract award, been in one of the situations referred to in Article 57(1) and should therefore have been excluded from the procurement procedure;
- (c) the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and this Directive that has been declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 TFEU.

## TITLE III

## PARTICULAR PROCUREMENT REGIMES

## CHAPTER I

***Social and other specific services****Article 74***Award of contracts for social and other specific services**

Public contracts for social and other specific services listed in Annex XIV shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in point (d) of Article 4.

*Article 75***Publication of notices**

1. Contracting authorities intending to award a public contract for the services referred to in Article 74 shall make known their intention by any of the following means:

- (a) by means of a contract notice, which shall contain the information referred to in Annex V Part H, in accordance with the standard forms referred to in Article 51; or
- (b) by means of a prior information notice, which shall be published continuously and contain the information set out in Annex V Part I. The prior information notice shall refer specifically to the types of services that will be the subject of the contracts to be awarded. It shall indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing.

The first subparagraph shall, however, not apply where a negotiated procedure without prior publication could have been used in conformity with Article 32 for the award of a public service contract.

2. Contracting authorities that have awarded a public contract for the services referred to in Article 74 shall make known the results of the procurement procedure by means of a contract award notice, which shall contain the information referred to in Annex V Part J, in accordance with the standard forms referred to in Article 51. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.

3. The Commission shall establish the standard forms referred to in paragraphs 1 and 2 of this Article by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 89(2).

4. The notices referred to in this Article shall be published in accordance with Article 51.

*Article 76***Principles of awarding contracts**

1. Member States shall put in place national rules for the award of contracts subject to this Chapter in order to ensure contracting authorities comply with the principles of transparency and equal treatment of economic operators. Member States are free to determine the procedural rules applicable as long as such rules allow contracting authorities to take into account the specificities of the services in question.

2. Member States shall ensure that contracting authorities may take into account the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the involvement and empowerment of users and innovation. Member States may also provide that the choice of the service provider shall be made on the basis of the tender presenting the best price-quality ratio, taking into account quality and sustainability criteria for social services.

*Article 77***Reserved contracts for certain services**

1. Member States may provide that contracting authorities may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to in Article 74, which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8.

2. An organisation referred to in paragraph 1 shall fulfil all of the following conditions:

- (a) its objective is the pursuit of a public service mission linked to the delivery of the services referred to in paragraph 1;
- (b) profits are reinvested with a view to achieving the organisation's objective. Where profits are distributed or redistributed, this should be based on participatory considerations;
- (c) the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders; and
- (d) the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Article within the past three years.

3. The maximum duration of the contract shall not be longer than three years.

4. The call for competition shall make reference to this Article.

5. Notwithstanding Article 92, the Commission shall assess the effects of this Article and report to the European Parliament and the Council by 18 April 2019.

## CHAPTER II

### Rules governing design contests

#### Article 78

##### Scope

This Chapter shall apply to:

- (a) design contests organised as part of a procedure leading to the award of a public service contract;
- (b) design contests with prizes or payments to participants.

In the cases referred to in point (a) of the first paragraph of this Article, the threshold referred to in Article 4 is calculated on the basis of the estimated value net of VAT of the public service contract, including any possible prizes or payments to participants.

In the cases referred to in point (b) of the first paragraph of this Article, the threshold refers to the total amount of the prizes and payments, including the estimated value net of VAT of the public services contract which might subsequently be concluded under Article 32(4) if the contracting authority has announced its intention to award such contract in the contest notice.

#### Article 79

##### Notices

1. Contracting authorities that intend to carry out a design contest shall make known their intention by means of a contest notice.

Where they intend to award a subsequent service contract pursuant to Article 32(4), this shall be indicated in the contest notice.

2. Contracting authorities that have held a design contest shall send a notice of the results of the contest in accordance with Article 51 and shall be able to prove the date of dispatch.

Where the release of information on the outcome of the contest would impede law enforcement, would be contrary to the public interest or would prejudice the legitimate commercial interests of a particular enterprise, whether public or private, or might prejudice fair competition between service providers, such information may be withheld from publication.

3. The notices referred to in paragraphs 1 and 2 of this Article shall be published in accordance with Article 51(2) to (6) and Article 52. They shall include the information set out respectively in Annex V parts E and F in the format of the standard forms.

The Commission shall establish the standard forms by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 89(2).

#### Article 80

##### Rules on the organisation of design contests and the selection of participants

1. When organising design contests, contracting authorities shall apply procedures which are adapted to the provisions of Title I and this Chapter.

2. The admission of participants to design contests shall not be limited:

- (a) by reference to the territory or part of the territory of a Member State;
- (b) on the grounds that, under the law of the Member State in which the contest is organised, they would be required to be either natural or legal persons.

3. Where design contests are restricted to a limited number of participants, the contracting authorities shall lay down clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

*Article 81***Composition of the jury**

The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.

*Article 82***Decisions of the jury**

1. The jury shall be autonomous in its decisions or opinions.
2. The jury shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.
3. The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.
4. Anonymity shall be observed until the jury has reached its opinion or decision.
5. Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspect of the projects.
6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.

## TITLE IV

**GOVERNANCE***Article 83***Enforcement**

1. In order to effectively ensure correct and efficient implementation, Member States shall ensure that at least the tasks set out in this Article are performed by one or more authorities, bodies or structures. They shall indicate to the Commission all authorities, bodies or structures competent for those tasks.
2. Member States shall ensure that the application of public procurement rules is monitored.

Where monitoring authorities or structures identify by their own initiative or upon the receipt of information specific violations or systemic problems, they shall be empowered to indicate those problems to national auditing authorities, courts or tribunals or other appropriate authorities or structures, such as the ombudsman, national parliaments or committees thereof.

3. The results of the monitoring activities pursuant to paragraph 2 shall be made available to the public through appropriate means of information. These results shall also be made available to the Commission. For instance, they may be integrated in the monitoring reports referred to in the second subparagraph of this paragraph.

By 18 April 2017 and every three years thereafter Member States shall submit to the Commission a monitoring report covering, where applicable, information on the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, on the level of SME participation in public procurement and about prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities.

The Commission may, not more than every three years, request Member States to provide information on the practical implementation of national strategic procurement policies.

For the purposes of this paragraph and paragraph 4 of this Article, 'SME' shall be understood as defined in Commission Recommendation 2003/361/EC <sup>(1)</sup>.

On the basis of the data received under this paragraph, the Commission shall regularly issue a report on the implementation and best practices of national procurement policies in the internal market.

4. Member States shall ensure that:
  - (a) information and guidance on the interpretation and application of the Union public procurement law is available free of charge to assist contracting authorities and economic operators, in particular SMEs, in correctly applying the Union public procurement rules; and
  - (b) support is available to contracting authorities with regard to planning and carrying out procurement procedures.
5. Member States shall, without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, designate a point of reference for cooperation with the Commission as regards the application of public procurement legislation.

6. Contracting authorities shall, at least for the duration of the contract, keep copies of all concluded contracts with a value equal to or greater than:

<sup>(1)</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, (OJ L 124, 20.5.2003, p. 36).



(a) 1 000 000 EUR in the case of public supply contracts or public service contracts;

(b) 10 000 000 EUR in the case of public works contracts.

Contracting authorities shall grant access to those contracts; however, access to specific documents or items of information may be denied to the extent and on the conditions provided for in the applicable Union or national rules on access to documents and data protection.

#### Article 84

##### **Individual reports on procedures for the award of contracts**

1. For every contract or framework agreement covered by this Directive, and every time a dynamic purchasing system is established, contracting authorities shall draw up a written report which shall include at least the following:

(a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;

(b) where applicable, the results of the qualitative selection and/or reduction of numbers pursuant to Articles 65 and 66, namely:

(i) the names of the selected candidates or tenderers and the reasons for their selection;

(ii) the names of the candidates or tenderers rejected and the reasons for their rejection;

(c) the reasons for the rejection of tenders found to be abnormally low;

(d) the name of the successful tenderer and the reasons why its tender was selected and, where known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties; and, where known at this point in time, the names of the main contractor's subcontractors, if any;

(e) for competitive procedures with negotiations and competitive dialogues, the circumstances as laid down in Article 26 which justify the use of those procedures;

(f) for negotiated procedures without prior publication, the circumstances referred to in Article 32 which justify the use of this procedure;

(g) where applicable, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system;

(h) where applicable, the reasons why other means of communication than electronic means have been used for the submission of tenders;

(i) where applicable, conflicts of interests detected and subsequent measures taken.

This report shall not be required in respect of contracts based on framework agreements where these are concluded in accordance with Article 33(3) or point (a) of Article 33(4).

To the extent that the contract award notice drawn up pursuant to Article 50 or Article 75(2) contains the information required in this paragraph, contracting authorities may refer to that notice.

2. Contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiation if any, selection and award of the contract. The documentation shall be kept for a period of at least three years from the date of award of the contract.

3. The report, or its main elements, shall be communicated to the Commission or the competent authorities, bodies or structures referred to in Article 83 where they so request.

#### Article 85

##### **National reporting and statistical information**

1. The Commission shall review the quality and completeness of data that can be extracted from the notices, referred to in Articles 48, 49, 50, 75 and 79, which are published in accordance with Annex VIII.

Where the quality and completeness of the data referred to in the first subparagraph of this paragraph is not compliant with the obligations stipulated in Article 48(1), Article 49, Article 50(1), Article 75(2) and Article 79(3), the Commission shall request complementary information from the Member State concerned. Within a reasonable time, the Member State concerned shall supply the missing statistical information requested by the Commission.

2. By 18 April 2017 and every three years thereafter, Member States shall forward to the Commission a statistical report for procurement which would have been covered by this Directive if its value had exceeded the relevant threshold laid down in Article 4, indicating an estimation of the aggregated total value of such procurement during the period concerned. That estimation may in particular be based on data available under national publication requirements or on sample-based estimates.

That report may be included in the report referred to in Article 83(3).

3. Member States shall make available to the Commission information on their institutional organisation related to the implementation, monitoring and enforcement of this Directive, as well as on national initiatives taken to provide guidance on or assist in implementation of Union rules on public procurement, or to respond to challenges confronting the implementation of those rules.

That information may be included in the report referred to in Article 83(3).

#### Article 86

##### Administrative cooperation

1. Member States shall provide mutual assistance to each other, and shall put in place measures for effective cooperation with one another, in order to ensure exchange of information on issues referred to in Articles 42, 43, 44, 57, 59, 60, 62, 64 and 69. They shall ensure the confidentiality of the information which they exchange.

2. The competent authorities of all Member States concerned shall exchange information in compliance with personal data protection rules provided for in Directive 95/46/EC of the European Parliament and of the Council <sup>(1)</sup> and Directive 2002/58/EC of the European Parliament and of the Council <sup>(2)</sup>.

3. To test the suitability of using the Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 for the purpose of exchanging information covered by this Directive, a pilot project shall be launched by 18 April 2015.

#### TITLE V

### DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS

#### Article 87

##### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 6, 22, 23, 56 and 68 shall be conferred on the Commission for an indeterminate period of time from 17 April 2014.

3. The delegation of power referred to in Articles 6, 22, 23, 56 and 68 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the

<sup>(1)</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

<sup>(2)</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 6, 22, 23, 56 and 68 shall enter into force only where no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of the act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### Article 88

##### Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 87(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

#### Article 89

##### Committee procedure

1. The Commission shall be assisted by the Advisory Committee on Public Procurement established by Council Decision 71/306/EEC <sup>(3)</sup>. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### Article 90

##### Transposition and transitional provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 18 April 2016. They shall forthwith communicate to the Commission the text of those measures.

<sup>(3)</sup> Council Decision 71/306/EEC of 26 July 1971 setting up an Advisory Committee for Public Works Contracts (OJ L 185, 16.8.1971, p. 15).

2. Notwithstanding paragraph 1 of this Article, Member States may postpone the application of Article 22(1) until 18 October 2018, except where use of electronic means is mandatory pursuant to Articles 34, 35 or 36, Article 37(3), Article 51(2) or Article 53.

Notwithstanding paragraph 1 of this Article, Member States may postpone the application of Article 22(1) for central purchasing bodies until 18 April 2017.

Where a Member State chooses to postpone the application of Article 22(1), that Member State shall provide that contracting authorities may choose between the following means of communication for all communication and information exchange:

- (a) electronic means in accordance with Article 22;
- (b) post or other suitable carrier;
- (c) fax;
- (d) a combination of those means.

3. Notwithstanding paragraph 1 of this Article, Member States may postpone the application of the second subparagraph of Article 59(2) until 18 April 2018.

4. Notwithstanding paragraph 1 of this Article, Member States may postpone the application of the second subparagraph of Article 59(5) until 18 October 2018.

5. Notwithstanding paragraph 1 of this Article, Member States may postpone the application of Article 61(2) until 18 October 2018.

6. When Member States adopt the measures referred to in paragraphs 1 to 5, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

7. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### Article 91

##### Repeals

Directive 2004/18/EC is repealed with effect from 18 April 2016.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex XV.

#### Article 92

##### Review

The Commission shall review the economic effects on the internal market, in particular in terms of factors such as the cross-border award of contracts and transaction costs, resulting from the application of the thresholds set in Article 4 and report thereon to the European Parliament and the Council by 18 April 2019.

The Commission shall, where possible and appropriate, consider suggesting an increase of the threshold amounts applicable under the GPA during the next round of negotiations. In the event of any change to the threshold amounts applicable under the GPA, the report shall, where appropriate, be followed by a proposal for a legal act amending the thresholds set out in this Directive.

#### Article 93

##### Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

#### Article 94

##### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 26 February 2014.

For the European Parliament  
The President  
M. SCHULZ

For the Council  
The President  
D. KOURKOULAS

## ANNEX I

## CENTRAL GOVERNMENT AUTHORITIES

## BELGIUM

1. Services publics fédéraux (Ministries):	1. Federale Overheidsdiensten (Ministries):
SPF Chancellerie du Premier Ministre;	FOD Kanselarij van de Eerste Minister;
SPF Personnel et Organisation;	FOD Kanselarij Personeel en Organisatie;
SPF Budget et Contrôle de la Gestion;	FOD Budget en Beheerscontrole;
SPF Technologie de l'Information et de la Communication (Fedict);	FOD Informatie- en Communicatietechnologie (Fedict);
SPF Affaires étrangères, Commerce extérieur et Coopération au Développement;	FOD Buitenlandse Zaken, Buitenlandse Handel en Ontwikkelingssamenwerking;
SPF Intérieur;	FOD Binnenlandse Zaken;
SPF Finances;	FOD Financiën;
SPF Mobilité et Transports;	FOD Mobiliteit en Vervoer;
SPF Emploi, Travail et Concertation sociale;	FOD Werkgelegenheid, Arbeid en sociaal overleg
SPF Sécurité Sociale et Institutions publiques de Sécurité Sociale;	FOD Sociale Zekerheid en Openbare Instellingen van sociale Zekerheid
SPF Santé publique, Sécurité de la Chaîne alimentaire et Environnement;	FOD Volksgezondheid, Veiligheid van de Voedselketen en Leefmilieu;
SPF Justice;	FOD Justitie;
SPF Economie, PME, Classes moyennes et Energie;	FOD Economie, KMO, Middenstand en Energie;
Ministère de la Défense;	Ministerie van Landsverdediging;
Service public de programmation Intégration sociale, Lutte contre la pauvreté et Economie sociale;	Programmatorische Overheidsdienst Maatschappelijke Integratie, Armoedsbestrijding en sociale Economie;
Service public fédéral de Programmation Développement durable;	Programmatorische federale Overheidsdienst Duurzame Ontwikkeling;
Service public fédéral de Programmation Politique scientifique;	Programmatorische federale Overheidsdienst Wetenschapsbeleid;
2. Régie des Bâtiments;	2. Regie der Gebouwen;
Office national de Sécurité sociale;	Rijksdienst voor sociale Zekerheid;
Institut national d'Assurance sociales pour travailleurs indépendants	Rijksinstituut voor de sociale Verzekeringen der Zelfstandigen;
Institut national d'Assurance Maladie-Invalidité;	Rijksinstituut voor Ziekte- en Invaliditeitsverzekering;
Office national des Pensions;	Rijksdienst voor Pensioenen;
Caisse auxiliaire d'Assurance Maladie-Invalidité;	Hulpkas voor Ziekte-en Invaliditeitsverzekering;
Fond des Maladies professionnelles;	Fonds voor Beroepsziekten;
Office national de l'Emploi;	Rijksdienst voor Arbeidsvoorziening

## BULGARIA

Администрация на Народното събрание

Администрация на Президента

Администрация на Министерския съвет

Конституционен съд

Българска народна банка

Министерство на външните работи

Министерство на вътрешните работи

Министерство на държавната администрация и административната реформа

Министерство на извънредните ситуации

Министерство на земеделието и храните

Министерство на здравеопазването

Министерство на икономиката и енергетиката

Министерство на културата

Министерство на образованието и науката

Министерство на околната среда и водите

Министерство на отбраната

Министерство на правосъдието

Министерство на регионалното развитие и благоустройството

Министерство на транспорта

Министерство на труда и социалната политика

Министерство на финансите

State agencies, state commissions, executive agencies and other state authorities established by law or by Council of Ministers' decree having a function relating to the exercise of executive power:

Агенция за ядрено регулиране

Висшата атестационна комисия

Държавна комисия за енергийно и водно регулиране

Държавна комисия по сигурността на информацията

Комисия за защита на конкуренцията

Комисия за защита на личните данни

Комисия за защита от дискриминация

Комисия за регулиране на съобщенията

Комисия за финансов надзор

Патентно ведомство на Република България

Сметна палата на Република България

Агенция за приватизация

Агенция за следприватизационен контрол

Български институт по метрология

Държавна агенция 'Архиви'

Държавна агенция 'Държавен резерв и военновременни запаси'

Държавна агенция 'Национална сигурност'

Държавна агенция за бежанците



Държавна агенция за българите в чужбина  
Държавна агенция за закрила на детето  
Държавна агенция за информационни технологии и съобщения  
Държавна агенция за метрологичен и технически надзор  
Държавна агенция за младежта и спорта  
Държавна агенция по горите  
Държавна агенция по туризма  
Държавна комисия по стоковите борси и тържища  
Институт по публична администрация и европейска интеграция  
Национален статистически институт  
Национална агенция за оценяване и акредитация  
Националната агенция за професионално образование и обучение  
Национална комисия за борба с трафика на хора  
Агенция 'Митници'  
Агенция за държавна и финансова инспекция  
Агенция за държавни вземания  
Агенция за социално подпомагане  
Агенция за хората с увреждания  
Агенция по вписванията  
Агенция по геодезия, картография и кадастър  
Агенция по енергийна ефективност  
Агенция по заетостта  
Агенция по обществени поръчки  
Българска агенция за инвестиции  
Главна дирекция 'Гражданска въздухоплавателна администрация'  
Дирекция 'Материално-техническо осигуряване и социално обслужване' на Министерство на вътрешните работи  
Дирекция 'Оперативно издирване' на Министерство на вътрешните работи  
Дирекция 'Финансово-ресурсно осигуряване' на Министерство на вътрешните работи  
Дирекция за национален строителен контрол  
Държавна комисия по хазарта  
Изпълнителна агенция 'Автомобилна администрация'  
Изпълнителна агенция 'Борба с градушките'  
Изпълнителна агенция 'Българска служба за акредитация'  
Изпълнителна агенция 'Военни клубове и информация'  
Изпълнителна агенция 'Главна инспекция по труда'  
Изпълнителна агенция 'Държавна собственост на Министерството на отбраната'  
Изпълнителна агенция 'Железопътна администрация'  
Изпълнителна агенция 'Изпитвания и контролни измервания на въоръжение, техника и имущества'  
Изпълнителна агенция 'Морска администрация'  
Изпълнителна агенция 'Национален филмов център'  
Изпълнителна агенция 'Пристанищна администрация'

Изпълнителна агенция 'Проучване и поддържане на река Дунав'  
Изпълнителна агенция 'Социални дейности на Министерството на отбраната'  
Изпълнителна агенция за икономически анализи и прогнози  
Изпълнителна агенция за насърчаване на малките и средни предприятия  
Изпълнителна агенция по лекарствата  
Изпълнителна агенция по лозата и виното  
Изпълнителна агенция по околна среда  
Изпълнителна агенция по почвените ресурси  
Изпълнителна агенция по рибарство и аквакултури  
Изпълнителна агенция по селекция и репродукция в животновъдството  
Изпълнителна агенция по сортоизпитване, апробация и семеконтрол  
Изпълнителна агенция по трансплантация  
Изпълнителна агенция по хидромелиорации  
Комисията за защита на потребителите  
Контролно-техническата инспекция  
Национален център за информация и документация  
Национален център по радиобиология и радиационна защита  
Национална агенция за приходите  
Национална ветеринарномедицинска служба  
Национална служба 'Полиция'  
Национална служба 'Пожарна безопасност и защита на населението'  
Национална служба за растителна защита  
Национална служба за съвети в земеделието  
Национална служба по зърното и фуражите  
Служба 'Военна информация'  
Служба 'Военна полиция'  
Фонд 'Републиканска пътна инфраструктура'  
Авиоотряд 28

CZECH REPUBLIC

Ministerstvo dopravy

Ministerstvo financí

Ministerstvo kultury

Ministerstvo obrany

Ministerstvo pro místní rozvoj

Ministerstvo práce a sociálních věcí

Ministerstvo průmyslu a obchodu

Ministerstvo spravedlnosti

Ministerstvo školství, mládeže a tělovýchovy

Ministerstvo vnitra

Ministerstvo zahraničních věcí

Ministerstvo zdravotnictví

Ministerstvo zemědělství  
Ministerstvo životního prostředí  
Poslanecká sněmovna PČR  
Senát PČR  
Kancelář prezidenta  
Český statistický úřad  
Český úřad zeměměřičský a katastrální  
Úřad průmyslového vlastnictví  
Úřad pro ochranu osobních údajů  
Bezpečnostní informační služba  
Národní bezpečnostní úřad  
Česká akademie věd  
Vězeňská služba  
Český báňský úřad  
Úřad pro ochranu hospodářské soutěže  
Správa státních hmotných rezerv  
Státní úřad pro jadernou bezpečnost  
Česká národní banka  
Energetický regulační úřad  
Úřad vlády České republiky  
Ústavní soud  
Nejvyšší soud  
Nejvyšší správní soud  
Nejvyšší státní zastupitelství  
Nejvyšší kontrolní úřad  
Kancelář Veřejného ochránce práv  
Grantová agentura České republiky  
Státní úřad inspekce práce  
Český telekomunikační úřad

DENMARK

Folketinget  
Rigsrevisionen  
Statsministeriet  
Udenrigsministeriet  
Beskæftigelsesministeriet

5 styrelser og institutioner (5 agencies and institutions)

Domstolsstyrelsen  
Finansministeriet

5 styrelser og institutioner (5 agencies and institutions)

Forsvarsministeriet

5 styrelser og institutioner (5 agencies and institutions)

Ministeriet for Sundhed og Forebyggelse

Adskillige styrelser og institutioner, herunder Statens Serum Institut (Several agencies and institutions, including Statens Serum Institut)

Justitsministeriet

Rigspolitichefen, anklagemyndigheden samt 1 direktorat og et antal styrelser (Commissioner of Police, the public prosecutor, 1 directorate and a number of agencies)

Kirkeministeriet

10 stiftsøvrigheder (10 diocesan authorities)

Kulturministeriet — Ministry of Culture

4 styrelser samt et antal statsinstitutioner (4 departments and a number of institutions)

Miljøministeriet

5 styrelser (5 agencies)

Ministeriet for Flygtninge, Indvandrere og Integration

1 styrelse (1 agency)

Ministeriet for Fødevarer, Landbrug og Fiskeri

4 direktorater og institutioner (4 directorates and institutions)

Ministeriet for Videnskab, Teknologi og Udvikling

Adskillige styrelser og institutioner, Forskningscenter Risø og Statens uddannelsesbygninger (Several agencies and institutions, including Risoe National Laboratory and Danish National Research and Education Buildings)

Skatteministeriet

1 styrelse og institutioner (1 agency and several institutions)

Velfærdsministeriet

3 styrelser og institutioner (3 agencies and several institutions)

Transportministeriet

7 styrelser og institutioner, herunder Øresundsbrokonsortiet (7 agencies and institutions, including Øresundsbrokonsortiet)

Undervisningsministeriet

3 styrelser, 4 undervisningsinstitutioner og 5 andre institutioner (3 agencies, 4 educational establishments, 5 other institutions)

Økonomi- og Erhvervsministeriet

Adskilligestyrelser og institutioner (Several agencies and institutions)

Klima- og Energiministeriet

3 styrelse og institutioner (3 agencies and institutions)

GERMANY

Auswärtiges Amt

Bundeskanzleramt

Bundesministerium für Arbeit und Soziales

Bundesministerium für Bildung und Forschung

Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz

Bundesministerium der Finanzen

Bundesministerium des Innern (only civil goods)  
Bundesministerium für Gesundheit  
Bundesministerium für Familie, Senioren, Frauen und Jugend  
Bundesministerium der Justiz  
Bundesministerium für Verkehr, Bau und Stadtentwicklung  
Bundesministerium für Wirtschaft und Technologie  
Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung  
Bundesministerium der Verteidigung (no military goods)  
Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit

## ESTONIA

Vabariigi Presidendi Kantslei;  
Eesti Vabariigi Riigikogu;  
Eesti Vabariigi Riigikohus;  
Riigikontroll;  
Õiguskantsler;  
Riigikantslei;  
Rahvusarhiiv;  
Haridus- ja Teadusministeerium;  
Justiitsministeerium;  
Kaitseministeerium;  
Keskkonnaministeerium;  
Kultuuriministeerium;  
Majandus- ja Kommunikatsiooniministeerium;  
Põllumajandusministeerium;  
Rahandusministeerium;  
Siseministeerium;  
Sotsiaalministeerium;  
Välisministeerium;  
Keeleinspeksioon;  
Riigiprokuratuur;  
Teabeamet;  
Maa-amet;  
Keskkonnainspeksioon;  
Metsakaitse- ja Metsauuenduskeskus;  
Muinsuskaitseamet;  
Patendiamet;  
Tarbijakaitseamet;  
Riigihangete Amet;  
Taimetoodangu Inspeksioon;  
Põllumajanduse Registrite ja Informatsiooni Amet;  
Veterinaar- ja Toiduamet  
Konkurentsiamet;



Maksu –ja Tolliamet;  
Statistikaamet;  
Kaitsepolitseiamet;  
Kodakondsus- ja Migratsiooniamet;  
Piirivalveamet;  
Politseiamet;  
Eesti Kohtuekspertiisi Instituut;  
Keskkriminaalpolitsei;  
Päästeamet;  
Andmekaitse Inspeksioon;  
Raviamet;  
Sotsiaalkindlustusamet;  
Tööturuamet;  
Tervishoiuamet;  
Tervisekaitseinspeksioon;  
Tööinspeksioon;  
Lennuamet;  
Maanteeamet;  
Veeteede Amet;  
Julgestuspolitsei;  
Kaitseressurside Amet;  
Kaitseväge Logistikakeskus;  
Tehnilise Järelevalve Amet.

## IRELAND

President's Establishment  
Houses of the Oireachtas — [Parliament]  
Department of the Taoiseach — [Prime Minister]  
Central Statistics Office  
Department of Finance  
Office of the Comptroller and Auditor General  
Office of the Revenue Commissioners  
Office of Public Works  
State Laboratory  
Office of the Attorney General  
Office of the Director of Public Prosecutions  
Valuation Office  
Office of the Commission for Public Service Appointments  
Public Appointments Service  
Office of the Ombudsman  
Chief State Solicitor's Office  
Department of Justice, Equality and Law Reform

Courts Service  
Prisons Service  
Office of the Commissioners of Charitable Donations and Bequests  
Department of the Environment, Heritage and Local Government  
Department of Education and Science  
Department of Communications, Energy and Natural Resources  
Department of Agriculture, Fisheries and Food  
Department of Transport  
Department of Health and Children  
Department of Enterprise, Trade and Employment  
Department of Arts, Sports and Tourism  
Department of Defence  
Department of Foreign Affairs  
Department of Social and Family Affairs  
Department of Community, Rural and Gaeltacht — [Gaelic speaking regions] Affairs  
Arts Council  
National Gallery.

## GREECE

Υπουργείο Εσωτερικών;  
Υπουργείο Εξωτερικών;  
Υπουργείο Οικονομίας και Οικονομικών;  
Υπουργείο Ανάπτυξης;  
Υπουργείο Δικαιοσύνης;  
Υπουργείο Εθνικής Παιδείας και Θρησκευμάτων;  
Υπουργείο Πολιτισμού;  
Υπουργείο Υγείας και Κοινωνικής Αλληλεγγύης;  
Υπουργείο Περιβάλλοντος, Χωροταξίας και Δημοσίων Έργων;  
Υπουργείο Απασχόλησης και Κοινωνικής Προστασίας;  
Υπουργείο Μεταφορών και Επικοινωνιών;  
Υπουργείο Αγροτικής Ανάπτυξης και Τροφίμων;  
Υπουργείο Εμπορικής Ναυτιλίας, Αιγαίου και Νησιωτικής Πολιτικής;  
Υπουργείο Μακεδονίας- Θράκης;  
Γενική Γραμματεία Επικοινωνίας;  
Γενική Γραμματεία Ενημέρωσης;  
Γενική Γραμματεία Νέας Γενιάς;  
Γενική Γραμματεία Ισότητας;  
Γενική Γραμματεία Κοινωνικών Ασφαλίσεων;  
Γενική Γραμματεία Απόδημου Ελληνισμού;  
Γενική Γραμματεία Βιομηχανίας;

Γενική Γραμματεία Έρευνας και Τεχνολογίας;  
Γενική Γραμματεία Αθλητισμού;  
Γενική Γραμματεία Δημοσίων Έργων;  
Γενική Γραμματεία Εθνικής Στατιστικής Υπηρεσίας Ελλάδος;  
Εθνικό Συμβούλιο Κοινωνικής Φροντίδας;  
Οργανισμός Εργατικής Κατοικίας;  
Εθνικό Τυπογραφείο;  
Γενικό Χημείο του Κράτους;  
Ταμείο Εθνικής Οδοποιίας;  
Εθνικό Καποδιστριακό Πανεπιστήμιο Αθηνών;  
Αριστοτέλειο Πανεπιστήμιο Θεσσαλονίκης;  
Δημοκρίτειο Πανεπιστήμιο Θράκης;  
Πανεπιστήμιο Αιγαίου;  
Πανεπιστήμιο Ιωαννίνων;  
Πανεπιστήμιο Πατρών;  
Πανεπιστήμιο Μακεδονίας;  
Πολυτεχνείο Κρήτης;  
Σιβιτανίδειος Δημόσια Σχολή Τεχνών και Επαγγελμάτων;  
Αιγινήτειο Νοσοκομείο;  
Αρεταίειο Νοσοκομείο;  
Εθνικό Κέντρο Δημόσιας Διοίκησης;  
Οργανισμός Διαχείρισης Δημοσίου Υλικού;  
Οργανισμός Γεωργικών Ασφαλίσεων;  
Οργανισμός Σχολικών Κτιρίων;  
Γενικό Επιτελείο Στρατού;  
Γενικό Επιτελείο Ναυτικού;  
Γενικό Επιτελείο Αεροπορίας;  
Ελληνική Επιτροπή Ατομικής Ενέργειας;  
Γενική Γραμματεία Εκπαίδευσης Ενηλίκων;  
Υπουργείο Εθνικής Άμυνας;  
Γενική Γραμματεία Εμπορίου.

SPAIN

Presidencia de Gobierno

Ministerio de Asuntos Exteriores y de Cooperación

Ministerio de Justicia

Ministerio de Defensa

Ministerio de Economía y Hacienda

Ministerio del Interior

Ministerio de Fomento

Ministerio de Educación, Política Social y Deportes

Ministerio de Industria, Turismo y Comercio  
Ministerio de Trabajo e Inmigración  
Ministerio de la Presidencia  
Ministerio de Administraciones Públicas  
Ministerio de Cultura  
Ministerio de Sanidad y Consumo  
Ministerio de Medio Ambiente y Medio Rural y Marino  
Ministerio de Vivienda  
Ministerio de Ciencia e Innovación  
Ministerio de Igualdad

## FRANCE

## 1. Ministries

Services du Premier ministre  
Ministère chargé de la santé, de la jeunesse et des sports  
Ministère chargé de l'intérieur, de l'outre-mer et des collectivités territoriales  
Ministère chargé de la justice  
Ministère chargé de la défense  
Ministère chargé des affaires étrangères et européennes  
Ministère chargé de l'éducation nationale  
Ministère chargé de l'économie, des finances et de l'emploi  
Secrétariat d'Etat aux transports  
Secrétariat d'Etat aux entreprises et au commerce extérieur  
Ministère chargé du travail, des relations sociales et de la solidarité  
Ministère chargé de la culture et de la communication  
Ministère chargé du budget, des comptes publics et de la fonction publique  
Ministère chargé de l'agriculture et de la pêche  
Ministère chargé de l'enseignement supérieur et de la recherche  
Ministère chargé de l'écologie, du développement et de l'aménagement durables  
Secrétariat d'Etat à la fonction publique  
Ministère chargé du logement et de la ville  
Secrétariat d'Etat à la coopération et à la francophonie  
Secrétariat d'Etat à l'outre-mer  
Secrétariat d'Etat à la jeunesse, des sports et de la vie associative  
Secrétariat d'Etat aux anciens combattants  
Ministère chargé de l'immigration, de l'intégration, de l'identité nationale et du co-développement  
Secrétariat d'Etat en charge de la prospective et de l'évaluation des politiques publiques  
Secrétariat d'Etat aux affaires européennes,  
Secrétariat d'Etat aux affaires étrangères et aux droits de l'homme  
Secrétariat d'Etat à la consommation et au tourisme  
Secrétariat d'Etat à la politique de la ville  
Secrétariat d'Etat à la solidarité

Secrétariat d'Etat en charge de l'industrie et de la consommation  
Secrétariat d'Etat en charge de l'emploi  
Secrétariat d'Etat en charge du commerce, de l'artisanat, des PME, du tourisme et des services  
Secrétariat d'Etat en charge de l'écologie  
Secrétariat d'Etat en charge du développement de la région-capitale  
Secrétariat d'Etat en charge de l'aménagement du territoire

2. Institutions, independent authorities and jurisdictions

Présidence de la République  
Assemblée Nationale  
Sénat  
Conseil constitutionnel  
Conseil économique et social  
Conseil supérieur de la magistrature  
Agence française contre le dopage  
Autorité de contrôle des assurances et des mutuelles  
Autorité de contrôle des nuisances sonores aéroportuaires  
Autorité de régulation des communications électroniques et des postes  
Autorité de sûreté nucléaire  
Autorité indépendante des marchés financiers  
Comité national d'évaluation des établissements publics à caractère scientifique, culturel et professionnel  
Commission d'accès aux documents administratifs  
Commission consultative du secret de la défense nationale  
Commission nationale des comptes de campagne et des financements politiques  
Commission nationale de contrôle des interceptions de sécurité  
Commission nationale de déontologie de la sécurité  
Commission nationale du débat public  
Commission nationale de l'informatique et des libertés  
Commission des participations et des transferts  
Commission de régulation de l'énergie  
Commission de la sécurité des consommateurs  
Commission des sondages  
Commission de la transparence financière de la vie politique  
Conseil de la concurrence  
Conseil des ventes volontaires de meubles aux enchères publiques  
Conseil supérieur de l'audiovisuel  
Défenseur des enfants  
Haute autorité de lutte contre les discriminations et pour l'égalité  
Haute autorité de santé  
Médiateur de la République  
Cour de justice de la République



Tribunal des Conflits

Conseil d'Etat

Cours administratives d'appel

Tribunaux administratifs

Cour des Comptes

Chambres régionales des Comptes

Cours et tribunaux de l'ordre judiciaire (Cour de Cassation, Cours d'Appel, Tribunaux d'instance et Tribunaux de grande instance)

### 3. National public establishments

Académie de France à Rome

Académie de marine

Académie des sciences d'outre-mer

Académie des technologies

Agence centrale des organismes de sécurité sociale (ACOSS)

Agence de biomédecine

Agence pour l'enseignement du français à l'étranger

Agence française de sécurité sanitaire des aliments

Agence française de sécurité sanitaire de l'environnement et du travail

Agence Nationale pour la cohésion sociale et l'égalité des chances

Agence nationale pour la garantie des droits des mineurs

Agences de l'eau

Agence Nationale de l'Accueil des Etrangers et des migrations

Agence nationale pour l'amélioration des conditions de travail (ANACT)

Agence nationale pour l'amélioration de l'habitat (ANAH)

Agence Nationale pour la Cohésion Sociale et l'Egalité des Chances

Agence nationale pour l'indemnisation des français d'outre-mer (ANIFOM)

Assemblée permanente des chambres d'agriculture (APCA)

Bibliothèque publique d'information

Bibliothèque nationale de France

Bibliothèque nationale et universitaire de Strasbourg

Caisse des Dépôts et Consignations

Caisse nationale des autoroutes (CNA)

Caisse nationale militaire de sécurité sociale (CNMSS)

Caisse de garantie du logement locatif social

Casa de Velasquez

Centre d'enseignement zootechnique

Centre d'études de l'emploi

Centre d'études supérieures de la sécurité sociale

Centres de formation professionnelle et de promotion agricole

Centre hospitalier des Quinze-Vingts

Centre international d'études supérieures en sciences agronomiques (Montpellier Sup Agro)

Centre des liaisons européennes et internationales de sécurité sociale  
Centre des Monuments Nationaux  
Centre national d'art et de culture Georges Pompidou  
Centre national des arts plastiques  
Centre national de la cinématographie  
Centre National d'Etudes et d'expérimentation du machinisme agricole, du génie rural, des eaux et des forêts (CEMAGREF)  
Centre national du livre  
Centre national de documentation pédagogique  
Centre national des œuvres universitaires et scolaires (CNOUS)  
Centre national professionnel de la propriété forestière  
Centre National de la Recherche Scientifique (C.N.R.S)  
Centres d'éducation populaire et de sport (CREPS)  
Centres régionaux des œuvres universitaires (CROUS)  
Collège de France  
Conservatoire de l'espace littoral et des rivages lacustres  
Conservatoire National des Arts et Métiers  
Conservatoire national supérieur de musique et de danse de Paris  
Conservatoire national supérieur de musique et de danse de Lyon  
Conservatoire national supérieur d'art dramatique  
Ecole centrale de Lille  
Ecole centrale de Lyon  
École centrale des arts et manufactures  
École française d'archéologie d'Athènes  
École française d'Extrême-Orient  
École française de Rome  
École des hautes études en sciences sociales  
Ecole du Louvre  
École nationale d'administration  
École nationale de l'aviation civile (ENAC)  
École nationale des Chartes  
École nationale d'équitation  
Ecole Nationale du Génie de l'Eau et de l'environnement de Strasbourg  
Écoles nationales d'ingénieurs  
Ecole nationale d'ingénieurs des industries des techniques agricoles et alimentaires de Nantes  
Écoles nationales d'ingénieurs des travaux agricoles  
École nationale de la magistrature  
Écoles nationales de la marine marchande  
École nationale de la santé publique (ENSP)  
École nationale de ski et d'alpinisme  
École nationale supérieure des arts décoratifs

École nationale supérieure des arts et techniques du théâtre  
École nationale supérieure des arts et industries textiles Roubaix  
Écoles nationales supérieures d'arts et métiers  
École nationale supérieure des beaux-arts  
École nationale supérieure de céramique industrielle  
École nationale supérieure de l'électronique et de ses applications (ENSEA)  
Ecole nationale supérieure du paysage de Versailles  
Ecole Nationale Supérieure des Sciences de l'information et des bibliothécaires  
Ecole nationale supérieure de la sécurité sociale  
Écoles nationales vétérinaires  
École nationale de voile  
Écoles normales supérieures  
École polytechnique  
École technique professionnelle agricole et forestière de Meymac (Corrèze)  
École de sylviculture Croigny (Aube)  
École de viticulture et d'œnologie de la Tour-Blanche (Gironde)  
École de viticulture — Avize (Marne)  
Etablissement national d'enseignement agronomique de Dijon  
Établissement national des invalides de la marine (ENIM)  
Établissement national de bienfaisance Koenigswarter  
Établissement public du musée et du domaine national de Versailles  
Fondation Carnegie  
Fondation Singer-Polignac  
Haras nationaux  
Hôpital national de Saint-Maurice  
Institut des hautes études pour la science et la technologie  
Institut français d'archéologie orientale du Caire  
Institut géographique national  
Institut National de l'origine et de la qualité  
Institut national des hautes études de sécurité  
Institut de veille sanitaire  
Institut National d'enseignement supérieur et de recherche agronomique et agroalimentaire de Rennes  
Institut National d'Etudes Démographiques (I.N.E.D)  
Institut National d'Horticulture  
Institut National de la jeunesse et de l'éducation populaire  
Institut national des jeunes aveugles — Paris  
Institut national des jeunes sourds — Bordeaux  
Institut national des jeunes sourds — Chambéry  
Institut national des jeunes sourds — Metz  
Institut national des jeunes sourds — Paris

- Institut national de physique nucléaire et de physique des particules (I.N.P.N.P.P)
- Institut national de la propriété industrielle
- Institut National de la Recherche Agronomique (I.N.R.A)
- Institut National de la Recherche Pédagogique (I.N.R.P)
- Institut National de la Santé et de la Recherche Médicale (I.N.S.E.R.M)
- Institut national d'histoire de l'art (I.N.H.A.)
- Institut national de recherches archéologiques préventives
- Institut National des Sciences de l'Univers
- Institut National des Sports et de l'Education Physique
- Institut national supérieur de formation et de recherche pour l'éducation des jeunes handicapés et les enseignements inadaptés
- Instituts nationaux polytechniques
- Instituts nationaux des sciences appliquées
- Institut national de recherche en informatique et en automatique (INRIA)
- Institut national de recherche sur les transports et leur sécurité (INRETS)
- Institut de Recherche pour le Développement
- Instituts régionaux d'administration
- Institut des Sciences et des Industries du vivant et de l'environnement (Agro Paris Tech)
- Institut supérieur de mécanique de Paris
- Institut Universitaires de Formation des Maîtres
- Musée de l'armée
- Musée Gustave-Moreau
- Musée national de la marine
- Musée national J.-J.-Henner
- Musée du Louvre
- Musée du Quai Branly
- Muséum National d'Histoire Naturelle
- Musée Auguste-Rodin
- Observatoire de Paris
- Office français de protection des réfugiés et apatrides
- Office National des Anciens Combattants et des Victimes de Guerre (ONAC)
- Office national de la chasse et de la faune sauvage
- Office National de l'eau et des milieux aquatiques
- Office national d'information sur les enseignements et les professions (ONISEP)
- Office universitaire et culturel français pour l'Algérie
- Ordre national de la Légion d'honneur
- Palais de la découverte
- Parcs nationaux
- Universités
4. Other national public bodies
- Union des groupements d'achats publics (UGAP)
- Agence Nationale pour l'emploi (A.N.P.E)

Caisse Nationale des Allocations Familiales (CNAF)

Caisse Nationale d'Assurance Maladie des Travailleurs Salariés (CNAMS)

Caisse Nationale d'Assurance-Vieillesse des Travailleurs Salariés (CNAVTS)

CROATIA

Hrvatski sabor

Predsjednik Republike Hrvatske

Ured predsjednika Republike Hrvatske

Ured predsjednika Republike Hrvatske po prestanku obnašanja dužnosti

Vlada Republike Hrvatske

uredi Vlade Republike Hrvatske

Ministarstvo gospodarstva

Ministarstvo regionalnog razvoja i fondova Europske unije

Ministarstvo financija

Ministarstvo obrane

Ministarstvo vanjskih i europskih poslova

Ministarstvo unutarnjih poslova

Ministarstvo pravosuđa

Ministarstvo uprave

Ministarstvo poduzetništva i obrta

Ministarstvo rada i mirovinskog sustava

Ministarstvo pomorstva, prometa i infrastrukture

Ministarstvo poljoprivrede

Ministarstvo turizma

Ministarstvo zaštite okoliša i prirode

Ministarstvo graditeljstva i prostornog uređenja

Ministarstvo branitelja

Ministarstvo socijalne politike i mladih

Ministarstvo zdravlja

Ministarstvo znanosti, obrazovanja i sporta

Ministarstvo kulture

državne upravne organizacije

uredi državne uprave u županijama

Ustavni sud Republike Hrvatske

Vrhovni sud Republike Hrvatske

sudovi

Državno sudbeno vijeće

državna odvjetništva

Državnoodvjetničko vijeće

pravobraniteljstva

Državna komisija za kontrolu postupaka javne nabave



Hrvatska narodna banka

državne agencije i uredi

Državni ured za reviziju

ITALY

Purchasing bodies

Presidenza del Consiglio dei Ministri

Ministero degli Affari Esteri

Ministero dell'Interno

Ministero della Giustizia e Uffici giudiziari (esclusi i giudici di pace)

Ministero della Difesa

Ministero dell'Economia e delle Finanze

Ministero dello Sviluppo Economico

Ministero delle Politiche Agricole, Alimentari e Forestali

Ministero dell'Ambiente, Tutela del Territorio e del Mare

Ministero delle Infrastrutture e dei Trasporti

Ministero del Lavoro, della Salute e delle Politiche Sociali

Ministero dell'Istruzione, Università e Ricerca

Ministero per i Beni e le Attività culturali, comprensivo delle sue articolazioni periferiche

Other national public bodies:

CONSIP (Concessionaria Servizi Informatici Pubblici)

CYPRUS

Προεδρία και Προεδρικό Μέγαρο

Γραφείο Συντονιστή Εναρμόνισης

Υπουργικό Συμβούλιο

Βουλή των Αντιπροσώπων

Δικαστική Υπηρεσία

Νομική Υπηρεσία της Δημοκρατίας

Ελεγκτική Υπηρεσία της Δημοκρατίας

Επιτροπή Δημόσιας Υπηρεσίας

Επιτροπή Εκπαιδευτικής Υπηρεσίας

Γραφείο Επιτρόπου Διοικήσεως

Επιτροπή Προστασίας Ανταγωνισμού

Υπηρεσία Εσωτερικού Ελέγχου

Γραφείο Προγραμματισμού

Γενικό Λογιστήριο της Δημοκρατίας

Γραφείο Επιτρόπου Προστασίας Δεδομένων Προσωπικού Χαρακτήρα

Γραφείο Εφόρου Δημοσίων Ενισχύσεων

Αναθεωρητική Αρχή Προσφορών

Υπηρεσία Εποπτείας και Ανάπτυξης Συνεργατικών Εταιρειών

Αναθεωρητική Αρχή Προσφύγων

Υπουργείο Άμυνας

Υπουργείο Γεωργίας, Φυσικών Πόρων και Περιβάλλοντος

Τμήμα Γεωργίας

Κτηνιατρικές Υπηρεσίες

Τμήμα Δασών

Τμήμα Αναπτύξεως Υδάτων

Τμήμα Γεωλογικής Επισκόπησης

Μετεωρολογική Υπηρεσία

Τμήμα Αναδασμού

Υπηρεσία Μεταλλείων

Ινστιτούτο Γεωργικών Ερευνών

Τμήμα Αλιείας και Θαλάσσιων Ερευνών

Υπουργείο Δικαιοσύνης και Δημοσίας Τάξεως

Αστυνομία

Πυροσβεστική Υπηρεσία Κύπρου

Τμήμα Φυλακών

Υπουργείο Εμπορίου, Βιομηχανίας και Τουρισμού

Τμήμα Εφόρου Εταιρειών και Επίσημου Παραλήπτη

Υπουργείο Εργασίας και Κοινωνικών Ασφαλίσεων

Τμήμα Εργασίας

Τμήμα Κοινωνικών Ασφαλίσεων

Τμήμα Υπηρεσιών Κοινωνικής Ευημερίας

Κέντρο Παραγωγικότητας Κύπρου

Ανώτερο Ξενοδοχειακό Ινστιτούτο Κύπρου

Ανώτερο Τεχνολογικό Ινστιτούτο

Τμήμα Επιθεώρησης Εργασίας

Τμήμα Εργασιακών Σχέσεων

Υπουργείο Εσωτερικών

Επαρχιακές Διοικήσεις

Τμήμα Πολεοδομίας και Οικήσεως

Τμήμα Αρχείου Πληθυσμού και Μεταναστεύσεως

Τμήμα Κτηματολογίου και Χωρομετρίας

Γραφείο Τύπου και Πληροφοριών

Πολιτική Άμυνα

Υπηρεσία Μέριμνας και Αποκαταστάσεων Εκτοπισθέντων

Υπηρεσία Ασύλου

Υπουργείο Εξωτερικών

Υπουργείο Οικονομικών

Τελωνεία

Τμήμα Εσωτερικών Προσόδων

Στατιστική Υπηρεσία

Τμήμα Κρατικών Αγορών και Προμηθειών  
Τμήμα Δημόσιας Διοίκησης και Προσωπικού  
Κυβερνητικό Τυπογραφείο  
Τμήμα Υπηρεσιών Πληροφορικής  
Υπουργείο Παιδείας και Πολιτισμού  
Υπουργείο Συγκοινωνιών και Έργων  
Τμήμα Δημοσίων Έργων  
Τμήμα Αρχαιοτήτων  
Τμήμα Πολιτικής Αεροπορίας  
Τμήμα Εμπορικής Ναυτιλίας  
Τμήμα Οδικών Μεταφορών  
Τμήμα Ηλεκτρομηχανολογικών Υπηρεσιών  
Τμήμα Ηλεκτρονικών Επικοινωνιών  
Υπουργείο Υγείας  
Φαρμακευτικές Υπηρεσίες  
Γενικό Χημείο  
Ιατρικές Υπηρεσίες και Υπηρεσίες Δημόσιας Υγείας  
Οδοντιατρικές Υπηρεσίες  
Υπηρεσίες Ψυχικής Υγείας

## LATVIA

Ministries, secretariats of ministers for special assignments, and their subordinate institutions

Aizsardzības ministrija un tās padotībā esošās iestādes  
Ārlietu ministrija un tās padotībā esošās iestādes  
Bērnu un ģimenes lietu ministrija un tās padotībā esošās iestādes  
Ekonomikas ministrija un tās padotībā esošās iestādes  
Finanšu ministrija un tās padotībā esošās iestādes  
Iekšlietu ministrija un tās padotībā esošās iestādes  
Izglītības un zinātnes ministrija un tās padotībā esošās iestādes  
Kultūras ministrija un tās padotībā esošās iestādes  
Labklājības ministrija un tās padotībā esošās iestādes  
Reģionālās attīstības un pašvaldības lietu ministrija un tās padotībā esošās iestādes  
Satiksmes ministrija un tās padotībā esošās iestādes  
Tieslietu ministrija un tās padotībā esošās iestādes  
Veselības ministrija un tās padotībā esošās iestādes  
Vides ministrija un tās padotībā esošās iestādes  
Zemkopības ministrija un tās padotībā esošās iestādes  
Īpašu uzdevumu ministra sekretariāti un to padotībā esošās iestādes  
Satversmes aizsardzības birojs

Other state institution

Augstākā tiesa  
Centrālā vēlēšanu komisija

Finanšu un kapitāla tirgus komisija  
Latvijas Banka  
Prokuratūra un tās pārraudzībā esošās iestādes  
Saeimas kanceleja un tās padotībā esošās iestādes  
Satversmes tiesa  
Valsts kanceleja un tās padotībā esošās iestādes  
Valsts kontrole  
Valsts prezidenta kanceleja  
Tiesībsarga birojs  
Nacionālā radio un televīzijas padome  
Citas valsts iestādes, kuras nav ministriju padotībā (Other state institutions not subordinate to ministries)

## LITHUANIA

Prezidentūros kanceliarija

Seimo kanceliarija

Institutions accountable to the Seimas [Parliament]: Lietuvos mokslo taryba;  
Seimo kontrolierių įstaiga;  
Valstybės kontrolė;  
Specialiųjų tyrimų tarnyba;  
Valstybės saugumo departamentas;  
Konkurencijos taryba;  
Lietuvos gyventojų genocido ir rezistencijos tyrimo centras;  
Vertybinių popierių komisija;  
Ryšių reguliavimo tarnyba;  
Nacionalinė sveikatos taryba;  
Etninės kultūros globos taryba;  
Lygių galimybių kontrolieriaus tarnyba;  
Valstybinė kultūros paveldo komisija;  
Vaiko teisių apsaugos kontrolieriaus įstaiga;  
Valstybinė kainų ir energetikos kontrolės komisija;  
Valstybinė lietuvių kalbos komisija;  
Vyriausioji rinkimų komisija;  
Vyriausioji tarnybinės etikos komisija;  
Žurnalistų etikos inspektorius tarnyba.

Vyriausybės kanceliarija

Institutions accountable to the Vyriausybė [Government]:

Ginklų fondas;  
Informacinės visuomenės plėtros komitetas;  
Kūno kultūros ir sporto departamentas;  
Lietuvos archyvų departamentas;  
Mokestinių ginčų komisija;  
Statistikos departamentas;

Tautinių mažumų ir išeivijos departamentas;  
Valstybinė tabako ir alkoholio kontrolės tarnyba;  
Viešųjų pirkimų tarnyba;  
Narkotikų kontrolės departamentas;  
Valstybinė atominės energetikos saugos inspekcija;  
Valstybinė duomenų apsaugos inspekcija;  
Valstybinė lošimų priežiūros komisija;  
Valstybinė maisto ir veterinarijos tarnyba;  
Vyriausioji administracinių ginčų komisija;  
Draudimo priežiūros komisija;  
Lietuvos valstybinis mokslo ir studijų fondas;  
Lietuvių grįžimo į Tėvynę informacijos centras.

#### Konstitucinis Teismas

Lietuvos bankas

Aplinkos ministerija

Institutions under the Aplinkos ministerija [Ministry of Environment]:

Generalinė miškų urėdija;  
Lietuvos geologijos tarnyba;  
Lietuvos hidrometeorologijos tarnyba;  
Lietuvos standartizacijos departamentas;  
Nacionalinis akreditacijos biuras;  
Valstybinė metrologijos tarnyba;  
Valstybinė saugomų teritorijų tarnyba;  
Valstybinė teritorijų planavimo ir statybos inspekcija.

Finansų ministerija

Institutions under the Finansų ministerija [Ministry of Finance]:

Muitinės departamentas;  
Valstybės dokumentų technologinės apsaugos tarnyba;  
Valstybinė mokesčių inspekcija;  
Finansų ministerijos mokymo centras.

Krašto apsaugos ministerija

Institutions under the Krašto apsaugos ministerija [Ministry of National Defence]:

Antrasis operatyvinių tarnybų departamentas;  
Centralizuota finansų ir turto tarnyba;  
Karo prievolės administravimo tarnyba;  
Krašto apsaugos archyvas;  
Krizių valdymo centras;  
Mobilizacijos departamentas;  
Ryšių ir informacinių sistemų tarnyba;  
Infrastruktūros plėtros departamentas;  
Valstybinis pilietinio pasipriešinimo rengimo centras.



Lietuvos kariuomenė

Krašto apsaugos sistemos kariniai vienetai ir tarnybos

Kultūros ministerija

Institutions under the Kultūros ministerija [Ministry of Culture]:

Kultūros paveldo departamentas;

Valstybinė kalbos inspekcija.

Socialinės apsaugos ir darbo ministerija

Institutions under the Socialinės apsaugos ir darbo ministerija [Ministry of Social Security and Labour]:

Garantinio fondo administracija;

Valstybės vaiko teisių apsaugos ir įvaikinimo tarnyba;

Lietuvos darbo birža;

Lietuvos darbo rinkos mokymo tarnyba;

Trišalės tarybos sekretoriatas;

Socialinių paslaugų priežiūros departamentas;

Darbo inspekcija;

Valstybinio socialinio draudimo fondo valdyba;

Neįgalumo ir darbingumo nustatymo tarnyba;

Ginčų komisija;

Techninės pagalbos neįgaliesiems centras;

Neįgaliųjų reikalų departamentas.

Susisiekimo ministerija

Institutions under the Susisiekimo ministerija [Ministry of Transport and Communications]:

Lietuvos automobilių kelių direkcija;

Valstybinė geležinkelio inspekcija;

Valstybinė kelių transporto inspekcija;

Pasienio kontrolės punktų direkcija.

Sveikatos apsaugos ministerija

Institutions under the Sveikatos apsaugos ministerija [Ministry of Health]:

Valstybinė akreditavimo sveikatos priežiūros veiklai tarnyba;

Valstybinė ligonių kasa;

Valstybinė medicininio audito inspekcija;

Valstybinė vaistų kontrolės tarnyba;

Valstybinė teismo psichiatrijos ir narkologijos tarnyba;

Valstybinė visuomenės sveikatos priežiūros tarnyba;

Farmacijos departamentas;

Sveikatos apsaugos ministerijos Ekstremalių sveikatai situacijų centras;

Lietuvos bioetikos komitetas;

Radiacinės saugos centras.

Švietimo ir mokslo ministerija

Institutions under the Švietimo ir mokslo ministerija [Ministry of Education and Science]:

Nacionalinis egzaminų centras;

Studijų kokybės vertinimo centras.

Teisingumo ministerija

Institutions under the Teisingumo ministerija [Ministry of Justice]:

Kalėjinų departamentas;

Nacionalinė vartotojų teisių apsaugos taryba;

Europos teisės departamentas.

Ūkio ministerija

Institutions under the Ūkio ministerija [Ministry of Economy]:

Įmonių bankroto valdymo departamentas;

Valstybinė energetikos inspekcija;

Valstybinė ne maisto produktų inspekcija;

Valstybinis turizmo departamentas.

Užsienio reikalų ministerija

Diplomatinės atstovybės ir konsulinės įstaigos užsienyje bei atstovybės prie tarptautinių organizacijų

Vidaus reikalų ministerija

Institutions under the Vidaus reikalų ministerija [Ministry of the Interior]:

Asmens dokumentų išrašymo centras;

Finansinių nusikaltimų tyrimo tarnyba;

Gyventojų registro tarnyba;

Policijos departamentas;

Priešgaisrinės apsaugos ir gelbėjimo departamentas;

Turto valdymo ir ūkio departamentas;

Vadovybės apsaugos departamentas;

Valstybės sienos apsaugos tarnyba;

Valstybės tarnybos departamentas;

Informatikos ir ryšių departamentas;

Migracijos departamentas;

Sveikatos priežiūros tarnyba;

Bendrasis pagalbos centras.

Žemės ūkio ministerija

Institutions under the Žemės ūkio ministerija [Ministry of Agriculture]:

Nacionalinė mokėjimo agentūra;

Nacionalinė žemės tarnyba;

Valstybinė augalų apsaugos tarnyba;

Valstybinė gyvulių veislininkystės priežiūros tarnyba;

Valstybinė sėklų ir grūdų tarnyba;

Žuvininkystės departamentas

## Teismai [Courts]:

Lietuvos Aukščiausiasis Teismas;  
Lietuvos apeliacinis teismas;  
Lietuvos vyriausiasis administracinis teismas;  
apygardų teismai;  
apygardų administraciniai teismai;  
apylinkių teismai;  
Nacionalinė teismų administracija

## Generalinė prokuratūra

## Other Central Public Administration Entities (institucijos [institutions], įstaigos [establishments], tarnybos [agencies])

Aplinkos apsaugos agentūra;  
Valstybinė aplinkos apsaugos inspekcija;  
Aplinkos projektų valdymo agentūra;  
Miško genetinių išteklių, sėklų ir sodmenų tarnyba;  
Miško sanitarinės apsaugos tarnyba;  
Valstybinė miškotvarkos tarnyba;  
Nacionalinis visuomenės sveikatos tyrimų centras;  
Lietuvos AIDS centras;  
Nacionalinis organų transplantacijos biuras;  
Valstybinis patologijos centras;  
Valstybinis psichikos sveikatos centras;  
Lietuvos sveikatos informacijos centras;  
Slaugos darbuotojų tobulinimosi ir specializacijos centras;  
Valstybinis aplinkos sveikatos centras;  
Respublikinis mitybos centras;  
Užkrečiamųjų ligų profilaktikos ir kontrolės centras;  
Trakų visuomenės sveikatos priežiūros ir specialistų tobulinimosi centras;  
Visuomenės sveikatos ugdymo centras;  
Muitinės kriminalinė tarnyba;  
Muitinės informacinių sistemų centras;  
Muitinės laboratorija;  
Muitinės mokymo centras;  
Valstybinis patentų biuras;  
Lietuvos teismo ekspertizės centras;  
Centrinė hipotekos įstaiga;  
Lietuvos metrologijos inspekcija;  
Civilinės aviacijos administracija;  
Lietuvos saugios laivybos administracija;  
Transporto investicijų direkcija;  
Valstybinė vidaus vandenų laivybos inspekcija;  
Pabėgėlių priėmimo centras

## LUXEMBOURG

Ministère d'Etat

Ministère des Affaires Etrangères et de l'Immigration

Ministère de l'Agriculture, de la Viticulture et du Développement Rural

Ministère des Classes moyennes, du Tourisme et du Logement

Ministère de la Culture, de l'Enseignement Supérieur et de la Recherche

Ministère de l'Economie et du Commerce extérieur

Ministère de l'Education nationale et de la Formation professionnelle

Ministère de l'Egalité des chances

Ministère de l'Environnement

Ministère de la Famille et de l'Intégration

Ministère des Finances

Ministère de la Fonction publique et de la Réforme administrative

Ministère de l'Intérieur et de l'Aménagement du territoire

Ministère de la Justice

Ministère de la Santé

Ministère de la Sécurité sociale

Ministère des Transports

Ministère du Travail et de l'Emploi

Ministère des Travaux publics

## HUNGARY

Egészségügyi Minisztérium

Földművelésügyi és Vidékfejlesztési Minisztérium

Gazdasági és Közlekedési Minisztérium

Honvédelmi Minisztérium

Igazságügyi és Rendészeti Minisztérium

Környezetvédelmi és Vízügyi Minisztérium

Külgügyminisztérium

Miniszterelnöki Hivatal

Oktatási és Kulturális Minisztérium

Önkormányzati és Területfejlesztési Minisztérium

Pénzügyminisztérium

Szociális és Munkügyi Minisztérium

Központi Szolgáltatási Főigazgatóság

## MALTA

Uffiċċju tal-Prim Ministru (Office of the Prime Minister)

Ministeru għall-Familja u Solidarjeta' Soċjali (Ministry for the Family and Social Solidarity)

Ministeru ta' l-Edukazzjoni Zghazagh u Impjieg (Ministry for Education Youth and Employment)

Ministeru tal-Finanzi (Ministry of Finance)

Ministeru tar-Riżorsi u l-Infrastruttura (Ministry for Resources and Infrastructure)

Ministeru tat-Turizmu u Kultura (Ministry for Tourism and Culture)  
Ministeru tal-Gustizzja u l-Intern (Ministry for Justice and Home Affairs)  
Ministeru għall-Affarijiet Rurali u l-Ambjent (Ministry for Rural Affairs and the Environment)  
Ministeru għal Ghawdex (Ministry for Gozo)  
Ministeru tas-Saħħa, l-Anzjani u Kura fil-Kommunita' (Ministry of Health, the Elderly and Community Care)  
Ministeru ta' l-Affarijiet Barranin (Ministry of Foreign Affairs)  
Ministeru għall-Investimenti, Industrija u Teknologija ta' Informazzjoni (Ministry for Investment, Industry and Information Technology)  
Ministeru għall-Kompetittivà u Komunikazzjoni (Ministry for Competitiveness and Communications)  
Ministeru għall-Iżvilupp Urban u Toroq (Ministry for Urban Development and Roads)

## NETHERLANDS

Ministerie van Algemene Zaken

Bestuursdepartement  
Bureau van de Wetenschappelijke Raad voor het Regeringsbeleid  
Rijksvoorlichtingsdienst

Ministerie van Binnenlandse Zaken en Koninkrijksrelaties

Bestuursdepartement  
Centrale Archiefselectiedienst (CAS)  
Algemene Inlichtingen- en Veiligheidsdienst (AIVD)  
Agentschap Basisadministratie Persoonsgegevens en Reisdocumenten (BPR)  
Agentschap Korps Landelijke Politiediensten

Ministerie van Buitenlandse Zaken

Directoraat-generaal Regiobeleid en Consulaire Zaken (DGRC)  
Directoraat-generaal Politieke Zaken (DGPZ)  
Directoraat-generaal Internationale Samenwerking (DGIS)  
Directoraat-generaal Europese Samenwerking (DGES)  
Centrum tot Bevordering van de Import uit Ontwikkelingslanden (CBI)  
Centrale diensten ressorterend onder S/PlvS (Support services falling under the Secretary-general and Deputy Secretary-general)  
Buitenlandse Posten (ieder afzonderlijk)

Ministerie van Defensie — (Ministry of Defence)

Bestuursdepartement  
Commando Diensten Centra (CDC)  
Defensie Telematica Organisatie (DTO)  
Centrale directie van de Defensie Vastgoed Dienst  
De afzonderlijke regionale directies van de Defensie Vastgoed Dienst  
Defensie Materieel Organisatie (DMO)  
Landelijk Bevoorradingsoedrijf van de Defensie Materieel Organisatie  
Logistiek Centrum van de Defensie Materieel Organisatie  
Marinebedrijf van de Defensie Materieel Organisatie  
Defensie Pijpleiding Organisatie (DPO)



## Ministerie van Economische Zaken

Bestuursdepartement

Centraal Planbureau (CPB)

SenterNovem

Staatstoezicht op de Mijnen (SodM)

Nederlandse Mededingingsautoriteit (NMa)

Economische Voorlichtingsdienst (EVD)

Agentschap Telecom

Kenniscentrum Professioneel &amp; Innovatief Aanbesteden, Netwerk voor Overheidsopdrachtgevers (PIANOo)

Regiebureau Inkoop Rijksoverheid

Octrooicentrum Nederland

Consumentenautoriteit

## Ministerie van Financiën

Bestuursdepartement

Belastingdienst Automatiseringscentrum

Belastingdienst

de afzonderlijke Directies der Rijksbelastingen (the various Divisions of the Tax and Customs Administration throughout the Netherlands)

Fiscale Inlichtingen- en Opsporingsdienst (incl. Economische Controle dienst (ECD))

Belastingdienst Opleidingen

Dienst der Domeinen

## Ministerie van Justitie

Bestuursdepartement

Dienst Justitiële Inrichtingen

Raad voor de Kinderbescherming

Centraal Justitie Incasso Bureau

Openbaar Ministerie

Immigratie en Naturalisatiedienst

Nederlands Forensisch Instituut

Dienst Terugkeer &amp; Vertrek

## Ministerie van Landbouw, Natuur en Voedselkwaliteit

Bestuursdepartement

Dienst Regelingen (DR)

Agentschap Plantenziektenkundige Dienst (PD)

Algemene Inspectiedienst (AID)

Dienst Landelijk Gebied (DLG)

Voedsel en Waren Autoriteit (VWA)

## Ministerie van Onderwijs, Cultuur en Wetenschappen

Bestuursdepartement

Inspectie van het Onderwijs

Erfgoedinspectie

Centrale Financiën Instellingen  
Nationaal Archief  
Adviesraad voor Wetenschaps- en Technologiebeleid  
Onderwijsraad  
Raad voor Cultuur  
Ministerie van Sociale Zaken en Werkgelegenheid  
Bestuursdepartement  
Inspectie Werk en Inkomen  
Agentschap SZW  
Ministerie van Verkeer en Waterstaat  
Bestuursdepartement  
Directoraat-Generaal Transport en Luchtvaart  
Directoraat-generaal Personenvervoer  
Directoraat-generaal Water  
Centrale diensten (Central Services)  
Shared services Organisatie Verkeer en Watersaat  
Koninklijke Nederlandse Meteorologisch Instituut KNMI  
Rijkswaterstaat, Bestuur  
De afzonderlijke regionale Diensten van Rijkswaterstaat (Each individual regional service of the Directorate-general of Public Works and Water Management)  
De afzonderlijke specialistische diensten van Rijkswaterstaat (Each individual specialist service of the Directorate-general of Public Works and Water Management)  
Adviesdienst Geo-Informatie en ICT  
Adviesdienst Verkeer en Vervoer (AVV)  
Bouwdienst  
Corporate Dienst  
Data ICT Dienst  
Dienst Verkeer en Scheepvaart  
Dienst Weg- en Waterbouwkunde (DWW)  
Rijksinstituut voor Kunst en Zee (RIKZ)  
Rijksinstituut voor Integraal Zoetwaterbeheer en Afvalwaterbehandeling (RIZA)  
Waterdienst  
Inspectie Verkeer en Waterstaat, Hoofddirectie  
Port state Control  
Directie Toezichtontwikkeling Communicatie en Onderzoek (TCO)  
Toezichthouder Beheer Eenheid Lucht  
Toezichthouder Beheer Eenheid Water  
Toezichthouder Beheer Eenheid Land  
Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer  
Bestuursdepartement  
Directoraat-generaal Wonen, Wijken en Integratie

Directoraat-generaal Ruimte  
Directoraat-generaal Milieubeheer  
Rijksgebouwendienst  
VROM Inspectie  
Ministerie van Volksgezondheid, Welzijn en Sport  
Bestuursdepartement  
Inspectie Gezondheidsbescherming, Waren en Veterinaire Zaken  
Inspectie Gezondheidszorg  
Inspectie Jeugdhulpverlening en Jeugdbescherming  
Rijksinstituut voor de Volksgezondheid en Milieu (RIVM)  
Sociaal en Cultureel Planbureau  
Agentschap t.b.v. het College ter Beoordeling van Geneesmiddelen  
Tweede Kamer der Staten-Generaal  
Eerste Kamer der Staten-Generaal  
Raad van State  
Algemene Rekenkamer  
Nationale Ombudsman  
Kanselarij der Nederlandse Orden  
Kabinet der Koningin  
Raad voor de rechtspraak en de Rechtbanken

AUSTRIA  
Bundeskanzleramt  
Bundesministerium für europäische und internationale Angelegenheiten  
Bundesministerium für Finanzen  
Bundesministerium für Gesundheit, Familie und Jugend  
Bundesministerium für Inneres  
Bundesministerium für Justiz  
Bundesministerium für Landesverteidigung  
Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft  
Bundesministerium für Soziales und Konsumentenschutz  
Bundesministerium für Unterricht, Kunst und Kultur  
Bundesministerium für Verkehr, Innovation und Technologie  
Bundesministerium für Wirtschaft und Arbeit  
Bundesministerium für Wissenschaft und Forschung  
Österreichische Forschungs- und Prüfzentrum Arsenal Gesellschaft m.b.H  
Bundesbeschaffung G.m.b.H  
Bundesrechenzentrum G.m.b.H

POLAND  
Kancelaria Prezydenta RP  
Kancelaria Sejmu RP  
Kancelaria Senatu RP

Kancelaria Prezesa Rady Ministrów  
Sąd Najwyższy  
Naczelny Sąd Administracyjny  
Wojewódzkie sądy administracyjne  
Sądy powszechne — rejonowe, okręgowe i apelacyjne  
Trybunał Konstytucyjny  
Najwyższa Izba Kontroli  
Biuro Rzecznika Praw Obywatelskich  
Biuro Rzecznika Praw Dziecka  
Biuro Ochrony Rządu  
Biuro Bezpieczeństwa Narodowego  
Centralne Biuro Antykorupcyjne  
Ministerstwo Pracy i Polityki Społecznej  
Ministerstwo Finansów  
Ministerstwo Gospodarki  
Ministerstwo Rozwoju Regionalnego  
Ministerstwo Kultury i Dziedzictwa Narodowego  
Ministerstwo Edukacji Narodowej  
Ministerstwo Obrony Narodowej  
Ministerstwo Rolnictwa i Rozwoju Wsi  
Ministerstwo Skarbu Państwa  
Ministerstwo Sprawiedliwości  
Ministerstwo Infrastruktury  
Ministerstwo Nauki i Szkolnictwa Wyższego  
Ministerstwo Środowiska  
Ministerstwo Spraw Wewnętrznych i Administracji  
Ministerstwo Spraw Zagranicznych  
Ministerstwo Zdrowia  
Ministerstwo Sportu i Turystyki  
Urząd Komitetu Integracji Europejskiej  
Urząd Patentowy Rzeczypospolitej Polskiej  
Urząd Regulacji Energetyki  
Urząd do Spraw Kombatantów i Osób Represjonowanych  
Urząd Transportu Kolejowego  
Urząd Dozoru Technicznego  
Urząd Rejestracji Produktów Leczniczych, Wyrobów Medycznych i Produktów Biobójczych  
Urząd do Spraw Repatriacji i Cudzoziemców  
Urząd Zamówień Publicznych  
Urząd Ochrony Konkurencji i Konsumentów

Urząd Lotnictwa Cywilnego  
Urząd Komunikacji Elektronicznej  
Wyższy Urząd Górniczy  
Główny Urząd Miar  
Główny Urząd Geodezji i Kartografii  
Główny Urząd Nadzoru Budowlanego  
Główny Urząd Statystyczny  
Krajowa Rada Radiofonii i Telewizji  
Generalny Inspektor Ochrony Danych Osobowych  
Państwowa Komisja Wyborcza  
Państwowa Inspekcja Pracy  
Rządowe Centrum Legislacji  
Narodowy Fundusz Zdrowia  
Polska Akademia Nauk  
Polskie Centrum Akredytacji  
Polskie Centrum Badań i Certyfikacji  
Polska Organizacja Turystyczna  
Polski Komitet Normalizacyjny  
Zakład Ubezpieczeń Społecznych  
Komisja Nadzoru Finansowego  
Naczelną Dyрекcja Archiwów Państwowych  
Kasa Rolniczego Ubezpieczenia Społecznego  
Generalna Dyрекcja Dróg Krajowych i Autostrad  
Państwowa Inspekcja Ochrony Roślin i Nasiennictwa  
Komenda Główna Państwowej Straży Pożarnej  
Komenda Główna Policji  
Komenda Główna Straży Granicznej  
Inspekcja Jakości Handlowej Artykułów Rolno-Spożywczych  
Główny Inspektorat Ochrony Środowiska  
Główny Inspektorat Transportu Drogowego  
Główny Inspektorat Farmaceutyczny  
Główny Inspektorat Sanitarny  
Główny Inspektorat Weterynarii  
Agencja Bezpieczeństwa Wewnętrznego  
Agencja Wywiadu  
Agencja Mienia Wojskowego  
Wojskowa Agencja Mieszkaniowa  
Agencja Restrukturyzacji i Modernizacji Rolnictwa  
Agencja Rynku Rolnego  
Agencja Nieruchomości Rolnych  
Państwowa Agencja Atomistyki

Polska Agencja Żeglugi Powietrznej  
Polska Agencja Rozwiązywania Problemów Alkoholowych  
Agencja Rezerw Materiałowych  
Narodowy Bank Polski  
Narodowy Fundusz Ochrony Środowiska i Gospodarki Wodnej  
Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych  
Instytut Pamięi Narodowej — Komisja Ścigania Zbrodni Przeciwko Narodowi Polskiemu  
Rada Ochrony Pamięci Walk i Męczeństwa  
Służba Celną Rzeczypospolitej Polskiej  
Państwowe Gospodarstwo Leśne 'Lasy Państwowe'  
Polska Agencja Rozwoju Przedsiębiorczości  
Urzędy wojewódzkie  
Samodzielne Publiczne Zakłady Opieki Zdrowotnej, jeśli ich organem założycielskim jest minister, centralny organ administracji rządowej lub wojewoda

## PORTUGAL

Presidência do Conselho de Ministros  
Ministério das Finanças e da Administração Pública  
Ministério da Defesa Nacional  
Ministério dos Negócios Estrangeiros  
Ministério da Administração Interna  
Ministério da Justiça  
Ministério da Economia e da Inovação  
Ministério da Agricultura, Desenvolvimento Rural e Pescas  
Ministério da Educação  
Ministério da Ciência, Tecnologia e do Ensino Superior  
Ministério da Cultura  
Ministério da Saúde  
Ministério do Trabalho e da Solidariedade Social  
Ministério das Obras Públicas, Transportes e Comunicações  
Ministério do Ambiente, do Ordenamento do Território e do Desenvolvimento Regional  
Presidência da República  
Tribunal Constitucional  
Tribunal de Contas  
Provedoria de Justiça

## ROMANIA

Administrația Prezidențială  
Senatul României  
Camera Deputaților  
Inalta Curte de Casație și Justiție  
Curtea Constituțională  
Consiliul Legislativ  
Curtea de Conturi



Consiliul Superior al Magistraturii  
Parchetul de pe lângă Inalta Curte de Casație și Justiție  
Secretariatul General al Guvernului  
Cancelaria primului ministru  
Ministerul Afacerilor Externe  
Ministerul Economiei și Finanțelor  
Ministerul Justiției  
Ministerul Apărării  
Ministerul Internelor și Reformei Administrative  
Ministerul Muncii, Familiei și Egalității de Șanse  
Ministerul pentru Intreprinderi Mici și Mijlocii, Comerț, Turism și Profesii Liberale  
Ministerul Agriculturii și Dezvoltării Rurale  
Ministerul Transporturilor  
Ministerul Dezvoltării, Lucrărilor Publice și Locuinței  
Ministerul Educației Cercetării și Tineretului  
Ministerul Sănătății Publice  
Ministerul Culturii și Cultelor  
Ministerul Comunicațiilor și Tehnologiei Informației  
Ministerul Mediului și Dezvoltării Durabile  
Serviciul Român de Informații  
Serviciul de Informații Externe  
Serviciul de Protecție și Pază  
Serviciul de Telecomunicații Speciale  
Consiliul Național al Audiovizualului  
Consiliul Concurenței (CC)  
Direcția Națională Anticorupție  
Inspectoratul General de Poliție  
Autoritatea Națională pentru Reglementarea și Monitorizarea Achizițiilor Publice  
Consiliul Național de Soluționare a Contestațiilor  
Autoritatea Națională de Reglementare pentru Serviciile Comunitare de Utilități Publice (ANRSC)  
Autoritatea Națională Sanitară Veterinară și pentru Siguranța Alimentelor  
Autoritatea Națională pentru Protecția Consumatorilor  
Autoritatea Navală Română  
Autoritatea Feroviară Română  
Autoritatea Rutieră Română  
Autoritatea Națională pentru Protecția Drepturilor Copilului  
Autoritatea Națională pentru Persoanele cu Handicap  
Autoritatea Națională pentru Turism  
Autoritatea Națională pentru Restituirea Proprietăților  
Autoritatea Națională pentru Tineret

Autoritatea Națională pentru Cercetare Științifică  
Autoritatea Națională pentru Reglementare în Comunicații și Tehnologia Informației  
Autoritatea Națională pentru Serviciile Societății Informaționale  
Autoritatea Electorală Permanente  
Agenția pentru Strategii Guvernamentale  
Agenția Națională a Medicamentului  
Agenția Națională pentru Sport  
Agenția Națională pentru Ocuparea Forței de Muncă  
Agenția Națională de Reglementare în Domeniul Energiei  
Agenția Română pentru Conservarea Energiei  
Agenția Națională pentru Resurse Minerale  
Agenția Română pentru Investiții Străine  
Agenția Națională pentru Întreprinderi Mici și Mijlocii și Cooperație  
Agenția Națională a Funcționarilor Publici  
Agenția Națională de Administrare Fiscală  
Agenția de Compensare pentru Achiziții de Tehnică Specială  
Agenția Națională Anti-doping  
Agenția Nucleară  
Agenția Națională pentru Protecția Familiei  
Agenția Națională pentru Egalitatea de Șanse între Bărbați și Femei  
Agenția Națională pentru Protecția Mediului  
Agenția națională Antidrog

SLOVENIA

Predsednik Republike Slovenije  
Državni zbor Republike Slovenije  
Državni svet Republike Slovenije  
Varuh človekovih pravic  
Ustavno sodišče Republike Slovenije  
Računsko sodišče Republike Slovenije  
Državna revizijska komisija za revizijo postopkov oddaje javnih naročil  
Slovenska akademija znanosti in umetnosti  
Vladne službe  
Ministrstvo za finance  
Ministrstvo za notranje zadeve  
Ministrstvo za zunanje zadeve  
Ministrstvo za obrambo  
Ministrstvo za pravosodje  
Ministrstvo za gospodarstvo  
Ministrstvo za kmetijstvo, gozdarstvo in prehrano  
Ministrstvo za promet

Ministrstvo za okolje in prostor  
Ministrstvo za delo, družino in socialne zadeve  
Ministrstvo za zdravje  
Ministrstvo za javno upravo  
Ministrstvo za šolstvo in šport  
Ministrstvo za visoko šolstvo, znanost in tehnologijo  
Ministrstvo za kulturo  
Vrhovno sodišče Republike Slovenije  
višja sodišča  
okrožna sodišča  
okrajna sodišča  
Vrhovno državno tožilstvo Republike Slovenije  
Okrožna državna tožilstva  
Državno pravobranilstvo  
Upravno sodišče Republike Slovenije  
Višje delovno in socialno sodišče  
delovna sodišča  
Davčna uprava Republike Slovenije  
Carinska uprava Republike Slovenije  
Urad Republike Slovenije za preprečevanje pranja denarja  
Urad Republike Slovenije za nadzor prirejanja iger na srečo  
Uprava Republike Slovenije za javna plačila  
Urad Republike Slovenije za nadzor proračuna  
Policija  
Inšpektorat Republike Slovenije za notranje zadeve  
Generalštab Slovenske vojske  
Uprava Republike Slovenije za zaščito in reševanje  
Inšpektorat Republike Slovenije za obrambo  
Inšpektorat Republike Slovenije za varstvo pred naravnimi in drugimi nesrečami  
Uprava Republike Slovenije za izvrševanje kazenskih sankcij  
Urad Republike Slovenije za varstvo konkurence  
Urad Republike Slovenije za varstvo potrošnikov  
Tržni inšpektorat Republike Slovenije  
Urad Republike Slovenije za intelektualno lastnino  
Inšpektorat Republike Slovenije za elektronske komunikacije, elektronsko podpisovanje in pošto  
Inšpektorat za energetiko in rudarstvo  
Agencija Republike Slovenije za kmetijske trge in razvoj podeželja  
Inšpektorat Republike Slovenije za kmetijstvo, gozdarstvo in hrano  
Fitosanitarna uprava Republike Slovenije  
Veterinarska uprava Republike Slovenije  
Uprava Republike Slovenije za pomorstvo

Direkcija Republike Slovenije za caste  
Prometni inšpektorat Republike Slovenije  
Direkcija za vodenje investicij v javno železniško infrastrukturo  
Agencija Republike Slovenije za okolje  
Geodetska uprava Republike Slovenije  
Uprava Republike Slovenije za jedrsko varstvo  
Inšpektorat Republike Slovenije za okolje in prostor  
Inšpektorat Republike Slovenije za delo  
Zdravstveni inšpektorat  
Urad Republike Slovenije za kemikalije  
Uprava Republike Slovenije za varstvo pred sevanji  
Urad Republike Slovenije za meroslovje  
Urad za visoko šolstvo  
Urad Republike Slovenije za mladino  
Inšpektorat Republike Slovenije za šolstvo in šport  
Arhiv Republike Slovenije  
Inšpektorat Republike Slovenije za kulturo in medije  
Kabinet predsednika Vlade Republike Slovenije  
Generalni sekretariat Vlade Republike Slovenije  
Služba vlade za zakonodajo  
Služba vlade za evropske zadeve  
Služba vlade za lokalno samoupravo in regionalno politiko  
Urad vlade za komuniciranje  
Urad za enake možnosti  
Urad za verske skupnosti  
Urad za narodnosti  
Urad za makroekonomske analize in razvoj  
Statistični urad Republike Slovenije  
Slovenska obveščevalno-varnostna agencija  
Protokol Republike Slovenije  
Urad za varovanje tajnih podatkov  
Urad za Slovence v zamejstvu in po svetu  
Služba Vlade Republike Slovenije za razvoj  
Informacijski pooblaščenec  
Državna volilna komisija

#### SLOVAKIA

Ministries and other central government authorities referred to as in Act No. 575/2001 Coll. on the structure of activities of the Government and central state administration authorities in wording of later regulations:

Kancelária Prezidenta Slovenskej republiky  
Národná rada Slovenskej republiky  
Ministerstvo hospodárstva Slovenskej republiky

Ministerstvo financií Slovenskej republiky  
Ministerstvo dopravy, pôšt a telekomunikácií Slovenskej republiky  
Ministerstvo pôdohospodárstva Slovenskej republiky  
Ministerstvo výstavby a regionálneho rozvoja Slovenskej republiky  
Ministerstvo vnútra Slovenskej republiky  
Ministerstvo obrany Slovenskej republiky  
Ministerstvo spravodlivosti Slovenskej republiky  
Ministerstvo zahraničných vecí Slovenskej republiky  
Ministerstvo práce, sociálnych vecí a rodiny Slovenskej republiky  
Ministerstvo životného prostredia Slovenskej republiky  
Ministerstvo školstva Slovenskej republiky  
Ministerstvo kultúry Slovenskej republiky  
Ministerstvo zdravotníctva Slovenskej republiky  
Úrad vlády Slovenskej republiky  
Protimonopolný úrad Slovenskej republiky  
Štatistický úrad Slovenskej republiky  
Úrad geodézie, kartografie a katastra Slovenskej republiky  
Úrad jadrového dozoru Slovenskej republiky  
Úrad pre normalizáciu, metrológiu a skúšobníctvo Slovenskej republiky  
Úrad pre verejné obstarávanie  
Úrad priemyselného vlastníctva Slovenskej republiky  
Správa štátnych hmotných rezerv Slovenskej republiky  
Národný bezpečnostný úrad  
Ústavný súd Slovenskej republiky  
Najvyšší súd Slovenskej republiky  
Generálna prokuratúra Slovenskej republiky  
Najvyšší kontrolný úrad Slovenskej republiky  
Telekomunikačný úrad Slovenskej republiky  
Úrad priemyselného vlastníctva Slovenskej republiky  
Úrad pre finančný trh  
Úrad na ochranu osobných údajov  
Kancelária verejného ochranu prav

## FINLAND

Oikeuskanslerinvirasto — Justitiekanslersämbetet  
Liikenne- ja viestintäministeriö — Kommunikationsministeriet  
Ajoneuvohallintokeskus AKE — Fordonsförvaltningscentralen AKE  
Ilmailuhallinto — Luftfartsförvaltningen  
Ilmatieteen laitos — Meteorologiska institutet  
Merenkululaitos — Sjöfartsverket  
Merentutkimuslaitos — Havsforskningsinstitutet

Ratahallintokeskus RHK — Banförvaltningscentralen RHK  
Rautatievirasto — Järnvägsverket  
Tiehallinto — Vägförvaltningen  
Viestintävirasto — Kommunikationsverket  
Maa- ja metsätalousministeriö — Jord- och skogsbruksministeriet  
Elintarviketurvallisuusvirasto — Livsmedelssäkerhetsverket  
Maanmittauslaitos — Lantmäteriverket  
Maaseutuvirasto — Landsbygdsverket  
Oikeusministeriö — Justitieministeriet  
Tietosuojavaltuutetun toimisto — Dataombudsmannens byrå  
Tuomioistuimet — Domstolar  
Korkein oikeus — Högsta domstolen  
Korkein hallinto-oikeus — Högsta förvaltningsdomstolen  
Hovioikeudet — Hovrätter  
Käräjäoikeudet — Tingsrätter  
Hallinto-oikeudet — Förvaltningsdomstolar  
Markkinaoikeus — Marknadsdomstolen  
Työtuomioistuin — Arbetsdomstolen  
Vakuutusosasto — Försäkringsdomstolen  
Kuluttajariitalautakunta — Konsumenttvistenämnden  
Vankeinhoitolaitos — Fängvårdsväsendet  
HEUNI — Yhdistyneiden Kansakuntien yhteydessä toimiva Euroopan kriminaalipoliitiikan instituutti — HEUNI —  
Europeiska institutet för kriminalpolitik, verksamt i anslutning till Förenta nationerna  
Konkursiasiamiehen toimisto — Konkursombudsmannens byrå  
Kuluttajariitalautakunta — Konsumenttvistenämnden  
Oikeushallinnon palvelukeskus — Justitieförvaltningens servicecentral  
Oikeushallinnon tietotekniikkakeskus — Justitieförvaltningens datateknikcentral  
Oikeuspoliittinen tutkimuslaitos (Optula) — Rättspolitiska forskningsinstitutet  
Oikeusrekisterikeskus — Rättsregistercentralen  
Onnettomuustutkintakeskus — Centralen för undersökning av olyckor  
Rikosseuraamusvirasto — Brottspåföljdsverket  
Rikosseuraamusalan koulutuskeskus — Brottspåföljdsområdets utbildningscentral  
Riksentorjuntaneuvosto — Rådet för brottsförebyggande  
Saamelaiskäräjät — Sametinget  
Valtakunnansyyttäjänvirasto — Riksåklagarämbetet  
Vankeinhoitolaitos — Fängvårdsväsendet  
Opetusministeriö — Undervisningsministeriet  
Opetushallitus — Utbildningsstyrelsen  
Valtion elokuvataarkastamo — Statens filmgranskningsbyrå  
Puolustusministeriö — Försvarsministeriet  
Puolustusvoimat — Försvarsmakten



Sisäasiainministeriö — Inrikesministeriet

Väestörekisterikeskus — Befolkningsregistercentralen

Keskusrikospoliisi — Centralkriminalpolisen

Liikkuva poliisi — Rörliga polisen

Rajavartiolaitos — Gränsbevakningsväsendet

Lääninhallitukset — Länstyrelserna

Suojelupoliisi — Skyddspolisen

Poliisiammattikorkeakoulu — Polisyrkeshögskolan

Poliisin tekniikkakeskus — Polisens teknikcentral

Poliisin tietohallintokeskus — Polisens datacentral

Helsingin kihlakunnan poliisilaitos — Polisnrättningen i Helsingfors

Pelastusopisto — Räddningsverket

Hätäkeskuslaitos — Nödcentralverket

Maahanmuuttovirasto — Migrationsverket

Sisäasiainhallinnon palvelukeskus — Inrikesförvaltningens servicecentral

Sosiaali- ja terveysministeriö — Social- och hälsovårdsministeriet

Työttömyysturvan muutoksenhakulautakunta — Besvärnämnden för utkomstskyddsärenden

Sosiaaliturvan muutoksenhakulautakunta — Besvärnämnden för social trygghet

Lääkelaitos — Läkemedelsverket

Terveydenhuollon oikeusturvakeskus — Rättsskyddscentralen för hälsovården

Säteilyturvakeskus — Strålsäkerhetscentralen

Kansanterveyslaitos — Folkhälsoinstitutet

Lääkehoidon kehittämiskeskus ROHTO — Utvecklingscentralen för läkemedelsbe-handling

Sosiaali- ja terveydenhuollon tuotevalvontakeskus — Social- och hälsovårdens produktillsynscentral

Sosiaali- ja terveysalan tutkimus- ja kehittämiskeskus Stakes — Forsknings- och utvecklingscentralen för social- och hälsovården Stakes

Vakuutusvalvontavirasto — Försäkringsinspektionen

Työ- ja elinkeinoministeriö — Arbets- och näringsministeriet

Kuluttajavirasto — Konsumentverket

Kilpailuvirasto — Konkurrensverket

Patentti- ja rekisterihallitus — Patent- och registerstyrelsen

Valtakunnansovittelijain toimisto — Riksförlikningsmännens byrå

Valtion turvapaikanhakijoiden vastaanottokeskukset – Statliga förläggningar för asylsökande

Energiamarkkinavirasto - Energimarknadsverket

Geologian tutkimuskeskus — Geologiska forskningscentralen

Huoltovarmuuskeskus — Försörjningsberedskapscentralen

Kuluttajatutkimuskeskus — Konsumentforskningscentralen

Matkailun edistämiskeskus (MEK) — Centralen för turistfrämjande

Mittatekniikan keskus (MIKES) — Mätteknikcentralen

Tekes — teknologian ja innovaatioiden kehittämiskeskus -Tekes — utvecklingscentralen för teknologi och innovationer

Turvatekniikan keskus (TUKES) — Säkerhetsteknikcentralen  
Valtion teknillinen tutkimuskeskus (VTT) — Statens tekniska forskningscentral  
Syrjintälautakunta — Nationella diskrimineringsnämnden  
Työneuvosto — Arbetsrådet  
Vähemmistövaltuutetun toimisto — Minoritetsombudsmannens byrå  
Ulkoasiainministeriö — Utrikesministeriet  
Valtioneuvoston kanslia — Statsrådets kansli  
Valtiovarainministeriö — Finansministeriet  
Valtiokonttori — Statskontoret  
Verohallinto — Skatteförvaltningen  
Tullilaitos — Tullverket  
Tilastokeskus — Statistikcentralen  
Valtion taloudellinen tutkimuskeskus — Statens ekonomiska forskningscentral  
Ympäristöministeriö — Miljöministeriet  
Suomen ympäristökeskus — Finlands miljöcentral  
Asumisen rahoitus- ja kehityskeskus — Finansierings- och utvecklingscentralen för boendet  
Valtiontalouden tarkastusvirasto — Statens revisionsverk

## SWEDEN

## A

Affärsverket svenska kraftnät  
Akademien för de fria konsterna  
Alkohol- och läkemedelssortiments-nämnden  
Allmänna pensionsfonden  
Allmänna reklamationsnämnden  
Ambassader  
Ansvarsnämnd, statens  
Arbetsdomstolen  
Arbetsförmedlingen  
Arbetsgivarverk, statens  
Arbetslivsinstitutet  
Arbetsmiljöverket  
Arkitekturmuseet  
Arrendenämnder  
Arvsfondsdelegationen  
Arvsfondsdelegationen

## B

Banverket  
Barnombudsmannen  
Beredning för utvärdering av medicinsk metodik, statens  
Bergsstaten

Biografbyrå, statens

Biografiskt lexikon, svenskt

Birgittaskolan

Blekinge tekniska högskola

Bokföringsnämnden

Bolagsverket

Bostadsnämnd, statens

Bostadskreditnämnd, statens

Boverket

Brottsförebyggande rådet

Brottsoffermyndigheten

C

Centrala studiestödsnämnden

D

Danshögskolan

Datainspektionen

Departementen

Domstolsverket

Dramatiska institutet

E

Ekeskolan

Ekobrottsmyndigheten

Ekonomistyrningsverket

Ekonomiska rådet

Elsäkerhetsverket

Energimarknadsinspektionen

Energimyndighet, statens

EU/FoU-rådet

Exportkreditnämnden

Exportråd, Sveriges

F

Fastighetsmäklarnämnden

Fastighetsverk, statens

Fideikommissnämnden

Finansinspektionen

Finanspolitiska rådet

Finsk-svenska gränsälvskommissionen

Fiskeriverket

Flygmedicincentrum

Folkhälsoinstitut, statens

Fonden för fukt- och mögelskador

Forskningsrådet för miljö, areella näringar och samhällsbyggande, Formas

Folke Bernadotte Akademin

Forskarskattenämnden

Forskningsrådet för arbetsliv och socialvetenskap

Fortifikationsverket

Forum för levande historia

Försvarets materielverk

Försvarets radioanstalt

Försvarets underrättelsenämnd

Försvarshistoriska museer, statens

Försvarshögskolan

Försvarsmakten

Försäkringskassan

G

Gentekniknämnden

Geologiska undersökning

Geotekniska institut, statens

Giftinformationscentralen

Glesbygdsverket

Grafiska institutet och institutet för högre kommunikation- och reklamutbildning

Granskningsnämnden för radio och TV

Granskningsnämnden för försvarsuppfinningar

Gymnastik- och Idrottshögskolan

Göteborgs universitet

H

Handelsflottans kultur- och fritidsråd

Handelsflottans pensionsanstalt

Handelssekreterare

Handelskamrar, auktoriserade

Handikappombudsmannen

Handikappråd, statens

Harpsunds nämnden

Haverikommission, statens

Historiska museer, statens

Hjälpmiddelsinstitutet

Hovrätterna

Hyresnämnder

Häkterna

Hälso- och sjukvårdens ansvarsnämnd

Högskolan Dalarna

Högskolan i Borås

Högskolan i Gävle

Högskolan i Halmstad

Högskolan i Kalmar

Högskolan i Karlskrona/Ronneby

Högskolan i Kristianstad

Högskolan i Skövde

Högskolan i Trollhättan/Uddevalla

Högskolan på Gotland

Högskolans avskiljandenämnd

Högskoleverket

Högsta domstolen

I

ILO kommittén

Inspektionen för arbetslöshetsförsäkringen

Inspektionen för strategiska produkter

Institut för kommunikationsanalys, statens

Institut för psykosocial medicin, statens

Institut för särskilt utbildningsstöd, statens

Institutet för arbetsmarknadspolitisk utvärdering

Institutet för rymdfysik

Institutet för tillväxtpolitiska studier

Institutionsstyrelse, statens

Insättningsgarantinämnden

Integrationsverket

Internationella programkontoret för utbildningsområdet

J

Jordbruksverk, statens

Justitiekanslern

Jämställdhetsombudsmannen

Jämställdhetsnämnden

Järnvägar, statens

Järnvägsstyrelsen

K

Kammarkollegiet

Kammarrätterna

Karlstads universitet

Karolinska Institutet

Kemikalieinspektionen

Kommerskollegium  
Konjunkturinstitutet  
Konkurrensverket  
Konstfack  
Konsthögskolan  
Konstnärsnämnden  
Konstråd, statens  
Konsulat  
Konsumentverket  
Krigsvetenskapsakademin  
Krigsförsäkringsnämnden  
Kriminaltekniska laboratorium, statens  
Kriminalvården  
Krisberedskapsmyndigheten  
Kristinaskolan  
Kronofogdemyndigheten  
Kulturråd, statens  
Kungl. Biblioteket  
Kungl. Konsthögskolan  
Kungl. Musikhögskolan i Stockholm  
Kungl. Tekniska högskolan  
Kungl. Vitterhets-, historie- och antikvitetsakademien  
Kungl Vetenskapsakademin  
Kustbevakningen  
Kvalitets- och kompetensråd, statens  
Kärnavfallsfondens styrelse

L

Lagrådet  
Lantbruksuniversitet, Sveriges  
Lantmäteriverket  
Linköpings universitet  
Livrustkammaren, Skoklosters slott och Hallwylska museet  
Livsmedelsverk, statens  
Livsmedelsekonomiska institutet  
Ljud- och bildarkiv, statens  
Lokala säkerhetsnämnderna vid kärnkraftverk  
Lotteriinspektionen  
Luftfartsverket  
Luftfartsstyrelsen  
Luleå tekniska universitet



Lunds universitet

Läkemedelsverket

Läkemedelsförmånsnämnden

Länsrätterna

Länsstyrelserna

Läraryhögskolan i Stockholm

M

Malmö högskola

Manillaskolan

Maritima muséer, statens

Marknadsdomstolen

Medlingsinstitutet

Meteorologiska och hydrologiska institut, Sveriges

Migrationsverket

Militärhögskolor

Mittuniversitetet

Moderna museet

Museer för världskultur, statens

Musikaliska Akademien

Musiksamlingar, statens

Myndigheten för handikappolitisk samordning

Myndigheten för internationella adoptionsfrågor

Myndigheten för skolutveckling

Myndigheten för kvalificerad yrkesutbildning

Myndigheten för nätverk och samarbete inom högre utbildning

Myndigheten för Sveriges nätuniversitet

Myndigheten för utländska investeringar i Sverige

Mälardalens högskola

N

Nationalmuseum

Nationellt centrum för flexibelt lärande

Naturhistoriska riksmuseet

Naturvårdsverket

Nordiska Afrikainstitutet

Notarienämnden

Nämnd för arbetstagares uppfinningar, statens

Nämnden för statligt stöd till trossamfund

Nämnden för styrelserepresentationsfrågor

Nämnden mot diskriminering

Nämnden för elektronisk förvaltning

Nämnden för RH anpassad utbildning

Nämnden för hemslöjdsfrågor

O

Oljekrisnämnden

Ombudsmannen mot diskriminering på grund av sexuell läggning

Ombudsmannen mot etnisk diskriminering

Operahögskolan i Stockholm

P

Patent- och registreringsverket

Patentbesvärslagen

Pensionsverk, statens

Personregisternämnd statens, SPAR-nämnden

Pliktverk, Totalförsvarets

Polarforskningssekretariatet

Post- och telestyrelsen

Premiepensionsmyndigheten

Presstödsnämnden

R

Radio- och TV-verket

Rederinämnden

Regeringskansliet

Regeringsrätten

Resegarantinämnden

Registernämnden

Revisorsnämnden

Riksantikvarieämbetet

Riksarkivet

Riksbanken

Riksdagsförvaltningen

Riksdagens ombudsmän

Riksdagens revisorer

Riksgäldskontoret

Rikshemvärnsrådet

Rikspolisstyrelsen

Riksrevisionen

Rikstrafiken

Riksutställningar, Stiftelsen

Riksvärderingsnämnden

Rymdstyrelsen

Rådet för Europeiska socialfonden i Sverige

Räddningsverk, statens  
Rättshjälpsmyndigheten  
Rättshjälpsnämnden  
Rättsmedicinalverket

S

Samarbetsnämnden för statsbidrag till trossamfund  
Sameskolstyrelsen och sameskolor  
Sametinget  
SIS, Standardiseringen i Sverige  
Sjöfartsverket  
Skatterättsnämnden  
Skatteverket  
Skaderegleringsnämnd, statens  
Skiljenämnden i vissa trygghetsfrågor  
Skogsstyrelsen  
Skogsvårdsstyrelserna  
Skogs och lantbruksakademien  
Skolverk, statens  
Skolväsendets överklagandenämnd  
Smittskyddsinstitutet  
Socialstyrelsen  
Specialpedagogiska institutet  
Specialskolmyndigheten  
Språk- och folkminnesinstitutet  
Sprängämnesinspektionen  
Statistiska centralbyrån  
Statskontoret  
Stockholms universitet  
Stockholms internationella miljöinstitut  
Strålsäkerhetsmyndigheten  
Styrelsen för ackreditering och teknisk kontroll  
Styrelsen för internationellt utvecklingssamarbete, SIDA  
Styrelsen för Samefonden  
Styrelsen för psykologiskt försvar  
Stängselnämnden  
Svenska institutet  
Svenska institutet för europapolitiska studier  
Svenska ESF rådet  
Svenska Unescorådet  
Svenska FAO kommittén  
Svenska Språknämnden

Svenska Skeppshypotekskassan  
Svenska institutet i Alexandria  
Sveriges författarfond  
Säkerhetspolisen  
Säkerhets- och integritetsskyddsnämnden  
Södertörns högskola

T

Taltidningsnämnden  
Talboks- och punktskriftsbiblioteket  
Teaterhögskolan i Stockholm  
Tingsrätterna  
Tjänstepensions och grupplivnämnd, statens  
Tjänsteförslagsnämnden för domstolsväsendet  
Totalförsvarets forskningsinstitut  
Totalförsvarets pliktverk  
Tullverket  
Turistdelegationen

U

Umeå universitet  
Ungdomsstyrelsen  
Uppsala universitet  
Utlandslönenämnd, statens  
Utlänningsnämnden  
Utrikesförvaltningens antagningsnämnd  
Utrikesnämnden  
Utsädeskontroll, statens

V

Valideringsdelegationen  
Valmyndigheten  
Vatten- och avloppsnämnd, statens  
Vattenöverdomstolen  
Verket för förvaltningsutveckling  
Verket för högskoleservice  
Verket för innovationssystem (VINNOVA)  
Verket för näringslivsutveckling (NUTEK)  
Vetenskapsrådet  
Veterinärmedicinska anstalt, statens  
Veterinära ansvarsnämnden  
Väg- och transportforskningsinstitut, statens

Vägverket

Vänerskolan

Växjö universitet

Växtingsnämnd, statens

Å

Åklagarmyndigheten

Åsbackaskolan

Ö

Örebro universitet

Örlogsmannasällskapet

Östervångsskolan

Överbefälhavaren

Överklagandenämnden för högskolan

Överklagandenämnden för nämndemanna-uppdrag

Överklagandenämnden för studiestöd

Överklagandenämnden för totalförsvaret

UNITED KINGDOM

Cabinet Office

Office of the Parliamentary Counsel

Central Office of Information

Charity Commission

Crown Estate Commissioners (Vote Expenditure Only)

Crown Prosecution Service

Department for Business, Enterprise and Regulatory Reform

Competition Commission

Gas and Electricity Consumers' Council

Office of Manpower Economics

Department for Children, Schools and Families

Department of Communities and Local Government

Rent Assessment Panels

Department for Culture, Media and Sport

British Library

British Museum

Commission for Architecture and the Built Environment

The Gambling Commission

Historic Buildings and Monuments Commission for England (English Heritage)

Imperial War Museum

Museums, Libraries and Archives Council

National Gallery

National Maritime Museum

National Portrait Gallery  
Natural History Museum  
Science Museum  
Tate Gallery  
Victoria and Albert Museum  
Wallace Collection

Department for Environment, Food and Rural Affairs  
Agricultural Dwelling House Advisory Committees  
Agricultural Land Tribunals  
Agricultural Wages Board and Committees  
Cattle Breeding Centre  
Countryside Agency  
Plant Variety Rights Office  
Royal Botanic Gardens, Kew  
Royal Commission on Environmental Pollution

Department of Health  
Dental Practice Board  
National Health Service Strategic Health Authorities  
NHS Trusts  
Prescription Pricing Authority

Department for Innovation, Universities and Skills  
Higher Education Funding Council for England  
National Weights and Measures Laboratory  
Patent Office

Department for International Development

Department of the Procurator General and Treasury Solicitor  
Legal Secretariat to the Law Officers

Department for Transport  
Maritime and Coastguard Agency

Department for Work and Pensions  
Disability Living Allowance Advisory Board  
Independent Tribunal Service  
Medical Boards and Examining Medical Officers (War Pensions)  
Occupational Pensions Regulatory Authority  
Regional Medical Service  
Social Security Advisory Committee

Export Credits Guarantee Department

Foreign and Commonwealth Office  
Wilton Park Conference Centre



Government Actuary's Department  
Government Communications Headquarters  
Home Office  
    HM Inspectorate of Constabulary  
House of Commons  
House of Lords  
Ministry of Defence  
    Defence Equipment & Support  
    Meteorological Office  
Ministry of Justice  
    Boundary Commission for England  
    Combined Tax Tribunal  
    Council on Tribunals  
    Court of Appeal — Criminal  
    Employment Appeals Tribunal  
    Employment Tribunals  
    HMCS Regions, Crown, County and Combined Courts (England and Wales)  
    Immigration Appellate Authorities  
    Immigration Adjudicators  
    Immigration Appeals Tribunal  
    Lands Tribunal  
    Law Commission  
    Legal Aid Fund (England and Wales)  
    Office of the Social Security Commissioners  
    Parole Board and Local Review Committees  
    Pensions Appeal Tribunals  
    Public Trust Office  
    Supreme Court Group (England and Wales)  
    Transport Tribunal  
The National Archives  
National Audit Office  
National Savings and Investments  
National School of Government  
Northern Ireland Assembly Commission  
Northern Ireland Court Service  
    Coroners Courts  
    County Courts  
    Court of Appeal and High Court of Justice in Northern Ireland  
    Crown Court  
    Enforcement of Judgements Office

Legal Aid Fund  
Magistrates' Courts  
Pensions Appeals Tribunals  
Northern Ireland, Department for Employment and Learning  
Northern Ireland, Department for Regional Development  
Northern Ireland, Department for Social Development  
Northern Ireland, Department of Agriculture and Rural Development  
Northern Ireland, Department of Culture, Arts and Leisure  
Northern Ireland, Department of Education  
Northern Ireland, Department of Enterprise, Trade and Investment  
Northern Ireland, Department of the Environment  
Northern Ireland, Department of Finance and Personnel  
Northern Ireland, Department of Health, Social Services and Public Safety  
Northern Ireland, Office of the First Minister and Deputy First Minister  
Northern Ireland Office  
Crown Solicitor's Office  
Department of the Director of Public Prosecutions for Northern Ireland  
Forensic Science Laboratory of Northern Ireland  
Office of the Chief Electoral Officer for Northern Ireland  
Police Service of Northern Ireland  
Probation Board for Northern Ireland  
State Pathologist Service  
Office of Fair Trading  
Office for National Statistics  
National Health Service Central Register  
Office of the Parliamentary Commissioner for Administration and Health Service Commissioners  
Paymaster General's Office  
Postal Business of the Post Office  
Privy Council Office  
Public Record Office  
HM Revenue and Customs  
The Revenue and Customs Prosecutions Office  
Royal Hospital, Chelsea  
Royal Mint  
Rural Payments Agency  
Scotland, Auditor-General  
Scotland, Crown Office and Procurator Fiscal Service  
Scotland, General Register Office  
Scotland, Queen's and Lord Treasurer's Remembrancer  
Scotland, Registers of Scotland

The Scotland Office

The Scottish Ministers

Architecture and Design Scotland

Crofters Commission

Deer Commission for Scotland

Lands Tribunal for Scotland

National Galleries of Scotland

National Library of Scotland

National Museums of Scotland

Royal Botanic Garden, Edinburgh

Royal Commission on the Ancient and Historical Monuments of Scotland

Scottish Further and Higher Education Funding Council

Scottish Law Commission

Community Health Partnerships

Special Health Boards

Health Boards

The Office of the Accountant of Court

High Court of Justiciary

Court of Session

HM Inspectorate of Constabulary

Parole Board for Scotland

Pensions Appeal Tribunals

Scottish Land Court

Sheriff Courts

Scottish Police Services Authority

Office of the Social Security Commissioners

The Private Rented Housing Panel and Private Rented Housing Committees

Keeper of the Records of Scotland

The Scottish Parliamentary Body Corporate

HM Treasury

Office of Government Commerce

United Kingdom Debt Management Office

The Wales Office (Office of the Secretary of State for Wales)

The Welsh Ministers

Higher Education Funding Council for Wales

Local Government Boundary Commission for Wales

The Royal Commission on the Ancient and Historical Monuments of Wales

Valuation Tribunals (Wales)

Welsh National Health Service Trusts and Local Health Boards

Welsh Rent Assessment Panels

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## ANNEX II

## LIST OF THE ACTIVITIES REFERRED TO IN POINT (6)(a) OF ARTICLE 2(1)

In the event of any difference of interpretation between the CPV and the NACE, the CPV nomenclature will apply.

NACE Rev. 1 (1)					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: — construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures, — clearing of building sites, — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. — site preparation for mining: — overburden removal and other development and preparation of mineral properties and sites.  This class also includes: — building site drainage. — drainage of agricultural or forestry land.	45110000
		45.12	Test drilling and boring	This class includes: — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes.  This class excludes: — drilling of production oil or gas wells, see 11.20. — water well drilling, see 45.25, — shaft sinking, see 45.25, — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000

NACE Rev. 1 <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of all types of buildings construction of civil engineering constructions,</li> <li>— bridges, including those for elevated highways, viaducts, tunnels and subways,</li> <li>— long-distance pipelines, communication and power lines,</li> <li>— urban pipelines, urban communication and power lines,</li> <li>— ancillary urban works,</li> <li>— assembly and erection of prefabricated constructions on the site.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— service activities incidental to oil and gas extraction, see 11.20,</li> <li>— erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23,</li> <li>— building installation, see 45.3,</li> <li>— building completion, see 45.4,</li> <li>— architectural and engineering activities, see 74.20,</li> <li>— project management for construction, see 74.20.</li> </ul>	<p>45210000</p> <p>Except:</p> <p>— 45213316</p> <p>45220000</p> <p>45231000</p> <p>45232000</p>
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— erection of roofs,</li> <li>— roof covering,</li> <li>— waterproofing.</li> </ul>	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of highways, streets, roads, other vehicular and pedestrian ways,</li> <li>— construction of railways,</li> <li>— construction of airfield runways,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations,</li> <li>— painting of markings on road surfaces and car parks.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— preliminary earth moving, see 45.11.</li> </ul>	<p>45212212 and DA03</p> <p>45230000</p> <p>except:</p> <p>— 45231000</p> <p>— 45232000</p> <p>— 45234115</p>

NACE Rev. 1 <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.24	Construction of water projects	<p>This class includes</p> <ul style="list-style-type: none"> <li>— construction of:</li> <li>— waterways, harbour and river works, pleasure ports (marinas), locks, etc.,</li> <li>— dams and dykes,</li> <li>— dredging,</li> <li>— subsurface work.</li> </ul>	45240000
		45.25	Other construction work involving special trades	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment,</li> <li>— construction of foundations, including pile driving,</li> <li>— water well drilling and construction, shaft sinking,</li> <li>— erection of non-self-manufactured steel elements,</li> <li>— steel bending,</li> <li>— bricklaying and stone setting,</li> <li>— scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms,</li> <li>— erection of chimneys and industrial ovens.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— renting of scaffolds without erection and dismantling, see 71.32</li> </ul>	45250000 45262000
	45.3		Building installation		45300000



NACE Rev. 1 <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.31	Installation of electrical wiring and fittings	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <ul style="list-style-type: none"> <li>— electrical wiring and fittings,</li> <li>— telecommunications systems,</li> <li>— electrical heating systems,</li> <li>— residential antennas and aerials,</li> <li>— fire alarms,</li> <li>— burglar alarm systems,</li> <li>— lifts and escalators,</li> <li>— lightning conductors, etc.</li> </ul>	<p>45213316</p> <p>45310000</p> <p>Except:</p> <p>– 45316000</p>
		45.32	Insulation work activities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of thermal, sound or vibration insulation.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— waterproofing, see 45.22.</li> </ul>	45320000
		45.33	Plumbing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of:</li> <li>— plumbing and sanitary equipment,</li> <li>— gas fittings,</li> <li>— heating, ventilation, refrigeration or air-conditioning equipment and ducts,</li> <li>— sprinkler systems.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— installation of electrical heating systems, see 45.31.</li> </ul>	45330000
		45.34	Other building installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of illumination and signalling systems for roads, railways, airports and harbours,</li> <li>— installation in buildings or other construction projects of fittings and fixtures n.e.c.</li> </ul>	<p>45234115</p> <p>45316000</p> <p>45340000</p>
	45.4		Building completion		45400000

NACE Rev. 1 <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.41	Plastering	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.</li> </ul>	45410000
		45.42	Joinery installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials,</li> <li>— interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— laying of parquet and other wood floor coverings, see 45.43.</li> </ul>	45420000
		45.43	Floor and wall covering	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— laying, tiling, hanging or fitting in buildings or other construction projects of: <ul style="list-style-type: none"> <li>— ceramic, concrete or cut stone wall or floor tiles,</li> <li>— parquet and other wood floor coverings carpets and linoleum floor coverings,</li> <li>— including of rubber or plastic,</li> <li>— terrazzo, marble, granite or slate floor or wall coverings,</li> <li>— wallpaper.</li> </ul> </li> </ul>	45430000
		45.44	Painting and glazing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— interior and exterior painting of buildings,</li> <li>— painting of civil engineering structures,</li> <li>— installation of glass, mirrors, etc.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— installation of windows, see 45.42,</li> </ul>	45440000

NACE Rev. 1 <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.45	Other building completion	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of private swimming pools,</li> <li>— steam cleaning, sand blasting and similar activities for building exteriors,</li> <li>— other building completion and finishing work n.e.c.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— interior cleaning of buildings and other structures, see 74.70.</li> </ul>	45212212 and DA04  45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	<p>This class excludes:</p> <ul style="list-style-type: none"> <li>— renting of construction or demolition machinery and equipment without operators, see 71.32.</li> </ul>	45500000

<sup>(1)</sup> Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1).

## ANNEX III

**LIST OF PRODUCTS REFERRED TO IN ARTICLE 4(b) WITH REGARD TO CONTRACTS AWARDED BY CONTRACTING AUTHORITIES IN THE FIELD OF DEFENCE**

The only text applicable for the purposes of this Directive is that in Annex 1 point 3 of the GPA on which the following indicative list of products is based:

Chapter 25:	Salt, sulphur, earths and stone, plastering materials, lime and cement
Chapter 26:	Metallic ores, slag and ash
Chapter 27:	Mineral fuels, mineral oils and products of their distillation, bituminous substances, mineral waxes except: ex 27.10: special engine fuels
Chapter 28:	Inorganic chemicals, organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes except: ex 28.09: explosives ex 28.13: explosives ex 28.14: tear gas ex 28.28: explosives ex 28.32: explosives ex 28.39: explosives ex 28.50: toxic products ex 28.51: toxic products ex 28.54: explosives
Chapter 29:	Organic chemicals except: ex 29.03: explosives ex 29.04: explosives ex 29.07: explosives ex 29.08: explosives ex 29.11: explosives ex 29.12: explosives ex 29.13: toxic products ex 29.14: toxic products ex 29.15: toxic products ex 29.21: toxic products ex 29.22: toxic products ex 29.23: toxic products ex 29.26: explosives ex 29.27: toxic products ex 29.29: explosives

Chapter 30:	Pharmaceutical products
Chapter 31:	Fertilisers
Chapter 32:	Tanning and dyeing extracts, tannings and their derivatives, dyes, colours, paints and varnishes, putty, fillers and stoppings, inks
Chapter 33:	Essential oils and resinoids, perfumery, cosmetic or toilet preparations
Chapter 34:	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'
Chapter 35:	Albuminoidal substances, glues, enzymes
Chapter 37:	Photographic and cinematographic goods
Chapter 38:	Miscellaneous chemical products, except: ex 38.19: toxic products
Chapter 39:	Artificial resins and plastic materials, celluloses esters and ethers, articles thereof, except: ex 39.03: explosives
Chapter 40:	Rubber, synthetic rubber, factice, and articles thereof, except: ex 40.11: bullet-proof tyres
Chapter 41:	Raw hides and skins (other than fur skins) and leather
Chapter 42:	Articles of leather, saddlery and harness, travel goods, handbags and similar containers, articles of animal gut (other than silk-worm gut)
Chapter 43:	Fur skins and artificial fur, manufactures thereof
Chapter 44:	Wood and articles of wood, wood charcoal
Chapter 45:	Cork and articles of cork
Chapter 46:	Manufactures of straw of esparto and of other plaiting materials, basketware and wickerwork
Chapter 47:	Paper-making material
Chapter 48:	Paper and paperboard, articles of paper pulp, of paper or of paperboard
Chapter 49:	Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans
Chapter 65:	Headgear and parts thereof

Chapter 66:	Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
Chapter 67:	Prepared feathers and down and articles made of feathers or of down, artificial flowers, articles of human hair
Chapter 68:	Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
Chapter 69:	Ceramic products
Chapter 70:	Glass and glassware
Chapter 71:	Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
Chapter 73:	Iron and steel and articles thereof
Chapter 74:	Copper and articles thereof
Chapter 75:	Nickel and articles thereof
Chapter 76:	Aluminium and articles thereof
Chapter 77:	Magnesium and beryllium and articles thereof
Chapter 78:	Lead and articles thereof
Chapter 79:	Zinc and articles thereof
Chapter 80:	Tin and articles thereof
Chapter 81:	Other base metals employed in metallurgy and articles thereof
Chapter 82:	Tools, implements, cutlery, spoons and forks, of base metal, parts thereof, except: ex 82.05: tools ex 82.07: tools, parts
Chapter 83:	Miscellaneous articles of base metal
Chapter 84:	Boilers, machinery and mechanical appliances, parts thereof, except: ex 84.06: engines ex 84.08: other engines ex 84.45: machinery ex 84.53: automatic data-processing machines ex 84.55: parts of machines under heading No 84.53 ex 84.59: nuclear reactors



Chapter 85:	Electrical machinery and equipment, parts thereof, except: ex 85.13: telecommunication equipment ex 85.15: transmission apparatus
Chapter 86:	Railway and tramway locomotives, rolling-stock and parts thereof, railway and tramway tracks fixtures and fittings, traffic signalling equipment of all kinds (not electrically powered), except: ex 86.02: armoured locomotives, electric ex 86.03: other armoured locomotives ex 86.05: armoured wagons ex 86.06: repair wagons ex 86.07: wagons
Chapter 87:	Vehicles, other than railway or tramway rolling-stock, and parts thereof, except: ex 87.08: tanks and other armoured vehicles ex 87.01: tractors ex 87.02: military vehicles ex 87.03: breakdown lorries ex 87.09: motorcycles ex 87.14: trailers
Chapter 89:	Ships, boats and floating structures, except: ex 89.01A: warships
Chapter 90:	Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus, parts thereof, except: ex 90.05: binoculars ex 90.13: miscellaneous instruments, lasers ex 90.14: telemeters ex 90.28: electrical and electronic measuring instruments ex 90.11: microscopes ex 90.17: medical instruments ex 90.18: mechano-therapy appliances ex 90.19: orthopaedic appliances ex 90.20: X-ray apparatus
Chapter 91:	Manufacture of watches and clocks

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Chapter 92:	Musical instruments, sound recorders or reproducers, television image and sound recorders or reproducers, parts and accessories of such articles
Chapter 94:	Furniture and parts thereof, bedding, mattresses, mattress supports, cushions and similar stuffed furnishings, except: ex 94.01A: aircraft seats
Chapter 95:	Articles and manufactures of carving or moulding material
Chapter 96:	Brooms, brushes, powder-puffs and sieves
Chapter 98:	Miscellaneous manufactured articles

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## ANNEX IV

**REQUIREMENTS RELATING TO TOOLS AND DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS FOR PARTICIPATION AS WELL AS PLANS AND PROJECTS IN DESIGN CONTESTS**

Tools and devices for the electronic receipt of tenders, requests for participation as well as plans and projects in design contests must at least guarantee, through technical means and appropriate procedures, that:

- (a) the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely;
  - (b) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
  - (c) only authorised persons may set or change the dates for opening data received;
  - (d) during the different stages of the procurement procedure or of the design contest access to all data submitted, or to part thereof, must be possible only for authorised persons;
  - (e) only authorised persons must give access to data transmitted and only after the prescribed date;
  - (f) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith;
  - (g) where the access prohibitions or conditions referred to under points (b), (c), (d), (e) and (f) are infringed or there is an attempt to do so, it may be reasonably ensured that the infringements or attempts are clearly detectable.
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## ANNEX V

**INFORMATION TO BE INCLUDED IN NOTICES**

## PART A

**Information to be included in notices of the publication of a prior information notice on a buyer profile**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority and main activity exercised.
3. Where appropriate, indication that the contracting authority is a centralised purchasing body; or that any other form of joint procurement is or may be involved.
4. CPV codes.
5. Internet address of the 'buyer profile' (URL).
6. Date of dispatch of the notice of the publication of the prior information notice on the buyer profile.

## PART B

**Information to be included in prior information notices**

(as referred to in Article 48)

**I. Information to be included in all cases**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Email or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in the second and third subparagraph of Article 53(1), an indication of how the procurement documents can be accessed.

3. Type of contracting authority and main activity exercised.
4. Where appropriate, indication that the contracting authority is a centralised purchasing body or that any other form of joint procurement is or may be involved.
5. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.
6. NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts; where the contract is divided into lots, this information shall be provided for each lot.
7. Brief description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services.
8. Where this notice is not used as a means of calling for competition, estimated date(s) for publication of a contract notice or contract notices in respect of the contract(s) referred to in this prior information notice.
9. Date of dispatch of the notice.
10. Any other relevant information.
11. Indication whether the contract is covered by the GPA.

**II. Additional information to be supplied where the notice is used as a means of calling for competition (Article 48(2))**

1. A reference to the fact that interested economic operators shall advise the authority of their interest in the contract or contracts.
2. Type of award procedure (restricted procedures, whether or not involving a dynamic purchasing system, or competitive procedures with negotiation).
3. Where appropriate, indication whether:
  - (a) a framework agreement is involved,
  - (b) a dynamic purchasing system is involved.
4. As far as already known, time-frame for delivery or provision of products, works or services and duration of the contract.
5. As far as already known, conditions for participation, including:
  - (a) where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
  - (b) where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession,
  - (c) brief description of selection criteria.
6. As far as already known, brief description of criteria to be used for award of the contract.
7. As far as already known, estimated total magnitude for contract(s); where the contract is divided into lots, this information shall be provided for each lot.
8. Time limits for receipt of expressions of interest.
9. Address where expressions of interest shall be transmitted.
10. Language or languages authorised for the presentation of candidatures or tenders.
11. Where appropriate, indication whether:
  - (a) electronic submission of tenders or requests to participate will be required/accepted,
  - (b) electronic ordering will be used,
  - (c) electronic invoicing will be used,
  - (d) electronic payment will be accepted.
12. Information whether the contract is related to a project and /or programme financed by Union funds.
13. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning time limits for review procedures, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

## PART C

**Information to be included in contract notices**

(as referred to in Article 49)

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Email or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in the second and third subparagraphs of Article 53(1), an indication of how the procurement documents can be accessed.

3. Type of contracting authority and main activity exercised.
4. Where appropriate, indication that the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
5. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.
6. NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts; where the contract is divided into lots, this information shall be provided for each lot.
7. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
8. Estimated total order of magnitude of contract(s); where the contract is divided into lots, this information shall be provided for each lot.
9. Admission or prohibition of variants.
10. Time-frame for delivery or provision of supplies, works or services and, as far as possible, duration of the contract.
  - (a) In the case of a framework agreement, indication of the planned duration of the framework agreement, stating, where appropriate, the reasons for any duration exceeding four years; as far as possible, indication of value or order of magnitude and frequency of contracts to be awarded, number and, where appropriate, proposed maximum number of economic operators to participate.
  - (b) In the case of a dynamic purchasing system, indication of the planned duration of that system; as far as possible, indication of value or order of magnitude and frequency of contracts to be awarded.
11. Conditions for participation, including:
  - (a) where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
  - (b) where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession; reference to the relevant law, regulation or administrative provision,
  - (c) a list and brief description of criteria regarding the personal situation of economic operators that may lead to their exclusion and of selection criteria; minimum level(s) of standards possibly required; indication of required information (self-declarations, documentation).



12. Type of award procedure; where appropriate, reasons for use of an accelerated procedure (in open and restricted procedures and competitive procedures with negotiation);
13. Where appropriate, indication whether:
  - (a) a framework agreement is involved,
  - (b) a dynamic purchasing system is involved,
  - (c) an electronic auction is involved (in the event of open or restricted procedures or competitive procedures with negotiation).
14. Where the contract is to be subdivided into lots, indication of the possibility of tendering for one, for several or for all of the lots; indication of any possible limitation of the number of lots that may be awarded to any one tenderer. Where the contract is not subdivided into lots, indication of the reasons therefor, unless this information is provided in the individual report.
15. In the case of a restricted procedure, a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, where recourse is made to the option of reducing the number of candidates to be invited to submit tenders, to negotiate or to engage in dialogue: minimum and, where appropriate, proposed maximum number of candidates and objective criteria to be used to choose the candidates in question.
16. In the case of a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, indication, where appropriate, of recourse to a staged procedure in order gradually to reduce the number of tenders to be negotiated or solutions to be discussed.
17. Where appropriate, particular conditions to which performance of the contract is subject.
18. Criteria to be used for award of the contract or contracts. Except where the most economically advantageous offer is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting shall be indicated where they do not appear in the specifications or, in the event of a competitive dialogue, in the descriptive document.
19. Time limit for receipt of tenders (open procedures) or requests to participate (restricted procedures, competitive procedures with negotiation, dynamic purchasing systems, competitive dialogues, innovation partnerships).
20. Address to which tenders or requests to participate shall be transmitted.
21. In the case of open procedures:
  - (a) time frame during which the tenderer must maintain its tender,
  - (b) date, time and place for the opening of tenders,
  - (c) persons authorised to be present at such opening.
22. Language or languages in which tenders or requests to participate must be drawn up.
23. Where appropriate, indication whether:
  - (a) electronic submission of tenders or requests to participate will be accepted,
  - (b) electronic ordering will be used,
  - (c) electronic invoicing will be accepted,
  - (d) electronic payment will be used.

24. Information whether the contract is related to a project and/or programme financed by Union funds.
25. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning deadlines for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
26. Date(s) and reference(s) of previous publications in the *Official Journal of the European Union* relevant to the contract(s) advertised in this notice.
27. In the case of recurrent procurement, estimated timing for further notices to be published.
28. Date of dispatch of the notice.
29. Indication whether the contract is covered by the GPA.
30. Any other relevant information.

#### PART D

##### **Information to be included in contract award notices**

(as referred to in Article 50)

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority and main activity exercised.
3. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
4. CPV codes.
5. NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts.
6. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
7. Type of award procedure; in the case of negotiated procedure without prior publication, justification.
8. Where appropriate, indication whether:
  - (a) a framework agreement was involved,
  - (b) a dynamic purchasing system was involved.
9. Criteria referred to in Article 67 which were used for award of the contract or contracts. Where appropriate, indication whether the holding of an electronic auction was involved (in the event of open or restricted procedures or competitive procedures with negotiation).
10. Date of the conclusion of the contract(s) or of the framework agreement(s) following the decision to award or conclude it/them.
11. Number of tenders received with respect of each award, including:
  - (a) number of tenders received from economic operators which are small and medium enterprises,
  - (b) number of tenders received from another Member State or from a third country,
  - (c) number of tenders received electronically.

12. For each award, name, address including NUTS code, telephone, fax number, email address and internet address of the successful tenderer(s) including
  - (a) information whether the successful tenderer is small and medium enterprise,
  - (b) information whether the contract was awarded to a group of economic operators (joint venture, consortium or other).
13. Value of the successful tender (tenders) or the highest tender and lowest tender taken into consideration for the contract award or awards.
14. Where appropriate, for each award, value and proportion of contract likely to be subcontracted to third parties.
15. Information whether the contract is related to a project and /or programme financed by Union funds.
16. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
17. Date(s) and reference(s) of previous publications in the *Official Journal of the European Union* relevant to the contract(s) advertised in this notice.
18. Date of dispatch of the notice.
19. Any other relevant information.

#### PART E

##### **Information to be included in design contest notices**

(as referred to in Article 79(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Email or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in the second and third subparagraphs of Article 53(1), an indication of how the procurement documents can be accessed.
3. Type of contracting authority and main activity exercised.
4. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
5. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.
6. Description of the principal characteristics of the project.
7. Number and value of any prizes.
8. Type of design contest (open or restricted).
9. In the event of an open design contest, time limit for the submission of projects.
10. In the event of a restricted design contest:
  - (a) number of participants contemplated,
  - (b) names of the participants already selected, if any,
  - (c) criteria for the selection of participants,
  - (d) time limit for requests to participate.

11. Where appropriate, indication that the participation is restricted to a specified profession.
12. Criteria to be applied in the evaluation of the projects.
13. Indication whether the jury's decision is binding on the contracting authority.
14. Payments to be made to all participants, if any.
15. Indication whether any contracts following the design contest will or will not be awarded to the winner or winners of the design contest.
16. Date of dispatch of the notice.
17. Any other relevant information.

#### PART F

##### **Information to be included in notices of the results of a contest**

(as referred to in Article 79(2))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority and main activity exercised.
3. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
4. CPV codes.
5. Description of the principal characteristics of the project.
6. Value of the prizes.
7. Type of design contest (open or restricted).
8. Criteria which were applied in the evaluation of the projects.
9. Date of the jury decision.
10. Number of participants.
  - (a) Number of participants who are SMEs.
  - (b) Number of participants from abroad.
11. Name, address including NUTS code, telephone, fax number, email address and internet address of the winner(s) of the contest and indication whether the winner(s) are small and medium enterprises.
12. Information whether the design contest is related to a project or programme financed by Union funds.
13. Date(s) and reference(s) of previous publications in the *Official Journal of the European Union* relevant to the project(s) concerned by this notice.
14. Date of dispatch of the notice.
15. Any other relevant information.

## PART G

**Information to be included in notices of modifications of a contract during its term**

(as referred to in Article 72(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. CPV codes.
3. NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts;
4. Description of the procurement before and after the modification: nature and extent of the works, nature and quantity or value of supplies, nature and extent of services.
5. Where applicable, increase in price caused by the modification.
6. Description of the circumstances which have rendered necessary the modification.
7. Date of contract award decision.
8. Where applicable, the name, address including NUTS code, telephone, fax number, email address and internet address of the new economic operator or operators.
9. Information whether the contract is related to a project and /or programme financed by Union funds.
10. Name and address of the oversight body and the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
11. Date(s) and reference(s) of previous publications in the *Official Journal of the European Union* relevant to the contract(s) concerned by this notice.
12. Date of dispatch of the notice.
13. Any other relevant information.

## PART H

**Information to be included in contract notices concerning contracts for social and other specific services**

(as referred to in Article 75(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, email and internet address of the contracting authority.
2. NUTS code for the main location of works in the case of works or NUTS code for the main place of delivery or performance in the case of supplies and services.
3. Brief description of the contract in question including CPV codes.
4. Conditions for participation, including
  - where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
  - where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.
5. Time limit(s) for contacting the contracting authority in view of participation.
6. Brief description of the main features of the award procedure to be applied.

## PART I

**Information to be included in prior information notices for social and other specific services**

(as referred to in Article 75(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, email and internet address of the contracting authority.
2. Brief description of the contract in question including the estimated total value of the contract and CPV codes.
3. As far as already known:
  - (a) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services
  - (b) time-frame for delivery or provision of supplies, works or services and duration of the contract.
  - (c) conditions for participation, including:
    - where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
    - where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession,
  - (d) brief description of the main features of the award procedure to be applied.
4. A reference to the fact that interested economic operators shall advise the contracting authority of their interest in the contract or contracts and time limits for receipt of expressions of interest and address to which expressions of interest shall be transmitted.

## PART J

**Information to be included in contract award notices concerning contracts for social and other specific services**

(as referred to in Article 75(2))

1. Name, identification number (where provided for in national legislation), address including NUTS code, email and internet address of the contracting authority.
  2. Brief description of the contract in question including CPV codes.
  3. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services.
  4. Number of tenders received.
  5. Price or range of prices (maximum/minimum) paid.
  6. For each award, name, address including NUTS code, email address and internet address of the successful economic operator or operators.
  7. Any other relevant information.
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## ANNEX VI

**INFORMATION TO BE INCLUDED IN THE PROCUREMENT DOCUMENTS RELATING TO ELECTRONIC AUCTIONS**

(Article 35(4))

Where contracting authorities have decided to hold an electronic auction, the procurement documents shall include at least the following details:

- (a) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
  - (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
  - (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
  - (d) the relevant information concerning the electronic auction process;
  - (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
  - (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.
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## ANNEX VII

## DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive:

- (1) 'technical specification' means one of the following:
  - (a) in the case of public works contracts the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, so that it fulfils the use for which it is intended by the contracting authority; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
  - (b) in the case of public supply or service contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;
- (2) 'standard' means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is one of the following:
  - (a) 'international standard' means a standard adopted by an international standardisation organisation and made available to the general public,
  - (b) 'European standard' means a standard adopted by a European standardisation organisation and made available to the general public,
  - (c) 'national standard' means a standard adopted by a national standardisation organisation and made available to the general public;
- (3) 'European Technical Assessment' means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document, as defined in point 12 of Article 2 of Regulation (EU) No 305/2011 of the European Parliament and of the Council<sup>(1)</sup>;
- (4) 'common technical specification' means a technical specification in the field of ICT laid down in accordance with Articles 13 and 14 of Regulation (EU) 1025/2012;
- (5) 'technical reference' means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs.

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<sup>(1)</sup> Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

## ANNEX VIII

**FEATURES CONCERNING PUBLICATION****1. Publication of notices**

The notices referred to in Articles 48, 49, 50, 75 and 79 shall be sent by the contracting authorities to the Publications Office of the European Union and published in accordance with the following rules:

Notices referred to in Articles 48, 49, 50, 75 and 79 shall be published by the Publications Office of the European Union or by the contracting authorities in the event of a prior information notice published on a buyer profile in accordance with Article 48(1).

In addition, contracting authorities may publish this information on the Internet on a 'buyer profile' as referred to in point 2(b).

The Publications Office of the European Union shall give the contracting authority the confirmation referred to in Article 51(5), second subparagraph.

**2. Publication of complementary or additional information**

(a) Except where otherwise provided for in the second and third subparagraphs of Article 53(1), contracting authorities shall publish the procurement documents in their entirety on the Internet.

(b) The buyer profile may include prior information notices as referred to in Article 48(1), information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address. The buyer profile may also include prior information notices used as a means of calling for competition, which are published at national level pursuant to Article 52.

**3. Format and procedures for sending notices electronically**

The format and procedure for sending notices electronically as established by the Commission are made accessible at the Internet address '<http://simap.europa.eu>'.

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## ANNEX IX

**CONTENTS OF THE INVITATIONS TO SUBMIT A TENDER, TO PARTICIPATE IN THE DIALOGUE OR TO CONFIRM INTEREST PROVIDED FOR UNDER ARTICLE 54**

1. The invitation to submit a tender or to participate in the dialogue provided for under Article 54 must contain at least:

- (a) a reference to the call for competition published;
- (b) the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up;
- (c) in the case of competitive dialogue the date and the address set for the start of consultation and the language or languages used;
- (d) a reference to any possible adjoining documents to be submitted, either in support of verifiable declarations by the tenderer in accordance with Articles 59 and 60 and, where appropriate, Article 62 or to supplement the information referred to in those Articles, and under the conditions laid down in Articles 59, 60 and 62;
- (e) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, where they are not given in the contract notice, in the invitation to confirm interest, in the technical specifications or the descriptive document.

However, in the case of contracts awarded through a competitive dialogue or an innovation partnership, the information referred to in point (b) shall not appear in the invitation to participate in the dialogue or to negotiate but it shall appear in the invitation to submit a tender.

2. When a call for competition is made by means of a prior information notice, contracting authorities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

That invitation shall include at least the following information:

- (a) nature and quantity, including all options concerning complementary contracts and, where possible, the estimated time available for exercising these options for renewable contracts, the nature and quantity and, where possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;
  - (b) type of procedure: restricted procedure or competitive procedure with negotiation;
  - (c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;
  - (d) where electronic access cannot be offered, the address and closing date for the submission of requests for procurement documents and the language or languages in which they are to be drawn up;
  - (e) the address of the contracting authority which is to award the contract;
  - (f) economic and technical conditions, financial guarantees and information required from economic operators;
  - (g) the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of these; and
  - (h) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, where this information is not given in the prior information notice or the technical specifications or in the invitation to tender or to negotiate.
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## ANNEX X

**LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN  
ARTICLE 18(2)**

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
  - ILO Convention 98 on the Right to Organise and Collective Bargaining;
  - ILO Convention 29 on Forced Labour;
  - ILO Convention 105 on the Abolition of Forced Labour;
  - ILO Convention 138 on Minimum Age;
  - ILO Convention 111 on Discrimination (Employment and Occupation);
  - ILO Convention 100 on Equal Remuneration;
  - ILO Convention 182 on Worst Forms of Child Labour;
  - Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
  - Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
  - Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
  - Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.
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## ANNEX XI

REGISTERS <sup>(1)</sup>

The relevant professional and trade registers and corresponding declarations and certificates for each Member State are:

- in Belgium the 'Registre du Commerce'/Handelsregister', and, in the case of service contracts, the 'Ordres professionnels/Beroepsorden';
- in Bulgaria, the 'Търговски регистър';
- in the Czech Republic, the 'obchodní rejstřík';
- in Denmark, the 'Erhvervsstyrelsen';
- in Germany, the 'Handelsregister', the 'Handwerksrolle', and, in the case of service contracts, the 'Vereinsregister', the 'Partnerschaftsregister' and the 'Mitgliedsverzeichnisse der Berufskammern der Länder';
- in Estonia, the 'Registrite ja Infosüsteemide Keskus';
- in Ireland, the economic operator may be requested to provide a certificate from the Registrar of Companies or the Registrar of Friendly Societies or, where he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place under a given business name;
- in Greece, the 'Μητρώο Εργοληπτικών Επιχειρήσεων — ΜΕΕΠ' of the Ministry for Environment, Town and Country Planning and Public Works (Υ.Π.Ε.Χ.Ω.Δ.Ε) in respect of works contracts; the 'Βιοτεχνικό ή Εμπορικό ή Βιομηχανικό Επιμελητήριο' and the 'Μητρώο Κατασκευαστών Αμυντικού Υλικού' in the case of supplies contracts; in the case of service contracts, the service provider may be asked to provide a declaration on the exercise of the profession concerned made on oath before a notary; in the cases provided for by existing national legislation, for the provision of research services as referred to in Annex I, the professional register 'Μητρώο Μελετητών' and the 'Μητρώο Γραφείων Μελετών';
- in Spain, the 'Registro Oficial de Licitadores y Empresas Clasificadas del Estado' in respect of works and services contracts, and, in the case of supplies contracts, the 'Registro Mercantil' or, in the case of non-registered individuals, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question;
- in France, the 'Registre du commerce et des sociétés' and the 'Répertoire des métiers';
- in Croatia, the 'Sudski registar' and the 'Obrtni registar' or, in the case of some activities, a certificate stating that the person concerned is authorised to be engaged in the commercial activity or profession in question;
- in Italy, the 'Registro della Camera di commercio, industria, agricoltura e artigianato'; in the case of supplies and services contracts also the 'Registro delle commissioni provinciali per l'artigianato' or, in addition to the already mentioned registers, the 'Consiglio nazionale degli ordini professionali' in respect of services contracts; in respect of works or services contracts, the 'Albo nazionale dei gestori ambientali' in addition to the already mentioned registers;
- in Cyprus, the contractor may be requested to provide a certificate from the 'Council for the Registration and Audit of Civil Engineering and Building Contractors (Συμβούλιο Εγγραφής και Ελέγχου Εργοληπτών Οικοδομικών και Τεχνικών Έργων)' in accordance with the Registration and Audit of Civil Engineering and Building Contractors Law in respect of works contracts; in the case of supplies and services contracts the supplier or service provider may be requested to provide a certificate from the 'Registrar of Companies and Official Receiver' (Εφορος Εταιρειών και Επίσημος Παραλήπτης) or, where this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name;
- in Latvia, the 'Uzņēmumu reģistrs';
- in Lithuania, the 'Juridinių asmenų registras';
- in Luxembourg, the 'Registre aux firmes' and the 'Rôle de la Chambre des métiers';

<sup>(1)</sup> For the purposes of Article 58(2), 'professional or trade registers' means those listed in this Annex and, where changes have been made at national level, the registers which have replaced them.



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- in Hungary, the ‘Cégnyilvántartás’, the ‘egyéni vállalkozók jegyzői nyilvántartása’ and, in the case of service contracts, some ‘szakmai kamarák nyilvántartása’ or, in the case of some activities, a certificate stating that the person concerned is authorised to be engaged in the commercial activity or profession in question;
  - in Malta, the economic operator obtains his ‘numru ta’ registrazzjoni tat-Taxxa tal-Valur Miżjud (VAT) u n-numru tal-licenzja ta’ kummerċ’, and, in the case of a partnership or company, the relevant registration number as issued by the Malta Financial Services Authority;
  - in the Netherlands, the ‘Handelsregister’;
  - in Austria, the ‘Firmenbuch’, the ‘Gewerberegister’, the ‘Mitgliederverzeichnisse der Landeskammern’;
  - in Poland, the ‘Krajowy Rejestr Sądowy’;
  - in Portugal, the ‘Instituto da Construção e do Imobiliário’ (INCI) in respect of works contracts; the ‘Registro Nacional das Pessoas Colectivas’ in the case of supplies and services contracts;
  - in Romania, the ‘Registrul Comerțului’;
  - in Slovenia, the ‘sodni register’ and the ‘obrtni register’;
  - in Slovakia, the ‘Obchodný register’;
  - in Finland, the ‘Kaupparekisteri’/‘Handelsregistret’;
  - in Sweden, the ‘aktiebolags-, handels- eller föreningsregistren’;
  - in the United Kingdom, the economic operator may be requested to provide a certificate from the Registrar of Companies stating that he is certified as incorporated or registered or, where he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in a specific place under a given business name.
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## ANNEX XII

**MEANS OF PROOF OF SELECTION CRITERIA****Part I: Economic and financial standing**

Proof of the economic operator's economic and financial standing may, as a general rule, be furnished by one or more of the following references:

- (a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- (b) the presentation of financial statements or extracts from the financial statements, where publication of financial statements is required under the law of the country in which the economic operator is established;
- (c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.

**Part II: Technical ability**

Means providing evidence of the economic operators' technical abilities, as referred to in Article 58:

- (a) the following lists:
  - (i) a list of the works carried out over at the most the past five years, accompanied by certificates of satisfactory execution and outcome for the most important works; where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant works carried out more than five years before will be taken into account;
  - (ii) a list of the principal deliveries effected or the main services provided over at the most the past three years, with the sums, dates and recipients, whether public or private, involved. Where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant supplies or services delivered or performed more than three years before will be taken into account;
- (b) an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work;
- (c) a description of the technical facilities and measures used by the economic operator for ensuring quality and the undertaking's study and research facilities;
- (d) an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;
- (e) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the service provider and, where necessary, on the means of study and research which are available to it and the quality control measures it will operate;
- (f) the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff, provided that they are not evaluated as an award criterion;
- (g) an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;
- (h) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;
- (i) a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract;
- (j) an indication of the proportion of the contract which the economic operator intends possibly to subcontract;

- (k) with regard to the products to be supplied:
- (i) samples, descriptions or photographs, the authenticity of which must be certified where the contracting authority so requests;
  - (ii) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to technical specifications or standards.
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*ANNEX XIII***LIST OF UNION LEGAL ACTS REFERRED TO IN ARTICLE 68(3)**

Directive 2009/33/EC of the European Parliament and of the Council.

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## ANNEX XIV

## SERVICES REFERRED TO IN ARTICLE 74

CPV Code	Description
75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 [Supply services of domestic help personnel]; 79624000-4 [Supply services of nursing personnel] and 79625000-1 [Supply services of medical personnel] from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5; 98500000-8 [Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services]	Health, social and related services
85321000-5 and 85322000-2, 75000000-6 [Administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92700000-8 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3 [Fashion shows organisation services], 79956000-0 [Fair and exhibition organisation services]	Administrative social, educational, healthcare and cultural services
75300000-9	Compulsory social security services <sup>(1)</sup>
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services
98131000-0	Religious services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service] 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services 55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services	Hotel and restaurant services
79100000-5 to 79140000-7; 75231100-5;	Legal services, to the extent not excluded pursuant to point (d) of Article 10
75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3	Other administrative services and government services
75200000-8 to 75231000-4	Provision of services to the community

CPV Code	Description
75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services to the extent not excluded pursuant to point (h) of Article 10
79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1 [Graphology services], 79723000-8 [Waste analysis services]	Investigation and security services
98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]	International services
64000000-6 [Postal and telecommunications services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services], 64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]	Postal services
50116510-9 [Tyre-remoulding services], 71550000-8 [Blacksmith services]	Miscellaneous services
(1) These services are not covered by the present Directive where they are organised as non-economic services of general interest. Member States are free to organise the provision of compulsory social services or of other services as services of general interest or as non-economic services of general interest.	



## ANNEX XV

## CORRELATION TABLE

This Directive	Directive 2004/18/EC
Art. 1, par. 1, 2, 4, 5 and 6	—
Art. 1, par. 3	Art. 10
Art. 2, par 1, point (1)	Art. 1, par. 9, 1st subparagraph
Art. 2, par 1, point (2)	Art. 7, point (a)
Art. 2, par 1, point (3)	—
Art. 2, par 1, point (4) (a)	Art. 1, par. 9, 2nd subparagraph, point (a)
Art. 2, par 1, point (4) (b)	Art. 1, par. 9, 2nd subparagraph, point (b)
Art. 2, par 1, point (4) (c)	Art. 1, par. 9, 2nd subparagraph, point (c)
Art. 2, par 1, point (5)	Art. 1, par. 2, point (a)
Art. 2, par 1, point (6)	Art. 1, par. 2, point (b), 1st sentence
Art. 2 par 1, point (7)	Art. 1, par. 2, point (b), 2nd sentence
Art. 2, par 1, point (8)	Art. 1, par. 2, point (c)
Art. 2, par 1, point (9)	Art. 1, par. 2, point (d)
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**DIRECTIVE 2014/25/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 26 February 2014**

**on procurement by entities operating in the water, energy, transport and postal services sectors and  
repealing Directive 2004/17/EC**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 and Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) In the light of the results of the Commission staff working paper of 27 June 2011 entitled 'Evaluation Report — Impact and Effectiveness of EU Public Procurement Legislation', it appears appropriate to maintain rules on procurement by entities operating in the water, energy, transport and postal services sectors, since national authorities continue to be able to influence the behaviour of those entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies. Another reason to continue to regulate procurement in those sectors is the closed nature of the markets in which the entities in those sectors operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the service concerned.
- (2) In order to ensure the opening up to competition of procurement by entities operating in the water, energy, transport and postal services sectors, provisions should

be drawn up coordinating procurement procedures in respect of contracts above a certain value. Such coordination is needed to ensure the effect of the principles of the Treaty on the Functioning of the European Union (TFEU) and in particular the free movement of goods, the freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. In view of the nature of the sectors affected, the coordination of procurement procedures at the level of the Union should, while safeguarding the application of those principles, establish a framework for sound commercial practice and should allow maximum flexibility.

- (3) For procurement the value of which is lower than the thresholds triggering the application of the provisions of Union coordination, it is advisable to recall the case-law of the Court of Justice of the European Union regarding the proper application of the rules and principles of the TFEU.
- (4) Public procurement plays a key role in the Europe 2020 strategy, set out in the Commission Communication of 3 March 2010 entitled 'Europe 2020, a strategy for smart, sustainable and inclusive growth' ('Europe 2020 strategy for smart, sustainable and inclusive growth'), as one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council <sup>(4)</sup> and Directive 2004/18/EC of the European Parliament and of the Council <sup>(5)</sup> should be revised and modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises (SMEs) in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

<sup>(1)</sup> OJ C 191, 29.6.2012, p. 84.

<sup>(2)</sup> OJ C 391, 18.12.2012, p. 49.

<sup>(3)</sup> Position of the European Parliament of 15 January 2014 (not yet published in the Official Journal), and decision of the Council of 11 February 2014.

<sup>(4)</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1).

<sup>(5)</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

- (5) When implementing this Directive, the United Nations Convention on the Rights of Persons with Disabilities<sup>(1)</sup> should be taken into account, in particular in connection with the choice of means of communications, technical specifications, award criteria and contract performance conditions.
- (6) It is appropriate that the notion of procurement is as close as possible to that applied pursuant to Directive 2014/24/EU of the European Parliament of the Council<sup>(2)</sup>, having due regard to the specificities of the sectors covered by this Directive.
- (7) It should be recalled that nothing in this Directive obliges Member States to contract out or externalise the provision of services that they wish to provide themselves or to organise by means other than procurement within the meaning of this Directive. The provision of services based on laws, regulations or employment contracts, should not be covered. In some Member States, this might for example be the case for the provision of certain services to the community, such as the supply of drinking water.
- (8) It is also appropriate to recall that this Directive should not affect the social security legislation of the Member States. Nor should it deal with the liberalisation of services of general economic interest, reserved to public or private entities, or with the privatisation of public entities providing services.
- It should equally be recalled that Member States are free to organise the provision of compulsory social services or of other services such as postal services either as services of general economic interest or as non-economic services of general interest or as a mixture thereof. It is appropriate to clarify that non-economic services of general interest should not fall within the scope of this Directive.
- (9) It should finally be recalled that this Directive is without prejudice to the freedom of national, regional and local authorities to define, in conformity with Union law, services of general economic interest, their scope and the characteristics of the service to be provided, including any conditions regarding the quality of the service, in order to pursue their public policy objectives. This Directive should also be without prejudice to the
- power of national, regional and local authorities to provide, commission and finance services of general economic interest in accordance with Article 14 TFEU and Protocol No 26 on Services of General Interest annexed to the TFEU and to the Treaty on European Union (TEU). In addition, this Directive does not deal with the funding of services of general economic interest or with systems of aids granted by Member States, in particular in the social field, in accordance with Union rules on competition.
- (10) A contract should be deemed to be a works contract only if its subject-matter specifically covers the execution of activities listed in Annex I, even if the contract covers the provision of other services necessary for the execution of such activities. Service contracts, in particular in the sphere of property management services, may, in certain circumstances, include works. However, in so far as such works are incidental to the principal subject-matter of the contract, and are a possible consequence thereof or a complement thereto, the fact that such works are included in the contract does not justify the qualification of the service contract as a works contract.
- However, in view of the diversity of works contracts, contracting entities should be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. This Directive is not intended to prescribe either joint or separate contract awards.
- (11) The realisation of a work corresponding to the requirements specified by a contracting entity requires that the entity in question must have taken measures to define the type of the work or, at the very least, have had a decisive influence on its design. Whether the contractor realises all or part of the work by his own means or ensures their realisation by other means should not change the classification of the contract as a works contract, as long as the contractor assumes a direct or indirect obligation that is legally enforceable to ensure that the works will be realised.
- (12) The notion of 'contracting authorities' and in particular that of 'bodies governed by public law' have been examined repeatedly in the case-law of the Court of Justice of the European Union. To clarify that the scope of this Directive *ratione personae* should remain unaltered, it is appropriate to maintain the definitions on which the Court based itself and to incorporate a certain number of clarifications given by that case-law as a key to the understanding of the definitions themselves, without the intention of altering the understanding of the concept as elaborated by the case-law.

<sup>(1)</sup> Approved by Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L 23, 27.1.2010, p. 35).

<sup>(2)</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (see page 65 of this Official Journal).



For that purpose, it should be clarified that a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity should not be considered as being a 'body governed by public law' since the needs in the general interest, that it has been set up to meet or been given the task of meeting, can be deemed to have an industrial or commercial character. Similarly, the condition relating to the origin of the funding of the body considered, has also been examined in the case-law, which has clarified, *inter alia*, that being financed for 'the most part' means for more than half, and that such financing may include payments from users which are imposed, calculated and collected in accordance with rules of public law.

(13) In the case of mixed contracts, the applicable rules should be determined with respect to the main subject of the contract where the different parts which constitute the contract are objectively not separable. It should therefore be clarified how contracting entities should determine whether the different parts are separable or not. Such clarification should be based on the relevant case-law of the Court of Justice of the European Union. The determination should be carried out on a case-by-case basis, in which the expressed or presumed intentions of the contracting entity to regard the various aspects making up a mixed contract as indivisible should not be sufficient, but should be supported by objective evidence capable of justifying them and of establishing the need to conclude a single contract. Such a justified need to conclude a single contract could for instance be present in the case of the construction of one single building, a part of which is to be used directly by the contracting entity concerned and another part to be operated on a concessions basis, for instance to provide parking facilities to the public. It should be clarified that the need to conclude a single contract may be due to reasons both of a technical nature and of an economic nature.

(14) In the case of mixed contracts, which can be separated, contracting entities are always free to award separate contracts for the separate parts of the mixed contract, in which case the provisions applicable to each separate part should be determined exclusively with respect to the characteristics of that specific contract. On the other hand, where contracting entities choose to include other elements in the procurement, whatever their value and whatever the legal regime the added elements would otherwise have been subject to, the main principle should be that, where a contract should be awarded pursuant to the provisions of this Directive, if awarded on its own, then this Directive should continue to apply to the entire mixed contract.

(15) However, special provision should be made for mixed contracts involving defence or security aspects or parts not falling within the scope of the TFEU. In such cases, non-application of this Directive should be possible provided that the award of a single contract is justified for objective reasons and that the decision to award a single contract is not taken for the purpose of excluding contracts from the application of this Directive or of Directive 2009/81/EC of the European Parliament and of the Council<sup>(1)</sup>. It should be clarified that contracting entities should not be prevented from choosing to apply this Directive to certain mixed contracts instead of applying Directive 2009/81/EC.

(16) Furthermore, contracts might be awarded for the purpose of meeting the requirements of several activities, possibly subject to different legal regimes. It should be clarified that the legal regime applicable to a single contract intended to cover several activities should be subject to the rules applicable to the activity for which it is principally intended. Determination of the activity for which the contract is principally intended can be based on an analysis of the requirements which the specific contract must meet, carried out by the contracting entity for the purposes of estimating the contract value and drawing up the procurement documents. In certain cases, such as the purchase of a single piece of equipment for the pursuit of activities for which information allowing an estimation of the respective rates of use would be unavailable, it might be objectively impossible to determine for which activity the contract is principally intended. The rules applicable to such cases should be indicated.

(17) It should be clarified that the notion of 'economic operators' should be interpreted in a broad manner so as to include any persons and/or entities which offer the execution of works, the supply of products or the provision of services on the market, irrespective of the legal form under which they have chosen to operate. Thus, firms, branches, subsidiaries, partnerships, cooperative societies, limited companies, universities, public or private, and other forms of entities than natural persons should all fall within the notion of economic operator, whether or not they are 'legal persons' in all circumstances.

<sup>(1)</sup> Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).

- (18) It should be clarified that groups of economic operators, including where they have come together in the form of a temporary association, may participate in award procedures without it being necessary for them to take on a specific legal form. To the extent this is necessary, for instance where joint and several liability is required, a specific form may be required when such groups are awarded the contract.

It should also be clarified that contracting entities should be able to set out explicitly how groups of economic operators are to meet the criteria and requirements for qualification and qualitative selection set out in this Directive, which are required of economic operators participating on their own.

The performance of contracts by groups of economic operators may necessitate setting conditions which are not imposed on individual participants. Such conditions, which should be justified by objective reasons and be proportionate, could for instance include requiring the appointment of a joint representation or a lead partner for the purposes of the procurement procedure or requiring information on their constitution.

- (19) To ensure a real opening up of the market and a fair balance in the application of procurement rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 TFEU, that the rules governing the system of property ownership in Member States are not prejudiced.
- (20) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting authorities nor public undertakings within the meaning of this Directive are subject to its provisions only to the extent that they exercise one of the activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, in particular

pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive.

That legislation should include Directive 2009/73/EC of the European Parliament and of the Council <sup>(1)</sup>, Directive 2009/72/EC of the European Parliament and of the Council <sup>(2)</sup>, Directive 97/67/EC of the European Parliament and of the Council <sup>(3)</sup>, Directive 94/22/EC of the European Parliament and of the Council <sup>(4)</sup> and Regulation (EC) No 1370/2007 of the European Parliament and of the Council <sup>(5)</sup>.

It should also be clarified that that listing of legislation is not exhaustive and that rights in any form, including by way of acts of concession, which have been granted by means of other procedures based on objective criteria and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of defining the scope of this Directive *ratione personae*. The concept of exclusive rights should also be used in the context of determining whether use of a negotiated procedure without prior call for competition would be justified because the works, supplies or services can be supplied only by a particular economic operator because of the protection of certain exclusive rights.

However, bearing in mind the different *ratio legis* behind these provisions, it should be clarified that the notion of exclusive rights does not need to have the same meaning in the two contexts. It should thus be clarified that an entity, which has won the exclusive right to provide a given service in a given geographic area following a procedure based on objective criteria for which adequate transparency has been ensured would not, if a private body, be a contracting entity itself, but would, nevertheless, be the only entity that could provide the service concerned in that area.

<sup>(1)</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

<sup>(2)</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

<sup>(3)</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).

<sup>(4)</sup> Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospecting, exploration and production of hydrocarbons (OJ L 164, 30.6.1994, p. 3).

<sup>(5)</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

- (21) Certain entities are active in the fields of production, transmission or distribution of both heat and cooling. There may be some uncertainty as to which rules apply to respectively heat and cooling related activities. It should therefore be clarified that contracting authorities, public undertakings and private companies, which are active in the heating sector are subject to this Directive, however, in the case of private undertakings, on the additional condition of operating on the basis of special or exclusive rights. On the other hand, contracting authorities operating in the cooling field are subject to the rules of Directive 2014/24/EU, whereas public undertakings and private undertakings, irrespectively of whether these latter operate on the basis of special or exclusive rights, are not subject to procurement rules. It should finally be clarified that contracts awarded for the pursuit of both heating and cooling contracts should be examined under the provisions on contracts for the pursuit of several activities to determine which procurement rules, if any, will govern their award.
- (22) Before envisaging any change to the scope of this Directive and Directive 2014/24/EU for this sector, the situation of the cooling sector should be examined in order to obtain sufficient information, in particular in respect of the competitive situation, the degree of cross-border procurement and the views of stakeholders. Given that the application of Directive 2014/23/EU of the European Parliament and the Council <sup>(1)</sup> to this sector could have a substantial impact in terms of market-opening, it would be appropriate to conduct the examination when assessing the impact of Directive 2014/23/EU.
- (23) Without in any way extending the scope of this Directive, it should be clarified that production, wholesale and retail sale of electricity are covered when this Directive refers to the supply of electricity.
- (24) Contracting entities that operate in the drinking water sector may also deal with other activities relating to water, such as projects in the field of hydraulic engineering, irrigation, land drainage or the disposal and treatment of sewage. In such case, contracting entities should be able to apply the procurement procedures provided for in this Directive in respect of all their activities relating to water, whichever part of the water cycle is concerned. However, procurement rules of the type proposed for supplies of products are inappropriate for purchases of water, given the need to procure water from sources near the area in which it will be used.
- (25) It is appropriate to exclude procurement made for the purpose of exploring for oil and gas as that sector has consistently been found to be subject to such competitive pressure that the procurement discipline brought about by the Union procurement rules is no longer needed. As extraction of oil and gas continues to fall within the scope of this Directive, there might be a need to distinguish between exploration and extraction. In doing so, 'exploration' should be considered to include the activities that are undertaken in order to verify whether oil and gas is present in a given zone, and, if so, whether it is commercially exploitable, whereas 'extraction' should be considered as the 'production' of oil and gas. In line with established practice in merger cases, 'production' should be considered also to include 'development', i.e. the setting up of adequate infrastructure for future production (oil platforms, pipelines, terminals, etc.).
- (26) Contracting authorities should make use of all possible means at their disposal under national law in order to prevent distortions in procurement procedures stemming from conflicts of interest. This could include procedures in order to identify, prevent and remedy conflicts of interests.
- (27) Council Decision 94/800/EC <sup>(2)</sup>, approved in particular the World Trade Organisation Agreement on Government Procurement, (the 'GPA'). The aim of the GPA is to establish a multilateral framework of balanced rights and obligations relating to public contracts with a view to achieving the liberalisation and expansion of world trade. For contracts covered by Annexes 3, 4 and 5 and the General Notes to the European Union's Appendix I to the GPA, as well as by other relevant international agreements by which the Union is bound, contracting entities should fulfil the obligations under those agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.
- (28) The GPA applies to contracts above certain thresholds, set in the GPA and expressed as special drawing rights. The thresholds laid down by this Directive should be aligned to ensure that they correspond to the euro equivalents of the thresholds of the GPA. Provision should also

<sup>(1)</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (see page 1 of this Official Journal).

<sup>(2)</sup> Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) (OJ L 336, 23.12.1994, p. 1).

be made for periodic reviews of the thresholds expressed in euro so as to adjust them, by means of a purely mathematical operation, to possible variations in the value of the euro in relation to those special drawing rights.

Apart from those periodic mathematical adjustments, an increase in the thresholds set in the GPA should be explored during the next round of negotiations thereof.

To avoid a multiplication of thresholds it is furthermore appropriate, without prejudice to the international commitments of the Union, to continue to apply the same thresholds to all contracting entities, regardless of the sector in which they operate.

- (29) It should be clarified that, for the estimation of the value of a contract, all revenues have to be taken into account, whether received from the contracting entity or from third parties.

It should also be clarified that, for the purpose of estimating the thresholds, the notion of similar supplies should be understood as products which are intended for identical or similar uses, such as supplies of a range of foods or of various items of office furniture. Typically, an economic operator active in the field concerned would be likely to carry such supplies as part of his normal product range.

- (30) For the purposes of estimating the value of a given procurement, it should be clarified that it should be allowed to base the estimation of the value on a subdivision of the procurement only where this is justified by objective reasons. For instance, it could be justified to estimate contract values at the level of a separate operational unit of the contracting entity provided that the unit in question is independently responsible for its procurement. This can be assumed where the separate operational unit independently runs the procurement procedures and makes the buying decisions, has a separate budget line at its disposal for the procurements concerned, concludes the contract independently and finances it from a budget which it has at its disposal. A subdivision is not justified where the contracting entity merely organises a procurement in a decentralised way.
- (31) Being addressed to Member States, this Directive does not apply to procurement carried out by international organisations on their own behalf and for their own account. There is, however, a need to clarify to what extent this Directive should be applied to procurement governed by specific international rules.

- (32) It should be recalled that arbitration and conciliation services and other similar forms of alternative dispute resolution are usually provided by bodies or individuals which are agreed on, or selected, in a manner which cannot be governed by procurement rules. It should be clarified that this Directive does not apply to service contracts for the provision of such services, whatever their denomination under national law.

- (33) A certain number of legal services are rendered by service providers that are designated by a court or tribunal of a Member State, involve representation of clients in judicial proceedings by lawyers, must be provided by notaries or are connected with the exercise of official authority. Such legal services are usually provided by bodies or individuals designated or selected in a manner which cannot be governed by procurement rules, such as for instance the designation of State Attorneys in certain Member States. Those legal services should therefore be excluded from the scope of this Directive.

- (34) It is appropriate to specify that the notion of financial instruments as referred to in this Directive is given the same meaning as in other internal market legislation and, in view of the recent creation of the European Financial Stability Facility and the European Stability Mechanism, it should be stipulated that operations conducted with that Facility and that Mechanism should be excluded from the scope of this Directive. It should finally be clarified that loans, whether or not they are in connection with the issuing of securities or other financial instruments or other operations therewith, should be excluded from the scope of this Directive.

- (35) It should be recalled that Article 5(1) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council <sup>(1)</sup> explicitly provides that Directives 2004/17/EC and 2004/18/EC apply, respectively, to service contracts and public service contracts for public passenger transport services by bus or tramway, whereas Regulation (EC) No 1370/2007 applies to service concessions for public passenger transport by bus or tramway. It should furthermore be recalled that that Regulation continues to apply to public service contracts as well as to service concessions for public passenger transport by rail or metro. To clarify the relationship between this Directive and Regulation (EC) No 1370/2007, it should be provided explicitly that this Directive should not be applicable to service contracts for the provision of public passenger transport services by rail or metro, the award

<sup>(1)</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).



of which should continue to be subject to that Regulation. In so far as Regulation (EC) No 1370/2007 leaves it to national law to depart from the rules laid down in that Regulation, Member States should be able to continue to provide in their national law that service contracts for public passenger transport services by rail or metro are to be awarded by a contract award procedure following their general public procurement rules.

(36) This Directive should not apply to certain emergency services where they are performed by non-profit organisations or associations, since the particular nature of those organisations would be difficult to preserve if the service providers had to be chosen in accordance with the procedures set out in this Directive. However, the exclusion should not be extended beyond that strictly necessary. It should therefore be set out explicitly that patient transport ambulance services should not be excluded. In that context it is furthermore necessary to clarify that CPV Group 601 'Land Transport Services' does not cover ambulance services, to be found in CPV class 8514. It should therefore be clarified that services, which are covered by CPV code 85143000-3, consisting exclusively of patient transport ambulance services should be subject to the special regime set out for social and other specific services (the 'light regime'); Consequently, mixed contracts for the provision of ambulance services in general would also be subject to the light regime if the value of the patient transport ambulance services were greater than the value of other ambulance services.

(37) In certain cases, a contracting authority or an association of contracting authorities may be the sole source for a particular service, in respect of the provision of which it enjoys an exclusive right pursuant to laws, regulations or published administrative provisions which are compatible with the TFEU. It should be clarified that this Directive need not apply to the award of service contracts to that contracting authority or association.

(38) There is considerable legal uncertainty as to how far contracts concluded between contracting authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted differently between Member States and even between contracting authorities. As that case-law would be equally applicable to public authorities when operating in the sectors covered by this

directive, it is appropriate to ensure that the same rules apply and are interpreted in the same way in both this Directive and Directive 2014/24/EU.

(39) Many contracting entities are organised as an economic group which may comprise a series of separate undertakings; often each of these undertakings has a specialised role in the overall context of the economic group. It is therefore appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity the provision of such services, supply or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.

(40) It is also appropriate to clarify interaction of the provisions on cooperation between public authorities and the provisions on the award of contracts to affiliated undertakings or in the context of joint ventures.

(41) Undertakings should be considered to be affiliated where a direct or indirect dominant influence exists between the contracting entity and the undertaking concerned or where both are subject to the dominant influence of another undertaking; in this context, private participation should, per se, not be relevant. The verification of whether an undertaking is affiliated to a given contracting entity should be as easy to perform as possible. Consequently, and given that the possible existence of such direct or indirect dominant influence would already have had to be verified for the purposes of deciding whether the annual accounts of the undertakings and entities concerned should be consolidated, undertakings should be considered to be affiliated where their annual accounts are consolidated. However, Union rules on consolidated accounts are not applicable in a certain number of cases, for instance because of the size of the undertakings involved or because certain conditions relating to their legal form are not met. In

such cases, where Directive 2013/34/EU of the European Parliament and of the Council <sup>(1)</sup> is not applicable, it will be necessary to examine whether a direct or indirect dominant influence is present taking into account ownership, financial participation or the rules governing the undertakings.

- (42) The co-financing of research and development (R & D) programmes by industry sources should be encouraged. It should consequently be clarified that this Directive applies only where there is no such co-financing and where the outcome of the R & D activities go to the contracting entity concerned. This should not exclude the possibility that the service provider, having carried out those activities, could publish an account thereof as long as the contracting entity retains the exclusive right to use the outcome of the R & D in the conduct of its own affairs. However fictitious sharing of the results of the R & D or purely symbolic participation in the remuneration of the service provider should not prevent the application of this Directive.
- (43) This Directive should apply neither to contracts intended to permit the performance of an activity that is subject to this Directive nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to maintain the procedure, applicable to all sectors, or parts thereof, covered by this Directive that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Union law in this area. For the sake of legal certainty it should be clarified that all Decisions adopted prior to the entry into force of this Directive concerning the applicability of the corresponding provisions set out in Article 30 of Directive 2004/17/EC continue to be applicable.
- (44) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector of parts thereof concerned. This assessment is, however, limited by the short deadlines applicable and by the need to rely on the information available to the Commission – either from already available sources or from the information obtained in the context of the application pursuant to Article 35 — which can not be supplemented by more time consuming methods, including, in particular, public inquiries addressed to the economic operators concerned. The assessment of direct exposure to competition that can be carried out in the context of this Directive is consequently without prejudice to the full-fledged application of competition law.
- (45) Assessing whether a given sector, or parts thereof, is directly exposed to competition should be examined in respect of the specific area in which the activity, or the parts thereof concerned, are carried out by the relevant economic operators, the so-called ‘relevant geographical market’. As that notion is crucial for the assessment, it should be given an appropriate definition, based on existing notions in Union law. It should also be clarified that the relevant geographical market might not coincide with the territory of the Member State concerned; consequently, it should be possible to limit decisions concerning the applicability of the exemption to parts of the territory of the Member State concerned.
- (46) The implementation and application of appropriate Union legislation opening a given sector, or a part thereof, should be considered to provide sufficient grounds for assuming that there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. When updating that annex, the Commission should in particular take into account the possible adoption of measures entailing a genuine opening-up to competition of sectors other than those for which legislation is already referred to in that annex, such as that of national rail passenger transport.
- (47) Where free access to a given market is not presumed on the basis of the implementation of appropriate Union legislation, it should be demonstrated that, *de jure* and *de facto*, such access is free. Where a Member State extends the application of a Union legal act opening up a given sector to competition to situations falling outside the scope of that legal act, for instance by applying Directive 94/22/EC to the coal sector or Directive 2012/34/EU of the European Parliament and of the Council <sup>(2)</sup> to passenger service at the national level, that circumstance should be taken into account when assessing whether access to the sector concerned is free.

<sup>(1)</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

<sup>(2)</sup> Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).

(48) Independent national authorities, such as sectoral regulators or competition authorities, normally possess specialised know-how, information and knowledge that would be pertinent when assessing whether a given activity or parts thereof are directly exposed to competition on markets to which access is not limited. Requests for exemption should therefore where appropriate be accompanied by, or incorporate, a recent position on the competitive situation in the sector concerned, adopted by an independent national authority that is competent in relation to the activity concerned.

In the absence of a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned, more time would be needed for the assessment of a request for exemption. The periods within which the Commission must carry out its assessments of such requests should therefore be modified accordingly.

(49) The Commission should always be obliged to examine requests, which are in conformity with the detailed rules for the application of the procedures for establishing whether a given activity, or parts thereof, is directly exposed to competition on markets to which access is not restricted. It should, however, also be clarified that the complexity of such requests may be such that it might not always be possible to ensure the adoption, within the applicable deadlines, of implementing acts establishing whether a given activity or parts thereof is directly exposed to competition on markets to which access is not restricted.

(50) It should be clarified that the Commission should have the possibility to require Member States or contracting entities to provide or to supplement or clarify information. The Commission should set an appropriate time limit for so doing which, having due regard also to the need to meet the deadlines set for the Commission's adoption of its implementing act, should take into account factors such as the complexity of the information requested and whether the information is readily accessible.

(51) Employment and occupation contribute to integration in society and are key elements in guaranteeing equal opportunities for all. In this context, sheltered workshops can play a significant role. The same is true for other social businesses whose main aim is to support

the social and professional integration or reintegration of disabled and disadvantaged persons, such as the unemployed, members of disadvantaged minorities or otherwise socially marginalised groups. However, such workshops or businesses might not be able to obtain contracts under normal conditions of competition. Consequently, it is appropriate to provide that Member States should be able to reserve the right to participate in award procedures for public contracts or for certain lots thereof to such workshops or businesses or reserve performance of contracts to the context of sheltered employment programmes.

(52) With a view to an appropriate integration of environmental, social and labour requirements into public procurement procedures it is of particular importance that Member States and contracting entities take relevant measures to ensure compliance with obligations in the fields of environmental, social and labour law that apply at the place where the works are executed or the services provided and result from laws, regulations, decrees and decisions, at both national and Union level, as well as from collective agreements, provided that such rules, and their application, comply with Union law. Equally, obligations stemming from international agreements ratified by all Member States and listed in Annex XIV should apply during contract performance. However, this should in no way prevent the application of terms and conditions of employment which are more favourable to workers.

The relevant measures should be applied in conformity with the basic principles of Union law, in particular with a view to ensuring equal treatment. Such relevant measures should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council <sup>(1)</sup> and in a way that ensures equal treatment and does not discriminate directly or indirectly against economic operators and workers from other Member States.

(53) Services should be considered to be provided at the place at which the characteristic performances are executed. When services are provided at a distance, for example services provided by call centres, those services should be considered to be provided at the place where the services are executed, irrespective of the places and Member States to which the services are directed.

<sup>(1)</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).



- (54) The relevant obligations could be mirrored in contract clauses. It should also be possible to include clauses ensuring compliance with collective agreements in compliance with Union law in public contracts. Non-compliance with the relevant obligations could be considered to be grave misconduct on the part of the economic operator concerned, liable to exclusion of that economic operator from the procedure for the award of a public contract.
- (55) Control of the observance of the environmental, social and labour law provisions should be performed at the relevant stages of the procurement procedure, when applying the general principles governing the choice of participants and the award of contracts, when applying the exclusion criteria and when applying the provisions concerning abnormally low tenders. The necessary verification for that purpose should be carried out in accordance with the relevant provisions of this Directive, in particular those governing means of proof and self-declarations.
- (56) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public policy, public morality, public security, health, human and animal life, the preservation of plant life or other environmental measures, in particular with a view to sustainable development, provided that those measures are in conformity with the TFEU.
- (57) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Contracting entities should make the best strategic use of public procurement to spur innovation. Buying innovative products, works and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth.
- (58) Because of the importance of innovation, contracting entities should be encouraged to allow variants as often as possible. The attention of those entities should consequently be drawn to the need of to define the minimum requirements to be met by variants before indicating that variants may be submitted.
- (59) Where a need for the development of an innovative product or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be met by solutions already available on the market, contracting entities should have access to a specific procurement procedure in respect of contracts falling within the scope of this Directive. This specific procedure should allow contracting entities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided that such innovative product or service or innovative works can be delivered to agreed performance levels and costs, without the need for a separate procurement procedure for the purchase. The innovation partnership should be based on the procedural rules that apply to negotiated procedures with prior call for competition and contracts should be awarded on the sole basis of the best price-quality ratio, which is most suitable for comparing tenders for innovative solutions. Whether in respect of very large projects or smaller innovative projects, the innovation partnership should be structured in such a way that it can provide the necessary 'market-pull' incentivising the development of an innovative solution without foreclosing the market. Contracting entities should therefore not use innovation partnerships in such a way as to prevent, restrict or distort competition. In certain cases, setting up innovation partnerships with several partners could contribute to avoiding such effects.
- (60) Experience has shown that the competitive dialogue, which is provided for under Directive 2014/24/EU, has been of use in cases where contracting authorities are unable to define the means of satisfying their needs or of assessing what the market can offer in terms of technical, financial or legal solutions. This situation may arise in particular with innovative projects, the implementation of major integrated transport infrastructure projects, large

It should be recalled that a series of procurement models have been outlined in the Commission's communication of 14 December 2007 entitled 'Pre-commercial procurement: Driving innovation to ensure sustainable high quality public services in Europe', which deals

computer networks or projects involving complex and structured financing. Member States should therefore be allowed to place this tool at the disposal of contracting entities. Where relevant, contracting authorities should be encouraged to appoint a project leader to ensure good cooperation between the economic operators and the contracting authority during the award procedure.

- (61) In view of the detrimental effects on competition, negotiated procedures without a prior call for competition should be used only in very exceptional circumstances. This exception should be limited to cases where publication is either not possible, for reasons of extreme urgency brought about by events unforeseeable for and not attributable to the contracting entity, or where it is clear from the outset that publication would not trigger more competition or better procurement outcomes, not least because there is objectively only one economic operator that can perform the contract. This is the case for works of art, where the identity of the artist intrinsically determines the unique character and value of the art object itself. Exclusivity can also arise from other reasons, but only situations of objective exclusivity can justify the use of the negotiated procedure without a prior call for competition, where the situation of exclusivity has not been created by the contracting entity itself with a view to the future procurement procedure.

Contracting entities relying on this exception should provide reasons why there are no reasonable alternatives or substitutes such as using alternative distribution channels including outside the Member State of the contracting entity or considering functionally comparable works, supplies and services.

Where the situation of exclusivity is due to technical reasons, they should be rigorously defined and justified on a case-by-case basis. They could include, for instance, near technical impossibility for another economic operator to achieve the required performance or the necessity to use specific know-how, tools or means which only one economic operator has at its disposal. Technical reasons may also derive from specific interoperability requirements which must be fulfilled in order to ensure the functioning of the works, supplies or services to be procured.

Finally, a procurement procedure is not useful where supplies are purchased directly on a commodity market, including trading platforms for commodities such as agricultural products, raw materials and energy exchanges, where the regulated and supervised multi-lateral trading structure naturally guarantees market prices.

- (62) It should be clarified that the provisions concerning protection of confidential information do not in any way prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes.

- (63) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures, as they greatly enhance the possibilities of economic operators to participate in procurement procedures across the internal market. For that purpose, transmission of notices in electronic form, electronic availability of the procurement documents and – after a transition period of 30 months – fully electronic communication, meaning communication by electronic means at all stages of the procedure, including the transmission of requests for participation and, in particular, the transmission of the tenders (electronic submission) should be made mandatory. Member States and contracting entities should remain free to go further if they so wish. It should also be clarified that mandatory use of electronic means of communications pursuant to this Directive should not, however, oblige contracting entities to carry out electronic processing of tenders, nor should it mandate electronic evaluation or automatic processing. Furthermore, pursuant to this Directive, no elements of the public procurement process after the award of the contract should be covered by the obligation to use electronic means of communication, nor should internal communication within the contracting entity.

- (64) Contracting entities should, except in certain specific situations, use electronic means of communication which are non-discriminatory, generally available and interoperable with the information and communication technology (ICT) products in general use and which do not restrict economic operators' access to the procurement procedure. The use of such means of communication should also take accessibility for persons with disabilities into due account. It should be clarified that the obligation to use electronic means at all stages of the procurement procedure would be appropriate neither where the use of electronic means would require specialised tools or file formats that are not generally available nor where the communications concerned could only be handled using specialised office equipment. Contracting entities should therefore not be obliged to require the use of electronic means of communication in the submission process in certain cases, which should be listed exhaustively. This Directive stipulates that such cases should include situations which would require the use of specialised office equipment not generally available

to the contracting entities such as wide-format printers. In some procurement procedures the procurement documents might require the submission of a physical or scale model which cannot be submitted to the contracting entities using electronic means. In such situations, the model should be transmitted to the contracting entities by post or other suitable carrier.

It should however be clarified that the use of other means of communication should be limited to those elements of the tender for which electronic means of communications are not required.

It is appropriate to clarify that, where necessary for technical reasons, contracting entities should be able to set a maximum limit to the size of the files that may be submitted.

- (65) There can be exceptional cases in which contracting entities should be allowed not to use electronic means of communication where not using such means of communication is necessary in order to protect the particularly sensitive nature of information. It should be clarified that, where the use of electronic tools which are not generally available can offer the necessary level of protection, such electronic tools should be used. Such might for instance be the case where contracting entities require the use of dedicated secure means of communication to which they offer access.
- (66) Differing technical formats or processes and messaging standards could potentially create obstacles to interoperability, not only within each Member State but also and especially between the Member States. For example, in order to participate in a procurement procedure in which use of electronic catalogues, which is a format for the presentation and organisation of information in a manner that is common to all the participating bidders and which lends itself to electronic treatment, is permitted or required, economic operators would, in the absence of standardisation, be required to customise their own catalogues to each procurement procedure, which would entail providing very similar information in different formats depending on the specifications of the contracting entities concerned. Standardising the catalogue formats would thus improve the level of interoperability, enhance efficiency and would also reduce the effort required of economic operators.
- (67) When considering whether there is a need to ensure or enhance interoperability between differing technical formats or process and messaging standards by rendering the use of specific standards mandatory, and if so which standards to impose, the Commission should take the utmost account of the opinions of the stakeholders concerned. It should also consider the extent to which a given standard has already been used in practice by economic operators and contracting entities and how well it has worked. Before making the use of any particular standard mandatory, the Commission should also carefully consider the costs that this might entail, in particular in terms of adaptations to existing e-procurement solutions, including infrastructure, processes or software.
- Where the standards concerned are not developed by an international, European or national standardisation organisation, they should meet the requirements applicable to ICT standards as set out in Regulation (EU) No 1025/2012 of the European Parliament and of the Council <sup>(1)</sup>.
- (68) Before specifying the level of security required for the electronic means of communications to be used at the various stages of the award procedure, Member States and contracting entities should evaluate the proportionality between on the one hand the requirements aimed at ensuring correct and reliable identification of the senders of the communication concerned as well as the integrity of its content and on the other hand the risk of problems such as in situations where messages are sent by a different sender than that indicated. All other things being equal, this would mean that the level of security required of, for instance, an e-mail requesting confirmation of the exact address at which an information meeting will be held would not need to be set at the same level as for the tender itself which constitutes a binding offer for the economic operator. Similarly, the evaluation of proportionality could result in lower levels of security being required in connection with the resubmission of electronic catalogues or the submission of tenders in the context of mini-competitions under a framework agreement or the access to procurement documents.

<sup>(1)</sup> Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

- (69) While essential elements of a procurement procedure such as the procurement documents, requests for participation, confirmation of interest and tenders should always be made in writing, oral communication with economic operators should otherwise continue to be possible, provided that its content is documented to a sufficient degree. This is necessary to ensure an adequate level of transparency that allows for a verification of whether the principle of equal treatment has been adhered to. In particular, it is essential that oral communications with tenderers which could have an impact on the content and assessment of the tenders be documented to a sufficient extent and by appropriate means, such as written or audio records or summaries of the main elements of the communication.
- (70) There is a strong trend emerging across Union public procurement markets towards the aggregation of demand by public purchasers, with a view to obtaining economies of scale, including lower prices and transaction costs, and to improving and professionalising procurement management. This can be achieved by concentrating purchases either by the number of contracting entities involved or by volume and value over time. However, the aggregation and centralisation of purchases should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, as well as market access opportunities for SMEs.
- (71) Recourse to framework agreements can be an efficient procurement technique throughout the Union; however, there is a need to enhance competition by improving the transparency of and access to procurement carried out by means of framework agreements. It is therefore appropriate to revise the provisions applicable to those agreements, in particular by providing that the award of specific contracts based on such agreements take place on the basis of objective rules and criteria, for instance following a mini-competition, and by limiting the duration of framework agreements.
- (72) It should also be clarified, that while contracts based on a framework agreement are to be awarded before the end of the term of the framework agreement itself, the duration of the individual contracts based on a framework agreement does not need to coincide with the duration of that framework agreement, but might, as appropriate, be shorter or longer. In particular, it should be allowed to set the length of individual contracts based on a framework agreement taking account of factors such as the time needed for their performance; where maintenance of equipment with an expected useful life of more than eight years is included or where extensive training of staff to perform the contract is needed.
- It should also be clarified that there might be cases in which the length of the framework agreements themselves should be allowed to be longer than eight years. Such cases, which should be duly justified, in particular by the subject of the framework agreement, might for instance arise where economic operators need to dispose of equipment the amortisation period of which is longer than eight years and which must be available at any time over the entire duration of the framework agreement. In the particular context of utilities providing essential services to the public there may be a need in certain cases for both longer framework agreements and a longer duration of individual contracts; for instance in the case of framework agreements aimed at ensuring ordinary and extraordinary maintenance of networks which may require expensive equipment to be operated by personnel having received highly specialised ad-hoc training aimed at ensuring continuation of the services and minimisation of possible disruptions.
- (73) In view of the experience acquired, there is also a need to adjust the rules governing dynamic purchasing systems to enable contracting entities to take full advantage of the possibilities afforded by that instrument. The systems need to be simplified, in particular they should be operated in the form of a restricted procedure, hence eliminating the need for indicative tenders, which have been identified as one of the major burdens associated with dynamic purchasing systems. Thus any economic operator who submits a request to participate and meets the selection criteria should be allowed to take part in procurement procedures carried out through the dynamic purchasing system over its period of validity.
- This purchasing technique allows the contracting entity to have a particularly broad range of tenders and hence to ensure optimum use of funds through broad competition in respect of commonly used or off-the-shelf products, works or services which are generally available on the market.
- (74) The examination of those requests to participate should normally be performed within a maximum of 10 working days, given that the evaluation of the selection criteria will take place on the basis of the requirements for documentation set out by the contracting entities, where applicable in accordance with the simplified provisions of Directive 2014/24/EU. However, when a dynamic purchasing system is first set up, contracting entities might, in response to the first publication of the contract notice or the invitation to confirm interest, be faced with such a large number of requests for participation that they would need more time to examine the requests. That should be admissible, provided that no specific procurement is launched before all the requests have been examined.



Contracting entities should be free to organise the way in which they intend to examine the requests for participation, for instance by deciding to conduct such examinations only once a week, provided the deadlines for the examination of each request of admission are observed. Contracting entities using the exclusion or selection criteria provided for under Directive 2014/24/EU in the context of a dynamic purchasing system, should apply the relevant provisions of that Directive in the same way as contracting authorities operating a dynamic purchasing system pursuant to Directive 2014/24/EU.

- (75) In order to further the possibilities of SMEs to participate in a large-scale dynamic purchasing system, for instance one that is operated by a central purchasing body, the contracting authority or entity concerned should be able to articulate the system in objectively defined categories of products, works or services. Such categories should be defined by reference to objective factors which might for instance include the maximum allowable size of specific contracts to be awarded within the category concerned or a specific geographic area in which subsequent specific contracts are to be performed. Where a dynamic purchasing system is divided into categories, the contracting authority or entity should apply selection criteria that are proportionate to the characteristics of the category concerned.
- (76) It should be clarified that electronic auctions are typically not suitable for certain works contracts and certain service contracts having as their subject-matter intellectual performances, such as the design of works, because only the elements suitable for automatic evaluation by electronic means, without any intervention or appreciation by the contracting entity, namely elements which are quantifiable so that they can be expressed in figures or percentages, may be the object of electronic auctions.

It should, however, also be clarified that electronic auctions may be used in a procurement procedure for the purchase of a specific intellectual property right. It is also appropriate to recall that while contracting entities remain free to apply selection criteria enabling them to reduce the number of candidates or tenderers as long as the auction has not yet started, no further reduction of the number of tenderers participating in the electronic auction should be allowed after the auction has started.

- (77) New electronic purchasing techniques are constantly being developed, such as electronic catalogues. Electronic catalogues are a format for the presentation and organisation of information in a manner that is common to all the participating bidders and which lends itself to electronic treatment. An example could be tenders presented in the form of a spreadsheet. Contracting entities should be able to require electronic catalogues in all available procedures where the use of electronic means of communication is required. Electronic catalogues help to increase competition and streamline public purchasing, particularly in terms of savings in time and money. Certain rules should however be laid down to ensure that such use complies with this Directive with and the principles of equal treatment, non-discrimination and transparency. Thus, the use of electronic catalogues for the presentation of tenders should not entail the possibility of economic operators limiting themselves to the transmission of their general catalogue. Economic operators should still have to adapt their general catalogues in view of the specific procurement procedure. Such adaptation ensures that the catalogue that is transmitted in response to a given procurement procedure contains only products, works or services that the economic operators estimated — after an active examination — correspond to the requirements of the contracting entity. In so doing, economic operators should be allowed to copy information contained in their general catalogue, but they should not be allowed to submit the general catalogue as such. Furthermore, where sufficient guarantees are offered in respect of ensuring traceability, equal treatment and predictability, contracting entities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues, in particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used.

Where tenders have been generated by the contracting entity, the economic operator concerned should be given the possibility to verify that the tender thus constituted by the contracting entity does not contain any material errors. Where material errors are present, the economic operator should not be bound by the tender generated by the contracting entity unless the error is corrected.

In line with the requirements of the rules for electronic means of communication, contracting entities should avoid unjustified obstacles to economic operators' access to procurement procedures in which tenders are to be presented in the form of electronic catalogues and which guarantee compliance with the general principles of non-discrimination and equal treatment.

(78) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions, managing dynamic purchasing systems or awarding contracts/framework agreements for other contracting authorities or contracting entities, with or without remuneration. The contracting entities for whom a framework agreement is concluded should be able to use it for individual or repetitive purchases. In view of the large volumes purchased, such techniques may help increase competition and should help to professionalise public purchasing. Provision should therefore be made for a Union definition of central purchasing bodies dedicated to contracting entities and it should be clarified that central purchasing bodies operate in two different manners.

Firstly, they should be able to act as wholesalers by buying, stocking and reselling or, secondly, they should be able to act as intermediaries by awarding contracts, operating dynamic purchasing systems or concluding framework agreements to be used by contracting entities.

Such an intermediary role might in some cases be carried out by conducting the relevant award procedures autonomously, without detailed instructions from the contracting entities concerned; in other cases, by conducting the relevant award procedures under the instructions of the contracting entities concerned, on their behalf and for their account.

Furthermore, rules should be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, also in the case of remedies, as between the central purchasing body and the contracting entities procuring from or through it. Where the central purchasing body has sole responsibility for the conduct of the procurement procedures, it should also be solely and directly responsible for the legality of the procedures. Where a contracting entity conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.

(79) Contracting entities should be allowed to award a service contract for the provision of centralised purchasing activities to a central purchasing body without applying the procedures provided for in this Directive. It should

also be permitted for such service contracts to include the provision of ancillary purchasing activities. Such service contracts for the provision of ancillary purchasing activities should, when performed otherwise than by a central purchasing body in connection with its provision of central purchasing activities to the contracting entity concerned, be awarded in accordance with this Directive. It should also be recalled that this Directive should not apply where centralised or ancillary purchasing activities are provided other than through a contract for pecuniary interest which constitutes procurement within the meaning of this Directive.

(80) Strengthening the provisions concerning central purchasing bodies should in no way prevent the current practices of occasional joint procurement, i.e. less institutionalised and systematic common purchasing or the established practice of having recourse to service providers that prepare and manage procurement procedures on behalf and for the account of a contracting entity and under its instructions. On the contrary, certain features of joint procurement should be clarified because of the important role joint procurement may play, not least in connection with innovative projects.

Joint procurement can take many different forms, ranging from coordinated procurement through the preparation of common technical specifications for works, supplies or services that will be procured by a number of contracting entities, each conducting a separate procurement procedure, to situations where the contracting entities concerned jointly conduct one procurement procedure either by acting together or by entrusting one contracting entity with the management of the procurement procedure on behalf of all contracting entities.

Where several contracting entities are jointly conducting a procurement procedure, they should be jointly responsible for fulfilling their obligations under this Directive. However, where only parts of the procurement procedure are jointly conducted by the contracting entities, joint responsibility should apply only to those parts of the procedure that have been carried out together. Each contracting entity should be solely responsible in respect of procedures or parts of procedures it conducts on its own, such as the awarding of a contract, the conclusion of a framework agreement, the operation of a dynamic purchasing system or the reopening of competition under a framework agreement.

(81) Electronic means of communication are particularly well suited to supporting centralised purchasing practices and tools because of the possibility they offer to re-use and automatically process data and to minimise information and transaction costs. The use of such electronic means of communication should therefore, as a first step, be rendered compulsory for central purchasing bodies, while also facilitating converging practices across the Union. This should be followed by a general obligation to use electronic means of communication in all procurement procedures after a transition period of 30 months.

(82) Joint awarding of contracts by contracting entities from different Member States currently encounters specific legal difficulties concerning conflicts of national laws. Despite the fact that Directive 2004/17/EC implicitly allowed for cross-border joint public procurement, contracting entities are still facing considerable legal and practical difficulties in purchasing from central purchasing bodies in other Member States or jointly awarding contracts. In order to allow contracting entities to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting entity, those difficulties should be remedied. Therefore new rules on cross-border joint procurement should be established in order to facilitate cooperation between contracting entities and enhancing the benefits of the internal market by creating cross-border business opportunities for suppliers and service providers. Those rules should determine the conditions for cross-border utilisation of central purchasing bodies and designate the applicable public procurement legislation, including the applicable legislation on remedies, in cases of cross-border joint procedures, complementing the conflict of law rules of Regulation (EC) No 593/2008 of the European Parliament and the Council<sup>(1)</sup>. In addition, contracting entities from different Member States should be able to set up joint legal entities established under national or Union law. Specific rules should be established for such form of joint procurement.

However, contracting entities should not make use of the possibilities for cross-border joint procurement for the purpose of circumventing mandatory public law rules, in conformity with Union law, which are applicable to them in the Member State where they are located. Such rules might include, for example, provisions on transparency and access to documents or specific requirements for the traceability of sensitive supplies.

(83) The technical specifications drawn up by purchasers need to allow public procurement to be open to competition as well as to achieve objectives of sustainability. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions, standards and technical specifications in the marketplace, including those drawn up on the basis of performance criteria linked to the life cycle and the sustainability of the production process of the works, supplies and services.

Consequently, technical specifications should be drafted in such a way as to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows that objective to be achieved in the best way possible. Functional and performance-related requirements are also appropriate means to favour innovation in public procurement and should be used as widely as possible. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety should be considered by the contracting entities. It should be the responsibility of the economic operator to prove equivalence with the requested label.

To prove equivalence, it should be possible to require tenderers to provide third-party verified evidence. However, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits provided that the economic operator concerned thereby proves that the works, supplies or services meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

(84) For all procurement intended for use by persons, whether the general public or the staff of the contracting entity, it is necessary for contracting entities to lay down technical specifications so as to take into account accessibility criteria for people with disabilities, or design for all users, except in duly justified cases.

<sup>(1)</sup> Regulation (EC) No 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).



(85) Contracting entities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-) national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and that the label is accessible and available to all interested parties. It should be clarified that stakeholders could be public or private bodies, businesses or any sort of non-governmental organisations (an organisation that is not a part of a government and is not a conventional for-profit businesses).

It should equally be clarified that specific national or government bodies or organisations can be involved in setting up label requirements that may be used in connection with procurement by public authorities without those bodies or organisations losing their status as third parties. References to labels should not have the effect of restricting innovation.

(86) When drawing up technical specifications, contracting entities should take into account requirements ensuing from Union law in the field of data protection law, in particular in relation to the design of the processing of personal data (data protection by design).

(87) Public procurement should be adapted to the needs of SMEs. Contracting entities should be encouraged to make use of the Code of Best Practices set out in the Commission Staff Working Document of 25 June 2008 entitled 'European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts, providing guidance on how they may apply the public procurement framework in a way that facilitates SME participation. To that end, it should be provided explicitly that contracts may be divided into lots. Such division could be done on a quantitative basis, making the size of the individual contracts better correspond to the capacity of SMEs, or on a qualitative basis, in accordance with the different trades and specialisations involved, to adapt the content of the individual contracts more closely to the specialised sectors of SMEs or in accordance with different subsequent project phases. The size and subject-matter of the lots should be determined freely by the contracting entity, which, in accordance with the relevant rules on the calculation of the estimated value of procurement, should also be allowed to award some of the lots without applying the procedures of this Directive.

Member States should remain free to go further in their efforts to facilitate the involvement of SMEs in the public procurement market, by introducing an obligation to consider the appropriateness of dividing contracts into lots to smaller contracts, by requiring contracting entities to provide a justification for a decision not to divide contracts into lots or by rendering a division into lots obligatory under certain conditions. With the same purpose, Member States should also be free to provide mechanisms for direct payments to subcontractors.

(88) Where contracts are divided into lots, contracting entities should, for instance in order to preserve competition or to ensure reliability of supply, be allowed to limit the number of lots for which an economic operator may tender; they should also be allowed to limit the number of lots that may be awarded to any one tenderer.

However, the objective of facilitating greater access to public procurement by SMEs might be hampered if contracting entities would be obliged to award the contract lot by lot even where this would entail having to accept substantially less advantageous solutions compared to an award grouping several or all of the lots. Where the possibility to apply such a method has been clearly indicated beforehand, it should therefore be possible for contracting entities to conduct a comparative assessment of the tenders in order to establish whether the tenders submitted by a particular tenderer for a specific combination of lots would, taken as whole, fulfil the award criteria laid down in accordance with this Directive with regard to those lots better than the tenders for the individual lots concerned seen in isolation. If so, then the contracting entities should be allowed to award a contract combining the lots in question to the tenderer concerned. It should be clarified that contracting entities should conduct such a comparative assessment by first determining which tenders best fulfil the award criteria laid down for each individual lot and then comparing it with the tenders submitted by a particular tenderer for a specific combination of lots, taken as a whole.

(89) In order to make procedures faster and more efficient, time limits for participation in procurement procedures should be kept as short as possible without creating undue barriers to access for economic operators from across the internal market and in particular SMEs. It should therefore be kept in mind that, when fixing the time limits for the receipt of tenders and requests to participate, contracting entities should take account in particular of the complexity of the contract and the time required to draw up tenders, even if this entails setting time limits that are longer than the minima provided for under this Directive. The use of electronic means of information and communication, in particular

full electronic availability to economic operators, tenderers and candidates of procurement documents and electronic transmission of communications leads, on the other hand, to increased transparency and time savings. Therefore, provision should be made for reducing the minimum time limits applicable to open procedures in line with the rules set by the GPA and subject to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Furthermore, contracting entities should have the opportunity to further shorten the time limits for receipt of tenders in open procedures in cases where a state of urgency renders the regular time limit in open procedures impracticable, but does not make an open procedure with shortened deadline impossible. Only in exceptional situations where extreme urgency brought about by events unforeseeable by the contracting entity concerned that are not attributable to that contracting entity makes it impossible to conduct a regular procedure even with shortened time limits, contracting entities should, insofar as strictly necessary, have the possibility to award contracts by negotiated procedure without prior call for competition. This might be case where natural catastrophes require immediate action.

(90) It should be clarified that the need to ensure that economic operators have sufficient time in which to draw up responsive tenders may entail that the time limits which were set initially may have to be extended. This would, in particular, be the case where significant changes are made to the procurement documents. It should also be specified that, in that case, significant changes should be understood as covering changes, in particular to the technical specifications, in respect of which economic operators would need additional time in order to understand and respond appropriately. It should, however, be clarified that such changes should not be so substantial that the admission of candidates other than those initially selected would have been allowed for or additional participants in the procurement procedure would have been attracted. That could, in particular, be the case where the changes render the contract or the framework agreement materially different in character from the one initially set out in the procurement documents.

(91) It should be clarified that the information concerning certain decisions taken during a procurement procedure, including the decision not to award a contract or not to conclude a framework agreement, should be sent by the contracting entities, without candidates or tenderers having to request such information. It should also be recalled that Council Directive 92/13/EEC<sup>(1)</sup> provides

for an obligation for contracting entities, again without candidates or tenderer having to request it, to provide the candidates and tenderers concerned with a summary of the relevant reasons for some of the central decisions that are taken in the course of a procurement procedure. It should finally be clarified that candidates and tenderers should be able to request more detailed information concerning those reasons, which contracting entities should be required to give except where there would be serious grounds for not doing so. Those grounds should be set out in this Directive. To ensure the necessary transparency in the context of procurement procedures involving negotiations and dialogues with tenderers, tenderers having made an admissible tender should, except where there would be serious grounds for not doing so, also be enabled to request information on the conduct and progress of the procedure.

(92) In so far as compatible with the need to ensure the objective of sound commercial practice while allowing for maximum flexibility, it is appropriate to provide for the application of Directive 2014/24/EU in respect of requirements concerning economic and financial capacity and documentary evidence. Contracting entities should therefore be allowed to apply the selection criteria provided for in that Directive and, where they do so, they should then be obliged to apply certain other provisions concerning, in particular, the ceiling to requirements on minimum turnover as well as on use of the European Single Procurement Document.

(93) Contracting entities should be able to require that environmental management measures or schemes are to be applied during the performance of a contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council<sup>(2)</sup>, can demonstrate that the economic operator has the technical capability to perform the contract. A description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence, where the economic operator concerned has no access to such environmental management registration schemes or no possibility of obtaining them within the relevant time limits.

<sup>(1)</sup> Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14).

<sup>(2)</sup> Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

- (94) The notion of award criteria is central to this Directive, it is therefore important that the relevant provisions be presented in as simple and streamlined a way as possible. This can be obtained by using the terminology 'most economically advantageous tender' as the overriding concept, since all winning tenders should finally be chosen in accordance with what the individual contracting entity considers to be the economically best solution among those offered. In order to avoid confusion with the award criterion that is currently known as the 'most economically advantageous tender' in Directives 2004/17/EC and 2004/18/EC, a different terminology should be used to cover that concept, the 'best price-quality ratio'. Consequently, it should be interpreted in accordance with the case-law relating to those Directives, except where there is a clearly materially different solution in this Directive.
- (95) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment, with a view to ensuring an objective comparison of the relative value of the tenders in order to determine, in conditions of effective competition, which tender is the most economically advantageous tender. It should be set out explicitly that the most economically advantageous tender should be assessed on the basis of the best price-quality ratio which should always include a price or cost element. It should equally be clarified that such assessment of the most economically advantageous tender could also be carried out on the basis of either price or cost effectiveness only. It is furthermore appropriate to recall that contracting entities are free to set adequate quality standards by using technical specifications or contract performance conditions.
- (96) Article 11 TFEU requires that environmental protection requirements be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting entities can contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts.
- (97) When assessing the best price-quality ratio contracting entities should determine the economic and qualitative award criteria linked to the subject-matter of the contract on the basis of which they will assess tenders in order to identify the most economically advantageous tender from the view of the contracting entity. Those criteria should thus allow for a comparative assessment of the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications. In the context of the best price-quality ratio, a non-exhaustive list of possible award criteria is set out in this Directive. Contracting entities should be encouraged to choose award criteria that allow them to obtain high-quality works, supplies and services that are optimally suited to their needs.

The chosen award criteria should not confer an unrestricted freedom of choice on the contracting entity and they should ensure the possibility of effective and fair competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.

In order to encourage a greater quality orientation of public procurement, Member States should be permitted to prohibit or restrict use of price only or cost only to assess the most economically advantageous tender where they deem this appropriate.

To ensure compliance with the principle of equal treatment in the award of contracts, contracting entities should be obliged to create the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied in the contract award decision. Contracting entities should therefore be obliged to indicate the contract award criteria and the relative weighting given to each of those criteria. Contracting entities should, however, be permitted to derogate from that obligation to indicate the weighting of the criteria in duly justified cases for which they must be able to give reasons, where the weighting cannot be established in advance, in particular because of the complexity of the contract. In such cases, they should indicate the criteria in decreasing order of importance.

To identify the most economically advantageous tender, the contract award decision should not be based on non-cost criteria only. Qualitative criteria should therefore be accompanied by a cost criterion that could, at the choice of the contracting entity, be either the price or a cost-effectiveness approach such as life-cycle costing. However, the award criteria should not affect the application of national provisions determining the remuneration of certain services or setting out fixed prices for certain supplies.

- (98) Where national provisions determine the remuneration of certain services or set out fixed prices for certain supplies, it should be clarified that it remains possible to assess value for money on the basis of other factors than solely the price or remuneration. Depending on the service or product concerned, such factors could, for instance, include conditions of delivery and payment, aspects of after-sale service (e.g. extent of advisory and

replacement services) or environmental or social aspects (e.g. whether books were stamped on recycled paper or paper from sustainable timber, the cost imputed to environmental externalities or whether the social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract has been furthered). Given the numerous possibilities of evaluating value for money on the basis of substantive criteria, recourse to drawing of lots as the sole means of awarding the contract should be avoided.

(99) Wherever the quality of the staff employed is relevant to the level of performance of the contract, contracting entities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this can affect the quality of contract performance and, as a result, the economic value of the tender. This might be the case, for example, in contracts for intellectual services such as consultancy or architectural services. Contracting entities which make use of this possibility should ensure, by appropriate contractual means, that the staff assigned to contract performance effectively fulfil the specified quality standards and that such staff can only be replaced with the consent of the contracting entity which verifies that the replacement staff affords an equivalent level of quality.

(100) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth. In this context, it should be recalled that public procurement is crucial to driving innovation, which is of great importance for future growth in Europe. In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement.

The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council<sup>(1)</sup>) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council<sup>(2)</sup>). In addition, the definition of common methodologies for life cycle costing has significantly advanced.

<sup>(1)</sup> Directive 2009/33/EC of the European Parliament and the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (OJ L 120, 15.5.2009, p. 5).

<sup>(2)</sup> Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment (OJ L 39, 13.2.2008, p. 1).

It therefore appears appropriate to continue on that path, leaving it to sector-specific legislation to set mandatory objectives and targets in function of the particular policies and conditions prevailing in the relevant sector and to promote the development and use of European approaches to life-cycle costing as a further underpinning for the use of public procurement in support of sustainable growth.

(101) Those sector-specific measures should be complemented by an adaptation of Directives 2004/17/EC and 2004/18/EC empowering contracting entities to pursue the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth in their purchasing strategies. It should hence be made clear that, except where it is assessed on the basis of price only, contracting entities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach. The notion of life-cycle costing includes all costs over the life-cycle of a works, supplies or services.

This means internal costs such as research to be carried out, development, production, transport, use, maintenance and end-of-life disposal costs, but can also include costs imputed to environmental externalities, such as pollution caused by extraction of the raw materials used in the product or caused by the product itself or its manufacturing, provided they can be monetised and monitored. The methods which contracting entities use for assessing costs imputed to environmental externalities should be established in advance in an objective and non-discriminatory manner and be accessible to all interested parties. Such methods can be established at national, regional or local level, but they should, to avoid distortions of competition through tailor-made methodologies, remain general in the sense that they should not be set up specifically for a particular public procurement procedure. Common methodologies should be developed at Union level for the calculation of life-cycle costs for specific categories of supplies or services. Where such common methodologies are developed, their use should be made compulsory.

Furthermore, the feasibility of establishing a common methodology on social life cycle costing should be examined, taking into account existing methodologies such as the Guidelines for Social Life Cycle Assessment of Products adopted within the framework of the United Nations Environment Programme.



(102) Furthermore, with a view to a better integration of social and environmental considerations in the procurement procedures, contracting entities should be allowed to use award criteria or contract performance conditions relating to the works, supplies or services to be provided under the public contract in any respect and at any stage of their life cycles from extraction of raw materials for the product to the stage of disposal of the product, including factors involved in the specific process of production, provision or trading and its conditions of those works, supplies or services or a specific process during a later stage of their life cycle, even where such factors do not form part of their material substance. Criteria and conditions referring to such a production or provision process are for example that the manufacturing of the purchased products did not involve toxic chemicals, or that the purchased services are provided using energy-efficient machines.

In accordance with the case-law of the Court of Justice of the European Union, this includes also award criteria or contract performance conditions relating to the supply or utilisation of fair trade products in the course of the performance of the contract to be awarded. Contract performance conditions pertaining to environmental considerations might include, for example, the delivery, package and disposal of products, and in respect of works and services contracts, waste minimisation or resource efficiency.

However, the condition of a link with the subject-matter of the contract excludes criteria and conditions relating to general corporate policy, which cannot be considered as a factor characterising the specific process of production or provision of the purchased works, supplies or services. Contracting entities should hence not be allowed to require tenderers to have a certain corporate social or environmental responsibility policy in place.

(103) It is essential that award criteria or contract performance conditions concerning social aspects of the production process relate to the works, supplies or services to be provided under the contract. In addition, they should be applied in accordance with Directive 96/71/EC, as interpreted by the Court of Justice of the European Union, and should not be chosen or applied in a way that discriminates directly or indirectly against economic operators from other Member States or from third countries parties to the GPA or to Free Trade Agreements to which the Union is party. Thus, requirements concerning the basic working conditions regulated in Directive 96/71/EC, such as minimum rates of pay, should remain at the level set by national legislation or by collective agreements applied in accordance with Union law in the context of that Directive

Contract performance conditions might also be intended to favour the promotion of equality of women and men at work, the increased participation of women in the labour market and the reconciliation of work and private life, the protection of the environment or animal welfare and, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, and to recruit more disadvantaged persons than are required under national legislation.

(104) Measures aiming at the protection of health of the staff involved in the production process, the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract or training in the skills needed for the contract in question can also be the subject of award criteria or contract performance conditions provided that they relate to the works, supplies or services to be provided under the contract. For instance, such criteria or conditions might refer, amongst other things, to the employment of long-term job-seekers, the implementation of training measures for the unemployed or young persons in the course of the performance of the contract to be awarded. In technical specifications contracting entities can provide such social requirements which directly characterise the product or service in question, such as accessibility for persons with disabilities or design for all users.

(105) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests, terrorist offences, money laundering or terrorist financing. The non-payment of taxes or social security contributions should also lead to mandatory exclusion at the level of the Union. Member States should, however, be able to provide for a derogation from those mandatory exclusions in exceptional situations where overriding requirements in the general interest make a contract award indispensable. This might, for example, be the case where urgently needed vaccines or emergency equipment can only be purchased from an economic operator to whom one of the mandatory grounds for exclusion otherwise applies. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether to apply the exclusion criteria listed in Directive 2014/24/EU to such contracting entities. The obligation to apply Article 57(1) and (2) of Directive 2014/24/EU should therefore be limited to contracting entities that are contracting authorities.

(106) Contracting entities should further be given the possibility to exclude economic operators which have proven unreliable, for instance because of violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights. It should be clarified that grave professional misconduct can render an economic operator's integrity questionable and thus render the economic operator unsuitable to receive the award of a public contract irrespective of whether the economic operator would otherwise have the technical and economical capacity to perform the contract.

Bearing in mind that the contracting entity will be responsible for the consequences of its possible erroneous decision, contracting entities should also remain free to consider that there has been grave professional misconduct, where, before a final and binding decision on the presence of mandatory exclusion grounds has been rendered, they can demonstrate by any appropriate means that the economic operator has violated its obligations, including obligations relating to the payment of taxes or social security contributions, unless otherwise provided by national law. They should also be able to exclude candidates or tenderers whose performance in earlier public contracts or contracts with other contracting entities has shown major deficiencies with regard to substantive requirements, for instance failure to deliver or perform, significant shortcomings of the product or service delivered, making it unusable for the intended purpose, or misbehaviour that casts serious doubts as to the reliability of the economic operator. National law should provide for a maximum duration for such exclusions.

In applying facultative grounds for exclusion, particular attention should be paid to the principle of proportionality. Minor irregularities should only in exceptional circumstances lead to the exclusion of an economic operator. However repeated cases of minor irregularities can give rise to doubts about the reliability of an economic operator which might justify its exclusion.

(107) Where contracting entities are obliged or choose to apply the such exclusion criteria, they should apply Directive 2014/24/EU concerning the possibility that economic operators adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour.

(108) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. Where the tenderer cannot provide a sufficient explanation, the contracting entity should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting entity has established that the abnormally low price or costs proposed results from non-compliance with mandatory Union law or national law compatible with it in the fields of social, labour or environmental law or international labour law provisions.

(109) Contract performance conditions are for laying down specific requirements relating to the performance of the contract. Unlike contract award criteria which are the basis for a comparative assessment of the quality of tenders, contract performance conditions constitute fixed objective requirements that have no impact on the assessment of tenders. Contract performance conditions should be compatible with this Directive provided that they are not directly or indirectly discriminatory and are linked to the subject-matter of the contract, which comprises all factors involved in the specific process of production, provision or commercialisation. This includes conditions concerning the process of performance of the contract, but excludes requirements referring to a general corporate policy.

(110) It is important that observance by subcontractors of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in this Directive, provided that such rules, and their application, comply with Union law, be ensured through appropriate actions by the competent national authorities within the scope of their responsibilities and remit, such as labour inspection agencies or environmental protection agencies.

It is also necessary to ensure some transparency in the subcontracting chain, as this gives contracting entities information on who is present at building sites on which works are being performed for them, or on which undertakings are providing services in or at buildings, infrastructures or areas, such as town halls,

municipal schools, sports facilities, ports or motorways, for which the contracting entities are responsible or over which they have a direct oversight. It should be clarified that the obligation to deliver the required information is in any case incumbent upon the main contractor, either on the basis of specific clauses, that each contracting entity would have to include in all procurement procedures, or on the basis of obligations which Member States would impose on main contractors by means of generally applicable provisions.

It should also be clarified that the conditions relating to the enforcement of observance of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in this Directive, provided that such rules, and their application, comply with Union law, should be applied whenever the national law of a Member State provides for a mechanism of joint liability between subcontractors and the main contractor. Furthermore, it should be stated explicitly that Member States should be able to go further, for instance by extending the transparency obligations, by enabling direct payment to subcontractors or by enabling or requiring contracting authorities to verify that subcontractors are not in any of the situations in which exclusion of economic operators would be warranted. Where such measures are applied to subcontractors, coherence with the provisions applicable to main contractors should be ensured so that the existence of compulsory exclusion grounds would be followed by a requirement that the main contractor replaces the subcontractor concerned. Where such verification shows the presence of non-compulsory grounds for exclusion, it should be clarified that contracting authorities are able to require the replacement. It should, however, also be set out explicitly that contracting authorities may be obliged to require the replacement of the subcontractor concerned where exclusion of main contractors would be obligatory in such cases.

It should also be set out explicitly that Member States remain free to provide for more stringent liability rules under national law or to go further under national law on direct payments to subcontractors.

- (111) Having regard to current discussions on horizontal provisions governing relations with third countries in the context of public procurement, it is appropriate to maintain for an interim period the status quo of the regime which applies to the utilities sector pursuant to Articles 58 and 59 of Directive 2004/17/EC. Consequently, those provisions should be kept

unchanged, including the provision for the adoption of implementing acts where Union undertakings have difficulties in accessing third country markets. Under these circumstances, those implementing acts should continue to be adopted by the Council.

- (112) It should be recalled that Council Regulation (EEC, Euratom) No 1182/71 <sup>(1)</sup> applies to the calculation of the time limits contained in this Directive.

- (113) It is necessary to clarify the conditions under which modifications to a contract during its performance require a new procurement procedure, taking into account the relevant case-law of the Court of Justice of the European Union. A new procurement procedure is required in case of material changes to the initial contract, in particular to the scope and content of the mutual rights and obligations of the parties, including the distribution of intellectual property rights. Such changes demonstrate the parties' intention to renegotiate essential terms or conditions of that contract. This is the case in particular if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure.

Modifications to the contract resulting in a minor change of the contract value up to a certain value should always be possible without the need to carry out a new procurement procedure. To this effect and in order to ensure legal certainty, this Directive should provide for *de minimis* thresholds, below which a new procurement procedure is not necessary. Modifications to the contract above those thresholds should be possible without the need to carry out a new procurement procedure to the extent they comply with the relevant conditions laid down in this Directive.

- (114) Contracting entities may be faced with situations where additional works, supplies or services become necessary; in such cases a modification of the initial contract without a new procurement procedure may be justified, in particular where the additional deliveries are intended either as a partial replacements or as the extension of existing services, supplies or installations where a change of supplier would oblige the contracting entity to acquire material, works or services having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance

<sup>(1)</sup> Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ — English special edition: Series V Volume 1952-1972 p. 88).



- (115) Contracting entities can be faced with external circumstances that they could not foresee when they awarded the contract, in particular when the performance of the contract covers a long period. In this case, a certain degree of flexibility is needed to adapt the contract to those circumstances without a new procurement procedure. The notion of unforeseeable circumstances refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting entity, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value.

However, this cannot apply in cases where a modification results in an alteration of the nature of the overall procurement, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement since, in such a situation, a hypothetical influence on the outcome may be assumed.

- (116) In line with the principles of equal treatment and transparency, the successful tenderer should not, for instance where a contract is terminated because of deficiencies in the performance, be replaced by another economic operator without reopening the contract to competition. However, the successful tenderer performing the contract should be able, in particular where the contract has been awarded to more than one undertaking, to undergo certain structural changes during the performance of the contract, such as purely internal reorganisations, take-overs, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all contracts performed by that tenderer.
- (117) Contracting entities should, in the individual contracts themselves, have the possibility to provide for modifications by way of review or option clauses, but such clauses should not give them unlimited discretion. This Directive should therefore set out to what extent modifications may be provided for in the initial contract. It should consequently be clarified that sufficiently clearly drafted review or option clauses may for instance provide for price indexations or ensure that, for example, communications equipment to be delivered over a given period continues to be suitable, also in the case

of changing communications protocols or other technological changes. It should also be possible under sufficiently clear clauses to provide for adaptations of the contract which are rendered necessary by technical difficulties which have appeared during operation or maintenance. It should also be recalled that contracts could, for instance, include both ordinary maintenance as well as provide for extraordinary maintenance interventions that might become necessary in order to ensure continuation of a public service.

- (118) Contracting entities are sometimes faced with circumstances that require the early termination of public contracts in order to comply with obligations under Union law in the field of public procurement. Member States should therefore ensure that contracting entities have the possibility, under the conditions determined by national law, to terminate a public contract during its term if so required by Union law.
- (119) The results of the Commission staff working paper of 27 June 2011 entitled 'Evaluation Report: Impact and Effectiveness of EU Public Procurement Legislation' suggested that the exclusion of certain services from the full application of Directive 2004/17/EC should be reviewed. As a result, the full application of this Directive should be extended to a number of services.
- (120) Certain categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for contracts for those services, with a higher threshold than that which applies to other services.

In the particular context of procurement in those sectors, services to the person with values below that threshold will typically not be of interest to providers from other Member States unless there are concrete indications to the contrary, such as Union financing for cross-border projects.

Contracts for services to the person above that threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of those services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this Directive take account of that imperative, imposing only the observance of basic principles of transparency and equal treatment and making sure that contracting entities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services, published by the Social Protection Committee. When determining the procedures to be used for the award of contracts for services to the person, Member States should take Article 14 TFEU and Protocol No 26 into account. In so doing, Member States should also pursue the objectives of simplification and of alleviating the administrative burden for contracting entities and economic operators; it should be clarified that so doing might also entail relying on rules applicable to service contracts not subject to the specific regime.

Member States and contracting entities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, provided that such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

(121) Likewise, hotel and restaurant services are typically offered only by operators located in the specific place of delivery of those services and therefore also have a limited cross-border dimension. They should therefore only be covered by the light regime, as from a threshold of EUR 1 000 000. Large hotel and restaurant service contracts above that threshold can be of interest for various economic operators, such as travel agencies and other intermediaries, also on a cross-border basis.

(122) Similarly, certain legal services concern exclusively issues of purely national law and are therefore typically offered only by operators located in the Member State concerned and consequently also have a limited cross-border dimension. They should therefore only be covered by the light regime, as from a threshold of EUR

1 000 000. Large legal service contracts above that threshold can be of interest for various economic operators, such as international law firms, also on a cross-border basis, in particular where they involve legal issues arising from or having as its background Union or other international law or involving more than one country.

(123) Experience has shown that a series of other services, such as rescue services, firefighting services and prison services are normally only of cross-border interest as of such time as they acquire sufficient critical mass through their relatively high value. In so far as they are not excluded from the scope of this Directive, they should be included under the light regime. To the extent that their provision is actually based on contracts, other categories of services, such as investigation and security services, they would normally only be likely to present a cross-border interest as from a threshold of EUR 1 000 000 and should consequently only then be subject to the light regime.

(124) In order to ensure the continuity of public services, this Directive should allow that participation in procurement procedures for certain services in the fields of health, social and cultural services could be reserved for organisations which are based on employee ownership or active employee participation in their governance, and for existing organisations such as cooperatives to participate in delivering these services to end users. This provision is limited in scope exclusively to certain health, social and related services, certain education and training services, library, archive, museum and other cultural services, sporting services, and services for private households, and is not intended to cover any of the exclusions otherwise provided for by this Directive. Those services should only be covered by the 'light regime'.

(125) It is appropriate to identify those services by reference to specific positions of the Common Procurement Vocabulary (CPV) as adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council<sup>(1)</sup>, which is a hierarchically structured nomenclature, divided into divisions, groups, classes, categories and subcategories. In order to avoid legal uncertainty, it should be clarified that reference to a division does not implicitly entail a reference to subordinate subdivisions. Such comprehensive coverage should instead be set out explicitly by mentioning all the relevant positions, where appropriate as a range of codes.

<sup>(1)</sup> Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L 340, 16.12.2002, p. 1).

(126) Design contests have traditionally mostly been used in the fields of town and country planning, architecture and engineering or data processing. It should, however, be recalled that these flexible instruments could be used also for other purposes and that it may be stipulated that the subsequent service contracts would be awarded to the winner or one of the winners of the design contest by a negotiated procedure without publication.

(127) The evaluation has shown that there is still considerable room for improvement in the application of the Union public procurement rules. With a view to a more efficient and consistent application of the rules, it is essential to get a good overview on possible structural problems and general patterns in national procurement policies, in order to address possible problems in a more targeted way. That overview should be gained through appropriate monitoring, the results of which should be regularly published, in order to allow an informed debate on possible improvements of procurement rules and practice. Acquiring such a good overview could also allow insights on the application of public procurement rules in the context of the implementation of projects co-financed by the Union. Member States should remain free to decide how and by whom this monitoring should be carried out in practice; in so doing, they should also remain free to decide whether the monitoring should be based on a sample-based *ex-post* control or on a systematic, *ex-ante* control of public procurement procedures covered by this Directive. It should be possible to bring potential problems to the attention of the proper bodies; this should not necessarily require that those having performed the monitoring have standing before courts and tribunals.

Better guidance, information and support to contracting entities and economic operators could also greatly contribute to enhancing the efficiency of public procurement, through better knowledge, increased legal certainty and professionalisation of procurement practices. Such guidance should be made available to contracting entities and economic operators wherever it appears necessary to improve correct application of the rules. The guidance to be provided could cover all matters relevant to public procurement, such as acquisition planning, procedures, choice of techniques and instruments and good practices in the conduct of the procedures. With regard to legal questions, guidance should not necessarily amount to a complete legal analysis of the issues concerned; it could be limited to a general indication of the elements that should be taken

into consideration for the subsequent detailed analysis of the questions, for instance by pointing to case-law that could be relevant or to guidance notes or other sources having examined the specific question concerned.

(128) Directive 92/13/EEC provides for certain review procedures to be available at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement of Union law in the field of public procurement or national rules transposing that law. Those review procedures should not be affected by this Directive. However, citizens, concerned stakeholders, organised or not, and other persons or bodies which do not have access to review procedures pursuant to Directive 92/13/EEC do nevertheless have a legitimate interest, as taxpayers, in sound procurement procedures. They should therefore be given a possibility, otherwise than through the review system pursuant to Directive 92/13/EEC and without it necessarily involving them being given standing before courts and tribunals, to indicate possible violations of this Directive to a competent authority or structure. So as not to duplicate existing authorities or structures, Member States should be able to provide for recourse to general monitoring authorities or structures, sectoral oversight bodies, municipal oversight authorities, competition authorities, the ombudsman or national auditing authorities.

(129) In order to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth, environmental, social and innovation procurement will also have to play its part. It is therefore important to obtain an overview of the developments in the field of strategic procurement so as to take an informed view on the general trends at the overall level in that area. Any already prepared, appropriate reports can of course be used in this context also.

(130) Given the potential of SMEs for job creation, growth and innovation it is important to encourage their participation in public procurement, both through appropriate provisions in this Directive as well as through initiatives at the national level. The new provisions provided for in this Directive should contribute towards an improvement of the level of success, by which is understood the share of SMEs in the total value of contracts awarded. It is not appropriate to impose obligatory shares of success, however, the national initiatives to enhance SME participation should be closely monitored given its importance.

- (131) A series of procedures and working methods have already been established in respect of the Commission's communications and contacts with Member States, such as communications and contacts relating to the procedures provided for under Articles 258 and 260 TFEU, the Internal Market Problem Solving Network (SOLVIT) and EU Pilot, which are not modified by this Directive. They should, however, be complemented by the designation of one single point of reference in each Member State for the cooperation with the Commission, which would function as sole entry point for matters concerning public procurement in the Member State concerned. This function may be performed by persons or structures which are already regularly in contact with the Commission on issues relating to public procurement, such as national contact points, members of the Advisory Committee on Public Procurement, Members of the Procurement Network or national coordinating instances.
- (132) The traceability and transparency of decision-making in procurement procedures is essential for ensuring sound procedures, including efficiently fighting corruption and fraud. Contracting authorities should therefore keep copies of concluded high-value contracts, in order to be able to provide access to those documents to interested parties in accordance with applicable rules on access to documents. Furthermore, the essential elements and decisions of individual procurement procedures should be documented by contracting entities in a procurement report. To avoid administrative burdens wherever possible, it should be permitted for the procurement report to refer to information already contained in the relevant contract award notice. The electronic systems for publication of those notices, managed by the Commission, should also be improved with a view to facilitating the entry of data while making it easier to extract global reports and exchange data between systems.
- (133) In the interests of administrative simplification and in order to lessen the burden on Member States, the Commission should periodically examine whether the quality and completeness of the information contained in the notices which are published in connection with public procurement procedures is sufficient to allow the Commission to extract the statistical information that would otherwise have to be transmitted by the Member States.
- (134) Effective administrative cooperation is necessary for the exchange of information needed for conducting award procedures in cross-border situations, in particular with regard to the verification of the grounds for exclusion and the selection criteria and the application of quality and environmental standards. The Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council <sup>(1)</sup> could provide a useful electronic means to facilitate and enhance administrative cooperation managing the exchange of information on the basis of simple and unified procedures overcoming language barriers. A pilot project should consequently be launched as soon as possible to test the suitability of an expansion of IMI to cover the exchange of information under this Directive.
- (135) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of a number of non-essential elements of this Directive. Due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves; references to the CPV nomenclature may undergo regulatory changes at Union level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments; it is also necessary to empower the Commission to make mandatory certain technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments; the Commission should also be empowered to adapt the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs; the list of International Social and Environmental Conventions and the list of Union legislation whose implementation creates a presumption of free access to a given market as well as Annex II, setting out a list of legal acts to be taken into account when assessing the existence of special or exclusive rights, should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy that need, the Commission should be empowered to keep the lists up-to date. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

<sup>(1)</sup> Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).



(136) In the application of this Directive the Commission should consult appropriate groups of experts in the field of e-procurement ensuring a balanced composition of the main stakeholder groups.

into account factors such as the level of cross-border procurement, SME participation, transaction costs and the cost-benefit trade-off.

(137) In order to ensure uniform conditions for the implementation of this Directive, as for the procedure for sending and publishing data referred to in Annex IX and the procedures for drawing up and transmitting notices, the standard forms for the publication of notices, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(1)</sup>.

In accordance with Article XXII(7) thereof, the GPA shall be the subject of further negotiations three years after its entry into force and periodically thereafter. In that context, the appropriateness of the level of thresholds should be examined, bearing in mind the impact of inflation in view of a long period without changes of the thresholds in the GPA; in the event that the level of thresholds should change as a consequence, the Commission should, where appropriate, adopt a proposal for a legal act amending the thresholds set out in this Directive.

(138) The advisory procedure should be used for the adoption of the implementing acts concerning standard forms for the publication of notices, which do not have any impact either from the financial point of view or on the nature and scope of obligations stemming from this Directive. On the contrary, those acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set out in this Directive.

(140) Since the objective of this Directive, namely the coordination of laws, regulations and administrative provisions of the Member States applying to certain public procurement procedures, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Furthermore, decisions to establish whether a given activity is directly exposed to competition on markets to which access is free should be adopted under conditions ensuring uniform conditions for implementing that provision. Implementing powers should therefore be conferred on the Commission also in respect of the detailed provisions for the implementation of the procedure, provided for under Article 35, for establishing whether Article 34 is applicable as well as the implementing acts themselves. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. The advisory procedure should be used for the adoption of those implementing acts.

(141) Directive 2004/17/EC should be repealed.

(139) The Commission should review the effects on the internal market resulting from the application of the thresholds and report thereon to the European Parliament and the Council. In so doing, it should take

(142) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

<sup>(1)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

HAVE ADOPTED THIS DIRECTIVE:

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Article 2:	Definitions
Article 3:	Contracting authorities
Article 4:	Contracting entities
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Article 19:	Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country



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Article 20:	Contracts awarded and design contest organised pursuant to international rules
Article 21:	Specific exclusions for service contracts
Article 22:	Service contracts awarded on the basis of an exclusive right
Article 23:	Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy
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Article 24:	Defence and security
Article 25:	Mixed procurement covering the same activity and involving defence or security aspects
Article 26:	Procurement covering several activities and involving defence or security aspects
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Article 28:	Contracts between contracting authorities
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Article 31:	Notification of information
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## TITLE I

## SCOPE, DEFINITIONS AND GENERAL PRINCIPLES

## CHAPTER I

*Subject-matter and definitions*

## Article 1

**Subject matter and scope**

1. This Directive establishes rules on the procedures for procurement by contracting entities with respect to contracts as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 15.

2. Procurement within the meaning of this Directive is the acquisition by means of a supply, works or service contract of works, supplies or services by one or more contracting entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 8 to 14.

3. The application of this Directive is subject to Article 346 of TFEU.

4. This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to. Equally, this Directive does not affect the decision of public authorities whether, how and to what extent they wish to perform public functions themselves pursuant to Article 14 TFEU and Protocol No 26.

5. This Directive does not affect the way in which the Member States organise their social security systems.

6. The scope of this Directive shall not include non-economic services of general interest.

## Article 2

**Definitions**

For the purposes of this Directive, the following definitions apply:

- (1) 'supply, works and service contracts' means contracts for pecuniary interest concluded in writing between one or more contracting entities and one or more economic operators and having as their object the execution of works, the supply of products or the provision of services;
- (2) 'works contracts' means contracts having as their object one of the following:
  - (a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I;
  - (b) the execution, or both the design and execution, of a work;
  - (c) the realisation by whatever means of a work corresponding to the requirements specified by the contracting entity exercising a decisive influence on the type or design of the work;
- (3) 'a work' means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;
- (4) 'supply contracts' means contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A supply contract may include, as an incidental matter, siting and installation operations;
- (5) 'service contracts' means contracts having as their object the provision of services other than those referred to in point 2;
- (6) 'economic operator' means any natural or legal person, or a contracting entity, or a group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of works and/or a work, the supply of products or the provision of services on the market;
- (7) 'tenderer' means an economic operator that has submitted a tender;
- (8) 'candidate' means an economic operator that has sought an invitation or has been invited to take part in a restricted or negotiated procedure, in a competitive dialogue or in an innovation partnership;



- (9) 'procurement document' means any document produced or referred to by the contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the periodic indicative notice or the notices on the existence of a qualification system where they are used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;
- (10) 'centralised purchasing activities' means activities conducted on a permanent basis, in one of the following forms:
- (a) the acquisition of supplies and/or services intended for contracting entities,
  - (b) the award of contracts or the conclusion of framework agreements for works, supplies or services intended for contracting entities;
- (11) 'ancillary purchasing activities' means activities consisting in the provision of support to purchasing activities, in particular in the following forms:
- (a) technical infrastructure enabling contracting entities to award public contracts or to conclude framework agreements for works, supplies or services;
  - (b) advice on the conduct or design of procurement procedures;
  - (c) preparation and management of procurement procedures on behalf and for the account of the contracting entity concerned;
- (12) 'central purchasing body' means a contracting entity within the meaning of Article 4(1) of this Directive or a contracting authority within the meaning of point 1 of Article 2(1) of Directive 2014/24/EU providing centralised purchasing activities and, possibly, ancillary purchasing activities.
- Procurement carried out by a central purchasing body in order to perform centralised purchasing activities shall be deemed to be procurement for the pursuit of an activity as described in Articles 8 to 14. Article 18 shall not apply to procurement carried out by a central purchasing body in order to perform centralised purchasing activities;
- (13) 'procurement service provider' means a public or private body, which offers ancillary purchasing activities on the market;
- (14) 'written' or 'in writing' means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;
- (15) 'electronic means' means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- (16) 'life cycle' means all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;
- (17) 'design contests' means those procedures which enable the contracting entity to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes;
- (18) 'innovation' means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations, inter alia, with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth;
- (19) 'label' means any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;
- (20) 'label requirements' means the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned.

### Article 3

#### Contracting authorities

1. For the purpose of this Directive 'contracting authorities' means State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law.

2. 'Regional authorities' includes all authorities of the administrative units, listed non-exhaustively in NUTS 1 and 2, as referred to in Regulation (EC) No 1059/2003 of the European Parliament and of the Council<sup>(1)</sup>.

3. 'Local authorities' includes all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to in Regulation (EC) No 1059/2003.

4. 'Bodies governed by public law' means bodies that have all of the following characteristics:

- (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) they have legal personality; and
- (c) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or which have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

### Article 4

#### Contracting entities

1. For the purpose of this Directive contracting entities are entities, which:

- (a) are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 8 to 14;
- (b) when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 8 to 14, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

<sup>(1)</sup> Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1).

2. 'Public undertaking' means any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.

A dominant influence on the part of the contracting authorities shall be presumed in any of the following cases in which those authorities, directly or indirectly:

- (a) hold the majority of the undertaking's subscribed capital;
- (b) control the majority of the votes attaching to shares issued by the undertaking,
- (c) can appoint more than half of the undertaking's administrative, management or supervisory body.

3. For the purposes of this Article, 'special or exclusive rights' means rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Articles 8 to 14 to one or more entities, and which substantially affects the ability of other entities to carry out such activity.

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute special or exclusive rights within the meaning of the first subparagraph.

Such procedures include:

- (a) procurement procedures with a prior call for competition in conformity with Directive 2014/24/EU, Directive 2009/81/EC, Directive 2014/23/EU or this Directive;
- (b) procedures pursuant to other legal acts of the Union listed in Annex II, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 concerning the modification of the list of Union legal acts set out in Annex II, when on the basis of the adoption of new legal acts, repeal or modification of such legal acts, such amendments prove necessary.

#### Article 5

##### Mixed procurement covering the same activity

1. Paragraph 2 shall apply to mixed contracts which have as their subject-matter different types of procurement all of which are covered by this Directive.

Paragraphs 3 to 5 shall apply to mixed contracts which have as their subject-matter procurement covered by this Directive and procurement covered by other legal regimes.

2. Contracts which have as their subject-matter two or more types of procurement (works, services or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.

In the case of mixed contracts consisting partly of services within the meaning of Chapter I of Title III and partly of other services or of mixed contracts consisting partly of services and partly of supplies, the main subject shall be determined in accordance with which of the estimated values of the respective services or supplies is the highest.

3. Where the different parts of a given contract are objectively separable, paragraph 4 shall apply. Where the different parts of a given contract are objectively not separable, paragraph 5 shall apply.

Where part of a given contract is covered by Article 346 TFEU or Directive 2009/81/EC Article 25 of this Directive shall apply.

4. In the case of contracts which have as their subject-matter procurement covered by this Directive as well as procurement not covered by this Directive, contracting entities may choose to award separate contracts for the separate parts or to award a single contract. Where contracting entities choose to award separate contracts for separate parts, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

Where contracting entities choose to award a single contract, this Directive shall, unless otherwise provided in Article 25, apply to the ensuing mixed contract, irrespective of the value of the parts that would otherwise fall under a different legal regime and irrespective of which legal regime those parts would otherwise have been subject to.

In the case of mixed contracts containing elements of supply, works and service contracts and of concessions, the mixed contract shall be awarded in accordance with this Directive, provided that the estimated value of the part of the contract which constitutes a contract covered by this Directive, calculated in accordance with Article 16, is equal to or greater than the relevant threshold set out in Article 15.

5. Where the different parts of a given contract are objectively not separable, the applicable legal regime shall be determined on the basis of the main subject-matter of that contract.

#### Article 6

##### Procurement covering several activities

1. In the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for the purposes of each separate activity or to award a single contract. Where contracting entities choose to award separate contracts, the decision as to which rules apply to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

Notwithstanding Article 5, where contracting entities choose to award a single contract, paragraphs 2 and 3 of this Article shall apply. However, where one of the activities concerned is covered by Article 346 TFEU or Directive 2009/81/EC, Article 26 of this Directive shall apply.

The choice between awarding a single contract or awarding a number of separate contracts shall not, however, be made with the objective of excluding the contract or contracts from the scope of application either of this Directive or, where applicable, Directive 2014/24/EU or Directive 2014/23/EU.

2. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.

3. In the case of contracts for which it is objectively impossible to determine for which activity the contract is principally intended, the applicable rules shall be determined in accordance with points (a), (b), and (c):

(a) the contract shall be awarded in accordance with Directive 2014/24/EU, if one of the activities for which the contract is intended is subject to this Directive and the other to Directive 2014/24/EU;

(b) the contract shall be awarded in accordance with this Directive, if one of the activities for which the contract is intended is subject to this Directive and the other to Directive 2014/23/EU;

(c) the contract shall be awarded in accordance with this Directive, if one of the activities for which the contract is intended is subject to this Directive and the other is not subject to either this Directive, Directive 2014/24/EU or 2014/23/EU.

## CHAPTER II

### Activities

#### Article 7

#### Common provisions

For the purposes of Articles 8, 9 and 10, 'supply' shall include generation/production, wholesale and retail sale.

However, production of gas in the form of extraction falls within the scope of Article 14.

#### Article 8

#### Gas and heat

1. As far as gas and heat are concerned, this Directive shall apply to the following activities:

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;

(b) the supply of gas or heat to such networks.

2. The supply, by a contracting entity other than a contracting authority, of gas or heat to fixed networks which provide a service to the public shall not be considered to be a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

(a) the production of gas or heat by that contracting entity is the unavoidable consequence of carrying out an activity other than those referred to in paragraph 1 of this Article or in Articles 9 to 11;

(b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the contracting entity's turnover on the basis of the average for the preceding three years, including the current year.

#### Article 9

#### Electricity

1. As far as electricity is concerned, this Directive shall apply to the following activities:

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;

(b) the supply of electricity to such networks.

2. The supply, by a contracting entity other than a contracting authority, of electricity to fixed networks which provide a service to the public shall not be considered to be a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

(a) the production of electricity by that contracting entity takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraph 1 of this Article or in Articles 8, 10 and 11;

(b) supply to the public network depends only on that contracting entity's own consumption and has not exceeded 30 % of that contracting entity's total production of energy, on the basis of the average for the preceding three years, including the current year.

#### Article 10

#### Water

1. As far as water is concerned, this Directive shall apply to the following activities:

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water;

(b) the supply of drinking water to such networks.

2. This Directive shall also apply to contracts or design contests awarded or organised by contracting entities which pursue an activity referred to in paragraph 1 and which are connected with one of the following:

(a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations,

(b) the disposal or treatment of sewage.

3. The supply, by a contracting entity other than a contracting authority, of drinking water to fixed networks which provide a service to the public shall not be considered to be a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:

(a) the production of drinking water by that contracting entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 8 to 11;

(b) the supply to the public network depends only on that contracting entity's own consumption and has not exceeded 30 % of that contracting entity's total production of drinking water, on the basis of the average for the preceding three years, including the current year.

#### Article 11

##### Transport services

This Directive shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

#### Article 12

##### Ports and airports

This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of the provision

of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

#### Article 13

##### Postal services

1. This Directive shall apply to activities relating to the provision of:

(a) postal services;

(b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (b) of paragraph 2 of this Article and provided that the conditions set out in Article 34(1) are not satisfied in respect of the services falling within point (b) of paragraph 2 of this Article.

2. For the purpose of this Article and without prejudice to Directive 97/67/EC of the European Parliament and of the Council <sup>(1)</sup>:

(a) 'postal item' means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

(b) 'postal services' means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;

(c) 'other services than postal services' means services provided in the following areas:

(i) mail service management services (services both preceding and subsequent to despatch, including mailroom management services);

(ii) services concerning postal items not included in point (a), such as direct mail bearing no address.

<sup>(1)</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).



*Article 14***Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels**

This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of:

- (a) extracting oil or gas;
- (b) exploring for, or extracting, coal or other solid fuels.

*CHAPTER III***Material scope***Section 1***Thresholds***Article 15***Threshold amounts**

Save where they are ruled out by the exclusions in Articles 18 to 23 or pursuant to Article 34, concerning the pursuit of the activity in question, this Directive shall apply to procurements with a value net of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:

- (a) EUR 414 000 for supply and service contracts as well as for design contests;
- (b) EUR 5 186 000 for works contracts;
- (c) EUR 1 000 000 for service contracts for social and other specific services listed in Annex XVII.

*Article 16***Methods for calculating the estimated value of procurement**

1. The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, as estimated by the contracting entity, including any form of option and any renewals of the contracts as explicitly set out in the procurement documents.

Where the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the procurement.

2. Where a contracting entity is comprised of separate operational units, account shall be taken of the total estimated value for all the individual operational units.

Notwithstanding the first subparagraph, where a separate operational unit is independently responsible for its procurement or certain categories thereof, the values may be estimated at the level of the unit in question.

3. The choice of the method used to calculate the estimated value of a procurement shall not be made with the intention of excluding it from the scope of this Directive. A procurement shall not be subdivided with the effect of preventing it from falling within the scope of this Directive, unless justified by objective reasons.

4. That estimated value shall be valid at the moment at which the call for competition is sent or, in cases where such call for competition is not foreseen, at the moment at which the contracting entity commences the contract procurement procedure, for instance, where appropriate, by contacting economic operators in relation to the procurement.

5. With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the agreement or system.

6. In the case of innovation partnerships, the value to be taken into consideration shall be the maximum estimated value net of VAT of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.

7. For the purposes of Article 15, contracting entities shall include in the estimated value of a works contract both the cost of the works and the total estimated value of any supplies or services that are made available to the contractor by the contracting entities provided that they are necessary for the execution of the works.

8. Where a proposed work or a proposed provision of services may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 15, this Directive shall apply to the awarding of each lot.



9. Where a proposal for the acquisition of similar supplies may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying points (b) and (c) of Article 15.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 15, this Directive shall apply to the awarding of each lot.

10. Notwithstanding paragraphs 8 and 9, contracting entities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR 80 000 for supplies or services or EUR 1 million for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed provision of services has been divided.

11. In the case of supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:

- (a) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, where possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;
- (b) or the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year where that is longer than 12 months.

12. With regard to supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

- (a) in the case of fixed-term contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, where the term of the contract is greater than 12 months, the total value including the estimated residual value;

- (b) in the case of contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

13. With regard to service contracts, the basis for calculating the estimated contract value shall, where appropriate, be the following:

- (a) insurance services: the premium payable, and other forms of remuneration;
- (b) banking and other financial services: the fees, commissions payable, interest and other forms of remuneration;
- (c) design contracts: fees, commissions payable and other forms of remuneration.

14. With regard to service contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be the following:

- (a) in the case of fixed-term contracts, where that term is less than or equal to 48 months: the total value for their full term;
- (b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.

#### Article 17

##### Revision of the thresholds

1. Every two years from 30 June 2013, the Commission shall verify that the thresholds set out in points (a) and (b) of Article 15 correspond to the thresholds established in the World Trade Organisation Agreement on Government Procurement (GPA) and shall, where necessary, revise them in accordance with this Article.

In accordance with the calculation method set out in the GPA, the Commission shall calculate the value of those thresholds on the basis of the average daily value of the euro in terms of the special drawing rights (SDRs), over a period of 24 months terminating on 31 August preceding the revision with effect from 1 January. The value of the thresholds thus revised shall, where necessary, be rounded down to the nearest thousand euros so as to ensure that the thresholds in force provided for by the GPA, expressed in SDRs, are observed.

2. Every two years from 1 January 2014, the Commission shall determine the values, in the national currencies of Member States, whose currency is not the euro, of the thresholds referred to in points (a) and (b) of Article 15, revised pursuant to paragraph 1 of this Article.

At the same time, the Commission shall determine the value, in the national currencies of the Member States, whose currency is not the euro, of the threshold referred to in point (c) of Article 15.

In accordance with the calculation method set out in the GPA, the determination of such values shall be based on the average daily values of those currencies, corresponding to the applicable threshold expressed in euros over the 24 months terminating on 31 August preceding the revision with effect from 1 January.

3. The Commission shall publish the revised thresholds referred to in paragraph 1, their corresponding values in the national currencies referred to in the first subparagraph of paragraph 2, and the value determined in accordance with the second subparagraph of paragraph 2 in the *Official Journal of the European Union* at the beginning of the month of November following their revision.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 to adapt the methodology set out in the second subparagraph of paragraph 1 of this Article to any change in the methodology provided in the GPA for the revision of the thresholds referred to in points (a) and (b) of Article 15 and for the determination of the corresponding values in the national currencies of the Member States, whose currency is not the euro, as referred to in paragraph 2 of this Article.

The Commission shall be empowered to adopt delegated acts in accordance with Article 103 to revise the thresholds referred to in points (a) and (b) of Article 15 when necessary.

5. Where it is necessary to revise the thresholds referred to in points (a) and (b) of Article 15 and time constraints prevent the use of the procedure set in Article 103 and therefore imperative grounds of urgency so require, the procedure provided for in Article 104 shall apply to delegated acts adopted pursuant to the second subparagraph of paragraph 4 of this Article.

## Section 2

### **Excluded contracts and design contests; special provisions for procurement involving defence and security aspects**

#### Subsection 1

#### **Exclusions applicable to all contracting entities and special exclusions for the water and energy sectors**

##### Article 18

#### **Contracts awarded for purposes of resale or lease to third parties**

1. This Directive shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.

2. The contracting entities shall notify the Commission if so requested of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the *Official Journal of the European Union*, for information purposes, of lists of the categories of products and activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information.

##### Article 19

#### **Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country**

1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 8 to 14 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union nor shall it apply to design contests organised for such purposes.

2. The contracting entities shall notify the Commission, if so requested, of any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the *Official Journal of the European Union*, for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.

## Article 20

**Contracts awarded and design contests organised pursuant to international rules**

1. This Directive shall not apply to contracts or design contests which the contracting entity is obliged to award or organise in accordance with procurement procedures different from those laid down in this Directive established by any of the following:

- (a) a legal instrument creating international law obligations, such as an international agreement, concluded in accordance with the Treaties, between a Member State and one or more third countries or subdivisions thereof and covering works, supplies or services intended for the joint implementation or exploitation of a project by their signatories;
- (b) an international organisation.

Member States shall communicate all legal instruments referred to in point (a) of the first subparagraph of this paragraph to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 105.

2. This Directive shall not apply to contracts and design contests which the contracting entity awards or organises in accordance with procurement rules provided by an international organisation or international financing institution, where the contracts or design contests concerned are fully financed by that organisation or institution; in the case of contracts or design contests co-financed the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures.

3. Article 27 shall apply to contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules. Paragraphs 1 and 2 of this Article shall not apply to those contracts and design contests.

## Article 21

**Specific exclusions for service contracts**

This Directive shall not apply to service contracts for:

- (a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;
- (b) arbitration and conciliation services;
- (c) any of the following legal services:
  - (i) legal representation of a client by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC <sup>(1)</sup> in:
    - an arbitration or conciliation held in a Member State, a third country or before an international arbitration or conciliation instance; or
    - judicial proceedings before the courts, tribunals or public authorities of a Member State or a third country or before international courts, tribunals or institutions;
  - (ii) legal advice given in preparation of any of the proceedings referred to in point (i) of this point or where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;
  - (iii) document certification and authentication services which must be provided by notaries;
  - (iv) legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;
  - (v) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority;

<sup>(1)</sup> Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, 26.3.1977, p. 17).

- (d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council<sup>(1)</sup> and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;
- (e) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
- (f) employment contracts;
- (g) public passenger transport services by rail or metro;
- (h) civil defence, civil protection, and danger prevention that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8; 98113100-9 and 85143000-3 except patient transport ambulance services;
- (i) contracts for broadcasting time or programme provision that are awarded to audiovisual or radio media service providers. For the purposes of this point, 'media service providers' shall have the same meaning as pursuant to point (d) of Article 1(1) of Directive 2010/13/EU of the European Parliament and of the Council<sup>(2)</sup>. 'Programme' shall have the same meaning as pursuant to point (b) of Article 1(1) of that Directive, but shall also include radio programmes and radio programme materials. Furthermore, for the purposes of this provision, 'programme material' shall have the same meaning as 'programme'.

#### Article 22

##### **Service contracts awarded on the basis of an exclusive right**

This Directive shall not apply to service contracts awarded to an entity which is itself a contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provision which is compatible with the TFEU.

<sup>(1)</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

<sup>(2)</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

#### Article 23

##### **Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy**

This Directive shall not apply:

- (a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities relating to drinking water referred to in Article 10(1);
- (b) to contracts awarded by contracting entities themselves being active in the energy sector by being engaged in an activity referred to in Article 8(1), Article 9(1) or Article 14 for the supply:
  - (i) of energy;
  - (ii) of fuels for the production of energy.

#### Subsection 2

##### **Procurement involving defence and security aspects**

#### Article 24

##### **Defence and security**

1. In respect of contracts awarded and design contests organised in the fields of defence and security, this Directive shall not apply to:

- (a) contracts falling within the scope of Directive 2009/81/EC;
- (b) contracts to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 thereof.

2. This Directive shall not apply to contracts and design contests not otherwise exempted under paragraph 1, to the extent that the protection of the essential security interests of a Member State cannot be guaranteed by less intrusive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the contracting entity makes available in a contract award procedure as provided for in this Directive.

Furthermore, and in conformity with point (a) Article 346(1) TFEU, this Directive shall not apply to contracts and design contests not otherwise exempted under paragraph 1 of this Article to the extent that the application of this Directive would oblige a Member State to supply information the disclosure of which it considers contrary to the essential interests of its security.

3. Where the procurement and performance of the contract or design contest are declared to be secret or must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in a Member State, this Directive shall not apply provided that the Member State has determined that the essential interests concerned cannot be guaranteed by less intrusive measures, such as those referred to in the first subparagraph of paragraph 2.

#### Article 25

##### **Mixed procurement covering the same activity and involving defence or security aspects**

1. In the case of mixed contracts covering the same activity which have as their subject-matter procurement covered by this Directive and procurement or other elements covered by Article 346 TFEU or Directive 2009/81/EC, this Article shall apply.

2. Where the different parts of a given contract are objectively separable, contracting entities may choose to award separate contracts for the separate parts or to award a single contract.

Where contracting entities choose to award separate contracts for separate parts, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

Where contracting entities choose to award a single contract, the following criteria shall apply to determine the applicable legal regime:

(a) where part of a given contract is covered by Article 346 TFEU, the contract may be awarded without applying this Directive, provided that the award of a single contract is justified for objective reasons;

(b) where part of a given contract is covered by Directive 2009/81/EC, the contract may be awarded in accordance with that Directive, provided that the award of a single contract is justified for objective reasons. This point shall be without prejudice to the thresholds and exclusions for which that Directive provides.

The decision to award a single contract shall not, however, be taken for the purpose of excluding contracts from the application of either this Directive or Directive 2009/81/EC.

3. Point (a) of the third subparagraph of paragraph 2 shall apply to mixed contracts to which both point (a) and point (b) of that subparagraph could otherwise apply.

4. Where the different parts of a given contract are objectively not separable, the contract may be awarded without applying this Directive where it includes elements to which Article 346 TFEU applies; otherwise it may be awarded in accordance with Directive 2009/81/EC.

#### Article 26

##### **Procurement covering several activities and involving defence or security aspects**

1. In the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for the purposes of each separate activity or to award a single contract. Where contracting entities choose to award separate contracts for separate parts, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

Where contracting entities choose to award a single contract, paragraph 2 of this Article shall apply. The choice between awarding a single contract and awarding a number of separate contracts shall not be made with the objective of excluding the contract or contracts from the scope of this Directive or Directive 2009/81/EC.

2. In the case of contracts intended to cover an activity which is subject to this Directive and another which is:

(a) subject to Directive 2009/81/EC, or

(b) covered by Article 346 TFEU,



the contract may be awarded in accordance with Directive 2009/81/EC in the cases set out under point (a) and may be awarded without applying this Directive in the cases set out under point (b). This subparagraph is without prejudice to the thresholds and exclusions for which Directive 2009/81/EC provides.

Contracts as set out under point (a) of the first subparagraph, which in addition include procurement or other elements which are covered by Article 346 TFEU, may be awarded without applying this Directive.

However, it is a condition for the application of the first and second subparagraph that the award of a single contract is justified for objective reasons and the decision to award a single contract is not taken for the purpose of excluding contracts from the application of this Directive.

#### Article 27

##### **Contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules**

1. This Directive shall not apply to contracts or design contests involving defence or security aspects which the contracting entity is obliged to award or organise in accordance with procurement procedures different from those laid down in this Directive established by any of the following:

- (a) an international agreement or arrangement, concluded in accordance with the Treaties, between a Member State and one or more third countries or subdivisions thereof and covering works, supplies or services intended for the joint implementation or exploitation of a project by their signatories;
- (b) an international agreement or arrangement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- (c) an international organisation.

All agreements or arrangements referred to in point (a) of the first subparagraph of this paragraph shall be communicated to the Commission, which may consult the Advisory Committee on Public Procurement referred to in Article 105.

2. This Directive shall not apply to contracts and design contests involving defence or security aspects which the contracting entity awards in accordance with procurement rules provided by an international organisation or international financing institution, where the contracts or design contests concerned are fully financed by this organisation or institution. In the case of contracts or design contests co-financed for the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures.

#### Subsection 3

##### **Special relations (cooperation, affiliated undertakings and joint ventures)**

#### Article 28

##### **Contracts between contracting authorities**

1. A contract awarded by a contracting authority to a legal person governed by private or public law shall fall outside the scope of this Directive where all of the following conditions are fulfilled:

- (a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;
- (b) more than 80 % of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority;
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. Such control may also be exercised by another legal person, which is itself controlled in the same way by the contracting authority.



2. Paragraph 1 also applies where a controlled person which is a contracting authority awards a contract to its controlling contracting authority, or to another legal person controlled by the same contracting authority, provided that there is no direct private capital participation in the legal person being awarded the public contract with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

3. A contracting authority, which does not exercise over a legal person governed by private or public law control within the meaning of paragraph 1, may nevertheless award a contract to that legal person without applying this Directive, where all of the following conditions are fulfilled:

- (a) the contracting authority exercises jointly with other contracting authorities a control over that legal person which is similar to that which they exercise over their own departments;
- (b) more than 80 % of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or by other legal persons controlled by the same contracting authorities; and
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

For the purposes of point (a) of the first subparagraph, contracting authorities shall be deemed to exercise joint control over a legal person where all of the following conditions are fulfilled:

- (i) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities. Individual representatives may represent several or all of the participating contracting authorities;

- (ii) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person; and

- (iii) the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities.

4. A contract concluded exclusively between two or more contracting authorities shall fall outside the scope of this Directive, where all of the following conditions are met:

- (a) the contract establishes or implements a cooperation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
- (b) the implementation of that cooperation is governed solely by considerations relating to the public interest; and
- (c) the participating contracting authorities perform on the open market less than 20 % of the activities concerned by the cooperation.

5. For the determination of the percentage of activities referred to in point (b) of the first subparagraph of paragraph 1, point (b) of the first subparagraph of paragraph 3 and point (c) of paragraph 4, the average total turnover, or an appropriate alternative activity based measure such as costs incurred by the relevant legal person with respect to services, supplies and works for the three years preceding the contract award shall be taken into consideration.

Where, because of the date on which the relevant legal person was created or commenced activities or because of a reorganisation of its activities, the turnover, or alternative activity based measure such as costs, are either not available for the preceding three years or no longer relevant, it shall be sufficient to show that the measurement of activity is credible, particularly by means of business projections.

### Article 29

#### Contracts awarded to an affiliated undertaking

1. For the purposes of this Article, 'affiliated undertaking' means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Directive 2013/34/EU.

2. In the case of entities, which are not subject to Directive 2013/34/EU, 'affiliated undertaking' shall mean any undertaking that:

- (a) may be, directly or indirectly, subject to a dominant influence by the contracting entity;
- (b) may exercise a dominant influence over the contracting entity; or
- (c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

For the purposes of this paragraph, 'dominant influence' shall have the same meaning as in the second subparagraph of Article 4(2).

3. Notwithstanding Article 28 and provided that the conditions in paragraph 4 of this Article are met, this Directive shall not apply to contracts awarded:

- (a) by a contracting entity to an affiliated undertaking, or
- (b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities described in Articles 8 to 14, to an undertaking which is affiliated with one of those contracting entities.

4. Paragraph 3 shall apply to:

- (a) service contracts provided that at least 80 % of the average total turnover of the affiliated undertaking over the preceding three years, taking into account all services provided by that undertaking, derives from the provision of services to the contracting entity or other undertakings with which it is affiliated;

- (b) supply contracts provided that at least 80 % of the average total turnover of the affiliated undertaking, taking into account all supplies provided by that undertaking, over the preceding three years derives from the provision of supplies to the contracting entity or other undertakings with which it is affiliated;

- (c) to works contracts provided that at least 80 % of the average total turnover of the affiliated undertaking, taking into account all works provided by that undertaking, over the preceding three years derives from the provision of works to the contracting entity or other undertakings with which it is affiliated.

5. Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it shall be sufficient for that undertaking to show that the turnover referred to in points (a), (b) or (c) of paragraph 4 is credible, in particular by means of business projections.

6. Where more than one undertaking affiliated with the contracting entity with which they form an economic group provides the same or similar services, supplies or works, the percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

### Article 30

#### Contracts awarded to a joint venture or to a contracting entity forming part of a joint venture

Notwithstanding Article 28 and provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, this Directive shall not apply to contracts awarded by any of the following:

- (a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 8 to 14, to one of those contracting entities; or
- (b) by a contracting entity to such a joint venture of which it forms part.

## Article 31

**Notification of information**

Contracting entities shall notify to the Commission, if so requested, the following information regarding the application of Article 29(2) and (3) and Article 30:

- (a) the names of the undertakings or joint ventures concerned,
- (b) the nature and value of the contracts involved,
- (c) proof deemed necessary by the Commission that the relationship between the undertaking or joint venture to which the contracts are awarded and the contracting entity complies with the requirements of Articles 29 or 30.

## Subsection 4

**Specific situations**

## Article 32

**Research and development services**

This Directive shall only apply to service contracts for research and development services which are covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 provided that both of the following conditions are fulfilled:

- (a) the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, and
- (b) the service provided is wholly remunerated by the contracting entity.

## Article 33

**Contracts subject to special arrangements**

1. Without prejudice to Article 34 of this Directive the Republic of Austria and the Federal Republic of Germany shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Commission Decision <sup>(1)</sup> 2002/205/EC and Commission Decision 2004/73/EC <sup>(2)</sup>:

<sup>(1)</sup> Commission Decision 2002/205/EC of 4 March 2002 following a request by Austria applying for the special regime provided for in Article 3 of Directive 93/38/EEC (OJ L 68, 12.3.2002, p. 31).

<sup>(2)</sup> Commission Decision 2004/73/EC of 15 January 2004 on a request from Germany to apply the special procedure laid down in Article 3 of Directive 93/38/EEC (OJ L 16, 23.1.2004, p. 57).

(a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions;

(b) communicates to the Commission, under the conditions defined in Commission Decision 93/327/EEC <sup>(3)</sup>, information relating to the contracts they award.

2. Without prejudice to Article 34, the United Kingdom shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decision 97/367/EEC applies points (a) and (b) of paragraph 1 of this Article in respect of contracts awarded for the pursuit of that activity in Northern Ireland.

3. Paragraphs 1 and 2 shall not apply to contracts awarded for the purpose of exploring for oil or gas.

## Subsection 5

**Activities directly exposed to competition and procedural provisions relating thereto**

## Article 34

**Activities directly exposed to competition**

1. Contracts intended to enable an activity mentioned in Articles 8 to 14 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 35 can demonstrate that, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive. The activity concerned may form a part of a larger sector or be exercised only in certain parts of the Member State concerned. The competition assessment referred to in the first sentence of this paragraph, which will be made in the light of the information available to the Commission and for the purposes of this Directive, is without prejudice to the application of competition law. Such assessment shall be made having regard to the market for the activities in question and the geographical reference market within the meaning of paragraph 2.

<sup>(3)</sup> Commission Decision 93/327/EEC of 13 May 1993 defining the conditions under which contracting entities exploiting geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels must communicate to the Commission information relating to the contracts they award (OJ L 129, 27.5.1993, p. 25).

2. For the purposes of paragraph 1 of this Article, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the provisions on competition of the TFEU. Those may include the characteristics of the products or services concerned, the existence of alternative products or services considered to be substitutable on the supply side or demand side, the prices and the actual or potential presence of more than one supplier of the products or provider of the services in question.

The geographical reference market, on the basis of which exposure to competition is assessed, shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. That assessment shall take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas or of substantial price differences.

3. For the purposes of paragraph 1 of this Article, access to a market shall be deemed not to be restricted if the Member State has implemented and applied the Union legislation listed in Annex III.

If free access to a given market cannot be presumed on the basis of the first subparagraph, it must be demonstrated that access to the market in question is free de facto and de jure.

#### Article 35

##### **Procedure for establishing whether Article 34 is applicable**

1. Where a Member State or, where the legislation of the Member State concerned provides for it, a contracting entity considers that, on the basis of the criteria set out in Article 34(2) and (3), a given activity is directly exposed to competition on markets to which access is not restricted, it may submit a request to the Commission to establish that this Directive does not apply to the award of contracts or the organisation of design contests for the pursuit of that activity, where appropriate together with the position adopted by an independent national authority that is competent in relation to the activity concerned. Such requests may concern activities which are part of a larger sector or which are exercised only in certain parts of the Member State concerned.

In the request, the Member State or contracting entity concerned shall inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in Article 34(1).

2. Unless a request coming from a contracting entity is accompanied by a reasoned and substantiated position, adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the conditions for the possible applicability of Article 34(1) to the activity concerned in accordance with paragraphs 2 and 3 of that Article, the Commission shall immediately inform the Member State concerned. The Member State concerned shall in such cases inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in Article 34(1).

3. Upon request submitted in accordance with paragraph 1 of this Article, the Commission may, by means of implementing acts adopted within the periods set out in Annex IV, establish whether an activity referred to in Articles 8 to 14 is directly exposed to competition on the basis of the criteria set out in Article 34. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 105(2).

Contracts intended to enable the activity concerned to be carried out and design contests that are organised for the pursuit of such an activity shall cease to be subject to this Directive in any of the following cases:

- (a) The Commission has adopted the implementing act establishing the applicability of Article 34(1) within the period provided for in Annex IV;
- (b) has not adopted the implementing act within the period provided for in Annex IV.

4. After the submission of a request, the Member State or the contracting entity concerned may, with the Commission's agreement, substantially modify its request, in particular as regards the activities or the geographical areas concerned. In that case, a new period for the adoption of the implementing act shall apply, which shall be calculated in accordance with paragraph 1 of Annex IV, unless a shorter period is agreed on by the Commission and the Member State or contracting entity which has presented the request.

5. Where an activity in a given Member State is already the subject of a procedure under paragraphs 1, 2 and 4, further requests concerning the same activity in the same Member State before the expiry of the period opened in respect of the first request shall not be considered as new procedures and shall be treated in the context of the first request.

6. The Commission shall adopt an implementing act establishing detailed rules for the application of paragraphs 1 to 5. That implementing act shall include at least rules relating to:

- (a) the publication in the *Official Journal of the European Union*, for information, of the date on which the period set out in paragraph 1 of Annex IV begins and ends, including any prolongations or suspensions of those periods, as provided for in that Annex;
- (b) publication of the possible applicability of Article 34(1) in accordance with point (b) of the second subparagraph of paragraph 3 of this Article;
- (c) implementing provisions concerning the form, content and other details of requests pursuant to paragraph 1 of this Article;

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 105(2).

#### CHAPTER IV

### **General principles**

#### *Article 36*

### **Principles of procurement**

1. Contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.

2. Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex XIV.

#### *Article 37*

### **Economic operators**

1. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the contract is awarded, they would be required to be either natural or legal persons.

However, in the case of service and works contracts as well as supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff responsible for the performance of the contract in question.

2. Groups of economic operators, including temporary associations, may participate in procurement procedures. They shall not be required by contracting entities to have a specific legal form in order to submit a tender or a request to participate.

Where necessary, contracting entities may clarify in the procurement documents how groups of economic operators are to meet the criteria and requirements for qualification and qualitative selection referred to in Articles 77 to 81 provided that this is justified by objective reasons and is proportionate. Member States may establish standard terms for how groups of economic operators are to meet those requirements.

Any conditions for the performance of a contract by such groups of economic operators, which are different from those imposed on individual participants, shall also be justified by objective reasons and shall be proportionate.

3. Notwithstanding paragraph 2, contracting entities may require groups of economic operators to assume a specific legal form once they have been awarded the contract, to the extent that such a change is necessary for the satisfactory performance of the contract.

#### *Article 38*

### **Reserved contracts**

1. Member States may reserve the right to participate in procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30 % of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.



2. The call for competition shall make reference to this Article.

tools, devices or file formats that are not generally available or supported by generally available applications;

#### Article 39

##### Confidentiality

1. Unless otherwise provided in this Directive or in the national law to which the contracting entity is subject, in particular legislation concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 70 and 75, the contracting entity shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

2. Contracting entities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting entities make available throughout the procurement procedure, including information made available in connection with the operation of a qualification system, whether or not this has been the subject of a notice on the existence of a qualification system used as a means of calling for competition.

(b) the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting entity;

(c) the use of electronic means of communication would require specialised office equipment that is not generally available to contracting entities;

(d) the procurement documents require the submission of physical or scale models which cannot be transmitted using electronic means.

In respect of communications for which electronic means of communication are not used pursuant to the second subparagraph, communication shall be carried out by post or other suitable carrier or by a combination of post or other suitable carrier and electronic means.

#### Article 40

##### Rules applicable to communication

1. Member States shall ensure that all communication and information exchange under this Directive, in particular electronic submission, are performed using electronic means of communication in accordance with the requirements of this Article. The tools and devices to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the ICT products in general use and shall not restrict economic operators' access to the procurement procedure.

Notwithstanding the first subparagraph of this paragraph, contracting entities are not obliged to require electronic means of communication in the submission process to the extent that the use of means of communication other than electronic means is necessary either because of a breach of security of the electronic means of communications or for the protection of the particularly sensitive nature of information requiring such a high level of protection that it cannot be properly ensured by using electronic tools and devices that are either generally available to economic operators or can be made available to them by alternative means of access within the meaning of paragraph 5.

Notwithstanding the first subparagraph, contracting entities shall not be obliged to require electronic means of communication in the submission process in the following situations:

(a) due to the specialised nature of the procurement, the use of electronic means of communication would require specific

It shall be the responsibility of the contracting entities requiring, in accordance with the second subparagraph of this paragraph, means of communication other than electronic means in the submission process to indicate in the individual report referred to in Article 100 the reasons for this requirement. Where applicable, contracting entities shall indicate in the individual report the reasons why use of means of communication other than electronic means has been considered necessary in application of the fourth subparagraph of this paragraph.



2. Notwithstanding paragraph 1, oral communication may be used in respect of communications other than those concerning the essential elements of a procurement procedure, provided that the content of the oral communication is documented to a sufficient degree. For this purpose, the essential elements of the procurement procedure include the procurement documents, requests for participation and confirmations of interest and tenders. In particular, oral communications with tenderers which could have a substantial impact on the content and assessment of the tenders shall be documented to a sufficient extent and by appropriate means, such as written or audio records or summaries of the main elements of the communication.

3. In all communication, exchange and storage of information, contracting entities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. They shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

4. For public works contracts and design contests, Member States may require the use of specific electronic tools, such as of building information electronic modelling tools or similar. In such cases the contracting entities shall offer alternative means of access as provided for in paragraph 5, until such time as those tools become generally available within the meaning of the second sentence of the first subparagraph of paragraph 1.

5. Contracting entities may, where necessary, require the use of tools which are not generally available, provided that the contracting entities offer alternative means of access.

Contracting entities shall be deemed to offer suitable alternative means of access in any of the following situations, where they:

- (a) offer unrestricted and full direct access free of charge by electronic means to those tools and devices from the date of publication of the notice in accordance with Annex IX or from the date on which the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which those tools and devices are accessible;
  - (b) ensure that tenderers having no access to the tools and devices concerned, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the tenderer concerned, may access the procurement procedure through the use of provisional tokens made available free of charge online; or
  - (c) support an alternative channel for electronic submission of tenders.
6. In addition to the requirements set out in Annex V, the following rules shall apply to tools and devices for the electronic transmission and receipt of tenders and for the electronic receipt of requests to participate:
- (a) information on specifications for the electronic submission of tenders and requests to participate, including encryption and time-stamping, shall be available to interested parties;
  - (b) Member States, or contracting entities acting within an overall framework established by the Member State concerned, shall specify the level of security required for the electronic means of communication to be used in the various stages of the specific procurement procedure; that level shall be proportionate to the risks attached;
  - (c) where Member States, or contracting entities acting within an overall framework established by the Member State concerned, conclude that the level of risks, assessed under point (b) of this paragraph, is such that advanced electronic signatures as defined by Directive 1999/93/EC of the European Parliament and of the Council<sup>(1)</sup> are required, contracting entities shall accept advanced electronic signatures supported by a qualified certificate, taking into account whether those certificates are provided by a certificate services provider, which is on a trusted list as provided for in Commission Decision 2009/767/EC<sup>(2)</sup>, created with or without a secure signature creation device, subject to compliance with the following conditions:

<sup>(1)</sup> Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

<sup>(2)</sup> Commission Decision 2009/767/EC of 16 October 2009 setting out measures facilitating the use of procedures by electronic means through the points of single contact under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (OJ L 274, 20.10.2009, p. 36).

- (i) the contracting entities shall establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU<sup>(1)</sup> and shall put in place necessary measures to be able to process those formats technically; in case a different format of electronic signature is used, the electronic signature or the electronic document carrier shall include information on existing validation possibilities, which shall be under the responsibility of the Member State. The validation possibilities shall allow the contracting entity to validate online, free of charge and in a way that is understandable for non-native speakers, the received electronic signature as an advanced electronic signature supported by a qualified certificate. Member States shall notify information on the provider of validation services to the Commission, which shall make the information received from the Member States available to the public on the internet;
- (ii) where a tender is signed with the support of a qualified certificate that is included on a trusted list, the contracting entities shall not apply additional requirements that may hinder the use of those signatures by tenderers.

In respect of documents used in the context of a procurement procedure that are signed by a competent authority of a Member State or by another issuing entity, the competent issuing authority or entity may establish the required advanced signature format in accordance with the requirements set out in Article 1(2) of Decision 2011/130/EU. They shall put in place the necessary measures to be able to process that format technically by including the information required for the purpose of processing the signature in the document concerned. Such documents shall contain in the electronic signature or in the electronic document carrier information on existing validation possibilities that allow the validation of the received electronic signature online, free of charge and in a way that is understandable for non-native speakers.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 to amend the technical details and characteristics set out in Annex V to take account of technical developments.

The Commission shall be empowered to adopt delegated acts in accordance with Article 103 to amend the list set out in points (a) to (d) of the second subparagraph of paragraph 1 of this Article where technological developments render continued exceptions from the use of electronic means of communication

<sup>(1)</sup> Commission Decision 2011/130/EU of 25 February 2011 establishing minimum requirements for the cross-border processing of documents signed electronically by competent authorities under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (OJ L 53, 26.2.2011, p. 66).

inappropriate or, exceptionally, where new exceptions must be provided for because of technological developments.

To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission shall be empowered to adopt delegated acts in accordance with Article 103 to establish the mandatory use of such specific technical standards, in particular with regard to the use of electronic submission, electronic catalogues and means for electronic authentication, only where technical standards have been thoroughly tested and proved their usefulness in practice. Before making the use of any technical standard mandatory, the Commission shall also carefully consider the costs that this may entail, in particular in terms of adaptations to existing e-procurement solutions, including infrastructure, processes or software.

#### Article 41

##### Nomenclatures

1. Any references to nomenclatures in the context of public procurement shall be made using the Common Procurement Vocabulary (CPV) as adopted by Regulation (EC) No 2195/2002.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 to adapt the CPV codes referred to in this Directive, whenever changes in the CPV nomenclature have to be reflected in this Directive and they do not imply a modification of the scope of this Directive.

#### Article 42

##### Conflicts of interest

Member States shall ensure that contracting authorities take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

The concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

## TITLE II

## RULES APPLICABLE TO CONTRACTS

## CHAPTER I

**Procedures**

## Article 43

**Conditions relating to the GPA and other international agreements**

In so far as they are covered by Annexes 3, 4 and 5 and the General Notes to the European Union's Appendix I to the GPA and by the other international agreements by which the Union is bound, contracting entities within the meaning of Article 4(1)(a) shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the Union.

## Article 44

**Choice of procedures**

1. When awarding supply, works or service contracts, contracting entities shall apply the procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 47, a call for competition has been published in accordance with this Directive.

2. Member States shall provide that contracting entities may apply open or restricted procedures or negotiated procedures with prior call for competition as regulated in this Directive.

3. Member States shall provide that contracting entities may apply competitive dialogues and innovation partnerships as regulated in this Directive.

4. The call for competition may be made by one of the following means:

- (a) a periodic indicative notice pursuant to Article 67 where the contract is awarded by restricted or negotiated procedure;
- (b) a notice on the existence of a qualification system pursuant to Article 68 where the contract is awarded by restricted or negotiated procedure or by a competitive dialogue or an innovation partnership;
- (c) by means of a contract notice pursuant to Article 69.

In the case referred to in point (a) of this paragraph, economic operators having expressed their interest following the

publication of the periodic indicative notice shall subsequently be invited to confirm their interest in writing by means of an invitation to confirm interest in conformity with Article 74.

5. In the specific cases and circumstances referred to expressly in Article 50, Member States may provide that contracting entities may apply a negotiated procedure without prior call for competition. Member States shall not allow the application of that procedure in any other cases than those referred to in Article 50.

## Article 45

**Open procedure**

1. In open procedures any interested economic operator may submit a tender in response to a call for competition

The minimum time limit for the receipt of tenders shall be 35 days from the date on which the contract notice was sent.

The tender shall be accompanied by the information for qualitative selection that is requested by the contracting entity.

2. Where contracting entities have published a periodic indicative notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to 15 days, provided that all of the following conditions are fulfilled:

- (a) the periodic indicative notice included, in addition to the information required by Section I of Part A of Annex VI, all the information required by Section II of Part A of Annex VI, insofar as the latter information was available at the time the periodic indicative notice was published;
- (b) the periodic indicative notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

3. Where a state of urgency duly substantiated by the contracting entity renders impracticable the time limit laid down in the second subparagraph of paragraph 1, it may fix a time limit which shall be not less than 15 days from the date on which the contract notice was sent.

4. The contracting entity may reduce by five days the time limit for receipt of tenders set out in the second subparagraph of paragraph 1 of this Article where it accepts that tenders may be submitted by electronic means in accordance with first subparagraph of Article 40(4) and Article 40(5) and (6).

*Article 46***Restricted procedure**

1. In restricted procedures, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting entity.

The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or the invitation to confirm interest was sent and shall in any event not be less than 15 days.

2. Only those economic operators invited to do so by the contracting entity following its assessment of the information provided may submit a tender. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 78(2).

The time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all selected candidates have the same time to prepare and submit their tenders.

In the absence of agreement on the time limit for the receipt of tenders, the time limit shall be at least 10 days from the date on which the invitation to tender was sent.

*Article 47***Negotiated procedure with prior call for competition**

1. In negotiated procedures with prior call for competition, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting entity.

The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest was sent and shall in any event not be less than 15 days.

2. Only those economic operators invited by the contracting entity following its assessment of the information provided may participate in the negotiations. Contracting entities may limit

the number of suitable candidates to be invited to participate in the procedure in accordance with Article 78(2).

The time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that they all have the same time to prepare and submit their tenders.

In the absence of agreement on the time limit for the receipt of tenders, the time limit shall be at least 10 days from the date on which the invitation to tender was sent.

*Article 48***Competitive dialogue**

1. In competitive dialogues, any economic operator may submit a request to participate in response to a call for competition in accordance with points (b) and (c) of Article 44(4) by providing the information for qualitative selection that is requested by the contracting entity.

The minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest was sent and shall in any event not be less than 15 days.

Only those economic operators invited by the contracting entity following the assessment of the information provided may participate in the dialogue. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 78(2). The contract shall be awarded on the sole basis of the award criterion of the tender presenting the best price-quality ratio in accordance with Article 82(2).

2. Contracting entities shall set out and define their needs and requirements in the call for competition and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award criteria and set out an indicative timeframe.

3. Contracting entities shall open, with the participants selected in accordance with the relevant provisions of Articles 76 to 81, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. They may discuss all aspects of the procurement with the chosen participants during this dialogue.

During the dialogue, contracting entities shall ensure equality of treatment among all participants. To that end, they shall not provide information in a discriminatory manner which may give some participants an advantage over others.

In accordance with Article 39, contracting entities shall not reveal to the other participants solutions proposed or other confidential information communicated by a participating candidate or tenderer in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

4. Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the call for competition or in the descriptive document. In the call for competition or the descriptive document, the contracting entity shall indicate whether it will use that option.

5. The contracting entity shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

6. Having declared that the dialogue is concluded and having so informed the remaining participants, contracting entities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. Those tenders shall contain all the elements required and necessary for the performance of the project.

Those tenders may be clarified, specified and optimised at the request of the contracting entity. However, such clarification, specification, optimisation or additional information may not involve changes to the essential aspects of the tender or of the procurement, including the needs and requirements set out in the call for competition or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.

7. Contracting entities shall assess the tenders received on the basis of the award criteria laid down in the call for competition or in the descriptive document.

At the request of the contracting entity, negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio in accordance with Article 82(2) may be carried out to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract

provided such negotiations do not have the effect of materially modifying essential aspects of the tender or of the procurement, including the needs and requirements set out in the call for competition or in the descriptive document and does not risk distorting competition or causing discrimination.

8. Contracting entities may specify prizes or payments to the participants in the dialogue.

#### Article 49

##### **Innovation partnership**

1. In innovation partnerships, any economic operator may submit a request to participate in response to a call for competition in accordance with points (b) and (c) of Article 44(4) by providing the information for qualitative selection that is requested by the contracting entity.

In the procurement documents, the contracting entity shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. It shall indicate which elements of this description define the minimum requirements to be met by all tenders. The indications shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.

The contracting entity may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.

The minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice is sent and shall in any event not be less than 15 days. Only those economic operators invited by the contracting entity following the assessment of the information provided may participate in the procedure. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 78(2). The contracts shall be awarded on the sole basis of the award criterion of the tender presenting the best price-quality ratio in accordance with Article 82(2).

2. The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting entities and the participants.



The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of the remuneration in appropriate instalments.

Based on those targets, the contracting entity may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts, provided that the contracting entity has indicated in the procurement documents those possibilities and the conditions for their use.

3. Unless otherwise provided for in this Article, contracting entities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve the content thereof.

The minimum requirements and the award criteria shall not be subject to negotiations.

4. During the negotiations, contracting entities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall inform all tenderers, whose tenders have not been eliminated, pursuant to paragraph 5, in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements. Following those changes, contracting entities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

In accordance with Article 39, contracting entities shall not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

5. Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting entity shall indicate whether it will use that option.

6. In selecting candidates, contracting entities shall in particular apply criteria concerning the candidates' capacity in

the field of research and development and of developing and implementing innovative solutions.

Only those economic operators invited by the contracting entity following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions.

In the procurement documents, the contracting entity shall define the arrangements applicable to intellectual property rights. In the case of an innovation partnership with several partners, the contracting entity shall not, in accordance with Article 39, reveal to the other partners solutions proposed or other confidential information communicated by a partner in the framework of the partnership without that partner's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

7. The contracting entity shall ensure that the structure of the partnership and, in particular the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of supplies, services or works purchased shall not be disproportionate in relation to the investment for their development.

#### Article 50

#### **Use of the negotiated procedure without prior call for competition**

Contracting entities may use a negotiated procedure without prior call for competition in the following cases:

- (a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of the contract are not substantially altered;

A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting entity's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned is to be or may be excluded pursuant to Articles 78(1) or 80(1), or does not meet the selection criteria laid down by the contracting entity pursuant to Articles 78 or 80;



(b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;

(c) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

(ii) competition is absent for technical reasons;

(iii) the protection of exclusive rights, including intellectual property rights.

The exceptions set out in points (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(d) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting entity, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting entity;

(e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

(f) for new works or services consisting in the repetition of similar works or services assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works or services conform to a basic project for which a first contract was awarded according to a procedure in accordance with Article 44(1).

The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting entities when they apply Articles 15 and 16;

(g) for supplies quoted and purchased on a commodity market;

(h) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;

(i) for purchases of supplies or services under particularly advantageous conditions from either a supplier which is definitively winding up its business activities or the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations;

(j) where the service contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the rules provided for in the design contest, to the winner or to one of the winners of that contest; in the latter case, all the winners shall be invited to participate in the negotiations.

## CHAPTER II

### **Techniques and instruments for electronic and aggregated procurement**

#### Article 51

#### **Framework agreements**

1. Contracting entities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.

A framework agreement means an agreement between one or more contracting entities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.

The term of a framework agreement shall not exceed eight years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

2. Contracts based on a framework agreement shall be awarded on the basis of objective rules and criteria, which may include reopening the competition among those economic operators party to the framework agreement as concluded. These rules and criteria shall be set out in the procurement documents for the framework agreement.

The objective rules and criteria referred to in the first subparagraph shall ensure equal treatment of the economic operators who are parties to the agreement. Where a reopening the competition is included, contracting entities shall set a time limit which is sufficiently long to allow tenders for each specific contract to be submitted and contracting entities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

#### Article 52

##### Dynamic purchasing systems

1. For commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting entities, they may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process and shall be open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria. It may be divided into categories of products, works or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned. Such characteristics may include reference to the maximum allowable size of the subsequent specific contracts or to a specific geographic area in which subsequent specific contracts will be performed.

2. In order to procure under a dynamic purchasing system, contracting entities shall follow the rules of the restricted procedure. All the candidates who satisfy the selection criteria shall be admitted to the system, and the number of candidates to be admitted to the system shall not be limited in accordance with Article 78(2). Where contracting entities have divided the system into categories of products, works or services in accordance with paragraph 1 of this Article, they shall specify the applicable selection criteria for each category.

Notwithstanding Article 46, the following time limits shall apply:

(a) the minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at no less than

30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent and shall in any event not be less than 15 days. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent.

(b) The minimum time limit for receipt of tenders shall be at least 10 days from the date on which the invitation to tender is sent. The second and third subparagraphs of Article 46(2) shall apply.

3. All communications in the context of a dynamic purchasing system shall only be made by electronic means in accordance with Article 40(1), (3), (5) and (6).

4. For the purposes of awarding contracts under a dynamic purchasing system, contracting entities shall:

(a) publish a call for competition making it clear that a dynamic purchasing system is involved;

(b) indicate in the procurement documents at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including how the dynamic purchasing system operates, the electronic equipment used and the technical connection arrangements and specifications;

(c) indicate any division into categories of products, works or services and the characteristics defining them;

(d) offer unrestricted and full direct access, as long as the system is valid, to the procurement documents in accordance with Article 73.

5. Contracting entities shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraph 2. Contracting entities shall finalise their assessment of such requests in accordance with the selection criteria within 10 working days following their receipt. That deadline may be prolonged to 15 working days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met.

Notwithstanding the first subparagraph, as long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, contracting entities may extend the evaluation period provided that no invitation to tender is issued during the extended evaluation period. Contracting entities shall indicate in the procurement documents the length of the extended period that they intend to apply.

Contracting entities shall inform the economic operator concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

6. Contracting entities shall invite all admitted participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 74. Where the dynamic purchasing system has been divided into categories of works, products or services, contracting entities shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender.

They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.

7. Contracting entities who, pursuant to Article 80, apply exclusion grounds and selection criteria provided for under Directive 2014/24/EU, may, at any time during the period of validity of the dynamic purchasing system, require admitted participants to submit a renewed and updated self-declaration as provided for in Article 59(1) of that Directive, within five working days from the date on which that request is transmitted.

Paragraphs 2 to 4 of Article 59 shall apply throughout the entire period of validity of the dynamic purchasing system.

8. Contracting entities shall indicate the period of validity of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in period of validity, using the following standard forms:

(a) where the period of validity is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;

(b) where the system is terminated, a contract award notice referred to in Article 70.

9. No charges may be billed prior to or during the period of validity of the dynamic purchasing system to the economic operators interested in or party to the dynamic purchasing system.

#### Article 53

#### Electronic auctions

1. Contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

For this purpose, contracting entities shall structure the electronic auction as a repetitive electronic process, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

Certain service contracts and certain works contracts having as their subject-matter intellectual performances, such as the design of works, which cannot be ranked using automatic evaluation methods, shall not be the object of electronic auctions.

2. In open or restricted procedures or negotiated procedures with a prior call for competition, the contracting entities may decide that the award of a contract shall be preceded by an electronic auction when the content of the procurement documents, in particular the technical specifications, can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in Article 51(2) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 52.

3. The electronic auction shall be based on one of the following elements of the tenders:

(a) solely on prices where the contract is awarded on the basis of price only,

(b) on prices and/or on the new values of the features of the tenders indicated in the procurement documents, where the contract is awarded on the basis of the best price-quality ratio or to the tender with the lowest cost using a cost-effectiveness approach.

4. Contracting entities which decide to hold an electronic auction shall state that fact in the contract notice, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender. The procurement documents shall include at least the information set out in Annex VII.

5. Before proceeding with the electronic auction, contracting entities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.

A tender shall be considered admissible where it has been submitted by a tenderer, who has not been excluded pursuant to Article 78(1) or 80(1) and who meets the selection criteria laid down pursuant to Articles 78 and 80, and whose tender is in conformity with the technical specifications without being irregular or unacceptable or unsuitable.

In particular, tenders which do not comply with the procurement documents, which were received late, where there is evidence of collusion or corruption, or which have been found by the contracting authority to be abnormally low, shall be considered as being irregular. In particular tenders submitted by tenderers that do not have the required qualifications, and tenders whose price exceeds the contracting authority's budget as determined and documented prior to the launching of the procurement procedure shall be considered as unacceptable.

A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting entity's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned is to be or may be excluded pursuant to Articles 78(1) or 80(1), or does not meet the selection criteria laid down by the contracting entity pursuant to Articles 78 or 80.

All tenderers that have submitted admissible tenders shall be invited simultaneously by electronic means to participate in the electronic auction using, as of the specified date and time, the connections in accordance with the instructions set out in the invitation. The electronic auction may take place in a number of successive phases. The electronic auction shall not start sooner than two working days after the date on which invitations are sent out.

6. The invitation shall be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance

with the weighting provided for in the first subparagraph of Article 82(5).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. Except where the most economically advantageous offer is identified on the basis of price alone, that formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in other procurement documents. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

7. Throughout each phase of an electronic auction the contracting entities shall instantaneously communicate to all tenderers sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

8. Contracting entities shall close an electronic auction in one or more of the following manners:

- (a) at the previously indicated date and time;
- (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction; or
- (c) when the previously indicated number of phases in the auction has been completed.

Where the contracting entities intend to close an electronic auction in accordance with point (c) of the first subparagraph, possibly in combination with the arrangements laid down in point (b) thereof, the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

9. After closing an electronic auction the contracting entities shall award the contract in accordance with Article 82 on the basis of the results of the electronic auction.

*Article 54***Electronic catalogues**

1. Where use of electronic means of communication is required, contracting entities may require tenders to be presented in the format of an electronic catalogue or to include an electronic catalogue.

Member States may render the use of electronic catalogues mandatory in connection with certain types of procurement.

Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.

2. Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a given procurement procedure in accordance with the technical specifications and format established by the contracting entity.

Furthermore, electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting entity in accordance with Article 40.

3. Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting entities shall:

(a) state so in the contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate;

(b) indicate in the procurement documents all the necessary information pursuant to Article 40(6) concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.

4. Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting entities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such a case, contracting entities shall use one of the following methods:

(a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question; or

(b) notify tenderers that they intend to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the contract in question, provided that the use of that method has been announced in the procurement documents for the framework agreement.

5. Where contracting entities reopen competition for specific contracts in accordance with point (b) of paragraph 4, they shall notify the tenderers of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question and shall give tenderers the possibility to refuse such collection of information.

Contracting entities shall allow for an adequate period between the notification and the actual collection of information.

Before awarding the contract, contracting entities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

6. Contracting entities may award contracts based on a dynamic purchasing system by requiring that offers for specific contract are to be presented in the format of an electronic catalogue.

Contracting entities may also award contracts based on a dynamic purchasing system in accordance with point (b) of paragraph 4 and paragraph 5 provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting entity. That catalogue shall be completed subsequently by the candidates, when they are informed of the contracting entity's intention to constitute tenders by means of the procedure set out in point (b) of paragraph 4.

*Article 55***Centralised purchasing activities and central purchasing bodies**

1. Member States may provide that contracting entities may acquire works, supplies and/or services from a central purchasing body offering the centralised purchasing activity referred to in point (a) of point (10) of Article 2.



Member States may also provide that contracting entities may acquire works, supplies and services by using contracts awarded by a central purchasing body, by using dynamic purchasing systems operated by a central purchasing body or by using a framework agreement concluded by a central purchasing body offering the centralised purchasing activity referred to in point (b) of point (10) of Article 2. Where a dynamic purchasing system which is operated by a central purchasing body may be used by other contracting entities, this shall be mentioned in the call for competition setting up that dynamic purchasing system.

In relation to the first and second subparagraphs, Member States may provide that certain procurements are to be made by having recourse to central purchasing bodies or to one or more specific central purchasing bodies.

2. A contracting entity fulfils its obligations pursuant to this Directive when it acquires supplies or services from a central purchasing body offering the centralised purchasing activity referred to in point (a) of point (10) of Article 2.

Furthermore, a contracting entity also fulfils its obligations pursuant to this Directive where it acquires works, supplies or services by using contracts awarded by the central purchasing body, by using dynamic purchasing systems operated by the central purchasing body or by using a framework agreement concluded by the central purchasing body offering the centralised purchasing activity referred to in point (b) of point (10) of Article 2.

However, the contracting entity concerned shall be responsible for fulfilling the obligations pursuant to this Directive in respect of the parts it conducts itself, such as:

- (a) awarding a contract under a dynamic purchasing system, which is operated by a central purchasing body; or
- (b) conducting a reopening of competition under a framework agreement that has been concluded by a central purchasing body.

3. All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements set out in Article 40.

4. Contracting entities may, without applying the procedures provided for in this Directive, award a service contract for the

provision of centralised purchasing activities to a central purchasing body.

Such service contracts may also include the provision of ancillary purchasing activities.

#### Article 56

##### Occasional joint procurement

1. Two or more contracting entities may agree to perform certain specific procurements jointly.

2. Where the conduct of a procurement procedure in its entirety is carried out jointly in the name and on behalf of all the contracting entities concerned, they shall be jointly responsible for fulfilling their obligations pursuant to this Directive. This applies also in cases where one contracting entity alone manages the procurement procedure, acting on its own behalf and on the behalf of the other contracting entities concerned.

Where the conduct of a procurement procedure is not in its entirety carried out in the name and on behalf of the contracting entities concerned, they shall be jointly responsible only for those parts carried out jointly. Each contracting entity shall have sole responsibility for fulfilling its obligations pursuant to this Directive in respect of the parts it conducts in its own name and on its own behalf.

#### Article 57

##### Procurement involving contracting entities from different Member States

1. Without prejudice to Articles 28 to 31, contracting entities from different Member States may act jointly in the award of contracts by using one of the means provided for in this Article.

Contracting entities shall not use the means provided in this Article for the purpose of avoiding the application of mandatory public law provisions in conformity with Union law to which they are subject in their Member State.

2. A Member State shall not prohibit its contracting entities from using centralised purchasing activities offered by central purchasing bodies located in another Member State.



In respect of centralised purchasing activities offered by a central purchasing body located in another Member State than the contracting entity, Member States may, however, choose to specify that their contracting entities may only use the centralised purchasing activities as defined in either point (a) or in point (b) of point (10) of Article 2.

3. The provision of centralised purchasing activities by a central purchasing body located in another Member State shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

The national provisions of the Member State where the central purchasing body is located shall also apply to the following:

- (a) the award of a contract under a dynamic purchasing system;
- (b) the conduct of a reopening of competition under a framework agreement.

4. Several contracting entities from different Member States may jointly award a contract, conclude a framework agreement or operate a dynamic purchasing system. They may also award contracts based on the framework agreement or on the dynamic purchasing system. Unless the necessary elements have been regulated by an international agreement concluded between the Member States concerned, the participating contracting entities shall conclude an agreement that determines:

- (a) the responsibilities of the parties and the relevant applicable national provisions;
- (b) the internal organisation of the procurement procedure, including the management of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

A participating contracting entity fulfils its obligations pursuant to this Directive when it purchases works, supplies or services from a contracting entity which is responsible for the procurement procedure. When determining responsibilities and the applicable national law as referred to in point (a), the participating contracting entities may allocate specific responsibilities among them and determine the applicable provisions of the national laws of any of their respective Member States. The

allocation of responsibilities and the applicable national law shall be referred to in the procurement documents for jointly awarded contracts.

5. Where several contracting entities from different Member States have set up a joint entity, including European Groupings of territorial cooperation under Regulation (EC) No 1082/2006 of the European Parliament and of the Council<sup>(1)</sup> or other entities established under Union law, the participating contracting entities shall, by a decision of the competent body of the joint entity, agree on the applicable national procurement rules of one of the following Member States:

- (a) the national provisions of the Member State where the joint entity has its registered office;
- (b) the national provisions of the Member State where the joint entity is carrying out its activities.

The agreement referred to in the first subparagraph may either apply for an undetermined period, when fixed in the constitutive act of the joint entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

#### CHAPTER III

### **Conduct of the procedure**

#### Section 1

### **Preparation**

#### Article 58

### **Preliminary market consultations**

Before launching a procurement procedure, contracting entities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.

For this purpose, contracting entities may for example seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

<sup>(1)</sup> Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ L 210, 31.7.2006, p. 19).

*Article 59***Prior involvement of candidates or tenderers**

Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting entity, whether in the context of Article 58 or not, or has otherwise been involved in the preparation of the procurement procedure, the contracting entity shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.

Such measures shall include the communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition. The measures taken shall be documented in the individual report required by Article 100.

*Article 60***Technical specifications**

1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. The technical specifications shall lay down the characteristics required of a works, service or supply.

Those characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance, provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.

The technical specifications may also specify whether the transfer of intellectual property rights will be required.

For all procurement which is intended for use by natural persons, whether general public or staff of the contracting entity, the technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.

Where mandatory accessibility requirements are adopted by a legal act of the Union, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.

2. Technical specifications shall afford equal access of economic operators to the procurement procedure and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when any of those do not exist — national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent';

(c) in terms of performance or functional requirements referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;

(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words 'or equivalent'.

5. Where a contracting entity uses the option of referring to the technical specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the ground that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender by any appropriate means, including the means of proof referred to in Article 62, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.

6. Where a contracting entity uses the option provided for in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for supplies, services or works which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

In its tender, the tenderer shall prove by any appropriate means including those referred to in Article 62, that the supplies, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.

#### Article 61

##### Labels

1. Where contracting entities intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, supplies or services correspond to the required characteristics, provided that all of the following conditions are fulfilled:

- (a) the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define the characteristics of the works, supplies or services that are the subject-matter of the contract;
- (b) the label requirements are based on objectively verifiable and non-discriminatory criteria;
- (c) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations may participate;
- (d) the labels are accessible to all interested parties;
- (e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

Where contracting entities do not require the works, supplies or services to meet all of the label requirements, they shall indicate which label requirements are referred to.

Contracting entities requiring a specific label shall accept all labels confirm that the works, supplies or services meet equivalent label requirements.

Where an economic operator had demonstrably no possibility of obtaining the specific label indicated by the contracting entity or an equivalent label within the relevant time limits for reasons that are not attributable to that economic operator, the contracting entity shall accept other appropriate means of proof, which may include a technical dossier of the manufacturer, provided that the economic operator concerned proves that the works, supplies and services to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting entity.

2. Where a label fulfils the conditions of provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting entities shall not require the label as such but may define the technical specification by reference to those of the detailed specifications of that label, or, if necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

### Article 62

#### Test reports, certification and other means of proof

1. Contracting entities may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

Where contracting entities require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by the contracting entities.

For the purpose of this paragraph, a conformity assessment body shall be a body that performs conformity assessment activities including calibration, testing, certification and inspection accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>(1)</sup>.

2. Contracting entities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned had no access to such certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned and provided that the economic operator concerned thereby proves that the works, supplies or services meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

3. Member States shall make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with Article 60(6), Article 61 and paragraphs 1 and 2 of this Article. The competent authorities of the Member State of establishment of the economic operator shall provide this information in accordance with Article 102.

### Article 63

#### Communication of technical specifications

1. On request from economic operators interested in obtaining a contract, contracting entities shall make available the technical specifications regularly referred to in their

<sup>(1)</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

supply, works or service contracts, or the technical specifications which they intend to apply to contracts for which the call for competition is a periodic indicative notice. Those specifications shall be made available by electronic means through unrestricted and full direct access free of charge.

However, the technical specifications shall be transmitted by other means than electronic means where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in the second subparagraph of Article 40(1) or where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because contracting entities intend to apply Article 39(2).

2. Where the technical specifications are based on documents available by electronic means through unrestricted and full direct access free of charge to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

### Article 64

#### Variants

1. Contracting entities may authorise or require tenderers to submit variants which meet the minimum requirements specified by the contracting entities.

Contracting entities shall indicate in the procurement documents whether or not they authorise or require variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation, in particular whether variants may be submitted only where a tender, which is not a variant, has also been submitted. Where variants are authorised or required, they shall also ensure that the chosen award criteria can be applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

2. In procedures for awarding supply or service contracts, contracting entities that have authorised or required variants shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

*Article 65***Division of contracts into lots**

1. Contracting entities may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots.

Contracting entities shall indicate, in the contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate, whether tenders may be submitted for one, for several or for all of the lots.

2. Contracting entities may, even where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer provided that the maximum number of lots per tenderer is stated in the contract notice or in the invitation to confirm interest, to tender or to negotiate. Contracting entities shall indicate in the procurement documents the objective and non-discriminatory criteria or rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.

3. Member States may provide that, where more than one lot may be awarded to the same tenderer, contracting entities may award a contract combining several or all lots where they have specified in the contract notice or in the invitation to confirm interest, to tender or to negotiate that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.

4. Member States may render it obligatory to award contracts in the form of separate lots under conditions to be specified in accordance with their national law and having regard for Union law. The second subparagraph of paragraph 1 and, where appropriate, paragraph 3 shall apply.

*Article 66***Setting time limits**

1. When fixing the time limits for requests to participate and the receipt of tenders, contracting entities shall take particular account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set out in Articles 45 to 49.

2. Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the procurement documents, the time limits for the receipt of tenders, which shall be longer than the minimum time limits set out in Articles 45 to 49, shall be fixed, so that all economic operators concerned may be aware of all the information needed to produce tenders.

3. Contracting entities shall extend the time limits for the receipt of tenders so that all economic operators concerned may be aware of all the information needed to produce tenders in the following cases:

(a) where, for whatever reason, additional information, although requested by the economic operator in good time, is not supplied at the latest six days before the time limit fixed for the receipt of tenders. In the event of an accelerated open procedure as referred to in Article 45(3), that period shall be four days;

(b) where significant changes are made to the procurement documents.

The length of the extension shall be proportionate to the importance of the information or change.

Where the additional information has either not been requested in good time or its importance with a view to preparing responsive tenders is insignificant, contracting entities shall not be required to extend the time limits.

**Section 2****Publication and Transparency***Article 67***Periodic indicative notices**

1. Contracting entities may make known their intentions of planned procurement through the publication of a periodic indicative notice. Those notices shall contain the information set out in part A, section I of Annex VI. They shall be published either by the Publications Office of the European Union or by the contracting entities on their buyer profiles in accordance with point 2(b) of Annex IX. Where the periodic indicative notice is published by the contracting entities on their buyer profile, they shall send a notice of the publication of the periodic indicative notice on a buyer profile to the Publications Office of the European Union in accordance with point 3 of Annex IX. Those notices shall contain the information set out in Annex VI Part B.



2. When a call for competition is made by means of a periodic indicative notice in respect of restricted procedures and negotiated procedures with prior call for competition, the notice shall meet all the following requirements:

- (a) it refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;
- (b) it indicates that the contract will be awarded by restricted or negotiated procedure without further publication of a call for competition and invites interested economic operators to express their interest;
- (c) it contains, in addition to the information set out in part A, section I of Annex VI, the information set out in part A, section II of Annex VI;
- (d) it has been sent for publication between 35 days and 12 months prior to the date on which the invitation to confirm interest is sent.

Such notices shall not be published on a buyer profile. However, the additional publication at national level pursuant to Article 72, if any, may be made on a buyer profile.

The period covered by the periodic indicative notice shall be a maximum of 12 months from the date the notice is transmitted for publication. However, in the case of contracts for social and other specific services, the periodic indicative notice referred to in point (b) of Article 92(1) may cover a period which is longer than 12 months.

#### Article 68

##### Notices on the existence of a qualification system

1. Where contracting entities choose to set up a qualification system in accordance with Article 77, the system shall be the subject of a notice as referred to in Annex X, indicating the purpose of the qualification system and how to have access to the rules concerning its operation.

2. Contracting entities shall indicate the period of validity of the qualification system in the notice on the existence of the system. They shall notify the Publications Office of the European Union of any change in period of validity, using the following standard forms:

(a) where the period of validity is changed without terminating the system, the form for notices on the existence of qualification systems;

(b) where the system is terminated, a contract award notice referred to in Article 70.

#### Article 69

##### Contract notices

Contract notices may be used as a means of calling for competition in respect of all procedures. They shall contain the information set out in the relevant part of Annex XI and shall be published in accordance with Article 71.

#### Article 70

##### Contract award notices

1. Not later than 30 days after the conclusion of a contract or of a framework agreement following the decision to award or conclude it, contracting entities shall send a contract award notice on the results of the procurement procedure.

Such notice shall contain the information set out in Annex XII and shall be published in accordance with Article 71.

2. Where the call for competition for the contract concerned has been made in the form of a periodic indicative notice and the contracting entity has decided that it will not award further contracts during the period covered by the periodic indicative notice, the contract award notice shall contain a specific indication to that effect.

In the case of framework agreements concluded in accordance with Article 51, contracting entities shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement. Member States may provide that contracting entities shall group notices of the results of the procurement procedure for contracts based on the framework agreement on a quarterly basis. In that case, contracting entities shall send the grouped notices within 30 days of the end of each quarter.

Contracting entities shall send a contract award notice within 30 days after the award of each contract based on a dynamic purchasing system. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.



3. The information provided in accordance with Annex XII and intended for publication shall be published in accordance with Annex IX. Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators.

In the case of contracts for research-and-development services ('R & D services'), the information concerning the nature and quantity of the services may be limited to:

- (a) the indication 'R & D services' where the contract has been awarded by a negotiated procedure without a call for competition in accordance with Article 50(b);
- (b) information at least as detailed as was indicated in the notice that was used as a means of calling for competition.

4. Information provided in accordance with Annex XII and marked as not being intended for publication shall be published only in simplified form and in accordance with Annex IX for statistical purposes.

#### Article 71

##### Form and manner of publication of notices

1. Notices referred to in Articles 67 to 70 shall include the information set out in Annexes VI Part A, VI Part B, X, XI, and XII and in the format of standard forms, including standard forms for corrigenda.

The Commission shall establish those standard forms by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 105.

2. Notices referred to in Articles 67 to 70 shall be drawn up, transmitted by electronic means to the Publications Office of the European Union and published in accordance with Annex IX. Notices shall be published not later than five days after they are sent. The costs of publication of the notices by Publications Office of the European Union shall be borne by the Union.

3. Notices referred to in Articles 67 to 70 shall be published in full in the official language(s) of the institutions of the Union chosen by the contracting entity. That language version or those

language versions shall constitute the sole authentic text(s). A summary of the important elements of each notice shall be published in the other official languages of the institutions of the Union.

4. The Publications Office of the European Union shall ensure that the full text and the summary of periodic indicative notices referred to in Article 67(2), calls for competition setting up a dynamic purchasing system as referred to in point (a) of Article 52(4) and notices on the existence of a qualification system used as a means of calling for competition in accordance with point (b) of Article 44(4) continue to be published:

- (a) in the case of periodic indicative notices for 12 months or until receipt of a contract award notice as provided for in Article 70(2) indicating that no further contracts will be awarded during the 12 month period covered by the call for competition. However, in the case of contracts for social and other specific services, the periodic indicative notice referred to in point (b) of Article 92(1) shall continue to be published until the end of its originally indicated period of validity or until receipt of a contract award notice as provided for in Article 70 indicating that no further contracts will be awarded during the period covered by the call for competition;
- (b) in the case of calls for competition setting up a dynamic purchasing system for the period of validity of the dynamic purchasing system;
- (c) in the case of notices on the existence of a qualification system for its period of validity.

5. Contracting entities shall be able to supply proof of the dates on which notices are dispatched.

The Publications Office of the European Union shall give the contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication.

6. Contracting entities may publish notices for works, supply or service contracts that are not subject to the publication requirements laid down in this Directive provided that those notices are sent to the Publications Office of the European Union by electronic means in accordance with the format and procedures for transmission indicated in Annex IX.

*Article 72***Publication at national level**

1. Notices referred to in Articles 67 to 70 and the information contained therein shall not be published at national level before the publication pursuant to Article 71. However, publication may in any event take place at the national level where contracting entities have not been notified of the publication within 48 hours after confirmation of the receipt of the notice in accordance with Article 71.

2. Notices published at national level shall not contain information other than that contained in the notices dispatched to the Publications Office of the European Union or published on a buyer profile, but shall indicate the date of dispatch of the notice to the Publications Office of the European Union or its publication on the buyer profile.

3. Periodic indicative notices shall not be published on a buyer profile before the dispatch to the Publications Office of the European Union of the notice of their publication in that form; they shall indicate the date of that dispatch.

*Article 73***Electronic availability of procurement documents**

1. Contracting entities shall by electronic means offer unrestricted and full direct access free of charge to the procurement documents from the date of publication of a notice in accordance with Article 71 or the date on which an invitation to confirm interest was sent.

Where the means of calling for competition is a notice on the existence of a qualification system, such access shall be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent. The text of the notice or of those invitations shall specify the internet address at which the procurement documents are accessible.

Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in the second subparagraph of Article 40(1), contracting entities may indicate in the notice or the invitation to confirm interest that the procurement documents concerned will be transmitted by other means than electronic means in accordance with paragraph 2 of this Article. In such a case, the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency referred to in Article 45(3) and where the time limit is set by mutual agreement pursuant to the second subparagraph of Article 46(2) or the second subparagraph of Article 47(2).

Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because contracting entities intend to apply Article 39(2), they shall indicate in the notice or the invitation to confirm interest or, where the means of calling for competition is a notice on the existence of a qualification system, in the procurement documents which measures aimed at protecting the confidential nature of the information they require and how access can be obtained to the documents concerned. In such case, the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency referred to in Article 45(3) and where the time limit is set by mutual agreement pursuant to the second subparagraph of Article 46(2) or the second subparagraph of Article 47(2).

2. Provided that it has been requested in good time, the contracting entities shall supply to all tenderers taking part in the procurement procedure additional information relating to the specifications and any supporting documents not later than six days before the time limit fixed for the receipt of tenders. In the event of an accelerated open procedure as referred to in Article 45(3), that period shall be four days.

*Article 74***Invitations to candidates**

1. In restricted procedures, competitive dialogue procedures, innovation partnerships and negotiated procedures with prior call for competition, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders, to take part in the dialogue or to negotiate.

Where a periodic indicative notice is used as a call for competition pursuant to point (a) of Article 44(4), contracting entities shall simultaneously and in writing invite the economic operators which have expressed their interest to confirm their continuing interest.

2. The invitations referred to in paragraph 1 of this Article shall include a reference to the electronic address on which the procurement documents have been made directly available by electronic means. The invitations shall be accompanied by the procurement documents, where those documents have not been the subject of unrestricted and full direct access, free of charge, for the reasons set out in the third or fourth subparagraph of Article 73(1) and have not already been made otherwise available. In addition, the invitations referred to in paragraph 1 of this Article shall include the information set out in Annex XIII.

*Article 75***Informing applicants for qualification, candidates and tenderers**

1. Contracting entities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing system.

2. On request from the candidate or tenderer concerned, contracting entities shall, as soon as possible, and in any event within 15 days from receipt of a written request, inform:

- (a) any unsuccessful candidate of the reasons for the rejection of its request to participate;
- (b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in Article 60(5) and (6), the reasons for their decision of non-equivalence or their decision that the works, supplies or services do not meet the performance or functional requirements;
- (c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer or the parties to the framework agreement;
- (d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

3. Contracting entities may decide to withhold certain information referred to in paragraphs 1 and 2, regarding the contract award, the conclusion of the framework agreement or the admittance to a dynamic purchasing system is to be withheld where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators.

4. Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a period of six months.

If the decision will take longer than four months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.

5. Applicants whose qualification is refused shall be informed of the refusal decision and the reasons for that decision as soon as possible and no more than 15 days later than the date of the refusal decision. The reasons shall be based on the criteria for qualification referred to in Article 77(2).

6. Contracting entities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in Article 77(2). Any intention to bring the qualification to an end shall be notified in writing to the economic operator at least 15 days before the date on which the qualification is due to end, together with the reason or reasons justifying the proposed action.

**Section 3****Choice of participants and award of contracts***Article 76***General principles**

1. For the purpose of selecting participants in their procurement procedures, the following rules shall all apply:

- (a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with Article 78(1) or Article 80(1) shall exclude economic operators identified in accordance with such rules and fulfilling such criteria;
- (b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to Articles 78 and 80;
- (c) in restricted procedures, in negotiated procedures with a call for competition, in competitive dialogues and in innovation partnerships, they shall where appropriate reduce in accordance with Article 78(2) the number of candidates selected pursuant to points (a) and (b) of this paragraph.

2. When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in procurement procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:

- (a) qualify economic operators in accordance with Article 77;
- (b) apply to such qualified economic operators those provisions of paragraph 1 that are relevant to restricted or negotiated procedures, to competitive dialogues or to innovation partnerships.

3. When selecting participants for a restricted or negotiated procedure, a competitive dialogue or an innovation partnership, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:

- (a) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others;
- (b) require tests or evidence which would duplicate objective evidence already available.

4. Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous, or where specific documents are missing, contracting entities may, unless otherwise provided for by the national law implementing this Directive, request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency.

5. Contracting entities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in Articles 82 and 84, taking into account Article 64.

6. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply with the applicable obligations referred to in Article 36(2).

7. In open procedures, contracting entities may decide to examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of Articles 76 to 84 are observed, including the rule that the contract shall not be awarded to a tenderer who should have been excluded pursuant to Article 80 or who does not meet the selection criteria set out by the contracting entity in accordance with Article 78(1) and Article 80.

Member States may exclude the use of the procedure in the first subparagraph for, or restrict it to, certain types of procurement or specific circumstances.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 to amend the list in Annex

XIV, where necessary, to add new international agreements that have been ratified by all Member States or where the existing international agreements referred to are no longer ratified by all Member States or they are otherwise changed, for instance in respect of their scope, content or denomination.

#### Subsection 1

### Qualification and qualitative selection

#### Article 77

### Qualification systems

1. Contracting entities which so wish may establish and operate a system of qualification of economic operators.

Contracting entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.

2. The system under paragraph 1 may involve different qualification stages.

Contracting entities shall establish objective rules and criteria for the exclusion and selection of economic operators requesting qualification and objective criteria and rules for the operation of the qualification system, covering matters such as inscription in the system, periodic updating of the qualifications, if any, and the duration of the system.

Where those criteria and rules include technical specifications, Articles 60 to 62 shall apply. The criteria and rules may be updated as required.

3. The criteria and rules referred to in paragraph 2 shall be made available to economic operators on request. Those updated criteria and rules shall be communicated to interested economic operators.

Where a contracting entity considers that the qualification system of certain other entities or bodies meets its requirements, it shall communicate to interested economic operators the names of such other entities or bodies.

4. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.

5. When a call for competition is made by means of a notice on the existence of a qualification system, specific contracts for the works, supplies or services covered by the qualification system shall be awarded by restricted procedures or negotiated procedures, in which all tenderers and participants are selected among the candidates already qualified in accordance with such a system.

6. Any charges that are billed in connection with requests for qualification or with updating or conserving an already obtained qualification pursuant to the system shall be proportionate to the generated costs.

#### Article 78

##### Criteria for qualitative selection

1. Contracting entities may establish objective rules and criteria for the exclusion and selection of tenderers or candidates; those rules and criteria shall be available to interested economic operators.

2. Where contracting entities need to ensure an appropriate balance between the particular characteristics of the procurement procedure and the resources required to conduct it, they may, in restricted or negotiated procedures, in competitive dialogues or in innovation partnerships, establish objective rules and criteria that reflect this need and enable the contracting entity to reduce the number of candidates that will be invited to tender or to negotiate. The number of candidates selected shall, however, take account of the need to ensure adequate competition.

#### Article 79

##### Reliance on the capacities of other entities

1. Where the objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities, the economic operator may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. With regard to criteria relating to the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting entity that those resources will be available to it throughout

the period of the validity of the qualification system, for example by producing a commitment by those entities to that effect.

Where, pursuant to Article 80 of this Directive, contracting entities have referred to exclusion or selection criteria provided for under Directive 2014/24/EU, contracting entities shall verify in accordance with Article 80(3) of this Directive whether the other entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria or whether there are grounds for exclusion, to which the contracting entities have referred, pursuant to Article 57 of Directive 2014/24/EU. The contracting entity shall require that the economic operator replaces an entity in respect of which there are compulsory grounds for exclusion to which the contracting entity has referred. The contracting entity may require or may be required by the Member State to require that the economic operator replaces an entity in respect of which there are non-compulsory grounds for exclusion to which the contracting entity has referred.

Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting entity may require that the economic operator and those entities be jointly liable for the execution of the contract.

Under the same conditions, a group of economic operators as referred to in Article 37(2) may rely on the capacity of participants in the group or of other entities.

2. Where the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures, in competitive dialogues or in innovation partnerships include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities the economic operator may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. With regard to criteria relating to the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting entity that the necessary resources will be available to it, for example by delivering a commitment by those entities to that effect.



Where, pursuant to Article 80 of this Directive, contracting entities have referred to exclusion or selection criteria provided for under Directive 2014/24/EU, contracting entities shall verify in accordance with Article 80(3) of this Directive whether the other entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria or whether there are grounds for exclusion, to which the contracting entities have referred, pursuant to Article 57 of Directive 2014/24/EU. The contracting entity shall require that the economic operator replaces an entity which does not meet a relevant selection criterion, or in respect of which there are compulsory grounds for exclusion to which the contracting entity has referred. The contracting entity may require or may be required by the Member State to require that the economic operator replaces an entity in respect of which there are non-compulsory grounds for exclusion to which the contracting entity has referred.

Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting entity may require that the economic operator and those entities be jointly liable for the execution of the contract.

Under the same conditions, a group of economic operators as referred to in Article 37 may rely on the capacities of participants in the group or of other entities.

3. In the case of works contracts, service contracts and siting and installation operations in the context of a supply contract, contracting entities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in Article 37(2), a participant in that group.

#### Article 80

##### **Use of exclusion grounds and selection criteria provided for under Directive 2014/24/EU**

1. The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system and the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures, in competitive dialogues or in innovation partnerships may include the exclusion grounds listed in Article 57 of Directive 2014/24/EU on the terms and conditions set out therein.

Where the contracting entity is a contracting authority, those criteria and rules shall include the exclusion grounds listed in Article 57(1) and (2) of Directive 2014/24/EU on the terms and conditions set out in that Article.

If so required by Member States, those criteria and rules shall, in addition, include the exclusion grounds listed in Article 57(4) of

Directive 2014/24/EU on the terms and conditions set out in that Article.

2. The criteria and rules referred to in paragraph 1 of this Article may include the selection criteria set out in Article 58 of Directive 2014/24/EU on the terms and conditions set out therein, notably as regards the limits to requirements concerning yearly turnovers, as provided for under the second subparagraph of paragraph 3 of that Article.

3. For the purpose of applying paragraphs 1 and 2 of this Article, Articles 59 to 61 of Directive 2014/24/EU shall apply.

#### Article 81

##### **Quality assurance standards and environmental management standards**

1. Contracting entities shall, where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures where the economic operator concerned had no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

2. Where contracting entities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, they shall refer to the Eco-Management and Audit Scheme (EMAS) of the Union or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States.

Where an economic operator had demonstrably no access to such certificates, or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting entity shall also accept other evidence of environmental management measures, provided that the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.



3. Upon request, Member States shall make available to other Member States any information relating to the documents produced as evidence of compliance with quality and environmental standards referred to in paragraphs 1 and 2.

#### Subsection 2

### Award of the contract

#### Article 82

#### Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions on the price of certain supplies or the remuneration of certain services, contracting entities shall base the award of contracts on the most economically advantageous tender.

2. The most economically advantageous tender from the point of view of the contracting entity shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 83, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the contract in question. Such criteria may comprise, for instance:

- (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- (b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- (c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion, commitments with regard to parts and security of supply.

The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.

Member States may provide that contracting entities may not use price only or cost only as the sole award criterion or restrict their use to certain categories of contracting entities or certain types of contracts.

3. Award criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in:

(a) the specific process of production, provision or trading of those works, supplies or services; or

(b) a specific process for another stage of their life cycle,

even where such factors do not form part of their material substance.

4. Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting entity. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, contracting entities shall verify effectively the accuracy of the information and proof provided by the tenderers.

5. The contracting entity shall specify in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone.

Those weightings may be expressed by providing for a range with an appropriate maximum spread.

Where weighting is not possible for objective reasons, the contracting entity shall indicate the criteria in descending order of importance.

## Article 83

**Life-cycle costing**

1. Life-cycle costing shall to the extent relevant cover parts or all of the following costs over the life cycle of a product, service or works

(a) costs, borne by the contracting entity or other users, such as:

(i) costs relating to acquisition,

(ii) costs of use, such as consumption of energy and other resources,

(iii) maintenance costs,

(iv) end of life costs, such as collection and recycling costs

(b) cost imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

2. Where contracting entities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting entity will use to determine the life-cycle costs on the basis of those data.

The method used for the assessment of costs imputed to environmental externalities shall fulfil all of the following conditions:

(a) it is based on objectively verifiable and non-discriminatory criteria. In particular where it has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain economic operators;

(b) it is accessible to all interested parties;

(c) the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the GPA or other international agreements by which the Union is bound.

3. Whenever a common method for the calculation of life-cycle costs has been made mandatory by a legislative act of the

Union that common method shall be applied for the assessment of life-cycle costs.

A list of such legislative acts, and where necessary the delegated acts supplementing them, is set out in Annex XV.

The Commission, shall be empowered to adopt delegated acts in accordance with Article 103 concerning the update of that list, when an update of the list is necessary due to the adoption of new legislation making a common method mandatory or the repeal or modification of existing legal acts.

## Article 84

**Abnormally low tenders**

1. Contracting entities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

2. The explanations referred to in paragraph 1 may in particular relate to:

(a) the economics of the manufacturing process, of the services provided or of the construction method;

(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;

(c) the originality of the supplies, services or work proposed by the tenderer;

(d) compliance with obligations referred to in Article 36(2);

(e) compliance with obligations referred to in Article 88;

(f) the possibility of the tenderer obtaining State aid.

3. The contracting entity shall assess the information provided by consulting the tenderer. It may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in paragraph 2.

Contracting entities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with applicable obligations referred to in Article 36(2).

4. Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting entity, that the aid in question was compatible with the internal market within the meaning of Article 107 TFEU. Where the contracting entity rejects a tender in those circumstances, it shall inform the Commission thereof.

5. Upon request, Member States shall make available to other Member States by means of administrative cooperation any information at its disposal, such as laws, regulations, universally applicable collective agreements or national technical standards, relating to the evidence and documents produced in relation to details listed in paragraph 2.

#### Section 4

### **Tenders comprising products originating in third countries and relations with those countries**

#### Article 85

#### **Tenders comprising products originating in third countries**

1. This Article shall apply to tenders covering products originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Union undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Union or its Member States in respect of third countries.

2. Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council <sup>(1)</sup>, exceeds 50 % of the total value of the products constituting the tender.

For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.

3. Subject to the second subparagraph of this paragraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 82, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2 of this Article. The prices of those tenders shall be

considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

4. For the purposes of this Article, those third countries to which the benefit of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the proportion, referred to in paragraph 2, of products originating in third countries.

5. By 31 December 2015 and every year thereafter, the Commission shall submit an annual report to the Council, on progress made in multilateral or bilateral negotiations regarding access for Union undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.

#### Article 86

### **Relations with third countries as regards works, supplies and service contracts**

1. Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of service contracts in third countries.

2. The Commission shall report to the Council by 18 April 2019, and periodically thereafter, on the opening up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the framework of the World Trade Organisation (WTO).

3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:

(a) does not grant Union undertakings effective access comparable to that granted by the Union to undertakings from that country;

<sup>(1)</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (b) does not grant Union undertakings national treatment or the same competitive opportunities as are available to national undertakings; or
- (c) grants undertakings from other third countries more favourable treatment than Union undertakings.

4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international labour law provisions listed in Annex XIV when those undertakings have tried to secure the award of contracts in third countries.

5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council adopt an implementing act to suspend or restrict, over a period to be laid down in that implementing act, the award of service contracts to:

- (a) undertakings governed by the law of the third country in question;
- (b) undertakings affiliated to the undertakings specified in point (a) and having their registered office in the Union but having no direct and effective link with the economy of a Member State;
- (c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.

The Council shall act, by qualified majority, as soon as possible.

The Commission may propose those measures on its own initiative or at the request of a Member State.

6. This Article shall be without prejudice to the commitments of the Union in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO.

#### CHAPTER IV

### **Contract performance**

#### Article 87

#### **Conditions for performance of contracts**

Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract within the meaning of Article 82(3) and indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation-related, environmental, social or employment-related considerations.

#### Article 88

### **Subcontracting**

1. Observance of the obligations referred to in Article 36(2) by subcontractors is ensured through appropriate action by the competent national authorities acting within the scope of their responsibility and remit.

2. In the procurement documents, the contracting entity may ask, or may be required by a Member State to ask, the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.

3. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting entity shall transfer due payments directly to the subcontractor for services, supplies or works provided to the economic operator to whom the contract has been awarded (the main contractor). Such measures may include appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.

4. Paragraphs 1 to 3 shall be without prejudice to the question of the main contractor's liability.

5. In the case of works contracts and in respect of services to be provided at a facility under the direct oversight of the contracting entity, after the award of the contract and at the latest when the performance of the contract commences, the contracting entity shall require the main contractor to indicate to the contracting entity the name, contact details and legal representatives of its subcontractors, involved in such works or services, insofar as known at this point in time. The contracting entity shall require the main contractor to notify the contracting entity of any changes to this information during the course of the contract as well as of the required information for any new subcontractors which it subsequently involves in such works or services.

Notwithstanding the first subparagraph, Member States may impose the obligation to deliver the required information directly on the main contractor.

Where necessary for the purposes of point (b) of paragraph 6 of this Article, the required information shall be accompanied by the subcontractors' self-declarations as referred to in Article 80(3). The implementing measures pursuant to paragraph 8 of this Article may provide that subcontractors which are presented after the award of the contract shall provide the certificates and other supporting documents instead of the self-declaration.

The first subparagraph shall not apply to suppliers.

Contracting entities may extend or may be required by Member States to extend the obligations provided for in the first subparagraph to for instance:

- (a) supply contracts, to services contracts other than those concerning services to be provided at the facilities under the direct oversight of the contracting entity or to suppliers involved in works or services contracts;
- (b) subcontractors of the main contractor's subcontractors or further down the subcontracting chain.

6. With the aim of avoiding breaches of the obligations referred to in Article 36(2), appropriate measures may be taken, such as:

- (a) Where the national law of a Member State provides for a mechanism of joint liability between subcontractors and the main contractor, the Member State concerned shall ensure that the relevant rules are applied in compliance with the conditions set out in Article 36(2).
- (b) Contracting authorities may, in accordance with Article 80(3) of this Directive, verify or may be required by Member States to verify whether there are grounds for exclusion of subcontractors pursuant to Article 57 of Directive 2014/24/EU. In such cases, the contracting authority shall require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion. The contracting authority may require or may be required by a Member State to require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion.

7. Member States may provide for more stringent liability rules under national law or to go further under national law on direct payments to subcontractors, for instance by providing for direct payments to subcontractors without it being necessary for them to request such direct payment.

8. Member States having chosen to provide for measures pursuant to paragraphs 3, 5 or 6 shall, by law, regulation or administrative provisions and having regard for Union law, specify the implementing conditions for those measures. In so doing, Member States may limit their applicability, for instance

in respect of certain types of contracts, certain categories of contracting entities or economic operators or as of certain amounts.

#### Article 89

#### Modification of contracts during their term

1. Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Directive in any of the following cases:

- (a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses, or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract or framework agreement;
  - (b) for additional works, services or supplies by the original contractor, irrespective of their value, that have become necessary and were not included in the initial procurement where a change of contractor:
    - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and
    - (ii) would cause significant inconvenience or substantial duplication of costs for the contracting entity;
- (c) where all of the following conditions are fulfilled:
  - (i) the need for modification has been brought about by circumstances which a diligent contracting entity could not foresee;
  - (ii) the modification does not alter the overall nature of the contract;
- (d) Where a new contractor replaces the one to which the contracting entity had initially awarded the contract as a consequence of either:
  - (i) an unequivocal review clause or option in conformity with point (a),



- (ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive; or
  - (iii) in the event that the contracting entity itself assumes the main contractor's obligations towards its subcontractors where this possibility is provided for under national legislation pursuant to Article 88;
- (e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph 4.

Contracting entities having modified a contract in the cases set out under points (b) and (c) of this paragraph shall publish a notice to that effect in the *Official Journal of the European Union*. Such notice shall contain the information set out in Annex XVI and shall be published in accordance with Article 71.

2. Furthermore, and without any need to verify whether the conditions set out under points (a) to (d) of paragraph 4 are met, contracts may equally be modified without a new procurement procedure in accordance with this Directive being necessary where the value of the modification is below both of the following values:

- (i) the thresholds set out in Article 15; and
- (ii) 10 % of the initial contract value for service and supply contracts and below 15 % of the initial contract value for works contracts.

However, the modification may not alter the overall nature of the contract or framework agreement. Where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications.

3. For the purpose of the calculation of the price referred to in paragraph 2, the updated price shall be the reference value when the contract includes an indexation clause.

4. A modification of a contract or a framework agreement during its term shall be considered to be substantial within the meaning of point (e) of paragraph 1, where it renders the contract or the framework agreement materially different in character from the one initially concluded. In any event, without prejudice to paragraphs 1 and 2, a modification shall be considered to be substantial where one or more of the following conditions is met:

- (a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;
- (b) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
- (c) the modification extends the scope of the contract or framework agreement considerably;
- (d) where a new contractor replaces the one to which the contracting entity had initially awarded the contract in other cases than those provided for under point (d) of paragraph 1.

5. A new procurement procedure in accordance with this Directive shall be required for other modifications of the provisions of a works, supply or service contract or a framework agreement during its term than those provided for under paragraphs 1 and 2.

#### Article 90

##### Termination of contracts

Member States shall ensure that contracting entities have the possibility, at least under the following circumstances and under the conditions determined by the applicable national law, to terminate a works, supply or service contract during its term, where:

- (a) the contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to Article 89;
- (b) the contractor has, at the time of contract award, been in one of the situations referred to in Article 57(1) of Directive 2014/24/EU and should therefore have been excluded from the procurement procedure pursuant to the second subparagraph of Article 80(1) of this Directive;
- (c) the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and this Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 TFEU.



## TITLE III

**PARTICULAR PROCUREMENT REGIMES**

## CHAPTER I

***Social and other specific services***

## Article 91

**Award of contracts for social and other specific services**

Contracts for social and other specific services, listed in Annex XVII shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in point (c) Article 15.

## Article 92

**Publication of notices**

1. Contracting entities intending to award a contract for the services referred to in Article 91 shall make known their intention by any of the following means:

- (a) by means of a contract notice; or
- (b) by means of a periodic indicative notice, which shall be published continuously. The periodic indicative notice shall refer specifically to the types of services that will be the subject of the contracts to be awarded. It shall indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing; or
- (c) by means of a notice on the existence of a qualification system, which shall be published continuously.

The first subparagraph shall, however, not apply where a negotiated procedure without prior call for competition could have been used in conformity with Article 50 for the award of a service contract.

2. Contracting entities that have awarded a contract for the services referred to in Article 91 shall make known the results by means of contract award notice. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.

3. The notices referred to in paragraphs 1 and 2 of this Article shall contain the information referred to in Annex XVIII, respectively in parts A, B, C or D, in accordance with the standard model notices. The Commission shall establish the standard forms by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 105.

4. The notices referred to in this Article shall be published in accordance with Article 71.

## Article 93

**Principles of awarding contracts**

1. Member States shall put in place national rules for the award of contracts subject to this Chapter, in order to ensure contracting entities comply with the principles of transparency and equal treatment of economic operators. Member States are free to determine the procedural rules applicable as long as such rules allow contracting entities to take into account the specificities of the services in question.

2. Member States shall ensure that contracting entities may take into account the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the involvement and empowerment of users and innovation. Member States may also provide that the choice of the service provider shall be made on the basis of the tender presenting the best price-quality ratio, taking into account quality and sustainability criteria for social services.

## Article 94

**Reserved contracts for certain services**

1. Member States may provide that contracting entities which are contracting authorities may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to in Article 91, which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8.

2. An organisation referred to in paragraph 1 shall fulfil all of the following conditions:

- (a) its objective is the pursuit of a public service mission linked to the delivery of the services referred to in paragraph 1;
- (b) profits are reinvested with a view to achieving the organisation's objective. Where profits are distributed or redistributed, this should be based on participatory considerations;

- (c) the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders; and
- (d) the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Article within the past three years.
3. The maximum duration of the contract shall not be longer than three years.
4. The call for competition shall make reference to this Article.
5. Notwithstanding Article 108, the Commission shall assess the effects of this Article and report to the European Parliament and the Council by 18 April 2019.

## CHAPTER II

### **Rules governing design contests**

#### Article 95

##### **Scope**

1. This Chapter shall apply to design contests organised as part of a procurement procedure for a service contract, provided that the estimated value of the contract, net of VAT, and including any possible prizes or payments to participants, is equal to or greater than the amount set out in point (a) of Article 15.
2. This Chapter shall apply to all design contests where the total amount of contest prizes and payments to participants, including the estimated value net of VAT of the service contract which might subsequently be concluded under point (j) of Article 50 if the contracting entity does not exclude such an award in the contest notice, is equal to or greater than the amount set out in point (a) of Article 15.

#### Article 96

##### **Notices**

1. Contracting entities that intend to organise a design contest shall call for competition by means of a contest notice.

Where they intend to award a subsequent service contract pursuant to point (j) of Article 50, this shall be indicated in the design contest notice.

Contracting entities that have held a design contest shall make the results known by means of a notice.

2. The call for competition shall include the information set out in Annex XIX and the notice of the results of a design contest shall include the information set out in Annex XX in the format of standard forms. The Commission shall establish those standard forms by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 105.

The notice of the results of a design contest shall be forwarded to the Publication Office of the European Union within 30 days of the closure of the design contest.

Where the release of information on the outcome of the contest would impede law enforcement, would be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or might prejudice fair competition between economic operators, such information may be withheld from publication.

3. Article 71(2) to (6) shall also apply to notices relating to design contests.

#### Article 97

### **Rules on the organisation of design contests, the selection of participants and the jury**

1. When organising design contests, contracting entities shall apply procedures which are adapted to Title I and this Chapter.
2. The admission of participants to design contests shall not be limited:
- by reference to the territory or part of the territory of a Member State;
  - on the grounds that, under the law of the Member State in which the contest is organised, they would be required to be either natural or legal persons.

3. Where design contests are restricted to a limited number of participants, contracting entities shall establish clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

4. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required of participants in a contest, at least a third of the jury members shall have that qualification or an equivalent qualification.

*Article 98***Decisions of the jury**

1. The jury shall be autonomous in its decisions or opinions.
2. The jury shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.
3. The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.
4. Anonymity shall be observed until the jury has reached its opinion or decision.
5. Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspects of the projects.
6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.

## TITLE IV

**GOVERNANCE***Article 99***Enforcement**

1. In order to effectively ensure correct and efficient implementation, Member States shall make sure that at least the tasks set out in this Article are performed by one or more authorities, bodies or structures. They shall indicate to the Commission all authorities or structures competent for those tasks.
2. Member States shall ensure that the application of public procurement rules is monitored.

Where monitoring authorities or structures identify by their own initiative or upon the receipt of information specific violations or systemic problems, they shall be empowered to indicate those problems to national auditing authorities, courts or tribunals or other appropriate authorities or structures, such as the ombudsman, national parliaments or committees thereof.

3. The results of the monitoring activities pursuant to paragraph 2 shall be made available to the public through appropriate means of information. Those results shall also be made available to the Commission. For instance, they may be integrated in the monitoring reports referred to in the second subparagraph of this paragraph.

By 18 April 2017 and every three years thereafter Member States shall submit to the Commission, a monitoring report covering, where applicable, information on the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, on the level of SME participation in public procurement and about prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities.

The Commission may, not more than every three years, request Member States to provide information on the practical implementation of national strategic procurement policies.

For the purposes of this paragraph, 'SME' shall be understood as defined in Commission Recommendation 2003/361/EC <sup>(1)</sup>.

On the basis of the data received under this paragraph, the Commission shall regularly issue a report on the implementation and best practices of national procurement policies in the internal market.

4. Member States shall ensure that:

- (a) information and guidance on the interpretation and application of the Union public procurement law is available free of charge to assist contracting authorities and economic operators, in particular SMEs, in correctly applying the Union public procurement rules; and
- (b) support is available to contracting authorities with regard to planning and carrying out procurement procedures.

5. Member States shall, without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, designate a point of reference for cooperation with the Commission as regards the application of public procurement legislation.

<sup>(1)</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, (OJ L 124, 20.5.2003, p. 36).

6. Contracting authorities shall, at least for the duration of the contract, keep copies of all concluded contracts with a value equal to or greater than:

- (a) 1 000 000 EUR in the case of supply contracts or service contracts;
- (b) 10 000 000 EUR in the case of works contracts.

Contracting authorities shall grant access to those contracts; however, access to specific documents or items of information may be denied to the extent and on the conditions provided for in the applicable Union or national rules on access to documents and data protection.

#### Article 100

##### Individual reports on procedures for the award of contracts

1. Contracting entities shall keep appropriate information on each contract or framework agreement covered by this Directive and each time a dynamic purchasing system is established. This information shall be sufficient to permit them at a later date to justify decisions taken in connection with:

- (a) the qualification and selection of economic operators and the award of contracts;
- (b) the use of negotiated procedures without a call for competition by virtue of Article 50;
- (c) the non-application of Chapters II to IV of Title II by virtue of the derogations provided for in Chapters II and III of Title I;
- (d) where necessary, the reasons why other means of communication than electronic means for the electronic submission have been used.

To the extent that the contract award notice drawn up pursuant to Article 70 or Article 92(2) contains the information required in this paragraph, contracting entities may refer to that notice.

2. Contracting entities shall document the progress of all procurement procedures, whether or not the procedures are conducted by electronic means. To that end, they shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations, preparation of the procurement docu-

ments, dialogue or negotiation if any, selection and award of the contract. The documentation shall be kept for at least three years from the date of award of the contract.

3. The information or documentation, or the main elements thereof, shall be communicated to the Commission or the national authorities, bodies or structures referred to in Article 99 where they so request.

#### Article 101

##### National reporting and statistical information

1. The Commission shall review the quality and completeness of data that can be extracted from the notices, referred to in Articles 67 to 71, 92 and 96, which are published in accordance with Annex IX.

Where the quality and completeness of the data referred to in the first subparagraph of this paragraph is not compliant with the obligations stipulated in Articles 67(1), Article 68(1), Article 69, Article 70(1), Article 92(3) and Article 96(2), the Commission shall request complementary information from the Member State concerned. Within a reasonable time, the Member State concerned shall supply the missing statistical information requested by the Commission.

2. By 18 April 2017 and every three years thereafter, Member States shall forward to the Commission a statistical report for procurement which would have been covered by this Directive if its value had exceeded the relevant threshold laid down in Article 15, indicating an estimation of the aggregated total value of such procurement during the period concerned. That estimation may, in particular, be based on data available under national publication requirements or on sample-based estimates.

That report may be included in the report referred to in Article 99(3).

#### Article 102

##### Administrative cooperation

1. Member States shall provide mutual assistance to each other, and shall put in place measures for effective cooperation with one another, in order to ensure exchange of information on issues referred to in Articles 62, 81 and 84. They shall ensure the confidentiality of the information which they exchange.

2. The competent authorities of all Member States concerned shall exchange information in compliance with personal data protection rules provided for in Directive 95/46/EC of the European Parliament and of the Council <sup>(1)</sup> and Directive 2002/58/EC of the European Parliament and of the Council <sup>(2)</sup>.

3. To test the suitability of using the Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 for the purpose of exchanging information covered by this Directive, a pilot project shall be launched by 18 April 2015.

## TITLE V

### DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS

#### Article 103

##### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 4, 17, 40, 41, 76 and 83 shall be conferred on the Commission for an indeterminate period of time from 17 April 2014.

3. The delegation of power referred to in Articles 4, 17, 40, 41, 76 and 83 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 4, 17, 40, 41, 76 and 83 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of the act to the European Parliament and the Council or if, before the

<sup>(1)</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

<sup>(2)</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### Article 104

##### Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 103(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

#### Article 105

##### Committee procedure

1. The Commission shall be assisted by the Advisory Committee on Public Procurement established by Council Decision 71/306/EEC <sup>(3)</sup>. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### Article 106

##### Transposition and transitional provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 18 April 2016. They shall forthwith communicate to the Commission the text of those measures.

<sup>(3)</sup> Council Decision 71/306/EEC of 26 July 1971 setting up an Advisory Committee for Public Works Contracts (OJ L 185, 16.8.1971, p. 15).

2. Notwithstanding paragraph 1 of this Article, Member States may postpone the application of Article 40(1) until 18 October 2018, except where use of electronic means is mandatory pursuant to Articles 52, 53, 54, Article 55(3), Article 71(2) or Article 73.

Notwithstanding paragraph 1 of this Article, Member States may postpone the application of Article 40(1) for central purchasing bodies pursuant to Article 55(3) until 18 April 2017.

Where a Member State chooses to postpone the application of Article 40(1), that Member State shall provide that contracting entities may choose between the following means of communication for all communication and information exchange:

- (a) electronic means in accordance with Article 40;
- (b) post or other suitable carrier;
- (c) fax;
- (d) a combination of those means.

3. When Member States adopt the measures referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### Article 107

##### Repeal

Directive 2004/17/EC is repealed with effect from 18 April 2016.

References to the repealed Directive shall be construed as being made to this Directive and shall be read in accordance with the correlation table in Annex XXI.

#### Article 108

##### Review

The Commission shall review the economic effects on the internal market, in particular in terms of factors such as the cross-border award of contracts and transaction costs, resulting from the application of the thresholds set in Article 15 and report thereon to the European Parliament and the Council by 18 April 2019.

The Commission shall, where possible and appropriate, consider suggesting an increase of the threshold amounts applicable under the GPA during the next round of negotiations. In the event of any change to the threshold amounts applicable under the GPA, the report shall, if appropriate, be followed by a legislative proposal amending the thresholds set out in this Directive.

#### Article 109

##### Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

#### Article 110

##### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 26 February 2014.

For the European Parliament  
The President  
M. SCHULZ

For the Council  
The President  
D. KOURKOULAS



## ANNEX I

## LIST OF ACTIVITIES AS SET OUT IN POINT (A) OF POINT 2 OF ARTICLE 2

In the event of any difference of interpretation between the CPV and the NACE, the CPV nomenclature will apply.

NACE (!)					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures, — clearing of building sites, — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. — site preparation for mining: — overburden removal and other development and preparation of mineral properties and sites. This class also includes: — building site drainage. — drainage of agricultural or forestry land.	45110000
		45.12	Test drilling and boring	This class includes: — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. This class excludes: — drilling of production oil or gas wells, see 11.20. — water well drilling, see 45.25, — shaft sinking, see 45.25, — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.	45120000

NACE (*)					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of all types of buildings construction of civil engineering constructions,</li> <li>— bridges, including those for elevated highways, viaducts, tunnels and subways,</li> <li>— long-distance pipelines, communication and power lines,</li> <li>— urban pipelines, urban communication and power lines,</li> <li>— ancillary urban works,</li> <li>— assembly and erection of prefabricated constructions on the site.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— service activities incidental to oil and gas extraction, see 11.20,</li> <li>— erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23,</li> <li>— building installation, see 45.3,</li> <li>— building completion, see 45.4,</li> <li>— architectural and engineering activities, see 74.20,</li> <li>— project management for construction, see 74.20.</li> </ul>	<p>45210000</p> <p>Except:</p> <ul style="list-style-type: none"> <li>— 45213316</li> </ul> <p>45220000</p> <p>45231000</p> <p>45232000</p>
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— erection of roofs,</li> <li>— roof covering,</li> <li>— waterproofing.</li> </ul>	45261000

NACE (!)					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of highways, streets, roads, other vehicular and pedestrian ways,</li> <li>— construction of railways,</li> <li>— construction of airfield runways,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations,</li> <li>— painting of markings on road surfaces and car parks.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— preliminary earth moving, see 45.11.</li> </ul>	<p>45212212 and DA03</p> <p>45230000</p> <p>except:</p> <ul style="list-style-type: none"> <li>— 45231000</li> <li>— 45232000</li> <li>— 45234115</li> </ul>
		45.24	Construction of water projects	<p>This class includes</p> <ul style="list-style-type: none"> <li>— construction of:</li> <li>— waterways, harbour and river works, pleasure ports (marinas), locks, etc.,</li> <li>— dams and dykes,</li> <li>— dredging,</li> <li>— subsurface work.</li> </ul>	45240000
		45.25	Other construction work involving special trades	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment,</li> <li>— construction of foundations, including pile driving,</li> <li>— water well drilling and construction, shaft sinking,</li> <li>— erection of non-self-manufactured steel elements,</li> <li>— steel bending,</li> <li>— bricklaying and stone setting,</li> </ul>	<p>45250000</p> <p>45262000</p>

NACE (1)					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				<ul style="list-style-type: none"> <li>— scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms,</li> <li>— erection of chimneys and industrial ovens.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— renting of scaffolds without erection and dismantling, see 71.32</li> </ul>	
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <ul style="list-style-type: none"> <li>— electrical wiring and fittings,</li> <li>— telecommunications systems,</li> <li>— electrical heating systems,</li> <li>— residential antennas and aerials,</li> <li>— fire alarms,</li> <li>— burglar alarm systems,</li> <li>— lifts and escalators,</li> <li>— lightning conductors, etc.</li> </ul>	<p>45213316</p> <p>45310000</p> <p>Except:</p> <p>— 45316000</p>
		45.32	Insulation work activities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of thermal, sound or vibration insulation.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— waterproofing, see 45.22.</li> </ul>	45320000
		45.33	Plumbing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of:</li> <li>— plumbing and sanitary equipment,</li> <li>— gas fittings,</li> <li>— heating, ventilation, refrigeration or air-conditioning equipment and ducts,</li> <li>— sprinkler systems.</li> </ul>	45330000

NACE (!)					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				<p>This class excludes:</p> <ul style="list-style-type: none"> <li>— installation of electrical heating systems, see 45.31.</li> </ul>	
		45.34	Other building installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of illumination and signalling systems for roads, railways, airports and harbours,</li> <li>— installation in buildings or other construction projects of fittings and fixtures n.e.c.</li> </ul>	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.</li> </ul>	45410000
		45.42	Joinery installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials,</li> <li>— interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— laying of parquet and other wood floor coverings, see 45.43.</li> </ul>	45420000
		45.43	Floor and wall covering	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— laying, tiling, hanging or fitting in buildings or other construction projects of: <ul style="list-style-type: none"> <li>— ceramic, concrete or cut stone wall or floor tiles,</li> <li>— parquet and other wood floor coverings carpets and linoleum floor coverings,</li> <li>— including of rubber or plastic,</li> <li>— terrazzo, marble, granite or slate floor or wall coverings,</li> <li>— wallpaper.</li> </ul> </li> </ul>	45430000

NACE <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.44	Painting and glazing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— interior and exterior painting of buildings,</li> <li>— painting of civil engineering structures,</li> <li>— installation of glass, mirrors, etc.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— installation of windows, see 45.42,</li> </ul>	45440000
		45.45	Other building completion	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of private swimming pools,</li> <li>— steam cleaning, sand blasting and similar activities for building exteriors,</li> <li>— other building completion and finishing work n.e.c.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— interior cleaning of buildings and other structures, see 74.70.</li> </ul>	45212212 and DA04 45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	<p>This class excludes:</p> <ul style="list-style-type: none"> <li>— renting of construction or demolition machinery and equipment without operators, see 71.32.</li> </ul>	45500000

<sup>(1)</sup> Council Regulation (EEC) No 3037/90 of 9 October 1990 (OJ L 293, 24.10.1990, p. 1).



## ANNEX II

**LIST OF UNION LEGAL ACTS REFERRED TO IN ARTICLE 4(3)**

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria do not constitute 'special or exclusive rights' within the meaning of Article 4 of this Directive. The following lists procedures, ensuring adequate prior transparency, for granting authorisations on the basis of other legal acts of the Union which do not constitute 'special or exclusive rights' within the meaning of Article 4 of this Directive:

- (a) granting authorisation to operate natural gas installations in accordance with the procedures laid down in Article 4 of Directive 2009/73/EC;
  - (b) authorisation or an invitation to tender for the construction of new electricity production installations in accordance with Directive 2009/72/EC;
  - (c) the granting in accordance with the procedures laid down in Article 9 of Directive 97/67/EC of authorisations in relation to a postal service which is not or shall not be reserved;
  - (d) a procedure for granting an authorisation to carry on an activity involving the exploitation of hydrocarbons in accordance with Directive 94/22/EC;
  - (e) public service contracts within the meaning of Regulation (EC) No 1370/2007 for the provision of public passenger transport services by bus, tramway, rail or metro which have been awarded on the basis of a competitive tendering procedure in accordance with Article 5(3) thereof, provided that its length is in conformity with Article 4(3) or (4) of that Regulation.
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## ANNEX III

## LIST OF UNION LEGAL ACTS REFERRED TO IN ARTICLE 34(3)

**A. Transport or distribution of gas or heat**

Directive 2009/73/EC

**B. Production, transmission or distribution of electricity**

Directive 2009/72/EC

**C. Production, transport or distribution of drinking water**

[No entry]

**D. Contracting entities in the field of rail services**

Rail freight transport

Directive 2012/34/EU

International rail passenger transport

Directive 2012/34/EU

National rail passenger transport

[No entry]

**E. Contracting entities in the field of urban railway, tramway, trolleybus or motor bus services**

[No entry]

**F. Contracting entities in the field of postal services**

Directive 97/67/EC

**G. Extraction of oil or gas**

Directive 94/22/EC

**H. Exploration for and extraction of coal or other solid fuels**

[No entry]

**I. Contracting entities in the field of seaport or inlandport or other terminal equipment**

[No entry]

**J. Contracting entities in the field of airport installations**

[No entry]

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## ANNEX IV

**DEADLINES FOR THE ADOPTION OF THE IMPLEMENTING ACTS REFERRED TO IN ARTICLE 35**

1. The implementing acts referred to in Article 35 shall be adopted within the following periods:

- (a) 90 working days where free access to a given market is presumed on the basis of the first subparagraph of Article 34(3);
- (b) 130 working days in cases other than those referred to in point (a).

The periods set out in points (a) and (b) of this paragraph shall be prolonged by 15 working days where the request is not accompanied by a reasoned and substantiated position, adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the conditions for the possible applicability of Article 34(1) to the activity concerned in accordance with Article 34(2) and (3).

Those deadlines shall commence on the first working day following the date on which the Commission receives the request referred to in Article 35(1) or, where the information to be supplied with the request is incomplete, on the working day following the receipt of the complete information.

The periods set out in the first subparagraph may be extended by the Commission with the agreement of the Member State or contracting entity which has presented the request.

2. The Commission may require the Member State or the contracting entity concerned or the independent national authority referred to under paragraph 1 or any other competent national authority to provide all necessary information or to supplement or clarify information given within an appropriate time limit. In the event of late or incomplete answers, the periods set out in the first subparagraph of paragraph 1 shall be suspended for the period between the expiry of the time limit set in the request for information, and the receipt of the complete and correct information.

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## ANNEX V

**REQUIREMENTS RELATING TO TOOLS AND DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS TO PARTICIPATE, APPLICATIONS FOR QUALIFICATION AS WELL AS PLANS AND PROJECTS IN CONTESTS**

Tools and devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests must guarantee, through technical means and appropriate procedures, at least that:

- (a) the exact time and date of the receipt of tenders, requests to participate, applications for qualification as well as the submission of plans and projects can be determined precisely;
  - (b) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under those requirements;
  - (c) only authorised persons may set or change the dates for opening data received;
  - (d) during the various stages of the qualification procedure, the procurement procedure or contest, access to all data submitted, or to part thereof, must be possible only for authorised persons;
  - (e) only authorised persons must give access to data transmitted and only after the prescribed date;
  - (f) data received and opened in accordance with those requirements must remain accessible only to persons authorised to acquaint themselves therewith,
  - (g) where the access prohibitions or conditions referred to under points (b) to (f) are infringed or there is an attempt to do so, it may be reasonably ensured that the infringements or attempts are clearly detectable.
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## ANNEX VI

## PART A

**INFORMATION TO BE INCLUDED IN THE PERIODIC INDICATIVE NOTICE**

(as referred to in Article 67)

**I. Information to be included in all cases**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. (a) For supply contracts: nature and quantity or value of the services or products to be supplied (CPV codes).  
  
(b) For works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work (CPV codes).  
  
(c) For service contracts: intended total procurement in each of the service categories envisaged (CPV codes).
4. Date of dispatch of the notice or of dispatch of the notice of the publication of this notice on the buyer profile.
5. Any other relevant information.

**II. Additional information to be supplied where the notice is used as a means of calling for competition or permits the reduction of the time limits for the receipt of tenders (article 67(2))**

6. A reference to the fact that interested economic operators shall advise the entity of their interest in the contract or contracts.
7. E-mail or internet address at which the specifications procurement documents will be available for unrestricted and full direct access, free of charge.  
  
Where unrestricted and full direct access, free of charge, is not available for the reasons set out in the third and fourth subparagraph of Article 73(1), an indication of how the procurement documents can be accessed.
8. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
9. Time limit for the receipt of applications for an invitation to tender or to negotiate.
10. Nature and quantity of the products to be supplied or general nature of the work or category of service and description, stating if framework agreement(s) are envisaged, including any options for further procurement and the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, an estimate of the timing of the subsequent calls for competition. State whether purchase, lease, rental or hire-purchase or any combination of those is involved.
11. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service; if the contract is divided into lots, this information shall be provided for each lot.
12. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
13. Address to which interested undertakings shall send their expressions of interest in writing.
14. Time limit for receipt of expressions of interest.
15. Language or languages authorised for the presentation of candidatures or tenders.
16. Economic and technical conditions, and financial and technical guarantees required of suppliers.

17. (a) Estimated date for initiating the procurement procedures in respect of the contract or contracts (if known);  
(b) Type of procurement procedure (restricted procedures, whether or not involving a dynamic purchasing system, or negotiated procedures).
18. Where appropriate, particular conditions to which the performance of the contract is subject.
19. Where appropriate, indication whether:
  - (a) electronic submission of tenders or requests to participate will be required/accepted,
  - (b) electronic ordering will be used,
  - (c) electronic invoicing will be used,
  - (d) electronic payment will be accepted.
20. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
21. Where known, criteria referred to in Article 82 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be mentioned, where they do not appear in the specifications, or will not be indicated in the invitation to confirm interest referred to in point (b) of Article 67(2) or in the invitation tender or to negotiate.

PART B

**INFORMATION TO BE INCLUDED IN NOTICES OF PUBLICATION OF A PERIODIC INDICATIVE NOTICE  
ON A BUYER PROFILE NOT USED AS A MEANS OF CALLING FOR COMPETITION**

(as referred to in Article 67(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
  2. Main activity exercised.
  3. CPV Codes.
  4. Internet address of the 'buyer profile' (URL).
  5. Date of dispatch of the notice of the publication of the prior information notice on the buyer profile.
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## ANNEX VII

**INFORMATION TO BE INCLUDED IN THE PROCUREMENT DOCUMENTS RELATING TO ELECTRONIC AUCTIONS (ARTICLE 53(4))**

Where contracting entities have decided to hold an electronic auction, the procurement documents shall include at least the following details:

- (a) the features whose values will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
  - (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
  - (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
  - (d) the relevant information concerning the electronic auction process;
  - (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
  - (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.
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## ANNEX VIII

## DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive,

- (1) 'technical specification' means one of the following:
  - (a) in the case of service or supply contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;
  - (b) in the case of works contracts, the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting entity; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting entity is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
- (2) 'standard' means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is one of the following:
  - (a) 'international standard' means a standard adopted by an international standardisation organisation and made available to the general public,
  - (b) 'European standard' means a standard adopted by a European standardisation organisation and made available to the general public,
  - (c) 'national standard' means a standard adopted by a national standardisation organisation and made available to the general public;
- (3) 'European Technical Assessment' means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document, as defined in point 12 of Article 2 of Regulation (EU) No 305/2011 of the European Parliament and of the Council<sup>(1)</sup>;
- (4) 'common technical specification' means a technical specification in the field of ICT laid down in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012;
- (5) 'technical reference' means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs.

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<sup>(1)</sup> Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

## ANNEX IX

**FEATURES CONCERNING PUBLICATION****1. Publication of notices**

The notices referred to in Articles 67, 68, 69, 70, 92 and 96 must be sent by the contracting entities to the Publications Office of the European Union and published in accordance with the following rules:

- (a) Notices referred to in Articles 67, 68, 69, 70, 92 and 96 shall be published by the Publications Office of the European Union or by the contracting entities in the event of a periodic indicative notice published on a buyer profile in accordance with Article 67(1).

In addition, contracting entities may publish this information on the internet on a 'buyer profile' as referred to in point 2(b) below;

- (b) The Publications Office of the European Union will give the contracting entity the confirmation referred to in the second subparagraph of Article 71(5).

**2. Publication of complementary or additional information**

- (a) Except where otherwise provided for in the third and fourth subparagraph of Article 73(1), contracting entities shall publish the procurement documents in their entirety on the internet;

- (b) The buyer profile may include periodic indicative notices as referred to in Article 67(1), information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address. The buyer profile may also include periodic indicative notices used as a means of calling for competition, which are published at national level pursuant to Article 72.

**3. Format and procedures for the electronic transmission of notices**

The format and procedure for sending notices electronically as established by the Commission are made accessible at the internet address <http://simap.eu.int>

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## ANNEX X

**INFORMATION TO BE INCLUDED IN THE NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM**

(as referred to in point (b) of Article 44(4) and in Article 68)

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
  2. Main activity exercised.
  3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
  4. Purpose of the qualification system (description of the products, services or works or categories thereof to be procured through the system — CPV codes). NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
  5. Conditions to be fulfilled by the economic operators in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested economic operators, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
  6. Period of validity of the qualification system and the formalities for its renewal.
  7. Reference to the fact that the notice acts as the call for competition.
  8. Address where further information and documentation concerning the qualification system can be obtained (where different from the addresses mentioned under point (1)).
  9. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  10. Where known, criteria referred to in Article 82 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria, shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender or to negotiate.
  11. Where appropriate, indication whether:
    - (a) electronic submission of tenders or requests to participate will be required/accepted,
    - (b) electronic ordering will be used,
    - (c) electronic invoicing will be used,
    - (d) electronic payment will be accepted.
  12. Any other relevant information.
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## ANNEX XI

**INFORMATION TO BE INCLUDED IN CONTRACT NOTICES**

(as referred to in Article 69)

## A. OPEN PROCEDURES

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
4. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement or a dynamic purchasing system), description (CPV codes). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of those.
5. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
6. For supplies and works:
  - (a) nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the products to be procured or the nature and extent of the services to be provided and general nature of the work (CPV codes);
  - (b) indication of whether the suppliers may tender for some and/or all the products required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (c) for works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
7. For services:
  - (a) The nature and quantity of the products to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (c) Reference of the law, regulation or administrative provision;
  - (d) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (e) Indication of whether service providers may tender for a part of the services concerned.
8. Where known, indication of whether authorisation to submit variants exists or not.
9. Time limits for delivery or completion or duration of service contract and, as far as possible, the starting date.
10. E-mail or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in the third and fourth subparagraph of Article 73(1), an indication of how the procurement documents can be accessed.
11. (a) Final date for receipt of tenders or indicative tenders where a dynamic purchasing system is introduced;
  - (b) Address to which they shall be sent;
  - (c) Language or languages in which they shall be drawn up.

12. (a) Where applicable, the persons authorised to be present at the opening of tenders;
- (b) Date, time and place of such opening.
13. Where applicable, any deposits and guarantees required.
14. Main terms concerning financing and payment and/or references to the provisions in which those are contained.
15. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
16. Minimum economic and technical conditions required of the economic operator to whom the contract is awarded.
17. Period during which the tenderer is bound to keep open his tender.
18. Where appropriate, particular conditions to which the performance of the contract is subject.
19. Criteria referred to in Article 82 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the specifications.
20. Where appropriate, date(s) and the reference(s) to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
21. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.
22. Date of dispatch of the notice by the contracting entity.
23. Any other relevant information.

#### B. RESTRICTED PROCEDURES

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
4. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement); description (CPV codes). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of those.
5. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
6. For supplies and works:
  - (a) The nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the products to be procured or the nature and extent of the services to be provided and general nature of the work (CPV codes);
  - (b) Indication of whether the suppliers may tender for some and/or all the products required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (c) Information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.



7. For services:
  - (a) The nature and quantity of the products to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (c) Reference to the law, regulation or administrative provision;
  - (d) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (e) Indication of whether service providers may tender for a part of the services concerned.
8. Where known, indication of whether authorisation to submit variants exists or not.
9. Time limits for delivery or completion or duration of the contract and, as far as possible, for starting.
10. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
11.
  - (a) Final date for receipt of requests to participate;
  - (b) Address to which they shall be sent;
  - (c) Language or languages in which they shall be drawn up.
12. Final date for dispatch of invitations to tender.
13. Where applicable, any deposits and guarantees required.
14. Main terms concerning financing and payment and/or references to the provisions in which those are contained.
15. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.
16. Criteria referred to in Article 82 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the specifications or will not be indicated in the invitation to tender.
17. Where appropriate, particular conditions to which the performance of the contract is subject.
18. Where appropriate, the date(s) and reference(s) to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
20. Date of dispatch of the notice by the contracting entities.
21. Any other relevant information.

#### C. NEGOTIATED PROCEDURES

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
4. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement); description (CPV codes). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of those.
5. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.

6. For supplies and works:
    - (a) The nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the products to be procured or the nature and extent of the services to be provided and general nature of the work (CPV codes);
    - (b) Indication of whether the suppliers may tender for some and/or all the products required.  
If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
    - (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
  7. For services:
    - (a) The nature and quantity of the services to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
    - (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
    - (c) Reference of the law, regulation or administrative provision;
    - (d) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
    - (e) Indication of whether service providers may tender for a part of the services concerned.
  8. Where known, indication of whether authorisation to submit variants exists or not.
  9. Time limits for delivery or completion or duration of the contract and, as far as possible, for starting.
  10. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
  11.
    - (a) Final date for receipt of requests to participate;
    - (b) Address to which they shall be sent;
    - (c) Language or languages in which they shall be drawn up.
  12. Where appropriate, any deposits and guarantees required.
  13. Main terms concerning financing and payment and/or references to the provisions in which those are contained.
  14. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.
  15. Criteria referred to in Article 82 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the specifications or will not be indicated in the invitation to negotiate.
  16. Where appropriate, the names and addresses of the economic operators already selected by the contracting entity.
  17. Where appropriate, particular conditions to which the performance of the contract is subject.
  18. Where appropriate, the dates and reference(s) of publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
  19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  20. Date of dispatch of the notice by the contracting entity.
  21. Any other relevant information.
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## ANNEX XII

## INFORMATION TO BE INCLUDED IN THE CONTRACT AWARD NOTICE

(as referred to in Article 70)

I. Information for publication in the *Official Journal of the European Union* <sup>(1)</sup>

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Nature of the contract (supplies, works or services and CPV codes; where appropriate state if it is a framework agreement).
4. At least a summary indication of the nature and quantity of the products, works or services provided.
5. (a) Form of the call for competition (notice on the existence of a system of qualification; periodic notice; call for tenders);  
  
(b) Date(s) and reference(s) of publication of the notice in the *Official Journal of the European Union*;  
  
(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 50.
6. Procurement procedure (open, restricted or negotiated).
7. Number of tenders received, specifying
  - (a) number of tenders received from economic operators which are SMEs,
  - (b) number of tenders received from abroad,
  - (c) number of tenders received electronically.In the case of multiple awards (lots, multiple framework agreements), this information shall be given for each award.
8. Date of the conclusion of the contract(s) or of the framework agreement(s) following the decision to award or conclude it/them.
9. Price paid for bargain purchases pursuant to Article 50(h).
10. For each award, name, address including NUTS code, telephone, fax number, e-mail address and internet address of the successful tenderer(s) including:
  - (a) information whether the successful tenderer is an SME,
  - (b) information whether the contract was awarded to a consortium.
11. State, where appropriate, whether the contract has been, or may be, subcontracted.
12. Price paid or the prices of the highest and lowest tenders taken into account in the award of the contract.
13. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
14. Optional information:
  - value and share of the contract which has been or may be subcontracted to third parties,
  - award criteria.

<sup>(1)</sup> Information in headings 6, 9 and 11 is deemed information not intended for publication where the awarding entity considers that publication thereof might be detrimental to a sensitive commercial interest.

**II. Information not intended for publication**

15. Number of contracts awarded (where an award has been split between several suppliers).
  16. Value of each contract awarded.
  17. Country of origin of the product or service (Community origin or non-Community origin; if the latter, broken down by third country).
  18. Which award criteria were used?
  19. Was the contract awarded to a tenderer who submitted a variant, in accordance with Article 64(1)?
  20. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 84?
  21. Date of transmission of the notice by the contracting entity.
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## ANNEX XIII

**CONTENTS OF THE INVITATIONS TO SUBMIT A TENDER, PARTICIPATE IN THE DIALOGUE, TO NEGOTIATE OR TO CONFIRM INTEREST PROVIDED FOR UNDER ARTICLE 74**

1. The invitation to submit a tender, to participate in the dialogue or to negotiate provided for under Article 74 must contain at least:

(a) the final date for receipt of tenders, the address to which they are to be sent, and the language or languages in which they are to be drawn up;

However, in the case of contracts awarded through a competitive dialogue or an innovation partnership, this information shall not appear in the invitation to negotiate but it shall appear in the invitation to submit a tender.

(b) in the case of competitive dialogue the date and the address set for the start of consultation and the language or languages used;

(c) a reference to any published call for competition;

(d) an indication of any documents to be attached;

(e) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition;

(f) the relative weighting of the contract award criteria or, where appropriate, the order of importance of such criteria, if this information is not given in the contract notice, the notice on the existence of a qualification system or the specifications.

2. When a call for competition is made by means of a periodic indicative notice, contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

This invitation shall include at least the following information:

(a) nature and quantity, including all options concerning complementary contracts and, if possible, the estimated time available for exercising those options for renewable contracts, the nature and quantity and, if possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;

(b) type of procedure: restricted or negotiated;

(c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;

(d) where electronic access cannot be offered, the address and closing date for the submission of requests for procurement documents and the language or languages in which they are to be drawn up;

(e) the address of the contracting entity;

(f) economic and technical conditions, financial guarantees and information required from economic operators;

(g) the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of those; and

(h) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, if this information is not given in the indicative notice or the specifications or in the invitation to tender or to negotiate.

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## ANNEX XIV

**LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN  
ARTICLE 36(2)**

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
  - ILO Convention 98 on the Right to Organise and Collective Bargaining;
  - ILO Convention 29 on Forced Labour;
  - ILO Convention 105 on the Abolition of Forced Labour;
  - ILO Convention 138 on Minimum Age;
  - ILO Convention 111 on Discrimination (Employment and Occupation);
  - ILO Convention 100 on Equal Remuneration;
  - ILO Convention 182 on Worst Forms of Child Labour;
  - Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
  - Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
  - Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
  - Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its 3 regional Protocols.
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ANNEX XV

**LIST OF UNION LEGAL ACTS REFERRED TO IN ARTICLE 83(3)**

Directive 2009/33/EC of the European Parliament and of the Council.

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## ANNEX XVI

**INFORMATION TO BE INCLUDED IN NOTICES OF MODIFICATIONS OF A CONTRACT DURING ITS TERM**

(as referred to in Article 89(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
  2. Main activity exercised.
  3. CPV codes.
  4. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
  5. Description of the procurement before and after the modification: nature and extent of the works, nature and quantity or value of supplies, nature and extent of services.
  6. Where applicable, increase in price caused by the modification.
  7. Description of the circumstances which have rendered necessary the modification.
  8. Date of contract award decision.
  9. Where applicable, the name, address including NUTS code, telephone, fax number, e-mail address and internet address of the new economic operator or operators.
  10. Information whether the contract is related to a project and/or programme financed by Union funds.
  11. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
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## ANNEX XVII

## SERVICES REFERRED TO IN ARTICLE 91

CPV Code	Description
75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 [Supply services of domestic help personnel]; 79624000-4 [Supply services of nursing personnel] and 79625000-1 [Supply services of medical personnel] from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5 and; 98500000-8 [Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services]	Health and social and related services
85321000-5 and 85322000-2, 75000000-6 [Administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92700000-8 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3 [Fashion shows organisation services], 79956000-0 [Fair and exhibition organisation services]	Administrative social, educational, healthcare and cultural services
75300000-9	Compulsory social security services <sup>(1)</sup>
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3, 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services
98131000-0	Religious services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service] 55510000-8 [Canteen services], 55511000-5 [Canteen and other restricted-clientele cafeteria services], 55512000-2 [Canteen management services], 55523100-3 [School-meal services], 55520000-1 [Catering services], 55522000-5 [Catering services for transport enterprises], 55523000-2 [Catering services for other enterprises or other institutions], 55524000-9 [School catering services]	Hotel and restaurant services
79100000-5 to 79140000-7; 75231100-5;	Legal services, to the extent not excluded pursuant to Article 21(c)
75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3	Other administrative services and government services
75200000-8 to 75231000-4	Provision of services to the community

CPV Code	Description
75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services, to the extent not excluded pursuant to Article 21(h)
79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1 [Graphology services], 79723000-8 [Waste analysis services]	Investigation and security services
98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]	International services
64000000-6 [Postal and telecommunications services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services], 64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]	Postal services
50116510-9 [Tyre-remoulding services], 71550000-8 [Blacksmith services]	Miscellaneous services

(<sup>1</sup>) These services are not covered by the present Directive where they are organised as non-economic services of general interest. Member States are free to organise the provision of compulsory social services or of other services as services of general interest or as non-economic services of general interest.

## ANNEX XVIII

**INFORMATION TO BE INCLUDED IN NOTICES CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES**

(as referred to in Article 92)

**Part A Contract notice**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Description of the services or categories thereof and where applicable, incidental works and supplies to be procured, including an indication of the quantities or values involved, CPV codes.
4. NUTS code for the main place of performance of the services.
5. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
6. Main conditions to be fulfilled by the economic operators in view of their participation, or, where appropriate, the electronic address where detailed information may be obtained.
7. Time limit(s) for contacting the contracting entity in view of participation.
8. Any other relevant information.

**Part B Periodic indicative notice**

1. Name, identification number (where provided for in national legislation), address including NUTS code, e-mail and internet address of the contracting entity.
2. Brief description of the contract in question including CPV codes.
3. As far as already known:
  - (a) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services,
  - (b) time-frame for delivery or provision of supplies, works or services and duration of the contract,
  - (c) conditions for participation, including:

where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,

where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession,
  - (d) brief description of the main features of the award procedure to be applied.
4. A reference to the fact that interested economic operators shall advise the contracting entity of their interest in the contract or contracts and time limits for receipt of expressions of interest and address to which expressions of interest shall be transmitted.

**Part C Notice on the existence of a qualification system**

1. Name, identification number (where provided for in national legislation), address including NUTS code, e-mail and internet address of the contracting entity.
2. Brief description of the contract in question including CPV codes.

3. As far as already known:
  - (a) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services,
  - (b) time-frame for delivery or provision of supplies, works or services and duration of the contract,
  - (c) conditions for participation, including:
    - where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
    - where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession,
  - (d) brief description of the main features of the award procedure to be applied.
4. A reference to the fact that interested economic operators shall advise the contracting entity of their interest in the contract or contracts and time limits for receipt of expressions of interest and address to which expressions of interest shall be transmitted.
5. Period of validity of the qualification system and the formalities for its renewal.

**Part D Contract award notice**

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
  2. Main activity exercised.
  3. At least a summary indication of the nature and quantity of the services and where applicable, incidental works and supplies provided.
  4. Reference of publication of the notice in the *Official Journal of the European Union*.
  5. Number of tenders received.
  6. Name and address of the chosen economic operator(s).
  7. Any other relevant information.
-



## ANNEX XIX

**INFORMATION TO BE INCLUDED IN THE DESIGN CONTEST NOTICE**

(as referred to in Article 96(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
  2. Main activity exercised.
  3. Project description (CPV codes).
  4. Nature of the contest: open or restricted.
  5. In the case of open contests: final date for receipt of projects.
  6. In the case of restricted contests:
    - (a) the number of participants envisaged, or range;
    - (b) where applicable, names of participants already selected;
    - (c) criteria for the selection of participants;
    - (d) final date for receipt of requests to participate.
  7. Where applicable, indication of whether participation is reserved to a particular profession.
  8. Criteria to be applied in the evaluation of projects.
  9. Where applicable, names of the selected members of the jury.
  10. Indication of whether the decision of the jury is binding on the authority.
  11. Where applicable, number and value of prizes.
  12. Where applicable, details of payments to all participants.
  13. Indication of whether the prize-winners are permitted any follow-up contracts.
  14. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  15. Date of dispatch of the notice.
  16. Any other relevant information.
-

## ANNEX XX

**INFORMATION TO BE INCLUDED IN THE RESULTS OF DESIGN CONTEST NOTICES**

(as referred to in Article 96(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
  2. Main activity exercised.
  3. Project description (CPV codes).
  4. Total number of participants.
  5. Number of foreign participants.
  6. Winner(s) of the contest.
  7. Where applicable, the prize(s).
  8. Other information.
  9. Reference of the design contest notice.
  10. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  11. Date of dispatch of the notice.
-

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**DIRECTIVE 2014/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 26 February 2014**

**on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (a) and (b) of Article 79(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty on the Functioning of the European Union (TFEU) provides for measures to be adopted in the fields of asylum, immigration and protection of the rights of third-country nationals.
- (2) The TFEU provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals staying legally in Member States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and stay of third-country nationals and on the definition of their rights.
- (3) The Hague Programme, adopted by the European Council on 4 November 2004, recognised that legal migration will play an important role in advancing economic development and asked the Commission to present a policy plan on legal migration, including admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market.

- (4) The European Council of 14 and 15 December 2006 agreed on a series of steps for 2007. Those steps include the development of well-managed legal immigration policies that fully respect national competences in order to assist Member States in meeting existing and future labour needs. It also called for means to be explored to facilitate temporary migration.
- (5) The European Pact on Immigration and Asylum, adopted by the European Council on 16 October 2008, expresses the commitment of the Union and its Member States to conduct a fair, effective and consistent policy for dealing with the challenges and opportunities of migration. The Pact forms the basis of a common immigration policy guided by a spirit of solidarity between Member States and cooperation with third countries and founded on proper management of migratory flows, in the interests not only of the host countries but also of the countries of origin and of the migrants themselves.
- (6) The Stockholm Programme, adopted by the European Council on 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the Union in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the long term. It also highlights the importance of ensuring fair treatment of third-country nationals staying legally on the territory of the Member States and of optimising the link between migration and development. It invites the Commission and the European Council to continue implementing the Policy Plan on Legal Migration set out in the Commission's communication of 21 December 2005.
- (7) This Directive should contribute to the effective management of migration flows for the specific category of seasonal temporary migration and to ensuring decent working and living conditions for seasonal workers, by setting out fair and transparent rules for admission and stay and by defining the rights of seasonal workers while at the same time providing for incentives and safeguards to prevent overstaying or temporary stay from becoming permanent. In addition, the rules laid down in Directive 2009/52/EC of the European Parliament and of the Council <sup>(4)</sup> will contribute to avoiding such temporary stay turning into unauthorised stay.

<sup>(1)</sup> OJ C 218, 23.7.2011, p. 97.

<sup>(2)</sup> OJ C 166, 7.6.2011, p. 59.

<sup>(3)</sup> Position of the European Parliament of 5 February 2014 (not yet published in the Official Journal) and decision of the Council of 17 February 2014.

<sup>(4)</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

- (8) Member States should give effect to this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disability, age or sexual orientation in accordance, in particular, with Council Directive 2000/43/EC<sup>(1)</sup> and Council Directive 2000/78/EC<sup>(2)</sup>.
- (9) This Directive should be without prejudice to the principle of preference for Union citizens as regards access to Member States' labour market as expressed in the relevant provisions of the relevant Acts of Accession.
- (10) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals coming from third countries to their territory for the purposes of seasonal work as specified in the TFEU.
- (11) This Directive should not affect the conditions of the provision of services in the framework of Article 56 TFEU. In particular, this Directive should not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC of the European Parliament and of the Council<sup>(3)</sup>, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State.
- (12) This Directive should cover direct working relationships between seasonal workers and employers. However, where a Member State's national law allows admission of third-country nationals as seasonal workers through employment or temporary work agencies established on its territory and which have a direct contract with the seasonal worker, such agencies should not be excluded from the scope of this Directive.
- (13) When transposing this Directive, Member States should, where appropriate in consultation with social partners, list those sectors of employment which include activities that are dependent on the passing of the seasons. Activities dependent on the passing of the seasons are typically to be found in sectors such as agriculture and horticulture, in particular during the planting or harvesting period, or tourism, in particular during the holiday period.
- (14) If so provided under national law and in accordance with the principle of non-discrimination as set out in
- Article 10 TFEU, Member States are allowed to apply more favourable treatment to nationals of specific third countries when compared to the nationals of other third countries when implementing the optional provisions of this Directive.
- (15) It should only be possible to apply for admission as a seasonal worker while the third-country national is residing outside the territory of the Member States.
- (16) It should be possible to refuse admission for the purposes of this Directive on duly justified grounds. In particular, it should be possible to refuse admission if a Member State considers, on the basis of an assessment of the facts, that the third-country national concerned is a potential threat to public policy, public security or public health.
- (17) This Directive should be without prejudice to the application of Directive 2008/115/EC of the European Parliament and of the Council<sup>(4)</sup>.
- (18) This Directive should not adversely affect the rights that have been granted to third-country nationals who are already legally staying in a Member State for the purpose of work.
- (19) In the case of Member States applying the Schengen *acquis* in full, Regulation (EC) No 810/2009 of the European Parliament and of the Council<sup>(5)</sup> (Visa Code), Regulation (EC) No 562/2006 of the European Parliament and of the Council<sup>(6)</sup> (Schengen Borders Code), and Council Regulation (EC) No 539/2001<sup>(7)</sup> apply in their entirety. Accordingly, for stays not exceeding 90 days, the conditions for admission of seasonal workers to the territory of the Member States applying the Schengen *acquis* in full are regulated by those instruments, while this Directive should only regulate the criteria and requirements for access to employment. In the case of Member States not applying the Schengen *acquis* in full, with the exception of the United Kingdom and Ireland, only the Schengen Borders Code applies. The provisions of the Schengen *acquis* referred to in this Directive belong to that part of the Schengen *acquis* in which Ireland and the United Kingdom do not take part and therefore those provisions do not apply to them.

<sup>(1)</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).

<sup>(2)</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

<sup>(3)</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

<sup>(4)</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

<sup>(5)</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)(OJ L 243, 15.9.2009, p. 1).

<sup>(6)</sup> Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

<sup>(7)</sup> Council Regulation (EC) No 539/2001 of 15 March 2001 listing third countries whose nationals must be in possession of visas when crossing the external borders and those nationals exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

- (20) Criteria and requirements for admission as well as grounds for refusal and withdrawal or non-extension/non-renewal for stays not exceeding 90 days should be defined in this Directive as far as employment as a seasonal worker is concerned. When short-stay visas are issued for the purpose of seasonal work, the relevant provisions of the Schengen *acquis* concerning the conditions of entry and stay in the territory of Member States as well as grounds for refusal, extension, annulment or revocation of those visas apply accordingly. In particular, any decision on refusal, annulment or revocation of a visa and the reasons on which it is based should be notified, in accordance with Articles 32(2) and 34(6) of the Visa Code, to the applicant by means of the standard form set out in Annex VI to the Visa Code.
- (21) For seasonal workers who are admitted for stays of longer than 90 days, this Directive should define both the conditions for admission to and stay in the territory and the criteria and requirements for access to employment in the Member States.
- (22) This Directive should provide for a flexible entry system based on demand and objective criteria, such as a valid work contract or a binding job offer that specifies the essential aspects of the contract or employment relationship.
- (23) Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market.
- (24) Member States should be able to reject an application for admission in particular when the third-country national has not complied with the obligation arising from a previous admission decision as a seasonal worker to leave the territory of the Member State concerned on the expiry of an authorisation for the purpose of seasonal work.
- (25) Member States should be able to require the employer to cooperate with the competent authorities and to provide all relevant information needed in order to prevent possible abuse and misuse of the procedure set out in this Directive.
- (26) Provision for a single procedure leading to one combined permit, encompassing both stay and work, should contribute to simplifying the rules currently applicable in Member States. That should not affect the right of Member States to designate the competent authorities and the way in which they should be involved in the single procedure, in accordance with national specificities of administrative organisation and practice.
- (27) The designation of the competent authorities under this Directive should be without prejudice to the role and responsibilities of other authorities and, where applicable, the social partners, in accordance with national law and/or practice, with regard to the examination of, and the decision on, the application.
- (28) This Directive should provide for a degree of flexibility for Member States regarding the authorisations to be issued for the admission (entry, stay and work) of seasonal workers. The issuing of a long-stay visa in accordance with point (a) of Article 12(2) should be without prejudice to the possibility for Member States to issue a prior authorisation to work in the Member State concerned. Nevertheless, in order to ensure that the conditions of employment as provided for by this Directive have been checked and are met, it should be made clear on those authorisations that they were issued for the purpose of seasonal work. Where only short-stay visas are issued, Member States should make use of the 'remarks' heading of the visa sticker for that purpose.
- (29) For all stays not exceeding 90 days, Member States should choose to issue either a short-stay visa or a short-stay visa accompanied by a work permit in cases where the third-country national requires a visa in accordance with Regulation (EC) No 539/2001. Where the third-country national is not subject to the visa requirement and where the Member State did not apply Article 4(3) of that Regulation, the Member States should issue a work permit to him or her as an authorisation for the purpose of seasonal work. For all stays exceeding 90 days, Member States should choose to issue one of the following authorisations: a long-stay visa; a seasonal worker permit; or a seasonal worker permit accompanied by a long-stay visa, if the long-stay visa is required under national law for entering the territory. Nothing in this Directive should preclude Member States from delivering a work permit directly to the employer.
- (30) Where a visa is required for the sole purpose of entering the territory of a Member State and the third-country national fulfils the conditions for being issued a seasonal worker permit, the Member State concerned should grant the third-country national every facility to obtain the requisite visa and should ensure that the competent authorities effectively cooperate for that purpose.

- (31) The maximum duration of stay should be fixed by Member States and limited to a period of between five and nine months which, together with the definition of seasonal work, should ensure that the work is of genuinely seasonal nature. Provision should be made to the effect that within that maximum duration of stay, an extension of the contract or change of employer is possible, provided that the admission criteria continue to be met. That should serve to reduce the risk of abuse that seasonal workers may face if tied to a single employer and at the same time provide for a flexible response to employers' actual workforce needs. The possibility for the seasonal worker to be employed by a different employer under the conditions laid down in this Directive should not entail the possibility for the seasonal worker to seek employment on the territory of the Member States while being unemployed.
- (32) When deciding on the extension of stay or the renewal of the authorisation for the purpose of seasonal work, Member States should be able to take into consideration the labour market situation.
- (33) In cases where a seasonal worker has been admitted for a stay not exceeding 90 days and where the Member State has decided to extend the stay beyond 90 days, the short-stay visa should be replaced either by a long-stay visa or by a seasonal worker permit.
- (34) Taking into account certain aspects of circular migration as well as the employment prospects of third-country seasonal workers beyond a single season and the interests of Union employers in being able to rely on a more stable and already trained workforce, the possibility of facilitated admission procedures should be provided for in respect of bona fide third-country nationals who have been admitted as seasonal workers in a Member State at least once within the previous five years, and who have always respected all criteria and conditions provided under this Directive for entry and stay in the Member State concerned. Such procedures should not affect, or circumvent, the requirement that the employment be of a seasonal nature.
- (35) Member States should do their best to ensure that information on conditions of entry and stay, including the rights and obligations and the procedural safeguards as laid down in this Directive and all documentary evidence needed for an application to stay and work in the territory of a Member State as a seasonal worker, is made available to applicants.
- (36) Member States should provide for effective, proportionate and dissuasive sanctions against employers in the event of breaches of their obligations under this Directive. Those sanctions could consist of measures as provided for in Article 7 of Directive 2009/52/EC and should include, if appropriate, liability of the employer to pay compensation to seasonal workers. The necessary mechanisms should be in place to enable seasonal workers to obtain the compensation to which they are entitled even if they are no longer on the territory of the Member State in question.
- (37) A set of rules governing the procedure for examining applications for admission as a seasonal worker should be laid down. That procedure should be effective and manageable, taking account of the normal workload of Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.
- (38) In the case of short-stay visas, the procedural safeguards are governed by the relevant provisions of the Schengen *acquis*.
- (39) The competent authorities of the Member States should decide on applications for an authorisation for the purpose of seasonal work as soon as possible after they are submitted. In relation to applications for an extension or renewal, where submitted within the period of validity of the authorisation, Member States should take all reasonable steps to ensure that the seasonal worker is not obliged to interrupt his or her employment relationship with the same employer, or prevented from changing employers, due to on-going administrative procedures. Applicants should submit their application for extension or renewal as soon as possible. In any event, the seasonal worker should be allowed to stay on the territory of the Member State concerned, and where appropriate to continue working, until a final decision on the application for an extension or renewal has been taken by the competent authorities.
- (40) Given the nature of seasonal work, Member States should be encouraged not to charge a fee for the handling of applications. In the event that a Member State nevertheless decides to charge a fee, such a fee should not be disproportionate or excessive.
- (41) Seasonal workers should all benefit from accommodation that ensures an adequate standard of living. The competent authority should be informed of any change of accommodation. Where the accommodation is arranged by or through the employer the rent should not be excessive compared with the net remuneration of the seasonal worker and compared with the quality of that accommodation, the seasonal worker's rent should not be automatically deducted from his or her wage, the employer should provide the seasonal worker with a rental contract or equivalent document stating the rental conditions for the accommodation, and the employer should ensure that the accommodation meets the general health and safety standards in force in the Member State concerned.



(42) Third-country nationals who are in possession of a valid travel document and an authorisation for the purpose of seasonal work issued under this Directive by a Member State applying the Schengen *acquis* in full are allowed to enter into and move freely within the territory of the Member States applying the Schengen *acquis* in full, for a period up to 90 days in any 180-day period in accordance with the Schengen Borders Code and Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders<sup>(1)</sup> (Schengen Implementing Convention).

(43) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to provide effective protection of the rights of third-country national seasonal workers, also in the social security field, to check regularly for compliance and to fully guarantee respect for the principle of equal treatment with workers who are nationals of the host Member State, abiding by the concept of the same pay for the same work in the same workplace, by applying collective agreements and other arrangements on working conditions which have been concluded at any level or for which there is statutory provision, in accordance with national law and practice, under the same terms as to nationals of the host Member State.

(44) This Directive should apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961 and, where relevant, the European Convention on the Legal Status of Migrant Workers of 24 November 1977.

(45) In addition to the legislative, administrative and regulatory provisions applicable to workers who are nationals of the host Member State, arbitration decisions and collective agreements and contracts concluded at any level, in accordance with the host Member State's national law and practice, should also apply to third-country national seasonal workers under the same terms as to nationals of the host Member State.

(46) Third-country national seasonal workers should be granted equal treatment in respect of those branches of

social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>(2)</sup>. This Directive does not harmonise the social security legislation of Member States and does not cover social assistance. It is limited to applying the principle of equal treatment in the field of social security to the persons falling within its scope. This Directive should not confer more rights than those already provided in existing Union legislation in the field of social security for third-country nationals who have cross-border interests between Member States.

Due to the temporary nature of the stay of seasonal workers and without prejudice to Regulation (EU) No 1231/2010 of the European Parliament and of the Council<sup>(3)</sup>, Member States should be able to exclude family benefits and unemployment benefits from equal treatment between seasonal workers and their own nationals and should be able to limit the application of equal treatment in relation to education and vocational training, as well as tax benefits.

This Directive does not provide for family reunification. Furthermore, this Directive does not grant rights in relation to situations which lie outside the scope of Union law such as, for example, situations where family members reside in a third country. That should not, however, affect the right of survivors who derive rights from the seasonal worker to receive survivor's pensions when residing in a third country. This should be without prejudice to the non-discriminatory application by Member States of national law providing for *de minimis* rules on contributions to pension systems. Mechanisms should be in place in order to ensure effective social security coverage during the stay and the exporting of acquired rights of the seasonal workers, where applicable.

(47) Union law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at Union level, it is for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States should comply with Union law.

<sup>(1)</sup> OJ L 239, 22.9.2000, p. 19.

<sup>(2)</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

<sup>(3)</sup> Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).

- (48) Any restrictions on equal treatment in the field of social security under this Directive should be without prejudice to the rights conferred in application of Regulation (EU) No 1231/2010.
- (49) To ensure the proper enforcement of this Directive, and in particular the provisions regarding rights, working conditions and accommodation, Member States should ensure that appropriate mechanisms are in place for the monitoring of employers and that, where appropriate, effective and adequate inspections are carried out on their respective territories. The selection of employers to be inspected should be based primarily on a risk assessment to be carried out by the competent authorities in the Member States taking into account factors such as the sector in which a company operates and any past record of infringement.
- (50) To facilitate enforcement of this Directive, Member States should put in place effective mechanisms through which seasonal workers may seek legal redress and lodge complaints directly or through relevant third parties such as trade unions or other associations. That is considered necessary to address situations where seasonal workers are unaware of the existence of enforcement mechanisms or hesitant to use them in their own name, out of fear of possible consequences. Seasonal workers should have access to judicial protection against victimisation as a result of a complaint being made.
- (51) Since the objectives of this Directive, namely the introduction of a special admission procedure, the adoption of conditions on entry and stay for the purpose of seasonal work by third-country nationals and the definition of their rights as seasonal workers, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU), taking account of immigration and employment policies at European and national level. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (52) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular, Articles 7, 15(3), 17, 27, 28, 31 and 33(2) thereof, in accordance with Article 6 TEU.
- (53) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory

documents of 28 September 2011 <sup>(1)</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

- (54) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive, and are not bound by it or subject to its application.
- (55) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application.

HAVE ADOPTED THIS DIRECTIVE:

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

##### Subject-matter

1. This Directive determines the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers and defines the rights of seasonal workers.
2. For stays not exceeding 90 days, this Directive shall apply without prejudice to the Schengen *acquis*, in particular the Visa Code, the Schengen Borders Code and Regulation (EC) No 539/2001.

##### Article 2

##### Scope

1. This Directive shall apply to third-country nationals who reside outside the territory of the Member States and who apply to be admitted, or who have been admitted under the terms of this Directive, to the territory of a Member State for the purpose of employment as seasonal workers.

This Directive shall not apply to third-country nationals who at the time of application reside in the territory of a Member State with the exception of cases referred to in Article 15.

<sup>(1)</sup> OJ C 369, 17.12.2011, p. 14.

2. When transposing this Directive the Member States shall, where appropriate in consultation with the social partners, list those sectors of employment which include activities that are dependent on the passing of the seasons. The Member States may modify that list, where appropriate in consultation with the social partners. The Member States shall inform the Commission of such modifications.

3. This Directive shall not apply to third-country nationals who:

- (a) are carrying out activities on behalf of undertakings established in another Member State in the framework of the provision of services within the meaning of Article 56 TFEU, including third-country nationals posted by undertakings established in a Member State in the framework of the provision of services in accordance with Directive 96/71/EC;
- (b) are family members of Union citizens who have exercised their right to free movement within the Union, in conformity with Directive 2004/38/EC of the European Parliament and of the Council <sup>(1)</sup>;
- (c) together with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of Union citizens under agreements either between the Union and the Member States or between the Union and third countries.

### Article 3

#### Definitions

For the purposes of this Directive the following definitions apply:

- (a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU;
- (b) 'seasonal worker' means a third-country national who retains his or her principal place of residence in a third country and stays legally and temporarily in the territory of a Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State;
- (c) 'activity dependent on the passing of the seasons' means an activity that is tied to a certain time of the year by a recurring event or pattern of events linked to seasonal conditions during which required labour levels are significantly above those necessary for usually ongoing operations;

<sup>(1)</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

(d) 'seasonal worker permit' means an authorisation issued using the format laid down in Council Regulation (EC) No 1030/2002 <sup>(2)</sup> bearing a reference to seasonal work and entitling its holder to stay and work in the territory of a Member State for a stay exceeding 90 days under the terms of this Directive;

(e) 'short-stay visa' means an authorisation issued by a Member State as provided for in point (2)(a) of Article 2 of the Visa Code or issued in accordance with the national law of a Member State not applying the Schengen *acquis* in full;

(f) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Implementing Convention or issued in accordance with the national law of a Member State not applying the Schengen *acquis* in full;

(g) 'single application procedure' means a procedure leading, on the basis of one application for the authorisation of a third-country national's stay and work in the territory of a Member State, to a decision on the application for a seasonal worker permit;

(h) 'authorisation for the purpose of seasonal work' means any of the authorisations referred to in Article 12 entitling their holder to stay and work on the territory of the Member State that issued the authorisation under this Directive;

(i) 'work permit' means any authorisation issued by a Member State in accordance with national law for the purpose of work in the territory of that Member State.

### Article 4

#### More favourable provisions

1. This Directive shall apply without prejudice to more favourable provisions of:

- (a) Union law, including bilateral and multilateral agreements concluded between the Union or between the Union and its Member States on the one hand and one or more third countries on the other;
- (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for third-country nationals to whom it applies in respect of Articles 18, 19, 20, 23 and 25.

<sup>(2)</sup> Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).



## CHAPTER II

## CONDITIONS OF ADMISSION

## Article 5

**Criteria and requirements for admission for employment as a seasonal worker for stays not exceeding 90 days**

1. Applications for admission to a Member State under the terms of this Directive for a stay not exceeding 90 days shall be accompanied by:

(a) a valid work contract or, if provided for by national law, administrative regulations, or practice, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in that Member State which specifies:

(i) the place and type of the work;

(ii) the duration of employment;

(iii) the remuneration;

(iv) the working hours per week or month;

(v) the amount of any paid leave;

(vi) where applicable other relevant working conditions; and

(vii) if possible, the date of commencement of employment;

(b) evidence of having or, if provided for by national law, having applied for sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in that Member State;

(c) evidence that the seasonal worker will have adequate accommodation or that adequate accommodation will be provided in accordance with Article 20.

2. Member States shall require that the conditions referred to in point (a) of paragraph 1 comply with applicable law, collective agreements and/or practice.

3. On the basis of the documentation provided pursuant to paragraph 1, Member States shall require that the seasonal worker will have no recourse to their social assistance systems.

4. In cases where the work contract or binding job offer specifies that the third-country national will exercise a

regulated profession, as defined in Directive 2005/36/EC of the European Parliament and of the Council <sup>(1)</sup>, the Member State may require the applicant to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise of that regulated profession.

5. When examining an application for an authorisation referred to in Article 12(1), Member States not applying the Schengen *acquis* in full shall verify that the third-country national:

(a) does not present a risk of illegal immigration;

(b) intends to leave the territory of the Member States at the latest on the date of expiry of the authorisation.

## Article 6

**Criteria and requirements for admission as a seasonal worker for stays exceeding 90 days**

1. Applications for admission to a Member State under the terms of this Directive for a stay exceeding 90 days shall be accompanied by:

(a) a valid work contract or, if provided for by national law, administrative regulations, or practice, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in that Member State which specifies:

(i) the place and type of the work;

(ii) the duration of employment;

(iii) the remuneration;

(iv) the working hours per week or month;

(v) the amount of any paid leave;

(vi) where applicable, other relevant working conditions; and

(vii) if possible, the date of commencement of employment;

(b) evidence of having or, if provided for by national law, having applied for, sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in that Member State;

<sup>(1)</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

(c) evidence that the seasonal worker will have adequate accommodation or that adequate accommodation will be provided, in accordance with Article 20.

2. Member States shall require that the conditions referred to in point (a) of paragraph 1 comply with applicable law, collective agreements and/or practice.

3. On the basis of the documentation provided pursuant to paragraph 1, Member States shall require that the seasonal worker will have sufficient resources during his or her stay to maintain him/herself without having recourse to their social assistance systems.

4. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted.

5. When examining an application for an authorisation referred to in Article 12(2), Member States shall verify that the third-country national does not present a risk of illegal immigration and that he or she intends to leave the territory of the Member States at the latest on the date of expiry of the authorisation.

6. In cases where the work contract or binding job offer specifies that the third-country national will exercise a regulated profession, as defined in Directive 2005/36/EC, the Member State may require the applicant to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise of that regulated profession.

7. Member States shall require third-country nationals to be in possession of a valid travel document, as determined by national law. Member States shall require the period of validity of the travel document to cover at least the period of validity of the authorisation for the purpose of seasonal work.

In addition, Member States may require:

- (a) the period of validity to exceed the intended duration of stay by a maximum of three months;
- (b) the travel document to have been issued within the last 10 years; and
- (c) the travel document to contain at least two blank pages.

#### Article 7

##### Volumes of admission

This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals

entering its territory for the purpose of seasonal work. On this basis, an application for an authorisation for the purpose of seasonal work may be either considered inadmissible or be rejected.

#### Article 8

##### Grounds for rejection

1. Member States shall reject an application for authorisation for the purpose of seasonal work where:

- (a) Articles 5 or 6 are not complied with; or
- (b) the documents presented for the purpose of Articles 5 or 6 were fraudulently acquired, or falsified, or tampered with.

2. Member States shall, if appropriate, reject an application for authorisation for the purpose of seasonal work where:

- (a) the employer has been sanctioned in accordance with national law for undeclared work and/or illegal employment;
- (b) the employer's business is being or has been wound up under national insolvency laws or no economic activity is taking place; or
- (c) the employer has been sanctioned under Article 17.

3. Member States may verify whether the vacancy in question could be filled by nationals of the Member State concerned or by other Union citizens, or by third-country nationals lawfully residing in that Member State, in which case they may reject the application. This paragraph shall apply without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession.

4. Member States may reject an application for authorisation for the purpose of seasonal work where:

- (a) the employer has failed to meet its legal obligations regarding social security, taxation, labour rights, working conditions or terms of employment, as provided for in applicable law and/or collective agreements;
- (b) within the 12 months immediately preceding the date of the application, the employer has abolished a full-time position in order to create the vacancy that the employer is trying to fill by use of this Directive; or
- (c) the third-country national has not complied with the obligations arising from a previous decision on admission as a seasonal worker.

5. Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.

6. Grounds for refusing the issuing of a short-stay visa are regulated in the relevant provisions of the Visa Code.

#### Article 9

### Withdrawal of the authorisation for the purpose of seasonal work

1. Member States shall withdraw the authorisation for the purpose of seasonal work where:

- (a) the documents presented for the purpose of Articles 5 or 6 were fraudulently acquired, or falsified, or tampered with; or
- (b) the holder is staying for purposes other than those for which he or she was authorised to stay.

2. Member States shall, if appropriate, withdraw the authorisation for the purpose of seasonal work where:

- (a) the employer has been sanctioned in accordance with national law for undeclared work and/or illegal employment;
- (b) the employer's business is being or has been wound up under national insolvency laws or no economic activity is taking place; or
- (c) the employer has been sanctioned under Article 17.

3. Member States may withdraw the authorisation for the purpose of seasonal work where:

- (a) Articles 5 or 6 are not or are no longer complied with;
- (b) the employer has failed to meet its legal obligations regarding social security, taxation, labour rights, working conditions or terms of employment, as provided for in applicable law and/or collective agreements;
- (c) the employer has not fulfilled its obligations under the work contract; or
- (d) within the 12 months immediately preceding the date of the application, the employer has abolished a full-time position in order to create the vacancy that the employer is trying to fill by use of this Directive.

4. Member States may withdraw the authorisation for the purpose of seasonal work if the third-country national applies

for international protection under Directive 2011/95/EU of the European Parliament and of the Council <sup>(1)</sup> or for protection in accordance with national law, international obligations or practice of the Member State concerned.

5. Without prejudice to paragraph 1, any decision to withdraw the authorisation shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.

6. Grounds for annulment or revocation of a short-stay visa are regulated in the relevant provisions of the Visa Code.

#### Article 10

### Obligation of cooperation

Member States may require the employer to provide all relevant information needed for issuing, extending or renewing the authorisation for the purpose of seasonal work.

#### CHAPTER III

### PROCEDURE AND AUTHORISATIONS FOR THE PURPOSE OF SEASONAL WORK

#### Article 11

### Access to information

1. Member States shall make easily accessible to applicants the information on all documentary evidence needed for an application and information on entry and stay, including the rights and obligations and the procedural safeguards of the seasonal worker.

2. When Member States issue third-country nationals with an authorisation for the purpose of seasonal work, they shall also provide them with information in writing about their rights and obligations under this Directive, including complaint procedures.

#### Article 12

### Authorisations for the purpose of seasonal work

1. For stays not exceeding 90 days, Member States shall issue third-country nationals who comply with Article 5 and do not fall within the grounds set out in Article 8 one of the following authorisations for the purpose of seasonal work, without prejudice to the rules on the issuing of short-stay visas as laid down in the Visa Code and in Council Regulation (EC) No 1683/95 <sup>(2)</sup>:

<sup>(1)</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

<sup>(2)</sup> Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1).

- (a) a short-stay visa, indicating that it is issued for the purpose of seasonal work;
- (b) a short-stay visa and a work permit indicating that they are issued for the purpose of seasonal work; or
- (c) a work permit indicating that it is issued for the purpose of seasonal work, where the third-country national is exempted from the visa requirement in accordance with Annex II of Regulation (EC) No 539/2001 and the Member State concerned does not apply Article 4(3) of that Regulation to him or her.

When transposing this Directive, Member States shall provide for either the authorisations referred to in points (a) and (c) or the authorisations referred to in points (b) and (c).

2. For stays exceeding 90 days, Member States shall issue third-country nationals who comply with Article 6 and do not fall within the grounds set out in Article 8, one of the following authorisations for the purpose of seasonal work:

- (a) a long-stay visa, indicating that it is issued for the purpose of seasonal work;
- (b) a seasonal worker permit; or
- (c) a seasonal worker permit and a long-stay visa, if the long-stay visa is required under national law for entering the territory.

When transposing this Directive, Member States shall provide for only one of the authorisations referred to in points (a), (b) and (c).

3. Without prejudice to the Schengen *acquis*, Member States shall determine whether an application is to be submitted by the third-country national and/or by the employer.

The obligation on the Member States to determine whether the application is to be submitted by a third-country national and/or by the employer shall be without prejudice to any arrangements requiring both to be involved in the procedure.

4. The seasonal worker permit referred to in points (b) and (c) of the first subparagraph of paragraph 2 shall be issued by the competent authorities of the Member States using the format laid down in Regulation (EC) No 1030/2002. Member States shall enter a reference on the permit stating that it is issued for the purpose of seasonal work.

5. In the case of long-stay visas, Member States shall enter a reference stating that it is issued for the purpose of seasonal

work under the heading 'remarks' on the visa sticker in accordance with point 12 of the Annex to Regulation (EC) No 1683/95.

6. Member States may indicate additional information relating to the employment relationship of the seasonal worker in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and in point (a)16 of the Annex thereto.

7. Where a visa is required for the sole purpose of entering the territory of a Member State and the third-country national fulfils the conditions for being issued with a seasonal worker permit under point (c) of the first subparagraph of paragraph 2, the Member State concerned shall grant the third-country national every facility to obtain the requisite visa.

8. The issuing of a long-stay visa referred to in point (a) of the first subparagraph of paragraph 2 shall be without prejudice to the possibility for Member States to issue a prior authorisation to work in the Member State concerned.

#### Article 13

##### Applications for a seasonal worker permit

1. Member States shall designate the authorities competent to receive and decide on applications for and to issue seasonal worker permits.

2. An application for a seasonal worker permit shall be submitted in a single application procedure.

#### Article 14

##### Duration of stay

1. Member States shall determine a maximum period of stay for seasonal workers which shall be not less than five months and not more than nine months in any 12-month period. After the expiry of that period, the third-country national shall leave the territory of the Member State unless the Member State concerned has issued a residence permit under national or Union law for purposes other than seasonal work.

2. Member States may determine a maximum period of time within any 12-month period, during which an employer is allowed to hire seasonal workers. That period shall be not less than the maximum period of stay determined pursuant to paragraph 1.

*Article 15***Extension of stay or renewal of the authorisation for the purposes of seasonal work**

1. Within the maximum period referred to in Article 14(1) and provided that Articles 5 or 6 are complied with and the grounds set out in point (b) of Article 8(1), Article 8(2) and, if applicable, Article 8(4) are not met, Member States shall allow seasonal workers one extension of their stay, where seasonal workers extend their contract with the same employer.

2. Member States may decide, in accordance with their national law, to allow seasonal workers to extend their contract with the same employer and their stay more than once, provided that the maximum period referred to in Article 14(1) is not exceeded.

3. Within the maximum period referred to in Article 14(1) and provided that Articles 5 or 6 are complied with and the grounds set out in point (b) of Article 8(1), Article 8(2) and, if applicable, Article 8(4) are not met, Member States shall allow seasonal workers one extension of their stay to be employed with a different employer.

4. Member States may decide, in accordance with their national law, to allow seasonal workers to be employed by a different employer and to extend their stay more than once, provided that the maximum period referred to in Article 14(1) is not exceeded.

5. For the purposes of paragraphs 1 to 4, Member States shall accept the submission of an application when the seasonal worker admitted under this Directive is on the territory of the Member State concerned.

6. Member States may refuse to extend the stay or renew the authorisation for the purpose of seasonal work when the vacancy in question could be filled by nationals of the Member State concerned or by other Union citizens, or by third-country nationals lawfully residing in the Member State. This paragraph shall apply without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession.

7. Member States shall refuse to extend the stay or renew the authorisation for the purpose of seasonal work where the maximum duration of stay as defined in Article 14(1) has been reached.

8. Member States may refuse to extend the stay or renew the authorisation for the purpose of seasonal work if the third-country national applies for international protection under

Directive 2011/95/EU or if the third-country national applies for protection in accordance with national law, international obligations or practice of the Member State concerned.

9. Article 9(2) and points (b), (c) and (d) of Article 9(3) shall not apply to a seasonal worker who applies to be employed by a different employer in accordance with paragraph 3 of this Article when those provisions apply to the previous employer.

10. Grounds for extension of a short-stay visa are regulated in the relevant provisions of the Visa Code.

11. Without prejudice to Article 8(1), any decision on an application for an extension or renewal shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.

*Article 16***Facilitation of re-entry**

1. Member States shall facilitate re-entry of third-country nationals who were admitted to that Member State as seasonal workers at least once within the previous five years, and who fully respected the conditions applicable to seasonal workers under this Directive during each of their stays.

2. The facilitation referred to in paragraph 1 may include one or more measures such as:

- (a) the grant of an exemption from the requirement to submit one or more of the documents referred to in Articles 5 or 6;
- (b) the issuing of several seasonal worker permits in a single administrative act;
- (c) an accelerated procedure leading to a decision on the application for a seasonal worker permit or a long stay visa;
- (d) priority in examining applications for admission as a seasonal worker, including taking into account previous admissions when deciding on applications with regard to the exhaustion of volumes of admission.

*Article 17***Sanctions against employers**

1. Member States shall provide for sanctions against employers who have not fulfilled their obligations under this Directive, including the exclusion of employers who are in serious breach of their obligations under this Directive from employing seasonal workers. Those sanctions shall be effective, proportionate and dissuasive.



2. Member States shall ensure that, if the authorisation for the purpose of seasonal work is withdrawn pursuant to Article 9(2) and points (b), (c) and (d) of Article 9(3), the employer shall be liable to pay compensation to the seasonal worker in accordance with procedures under national law. Any liability shall cover any outstanding obligations which the employer would have to respect if the authorisation for the purpose of seasonal work had not been withdrawn.

3. Where the employer is a subcontractor who has infringed this Directive and where the main contractor and any intermediate subcontractor have not undertaken due diligence obligations as defined by national law, the main contractor and any intermediate subcontractor may:

- (a) be subject to the sanctions referred to in paragraph 1;
- (b) in addition to or in place of the employer, be liable to pay any compensation due to the seasonal worker in accordance with paragraph 2;
- (c) in addition to or in place of the employer, be liable to pay any back payments due to the seasonal worker under national law.

Member States may provide for more stringent liability rules under national law.

#### Article 18

##### Procedural safeguards

1. The competent authorities of the Member State shall adopt a decision on the application for authorisation for the purpose of seasonal work. The competent authorities shall notify the decision to the applicant in writing, in accordance with the notification procedures under national law, as soon as possible but not later than 90 days from the date on which the complete application was submitted.

2. In the case of an application for an extension of stay or for the renewal of the authorisation pursuant to Article 15, Member States shall take all reasonable steps to ensure that the seasonal worker is not obliged to interrupt his or her employment relationship with the same employer, or prevented from changing employer, due to on-going administrative procedures.

Where the validity of the authorisation for the purpose of seasonal work expires during the procedure for extension or renewal, in accordance with their national law, Member States shall allow the seasonal worker to stay on their territory until the competent authorities have taken a decision on the application, provided that the application was submitted within the period of validity of that authorisation and that the time period referred to in Article 14(1) has not expired.

Where the second subparagraph applies, Member States may, *inter alia*, decide to:

- (a) issue national temporary residence permits or equivalent authorisations until a decision is taken;
- (b) allow the seasonal worker to work until that decision is taken.

During the period of examination of the application for extension or renewal, the relevant provisions of this Directive shall apply.

3. Where the information or documentation supplied in support of the application is incomplete, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it. The period referred to in paragraph 1 shall be suspended until the competent authorities have received the additional information required.

4. Reasons for a decision declaring inadmissible an application for authorisation for the purpose of seasonal work or rejecting an application for authorisation for the purpose of seasonal work or refusing an extension of stay or renewal of the authorisation for the purpose of seasonal work shall be given in writing to the applicant. Reasons for a decision withdrawing the authorisation for the purpose of seasonal work shall be given in writing to both the seasonal worker and, if provided for in national law, the employer.

5. Any decision declaring inadmissible an application for authorisation for the purpose of seasonal work or rejecting the application, refusing an extension of stay or renewal of an authorisation for the purpose of seasonal work or withdrawing an authorisation for the purpose of seasonal work shall be open to legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court or administrative authority with which an appeal may be lodged and the time-limit for lodging the appeal.

6. Procedural safeguards concerning short-stay visas are regulated in the relevant provisions of the Visa Code.

#### Article 19

##### Fees and costs

1. Member States may require the payment of fees for the handling of applications in accordance with this Directive. The level of such fees shall not be disproportionate or excessive. Fees for short-stay visas are regulated in the relevant provisions of the Schengen *acquis*. Where those fees are paid by the third-country national, Member States may provide that they are entitled to be reimbursed by the employer in accordance with national law.

2. Member States may require employers of seasonal workers to pay for:

- (a) the cost of travel from the seasonal workers' place of origin to the place of work in the Member State concerned and the return journey;
- (b) the cost of sickness insurance referred to in point (b) of Article 5(1) and point (b) of Article 6(1).

When paid by the employers, such costs shall not be recoverable from the seasonal workers.

#### Article 20

##### Accommodation

1. Member States shall require evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living according to national law and/or practice, for the duration of his or her stay. The competent authority shall be informed of any change of accommodation of the seasonal worker.

2. Where accommodation is arranged by or through the employer:

- (a) the seasonal worker may be required to pay a rent which shall not be excessive compared with his or her net remuneration and compared with the quality of the accommodation. The rent shall not be automatically deducted from the wage of the seasonal worker;
- (b) the employer shall provide the seasonal worker with a rental contract or equivalent document in which the rental conditions of the accommodation are clearly stated;
- (c) the employer shall ensure that the accommodation meets the general health and safety standards in force in the Member State concerned.

#### Article 21

##### Placement by public employment services

Member States may determine that the placement of seasonal workers shall only be carried out by public employment services.

#### CHAPTER IV

##### RIGHTS

#### Article 22

##### Rights on the basis of the authorisation for the purpose of seasonal work

During the period of validity of the authorisation referred to in Article 12, the holder shall enjoy at least the following rights:

- (a) the right to enter and stay in the territory of the Member State that issued the authorisation;
- (b) free access to the entire territory of the Member State that issued the authorisation in accordance with national law;
- (c) the right to exercise the concrete employment activity authorised under the authorisation in accordance with national law.

#### Article 23

##### Right to equal treatment

1. Seasonal workers shall be entitled to equal treatment with nationals of the host Member State at least with regard to:

- (a) terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, as well as health and safety requirements at the workplace;
- (b) the right to strike and take industrial action, in accordance with the host Member State's national law and practice, and freedom of association and affiliation and membership of an organisation representing workers or of any organisation whose members are engaged in a specific occupation, including the rights and benefits conferred by such organisations, including the right to negotiate and conclude collective agreements, without prejudice to the national provisions on public policy and public security;
- (c) back payments to be made by the employers, concerning any outstanding remuneration to the third-country national;
- (d) branches of social security, as defined in Article 3 of Regulation (EC) No 883/2004;
- (e) access to goods and services and the supply of goods and services made available to the public, except housing, without prejudice to the freedom of contract in accordance with Union and national law;
- (f) advice services on seasonal work afforded by employment offices;
- (g) education and vocational training;
- (h) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;



- (i) tax benefits, in so far as the seasonal worker is deemed to be resident for tax purposes in the Member State concerned.

Seasonal workers moving to a third country, or the survivors of such seasonal workers residing in a third-country deriving rights from the seasonal worker, shall receive statutory pensions based on the seasonal worker's previous employment and acquired in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country.

2. Member States may restrict equal treatment:

- (i) under point (d) of the first subparagraph of paragraph 1 by excluding family benefits and unemployment benefits, without prejudice to Regulation (EU) No 1231/2010;
- (ii) under point (g) of the first subparagraph of paragraph 1 by limiting its application to education and vocational training which is directly linked to the specific employment activity and by excluding study and maintenance grants and loans or other grants and loans;
- (iii) under point (i) of the first subparagraph of paragraph 1 with respect to tax benefits by limiting its application to cases where the registered or usual place of residence of the family members of the seasonal worker for whom he/she claims benefits, lies in the territory of the Member State concerned.

3. The right to equal treatment provided for in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to extend or renew the authorisation for the purpose of seasonal work in accordance with Articles 9 and 15.

#### Article 24

##### Monitoring, assessment and inspections

1. Member States shall provide for measures to prevent possible abuses and to sanction infringements of this Directive. Measures shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice.
2. Member States shall ensure that services in charge of inspection of labour or competent authorities and, where provided for under national law for national workers, organisations representing workers' interests have access to the workplace and, with the agreement of the worker, to the accommodation.

#### Article 25

##### Facilitation of complaints

1. Member States shall ensure that there are effective mechanisms through which seasonal workers may lodge complaints against their employers directly or through third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive, or through a competent authority of the Member State when provided for by national law.
2. Member States shall ensure that third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive, may engage either on behalf of or in support of a seasonal worker, with his or her approval, in any administrative or civil proceedings, excluding the procedures and decisions concerning short-stay visas, provided for with the objective of implementing this Directive.
3. Member States shall ensure that seasonal workers have the same access as other workers in a similar position to measures protecting against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with this Directive.

#### CHAPTER V

##### FINAL PROVISIONS

#### Article 26

##### Statistics

1. Member States shall communicate to the Commission statistics on the number of authorisations for the purpose of seasonal work issued for the first time and, as far as possible, on the number of third-country nationals whose authorisation for the purpose of seasonal work has been extended, renewed or withdrawn. Those statistics shall be disaggregated by citizenship, and as far as possible by the period of validity of the authorisation and the economic sector.
2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be 2017.
3. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council<sup>(1)</sup>.

<sup>(1)</sup> Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).

*Article 27***Reporting**

Every three years, and for the first time no later than 30 September 2019, the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary.

*Article 28***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 September 2016. They shall forthwith communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 29***Entry into force**

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

*Article 30***Addressees**

This Directive is addressed to the Member States, in accordance with the Treaties.

Done at Strasbourg, 26 February 2014.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

D. KOURKOULAS

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