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from:	General Secretariat
to:	Delegations
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Subject:	Proposal for a Directive of the European Parliament and of the Council on public procurement - Consideration of IMCO amendments

Delegations will find attached in Annex I a four column document on the above proposal based on the general approach agreed by the Competitiveness Council on 10 December and showing the EP amendments as voted in IMCO Committee on 18 December 2012 in the second column.

In Annex II delegations will find attached part H of Annex VI, Annex VIII, Annex XIII and Annex XVI of the above proposal, where the IMCO committee voted amendments.

To assist with identifying amendments, changes made by IMCO and Council to the original Commission proposal are highlighted in **bold**.

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Proposal for a Directive of the European Parliament and of the Council on public procurement

2011/0438 (COD

COMISSION PROPOSAL	EP IMCO AMENDMENTS ¹	COUNCIL GENERAL APPROACH ²	COMMENTS
(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, 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 these principles are given practical effect and	(1) The award of public contracts by or on behalf of Member States authorities has to comply with the principles of the Treaties on the Functioning of the European Union, 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, advertising , proportionality, transparency and efficient management of public funds and with the distribution of competencies as enshrined in Article 14 of the Treaty on the Functioning of the European	(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, 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 these principles are given practical effect and	

¹ No official report is available yet, based on vote in IMCO Committee on 18 December 2012 and subject to Legal Linguist revision.

² Based on document 16725/1/12 REV1 with underlined corrections in Recital 14, article 17.3 and 29.2.

public procurement is opened up to competition.	Union and Protocol No 26. The European regulation of public procurement should respect the wide discretion of public authorities in carrying out their public service tasks.. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that these principles are given practical effect and public procurement is opened up to competition.	public procurement is opened up to competition.	
	(1a) Contracting authorities should always consider carefully the economic impact of a given requirement on the economic operators before it chooses to use such a requirement in the contract notice. Overly demanding requirements will raise transaction costs and can furthermore be an obstacle to the involvement of especially small and medium sized companies in public procurement.		

<p>(2) Public procurement plays a key role in the Europe 2020 strategy³ as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to 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 sectors⁴ and 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 contracts⁵ have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular</p>	<p>(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to 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 and 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 have to be revised and modernised in order to increase the efficiency of public spending, ensure value for money, facilitate</p>	<p>(2) Public procurement plays a key role in the Europe 2020 strategy⁶ as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to 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 sectors⁷ and 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 contracts⁸ have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular</p>	
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³ COM(2010) 2020 final, 3.3-2010.

⁴ OJ L 134, 30.4.2004, p. 1.

⁵ OJ L 134, 30.4.2004, p. 114.

⁶ COM(2010) 2020 final, 3.3-2010.

⁷ OJ L 134, 30.4.2004, p. 1.

⁸ OJ L 134, 30.4.2004, p. 114.

the participation of small and medium-sized enterprises 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.	equal access and fair participation of small and medium-sized enterprises and craftsmen in public procurement, both at local and EU-wide level , and enable procurers to make better use of public procurement in support of sustainable production and consumption . 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.	the participation of small and medium-sized enterprises 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) The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself. The Union rules on public procurement are not intended to cover all forms of disbursement of public money, but only those aimed at the acquisition of works, supplies or services for consideration. 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	(3) The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself. The Union rules on public procurement are not intended to cover all forms of disbursement of public money, but only those aimed at the acquisition of works, supplies or services for consideration. 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	(3) The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself; as such this clarification should not 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 money, but only those aimed at the acquisition of works, supplies or services for consideration by means of a public contract . The notion of acquisition should be understood broadly in the sense of	

authorities. Furthermore, the mere financing 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 usually fall under the public procurement rules.	authorities. Furthermore, the mere financing 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 usually fall under the public procurement rules.	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 intended, does not usually fall under 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 authorization schemes (for instance licenses for medicines or medical services).	
		(3a) 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 Article 2(7). The provision of	

		<p>services based on law or 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.</p>	
	<p>(3b) 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, nor with the privatisation of public entities providing services. [Articles 1(2) and 1(6) of Directive 2006/123/EC]. 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</p>	<p>(3b) 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, nor with the privatisation of public entities providing services. [Articles 1(2) and 1(6) of Directive 2006/123/EC]</p> <p>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</p>	

	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.	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.	
<p>(4) It has also proven necessary to clarify what should be understood as a single procurement, with the effect that the aggregate value of all contracts concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this directive, and that the procurement should be advertised as a whole, possibly split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project, for instance a works project or an entirety of works, supplies and/or services.</p> <p>Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting authority, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked and carried out in a</p>	<p>(4) It has also proven necessary to clarify what should be understood as a single procurement, with the effect that the aggregate value of all contracts concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this directive, and that the procurement should be advertised as a whole, possibly split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project, for instance a works project or an entirety of works, supplies and/or services.</p>	<p>(4) A contract shall 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, insofar 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.</p> <p>However, in view of the diversity of public works contracts,</p>	

narrow time frame.		contracting authorities should be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. It is not the intention of this Directive to prescribe either joint or separate contract awards.	
		(4a) 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.	
		(4b) The notion of "contracting authorities" and in particular that of "bodies governed by public law" have been examined repeatedly in the jurisprudence of the Court of Justice of the European Union. To clarify that the scope of the Directive <i>ratione personae</i> should remain unaltered, it is appropriate to maintain the definition on which the Court based itself and to incorporate a certain number of clarifications given by that jurisprudence as a key to the understanding of the	

		<p>definition itself without the intention to alter the understanding of the concept as elaborated by the jurisprudence. 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.</p> <p>Similarly, the condition relating to the origin of the funding of the body considered, has also been examined by jurisprudence, which has clarified i. a. 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 according to rules of public law.</p>	<p>to show that it was transferred from Article</p>
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		<p>(4c) In the case of mixed contracts, the applicable rules should be determined in function of 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 jurisprudence 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 case of the construction of one single building, a part of which to be used directly by the contracting</p>	
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		authority concerned and another part to be operated on a concessions basis, for instance to provide parking facilities to the public.	
		(4e) In the case of mixed contracts, which can be separated, contracting authorities are, of course, always free to award separate contracts for the separate parts of the mixed contract, in which case the provisions applicable to the each separate part should be determined exclusively in function of 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.	

		(4f) However, special provisions should be foreseen for mixed contracts involving defence or security aspects or parts not falling within the scope of the Treaty. 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 Directive 2009/81/EC.	
		(4g) 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 offers the execution of works and/or a work, the supply of products or the provision of services on the market, irrespective of the legal form they have chosen to operate under. 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 any and all relations.	
(5) Under Article 11 of the Treaty on the Functioning of the European Union, environmental protection requirements must 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 may 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.	(5) This Directive clarifies how the contracting authorities may 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.	deleted	
(6) Even if they do not necessarily lead to corrupt conduct, actual, potential or perceived conflicts of interest have a high potential to improperly influence public procurement decisions with the effect of distorting competition and jeopardising equal treatment of tenderers. Effective mechanisms should therefore be set up to prevent, identify and remedy	(6) Even if they do not necessarily lead to corrupt conduct, actual, potential or perceived conflicts of interest have a high potential to improperly influence public procurement decisions with the effect of distorting competition and jeopardising equal treatment of tenderers. Effective mechanisms should therefore be set up to prevent, identify and remedy	deleted	

conflicts of interest.	conflicts of interest. In addition, in order to guarantee efficient whistleblowers' protection, Member States should ensure that any staff member who reports undisclosed conflicts in good faith can be protected against retaliation, harassment or deleterious actions. In this context, retaliation means any direct or indirect detrimental action recommended, threatened or taken against an individual because of such action.		
(7) Illicit conduct by participants in a procurement procedure, such as attempts to unduly influence the decision-making process or to enter into agreements with other candidates to manipulate the outcome of the procedure, can result in violations of the basic principles of Union law and in serious distortions of competition. Economic operators should therefore be required to submit a declaration on honour that they do not engage in such illicit activities and be excluded if this declaration proves to be false.	(7) Illicit conduct by participants in a procurement procedure, such as attempts to unduly influence the decision-making process or to enter into agreements with other candidates to manipulate the outcome of the procedure, can result in violations of the basic principles of Union law and in serious distortions of competition. Economic operators should therefore be required to submit a declaration on honour that they do not engage in such illicit activities and be excluded if this declaration proves to be false.	deleted	

<p>(8) 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)⁹ approved in particular the World Trade Organisation Agreement on Government Procurement, hereinafter referred to as the ‘Agreement’. The aim of the Agreement 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 the Agreement, as well as by other relevant international agreements by which the Union is bound, contracting authorities fulfil the obligations under these agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.</p>	<p>(8) 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)¹⁰ approved in particular the World Trade Organisation Agreement on Government Procurement, hereinafter referred to as the ‘Agreement’. The aim of the Agreement 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 the Agreement, as well as by other relevant international agreements by which the Union is bound, contracting authorities fulfil the obligations under these agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.</p>	<p>(8) 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) approved in particular the World Trade Organisation Agreement on Government Procurement, hereinafter referred to as the ‘Agreement’. The aim of the Agreement 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 I, II, IV and V and the General Notes to the European Union’s Appendix 1 to the Agreement, as well as by other relevant international agreements by which the Union is bound, contracting authorities should fulfil the obligations under these agreements by applying this Directive to economic operators of third</p>	
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⁹ OJ L 336, 23.12.1994, p. 1.

¹⁰ OJ L 336, 23.12.1994, p. 1.

		countries that are signatories to the agreements.	
(9) The Agreement applies to contracts above certain thresholds, set in the Agreement 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 Agreement. Provision should also be made for periodic reviews of the thresholds expressed in euros so as to adjust them, by way of a purely mathematical operation, to possible variations in the value of the euro in relation to the special drawing right.	(9) The Agreement applies to contracts above certain thresholds, set in the Agreement 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 Agreement. Provision should also be made for periodic reviews of the thresholds expressed in euros so as to adjust them, by way of a purely mathematical operation, to possible variations in the value of the euro in relation to the special drawing right.	(9) The Agreement applies to contracts above certain thresholds, set in the Agreement 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 Agreement. Provision should also be made for periodic reviews of the thresholds expressed in euros so as to adjust them, by way of a purely mathematical operation, to possible variations in the value of the euro in relation to the special drawing right.	
		<p>(9a) 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.</p> <p>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, e.g. supplies of a range of foods</p>	

		or of different items of office furniture. Typically, an economic operator being active in the field concerned would be likely to carry such supplies as part of his normal product range.	
(10) The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation ¹¹ demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. As a result, the full application of this directive is extended to a number of services (such as hotel and legal services, which both showed a particularly high percentage of cross-border trade).	deleted	(10) The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation ¹² suggested that the exclusion of certain services from the full application of the Directive should be reviewed. As a result, the full application of this directive is extended to a number of services.	
(11) Other 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. These services are provided within a particular context that varies widely amongst Member States,	(11) The results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation¹⁶ demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. Some categories of services continue by their very nature to have a limited cross-border	(11) 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. These services are provided within a particular context that varies widely amongst Member States,	

¹¹ SEC(2011) 853 final, 27.6.2011.

¹² SEC(2011) 853 final, 27.6.2011.

<p>due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of EUR 500 000.</p> <p>Services to the person with values below this 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 transborder projects. Contracts for services to the person above this 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 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</p>	<p>dimension, for example what are known as services to the person, such as certain social, health and educational services. These 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 these services, with a higher threshold of EUR 750 000.</p> <p>Services to the person with values below this 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 transborder projects. Contracts for services to the person above this 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</p>	<p>due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of EUR 750 000.</p> <p>Services to the person with values below this 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 transborder projects.</p> <p>Contracts for services to the person above this 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 observance of basic principles of transparency and equal treatment and making sure that contracting</p>	
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¹³ SPC/2010/10/8 final, 6.10.2010.

¹⁴ SPC/2010/10/8 final, 6.10.2010.

<p>the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee¹³. 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 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 such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.</p>	<p>imperative, imposing only 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 of the European Union's Social Protection Committee¹⁷. 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 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 such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination. This Directive does not apply to tried and tested procedures in Member States that are based on the users free choice of service providers for</p>	<p>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 of the European Union's Social Protection Committee¹⁴.</p> <p>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 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 such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.</p>	
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	services of general interest (i.e. voucher system, free choice model, triangular relationship) provided that account is taken of the general Treaty principles of equal treatment, transparency and non-discrimination.		
		(11a) Likewise, hotel and restaurant services are typically offered only by operators located in the specific place of delivery of these services and have therefore also a limited cross-border dimension. They should therefore only be covered by the particular regime set out for social and other specific services, as from a threshold of EUR 750 000. Large hotel and restaurant service contracts above this threshold may be of interest for various economic operators, such as travel agencies and other intermediaries, also on a cross-border basis.	
		(11b) Similarly, certain legal services exclusively concern issues of purely national law and are therefore typically offered only by operators located in the Member State concerned and have consequently also a limited cross-border dimension. They	

		<p>should therefore only be covered by the particular regime set out for social and other specific services, as from a threshold of EUR 750 000. Large legal service contracts above this threshold may 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 EU or other international law or implicating more than one country.</p>	
		<p>(11c) Experience has shown that a series of other services, such as rescue services, firefighting services and prison services normally only present a certain cross-border interest as of the moment where they acquire sufficient critical mass through their relatively high value. They should therefore only be included under the particular regime set out for social and other specific services. 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, would</p>	

		normally only be likely to present a cross-border interest as of a threshold of EUR 750 000 and should consequently only be subject to the particular regime set out for social and other specific services.	
		(11d) It is appropriate to identify these services by reference to specific positions of the ‘Common Procurement Vocabulary (CPV)’ as adopted by Regulation (EC) No 2195/2002 , which is a hierarchically structured nomenclature, divided into divisions, groups, classes, categories and subcategories. 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.	

(12) Public contracts that are awarded by contracting authorities operating in the water, energy, transport and postal services sectors and fall within the scope of those activities are covered by Directive [...] of the European Parliament and of the Council of [...] on procurement by entities operating in the water, energy, transport and postal services sectors ¹⁵ . 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.	(12) Public contracts that are awarded by contracting authorities operating in the water, energy, transport and postal services sectors and fall within the scope of those activities are covered by Directive [...] of the European Parliament and of the Council of [...] on procurement by entities operating in the water, energy, transport and postal services sectors ¹⁶ . 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.	(12) Public contracts that are awarded by contracting authorities operating in the water, energy, transport and postal services sectors and fall within the scope of those activities are covered by Directive ... of the European Parliament and of the Council of ... on procurement by entities operating in the water, energy, transport and postal services sectors. 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.	identical
(13) 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.	(13) 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. The Union institutions should, in particular, take into account the changes	(13) 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.	

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	<p>effected by this Directive and adjust their own procurement rules accordingly to reflect these changes.</p>		
	<p>(13a) 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 render application of procurement rules inappropriate. For these 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 this exclusion should apply equally to broadcast media services as well as on-demand services (non-linear services). However, this exclusion should not apply to the supply of technical equipment</p>	<p>(13aa) 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 render application of procurement rules inappropriate. For these reasons, an exception must 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 this exclusion should apply equally to broadcast media services as well as on-demand services (non-linear services). However, this exclusion should not apply to the supply of technical equipment necessary for the production, co-</p>	

	necessary for the production, co-production and broadcasting of such programmes.	production and broadcasting of such programmes.	
	(13b) This Directive does not prevent Member States from keeping in place arrangements to ensure the continued provision and the quality of comprehensive and personalised care and the choice of staff providing such services to users by organisations that were providing them prior to the entry into force of this Directive.		
		(13a) 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 may for instance be the case for the designation of State Attorneys in certain Member States; they should consequently	

		be excluded from the scope of this Directive.	
		(13b) 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, it should be stipulated that operations conducted with that facility should be excluded from the scope of this Directive. It should finally be clarified that loans, whether or not these are in connection with the issue or other operations concerning securities or other financial instruments, should be excluded from the scope of the Directive.	
		(13c) It should be recalled that Article 5(1) of 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 ¹⁷ explicitly provides that Directives	

¹⁷ OJ L 315, 3.12.2007, p. 1

		<p>2004/17/EC and 2004/18/EC apply to (public) service contracts for public passenger transport services by bus or tram, whereas the Regulation applies to service concessions for public passenger transport by bus or tram. It should furthermore be recalled that the Regulation continues to apply to (public) service contracts as well as service concessions for public passenger transport by railway or metro. To clarify the relations between this Directive and the Regulation, it should be provided explicitly that the provisions of 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 the provisions of the Regulation. Insofar as the Regulation leaves it to national law to depart from the rules laid down by it, Member States may continue to provide in their national law that public service contracts for public passenger transport services by rail or metro have to be awarded by a</p>	
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		contract award procedure following their general public procurement rules.	
		(13d) In certain cases, a given contracting authority or a given association thereof may be the sole source for a given service, for the provision of which it enjoys an exclusive right pursuant to published laws, regulations or administrative provisions which are compatible with the Treaty. It should be clarified that a public service contract may be awarded to that contracting authority or association thereof without the Directive being applied.	
(14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application of public procurement rules. Such	(14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application of public procurement rules. Such	(14) There is considerable legal uncertainty as to how far contracts concluded between entities within 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.	

<p>clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting 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 decide how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.</p>	<p>clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of procurement rules. However, the application of public procurement rules should not interfere with the right of public authorities to decide freely how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition. In case any of the cumulative conditions for an</p>	<p>Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. 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. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if, at the time of the contract award, the conditions set out in this directive are fulfilled.</p> <p>It should be ensured that any exempted public-public cooperation does not cause a distortion of competition in</p>	
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	exemption from the scope is not fulfilled any more during the term of a contract or cooperation that has been excluded from the procurement rules, that ongoing contract or cooperation has to be opened to competition through regular procurement procedures.	relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.	
		(14aaaaa) Public contracts awarded to controlled legal entities should not be subject to the application of the procedures provided for by this Directive if the contracting authority exercises over the entity concerned a control which is similar to that which it exercises over its own departments provided that the controlled entity carries out <u>more than 80%</u> of its activities in the performance of contracts awarded to it by the controlling contracting authority or by other entities controlled by that contracting authority, regardless of the beneficiary of the contract performance.	
		(14aaaa) Contracting authorities may choose to carry out jointly their public service tasks by way of cooperation without being obliged to use any particular	

		<p>legal form. Such a cooperation may cover all types of activities related to the performance of service tasks and responsibilities assigned to or assumed by the participating authorities, such as mandatory or voluntary tasks of local or regional authorities or service tasks conferred upon specific bodies by public law. The tasks of the different participating authorities do not necessarily have to be identical; they might also be complementary, if it is possible to perform them in a cooperative way.</p> <p>Contracts for the joint performance of such tasks should not be subject to the application of the rules set out in this directive provided that they are concluded in a framework of genuine cooperation, that the implementation of that cooperation is governed solely by considerations and requirements relating to the pursuit of objectives in the public interest and the principle of equal treatment is respected, so that no private undertaking is placed in</p>	
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		<p>a position of advantage vis-à-vis its competitors.</p> <p>In order to fulfil these conditions, the cooperation should be based on a cooperative concept involving mutual rights and obligations, common management and decision-making [...] and sharing of risks, responsibilities and synergic effects. This does, however, not require that all participating authorities assume the performance of main contractual obligations, as long as there are commitments to contribute towards the cooperative performance of the public task in question. In addition, it should be ensured that any market activities by the participating authorities in the areas covered by the cooperation are only of marginal significance, that there is no private participation in any of the authorities involved and that financial transfers are based on the reimbursement of actual costs.</p>	
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		(14aaa) 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, and is obliged to carry out orders given to it by these 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.	
		(14aa) 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 an exchange of contractual performances against remuneration, should be considered as a matter of internal organisation of the Member State concerned and, as such, not affected in any way by the present Directive.	

		<p>(14a) The co-financing of research and development (R&D) programmes by industry sources should be encouraged; it should consequently be clarified that this Directive only applies 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 that the service provider having carried out these 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 any fictitious sharing of the results of the R&D or any symbolic participation in the remuneration of the service provider will not prevent the application of this Directive.</p>	
		<p>(14b) 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</p>	

		<p>whose main aim is to support the social and professional integration or reintegration of disabled and disadvantaged persons, such as unemployed, members of disadvantaged minorities or otherwise socially marginalised groups and for employee-led organisations aiming at the integration of former public sector employees into the private sector. 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.</p>	
	<p>(14 a) 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</p>		

	<p>economic operators from across the Internal Market, in particular SMEs. When fixing the time limits for the receipt of tenders and requests to participate, contracting authorities should accordingly take into account the complexity of the contract and the time required for drawing up tenders in particular, even if this would entail setting time limits that are longer than the minima provided for under this Directive. Use of electronic means of information and communication, in particular full electronic availability of procurement documents and electronic transmission of communications does, on the other hand, lead to increased transparency and time savings. Therefore, provision should be made for reducing the minimum periods in line with the rules set by the WTO Government Procurement Agreement and subject to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Furthermore, contracting authorities should</p>		
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	<p>have the opportunity to further shorten the time limits for receipt of requests to participate and tender submissions, in cases where a state of urgency renders the normal time limits impracticable, although running a procedure with publication is still possible. Only those situations where extreme urgency brought about by unforeseeable events - and which are not attributable to the contracting authority - should be considered as exceptional, and only these situations would make it impossible to conduct a regular procedure even with shortened time limits. In such cases, contracting authorities should, wherever possible, award contracts though use of the negotiated procedure without prior publication. This may be the case where natural or man-made disasters require immediate action.</p>		
<p>(15) There is a widespread need for additional flexibility and in particular for wider access to a procurement procedure providing for negotiations, as is explicitly</p>	<p>(15) Contracting authorities require additional flexibility to choose procurement procedures providing for negotiations. The Union rules on public</p>	<p>(15) 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 these procedures is</p>	

<p>foreseen in the Agreement, where negotiation is allowed in all procedures. Contracting authorities should, unless otherwise provided in the legislation of the Member State concerned, be able to use a competitive procedure with negotiation as provided for in this Directive, in various situations where open or restricted procedures without negotiations are not likely to lead to satisfactory procurement outcomes. This procedure should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. This will give greater leeway to contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. At the same time, it should also 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.</p>	<p>procurement should align to the Government Procurement Agreement, where negotiation is allowed in all procedures. Contracting authorities should be able to use a competitive procedure with negotiation as provided for in this Directive, in various situations where the classic open or restricted procedures without negotiations are not likely to deliver satisfactory outcomes. This procedure should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. This will give greater leeway to contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. At the same time, it should also increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate in attracting cross-border tenders.</p>	<p>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 over the last 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.</p>	
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	<p>(15a) For works contracts, such situations include works that are not standard buildings or where works include the design of an innovative solution. For services or supplies that require adaptation or design, the use of a competitive procedure with negotiation or competitive dialogue is likely to deliver added value. Such adaptation or design requirements are particularly beneficial in the case of complex purchases such as sophisticated products, intellectual services or major ICT projects. In these cases, negotiations may be necessary to guarantee that the supply or service in question corresponds to the needs of the contracting authority. In relation to "off-the shelf" services or supplies that can be provided by many different economic operators, the competitive procedure with negotiation and the competitive dialogue should not be used.</p>	<p>(15a) For works contracts, such situations include works that are not standard buildings or where works includes design or innovative solution. 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 or major ICT projects. In these 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.</p>	
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	<p>(15 b) The competitive procedure with negotiation should also be followed in cases where use of an open or restricted procedure delivered only invalid or unacceptable tenders. 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, should be considered invalid. Tenders submitted by tenderers that do not have the required qualifications, and tenders whose price exceeds the contracting authority's budget as communicated prior to the launching of the procurement procedure should also be considered as unacceptable.</p>	<p>(15b) 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 particular tenders which do not comply with the procurement documents, which were received late, which are the outcome of collusion or which have been found by the contracting authority to be abnormally low, should be considered irregular. In particular tenders submitted by tenderers that do not have the requisite qualification, and tenders whose price exceeds the contracting authority's budget as determined and documented prior to the launching of the procurement procedure should be considered unacceptable.</p>	
	<p>(15 c) The competitive procedure with negotiations should be accompanied by adequate safeguards ensuring that the principles of equal treatment and transparency are observed. In particular, contracting authorities should indicate up</p>	<p>(15c) 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</p>	

	<p>front the minimum requirements governing the nature of the procurement and which may not be changed in the course of negotiations. Award criteria and their weighting should remain stable throughout the entire procedure and not be subject to negotiations, in order to guarantee equal treatment of all economic operators. Negotiations should aim at improving the tenders to allow contracting authorities to acquire works, supplies and services ideally suited to their specific needs. Negotiations may concern all aspects of the purchased works, supplies or services including, for instance, quality, quantities, commercial clauses as well as social, environmental and innovative characteristics, insofar as they do not constitute minimum requirements. The minimum requirements referred to here are the conditions and characteristics (particularly physical, functional and legal) that any tender should meet pursuant to Article 54(1)(a) of this Directive in order to allow the contracting authority to</p>	<p>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, insofar as they do not constitute minimum requirements.</p> <p>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)</p>	
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	<p>award the contract in accordance with the chosen award criterion. To ensure transparency of the process, all negotiating stages should be documented in conformity with Article 85(2) and Article 19(1)(a) of this Directive, so that contracting authorities can provide proof in writing, at the request of any candidate or tenderer, that they have ensured the equal treatment of all economic operators concerned. Furthermore, to ensure transparency, all tenders throughout the procedures are to be submitted in writing or via electronic means.</p>	<p>that any tender should meet or possess pursuant to Article 54(1)(a) in order to allow the contracting authority to award the contract in accordance with the chosen award criterion. 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.</p>	
<p>(16) For the same reasons, contracting authorities should be free to use the competitive dialogue. The use of this procedure has significantly increased in terms of contract values over the last 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</p>	<p>(16) For the same reasons, contracting authorities should be free to use the competitive dialogue. The use of this procedure has significantly increased in terms of contract values over the last 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</p>	<p>deleted</p>	

with innovative projects, the implementation of major integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing.	with innovative projects, the implementation of major integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing.		
		(16a) Contracting authorities should be allowed to shorten certain deadlines applicable to open and restricted procedure 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.	
(17) 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	(17) 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	(17) 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	

<p>to spur innovation. Buying innovative goods 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. This directive should contribute to facilitating public procurement of innovation and help Member States in achieving the Innovation Union targets. A specific procurement procedure should therefore be provided for which allows contracting authorities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided it can be delivered to agreed</p>	<p>to drive innovation. Buying innovative goods 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 promoting sustainable economic growth. An innovative procurement model is detailed in the Commission's communication on pre-commercial procurement ¹⁸. This model promotes the take up in the procurement of research and development services which do not fall within the scope of this Directive. This model, which has been written into this Directive, is recognised and will be available for all contracting authorities to consider. This</p>	<p>innovative goods, works and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges.</p> <p>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.</p> <p>It should be recalled that a series of procurement models have been outlined in the Commission's communication of 14.12.2007 on pre-commercial procurement¹⁹, which deal with the procurement of those research and development services not falling within the scope of this Directive. Those models would continue to be</p>	
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¹⁸ *COM (2007) 799 final: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Pre-commercial procurement: driving innovation to ensure sustainable high quality public services in Europe.*

performance levels and costs. The 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.	Directive should however contribute to facilitating the public procurement of innovation more generally, and help Member States in achieving the Innovation Union targets. Where a need for the development of an innovative product, service or works and the subsequent purchase of the resulting output 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 new procedure should allow contracting authorities to establish an innovation partnership for the development and subsequent purchase of new, innovative products, services or works, provided that these can be delivered to agreed performance levels and costs. The procedure should be based on the rules applying to the competitive procedure with negotiations and	available as hitherto, but this directive should also contribute to facilitating public procurement of innovation and help Member States in achieving the Innovation Union targets.	
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¹⁹ COM(2007) 799 final: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Pre-commercial Procurement: driving innovation to ensure sustainable high quality public services in Europe.

	<p>contracts should be awarded on the sole basis of the most economically advantageous tender, which is the most suited to comparing tenders for innovative solutions. Whether the innovation partnership concerns a very large project or a smaller project, it should be structured in such a way that it can provide the necessary "market pull", incentivising the development of innovative solutions without foreclosing the market. Contracting authorities should therefore not misuse innovation partnerships to prevent, restrict or distort competition. In addition, when setting the terms and conditions for procurement, contracting authorities should be allowed to establish innovative characteristics, including best available techniques, as a criterion relating to the subject of the contract concerned.</p>		
		<p>(17aa) Because of the importance of innovation, contracting authorities should be encouraged to allow variants as often as possible; their attention should consequently be drawn to the</p>	

		need of defining the minimum requirements to be met by variants before indicating that variants may be submitted.	
		(17a) 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	

		<p>procedure with negotiation and contracts should be awarded on the sole basis of the most economically advantageous tender, 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.</p> <p>Contracting authorities should consequently 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.</p>	
(18) In view of the detrimental effects on competition, negotiated procedures without prior publication of a contract notice should only be used in very exceptional circumstances. This exception should be limited to	(18) In view of the detrimental effects on competition, negotiated procedures without prior publication of a contract notice should only be used in very exceptional circumstances. This exception should be limited to	(18) In view of the detrimental effects on competition, negotiated procedures without prior publication of a contract notice should only be used in very exceptional circumstances. This exception should be limited to	

<p>cases where publication is either not possible, for reasons of force majeure in line with the standing case-law of the Court of Justice of the European Union, or where it is clear from the outset that publication would not trigger more competition, not least because there is objectively only one economic operator that can perform the contract. 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, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.</p>	<p>cases where publication is either not possible, for reasons of force majeure in line with the standing case-law of the Court of Justice of the European Union, or where it is clear from the outset that publication would not trigger more competition, not least because there is objectively only one economic operator that can perform the contract. 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, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.</p>	<p>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.</p> <p>Contracting authorities relying on this exception should provide reasons why there are no reasonable alternatives or substitutes such as using alternative distribution channels</p>	
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		<p>including outside the Member State of the contracting authority or considering functionally comparable works, supplies and services.</p> <p>Where the situation of exclusivity is due to technical reasons, these 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.</p> <p>Finally, a procurement procedure is not useful where supplies are purchased directly on a commodity market, including trading platforms for commodities such as agricultural goods, raw materials and energy</p>	
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		exchanges, where the regulated and supervised multilateral trading structure naturally guarantees market prices.	
<p>(19) 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. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures.</p>	<p>(19) 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. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures. <i>In addition, the submission of building information electronic modelling tools for works contracts should be encouraged in order</i></p>	<p>(19) 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 thirty 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 (e-submission) should be made</p>	

	<p>to modernise the procurement process and ensure greater efficiencies are achieved in the public procurement of works covered by this Directive, in particular in relation to taking into account lifecycle costs and sustainability criteria.</p>	<p>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.</p>	
	<p>(19a) In order to ensure confidentiality during the procedure, contracting authorities should not disclose information that has been forwarded to it by economic operators which they have designated as confidential. Non-compliance with this obligation should render the contracting authority liable if harm can be</p>	<p>(19a) The obligation to use electronic means at all stages of the public procurement procedure would not be appropriate 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</p>	

	<p>clearly demonstrated by the economic operator.</p>	<p>equipment. Contracting authorities should therefore not be obliged to require the use of electronic means of communication in the submission process in certain cases. The Directive should stipulate 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 may 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.</p> <p>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.</p>	
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		<p>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.</p>	
		<p>(19b) 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.</p>	

		<p>Standardising the catalogue formats would thus improve the level of interoperability, enhance efficiency and would also - and perhaps above all - reduce the effort required of economic operators.</p>	
		<p>(19c) 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 use of any technical standard mandatory, the Commission should 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. Where the standards</p>	

		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) .../2012 on European standardisation.	
		(19d) 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 e. g. in situations where messages are sent by a different sender than the one 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 information meeting will be held would not need to be set at the	

		<p>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.</p>	
		<p>(19e) 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</p>	

		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.	
<p>(20) 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 small and medium-sized enterprises.</p>	<p>(20) 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 small and medium-sized enterprises. The Commission should provide guidance to Member States and contracting authorities on the</p>	<p>(20) 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 small and medium-sized enterprises.</p>	

	required monitoring of aggregated and centralised purchases to avoid excessive concentration of purchasing power and collusion.		
(21) 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 is. However, certain concepts need to be clarified, in particular the conditions for the use of a framework agreement by contracting authorities which are not themselves party to it.	(21) 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 is. However, certain concepts need to be clarified, in particular the conditions for the use of a framework agreement by contracting authorities which are not themselves party to it. It should be permissible to expand the range of parties entitled to be called upon under a framework agreement under conditions laid down in Article 31(2).	(21) 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 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 it; 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	

		<p>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. It should also be clarified that contracts based on a framework agreement are to be awarded before the end of the term of the framework agreement itself. Consequently, the duration of the individual contracts based on a framework agreement does not need to coincide with the duration of that framework agreement.</p>	
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	<p>(21 a) 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 include the needs or the choice of the natural persons concerned.</p>	<p>(21a) 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.</p> <p>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.</p> <p>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 of objective criteria and on the terms already set out, or by awarding a specific contract for the works, supplies or services concerned following a</p>	
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		<p>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 these 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 are not obliged pursuant to this Directive to procure works, supplies or services that are covered by a framework agreement, under this framework agreement.</p>	
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<p>(22) 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 this instrument. The systems need to be simplified, in particular by operating them 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 these 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. 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.</p>	<p>as proposal</p>	<p>(22) 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 goods or services which are generally available on the market.</p>	
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		<p>(22a) The examination of these 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 may, 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 may need more time to examine the requests. This should be admissible, provided that no specific procurement is launched as long as all the requests have not 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.</p>	
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		<p>(22b) 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.</p>	
		<p>(22c) 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 may for</p>	

		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 should apply selection criteria that are proportional to the characteristics of the category concerned.	
		(22d) 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 and/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.	

		<p>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 in accordance with Articles 64 and 65 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.</p>	
<p>(23) In addition, new electronic purchasing techniques are constantly being developed, such as electronic catalogues. They 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 the rules of this Directive and the principles of equal treatment, non-discrimination and transparency. In particular, where competition has been reopened under a framework</p>	<p>(23) In addition, new electronic purchasing techniques are constantly being developed, such as electronic catalogues. They 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 the rules of this Directive and the principles of equal treatment, non-discrimination and transparency. In particular, where competition has been reopened under a framework</p>	<p>(23) In addition, 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 may require electronic catalogues in all available procedures where the</p>	

<p>agreement or where a dynamic purchasing system is being used and 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 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.</p>	<p>agreement or where a dynamic purchasing system is being used and 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 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.</p>	<p>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 the rules of this Directive and the principles of equal treatment, non-discrimination and transparency. Thus, use of electronic catalogues for the presentation of tenders should not entail that economic operators may limit 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 will ensure that the catalogue that is transmitted in response to a given procurement procedure only contains products, works or services that the economic operators estimated - after an active examination - correspond to the requirements of the contracting authority. In so</p>	
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		<p>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.</p> <p>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.</p> <p>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</p>	
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		<p>contracting authority unless the error is corrected.</p> <p>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.</p>	
<p>(24) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions or awarding public contracts/framework agreements for other contracting authorities. In view of the large volumes purchased, such techniques help increase competition and professionalise public purchasing. Provision should therefore be made for a Union definition of central purchasing bodies dedicated to contracting authorities, without preventing the continuation of less institutionalised and systematic common purchasing or the</p>	<p>(24) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions or awarding public contracts/framework agreements for other contracting authorities. In view of the large volumes purchased, such techniques help increase competition and professionalise public purchasing. Specific attention should be paid to the accessibility of any such procedures for small and medium-sized enterprises. Provision should therefore be made for a Union definition of central purchasing bodies dedicated to</p>	<p>(24) 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 professionalise public purchasing.</p>	

<p>established practice of having recourse to service providers that prepare and manage procurement procedures on behalf and for the account of a contracting authority. Rules should also be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, also in the case of remedies, among the central purchasing body and the contracting authorities procuring from or through the central purchasing body. Where the latter 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.</p>	<p>contracting authorities, without preventing the continuation of 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. Rules should also be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, also in the case of remedies, among the central purchasing body and the contracting authorities procuring from or through the central purchasing body. Where the latter 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</p>	<p>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.</p> <p>Firstly, they should be able to act as wholesalers by buying, stocking and reselling or, secondly, as intermediaries by awarding contracts, operating dynamic purchasing systems or concluding framework agreements to be used by contracting authorities. Such 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.</p> <p>Furthermore, rules should be laid down for allocating responsibility</p>	
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		for the observance of the obligations pursuant to this Directive, among the central purchasing body and the contracting authorities procuring from or through the central purchasing body. Where the latter 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.	
		(24a) 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 that such public service contracts include the provision of ancillary purchasing activities. Public	

		<p>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 the provisions of 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.</p>	
		<p>(24b) 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</p>	

		<p>a contracting authority and under its instructions.</p> <p>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.</p> <p>Joint procurement may 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.</p> <p>Where different contracting</p>	
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		<p>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 only apply 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.</p>	
(25) Electronic means of communication are particularly well suited to support centralised purchasing practices and tools because of the possibility they offer	(25) Electronic means of communication are particularly well suited to support centralised purchasing practices and tools because of the possibility they offer	(25) Electronic means of communication are particularly well suited to support 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 two years.	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 two years. So as to ensure continued legal certainty, these provisions shall not affect existing arrangements at national level for publishing information on public procurement contracts for amounts below the thresholds set in this directive.	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 thirty months.	
(26) Joint awarding of public contracts by contracting authorities from different Member States currently encounters specific legal difficulties, with special reference to conflicts of national laws. Despite the fact that Directive 2004/18/EC implicitly allowed for cross-border joint public	(26) Joint awarding of public contracts by contracting authorities from different Member States currently encounters specific legal difficulties, with special reference to conflicts of national laws. Despite the fact that Directive 2004/18/EC implicitly allowed for cross-border joint public	(26) 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	

<p>procurement, in practice several national legal systems have explicitly or implicitly rendered cross-border joint procurement legally uncertain or impossible. Contracting authorities from different Member States may be interested in cooperating and in jointly awarding public contracts in order 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. Therefore new rules on cross-border joint procurement designating the applicable law should be established in order to facilitate cooperation between contracting authorities across the Single Market. In addition, contracting authorities from different Member States may set up joint legal bodies established under national or Union law. Specific rules should be established for such form of joint procurement.</p>	<p>procurement, in practice several national legal systems have explicitly or implicitly rendered cross-border joint procurement legally uncertain or impossible. Contracting authorities from different Member States may be interested in cooperating and in jointly awarding public contracts in order 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. Therefore new rules on cross-border joint procurement designating the applicable law should be established in order to facilitate cooperation between contracting authorities across the Single Market. In addition, contracting authorities from different Member States may set up joint legal bodies established under national or Union law. Specific rules should be established for such form of joint procurement.</p>	<p>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, these 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 from 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</p>	
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		<p>law rules of 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)²⁰ In addition, contracting authorities from different Member States may set up joint legal bodies established under national or Union law. Specific rules should be established for such form of joint procurement.</p> <p>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 may include, for example, provisions on transparency and access to documents or specific requirements for the traceability of sensitive supplies.</p>	
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²⁰ OJ L 177, 4.7.2008, p. 6.

<p>(27) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way 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 this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers can be required to provide third-party</p>	<p>(27) 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 must 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 works, supplies and services. Consequently, technical specifications should be drafted in such a way 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 this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national</p>	<p>(27) It is necessary that the technical specifications drawn up by public purchasers allow for public procurement to be opened up to competition. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition.</p> <p>Consequently, technical specifications should be drafted in such a way 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 this 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</p>	
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<p>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.</p>	<p>standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers can be required 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. In order not to discriminate those tenderers who invest time and money for certificates or test reports, the burden for providing equivalence should be placed on the tenderer claiming equivalence.</p>	<p>standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements should be considered by contracting authorities.</p> <p>To demonstrate equivalence, tenderers can be required 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.</p>	
		<p>(27a) For all procurement intended for use by persons, whether general public or staff of the contracting authority, it is necessary that contracting authorities 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.</p>	

<p>(28) 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 these 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.</p>	<p>(28) 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 or certificate, such as the European Eco-label, (multi-)national eco-labels or any other label or certificate 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 these 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, environmental organisations and social partners, can participate, and that the label is accessible and available to all interested parties.</p>	<p>(28) 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 these 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 avoided that references to labels would have the effect of restricting innovation.</p>	
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(29) For all procurement intended for use by persons, whether general public or staff of the contracting authority, it is necessary that contracting authorities 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.	29) For all procurement intended for use by persons, whether general public or staff of the contracting authority, it is necessary that contracting authorities 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.	deleted	
	(29 a) For all procurement it is necessary that contracting authorities ensure that the products, services and works subject to the contract meet the requirements of data protection law. In order to ensure and demonstrate the protection of the rights and freedoms of data subjects with regard to the processing of personal data, tenderers should adopt internal policies and implement appropriate technical and organisational measures at the time of the design of the processing of personal data (data protection by design).		

<p>(30) In order to foster the involvement of small and medium-sized enterprises (SMEs) in the public procurement market, contracting authorities should be encouraged to divide contracts into lots, and be obliged to state the reasons for not doing so. Where contracts are divided into lots, contracting authorities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender; they may also limit the number of lots that may be awarded to any one tenderer.</p>	<p>(30) Public procurement should be adapted to the needs of small and medium-sized enterprises (SMEs). Contracting authorities should 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. In order to foster the involvement of SMEs in the public procurement market <i>and especially for products that require quality for welfare, such as food for passive consumers in hospitals, schools, child and elders care, and to enhance competition,</i> contracting authorities should be encouraged in particular to give consideration to dividing contracts into lots. Where contracts are divided into lots, contracting authorities may, for instance in order to preserve competition or to ensure security of supply, limit the number of lots for which an economic operator may tender;</p>	<p>(30) In order to foster the involvement of small and medium-sized enterprises (SMEs) in the public procurement market, contracting authorities should be encouraged to divide large contracts – above EUR 500 000 for supplies and service contracts and above the threshold set out in Article 4(a) in the case of works 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 and/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</p>	
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	<p>they may also limit the number of lots that may be awarded to any one tenderer.</p>	<p>the lots without applying the procedures of this Directive. The contracting authority should have a duty to consider the appropriateness of dividing large contracts into lots while remaining free to decide autonomously on the basis of any reason it deems pertinent, 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 contract award notice 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.</p> <p>Member States should remain</p>	
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		<p>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.</p>	
		<p>(30a) 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. Furthermore, contracting authorities should be able to require that all contractors coordinate their performance of</p>	

		the contract under the direction of the economic operator to whom a lot involving the coordination of the entire project or its relevant parts has been awarded.	
		(30b) 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 for drawing up tenders, even if this entails setting time limits that are longer than the minima provided for under this Directive. Use of electronic means of information and communication, in particular full electronic availability to economic operators, tenderers and	

		<p>candidates of procurement documents and electronic transmission of communications does on the other hand lead 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 Agreement 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, insofar as</p>	
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		strictly necessary, have the possibility to award contracts by negotiated procedure without prior publication. This may be case where natural catastrophes require immediate action.	
		(30c) It should be clarified that the information concerning certain decisions taken during a procurement procedure, including the decision not to award a contract or conclude a framework agreement should be sent by the contracting authorities, without candidates or tenderer having to request such information. It should also be recalled that Directive 89/665/EEC provides for an obligation for contracting authorities, again without candidates or tenderer having to request it, to provide the concerned candidates and tenderers 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 enabled to request more detailed information concerning these	

		<p>reasons, which contracting authorities should be required to give except where there would be serious grounds for not doing so.</p> <p>These grounds should be set out in the 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, within the same limits, also be enabled to request information on the conduct and progress of the procedure.</p>	
<p>(31) Overly demanding requirements concerning economic and financial capacity frequently constitute an unjustified obstacle to the involvement of SMEs in public procurement. Contracting authorities should therefore not be allowed to require economic operators to have a minimum turnover exceeding three times the estimated contract value. However, in duly justified circumstances, higher requirements may be applied. Such circumstances may relate to the high risks attached to the performance of the contract or</p>	<p>(31) Overly demanding requirements concerning economic and financial capacity frequently constitute an unjustified obstacle to the involvement of SMEs in public procurement. Contracting authorities should therefore not be allowed to require economic operators to have a minimum turnover exceeding three times the estimated contract value. However, in duly justified circumstances, higher requirements may be applied. Such circumstances may relate to the high risks attached to the performance of the contract or</p>	<p>(31) 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; in any event the requirement should not</p>	

the fact that its timely and correct performance is critical, for instance because it constitutes a necessary preliminary for the performance of other contracts.	the fact that its timely and correct performance is critical, for instance because it constitutes a necessary preliminary for the performance of other contracts.	exceed at the most three times the estimated contract value. However, in duly justified circumstances, higher requirements may be applied. Such circumstances may 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.	
(32) 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 self-declarations, can 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	(32) 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 self-declarations, can 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	(32) 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 self-declarations, 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	

do so. Further simplification can be achieved through standardised documents such as the European Procurement Passport, which should be recognized by all contracting authorities and widely promoted among economic operators, in particular SMEs, for whom they can substantially lessen the administrative burden.	do so. Further simplification can be achieved through standardised documents such as the European Procurement Passport, which should be recognized by all contracting authorities and widely promoted among economic operators, in particular SMEs, for whom they can substantially lessen the administrative burden. In addition, it should be possible for groups or consortia of economic operators, notably of SMEs, to submit tenders or to put themselves forward together as candidates.	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 procedure – 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 prove unable to submit the supporting documents at the award stage, depriving otherwise qualified candidates from participation.	
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	<p>(32a) Job creation depends heavily on small and medium sized enterprises. SMEs have been able to offer new, sustainable jobs even in the times of economic crisis. As public authorities use around 18 % of GDP on public procurement, this legislative regime has significant impact on SMEs' ability to continue creating new jobs. Thus, public contracts should be made as accessible as possible for SMEs, both above and below the thresholds, which are defined in this Directive. In addition to the specific tools, which are tailored to enhance the involvement of SMEs in the public procurement market, Member States and contracting authorities should be strongly encouraged to create SME-friendly public procurement strategies. The Commission has published a staff working document "European code of best practices facilitating access by SMEs to public procurement contracts" (SEC (2008)COM 2193, which aims at helping Member States create national strategies, programs and action plans in order to</p>		
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	<p>improve SMEs participation in these markets. Efficient public procurement policy has to be coherent. National, regional and local authorities have to rigorously apply the rules set in this Directive and on the other hand, implementing general policies designated to enhance SMEs access to public procurement markets will remain extremely important especially from the perspective of job creation.</p>		
<p>(33) The Commission provides and manages an electronic system — e-Certis, which is 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 small and medium-sized enterprises in particular. Maintenance should</p>	<p>(33) The Commission provides and manages an electronic system — e-Certis, which is 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 small and medium-sized enterprises in particular. Maintenance should</p>	<p>(33) The Commission provides and manages an electronic system — e-Certis, which is 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 small and medium-sized enterprises in particular. Maintenance should therefore be rendered obligatory in</p>	

therefore be rendered obligatory in a first step; recourse to e-Certis will be made mandatory at a later stage.	therefore be rendered obligatory in a first step; recourse to e-Certis will be made mandatory at a later stage.	a first step; recourse to e-Certis will be made mandatory at a later stage.	
(34) 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 or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude candidates or tenderers for 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.	(34) Public contracts should not be awarded to economic operators that have participated in a criminal organisation, in exploitation of human trafficking and child labour or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude candidates or tenderers for violations of environmental, social or labour law provisions referred to in the general principles of this Directive.	deleted	
(35) Allowance should, however, be made for the possibility that economic operators may adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct	(35) Allowance should, however, be made for the possibility that economic operators may adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct	deleted	

and at effectively preventing further occurrences of the misbehaviour. These measures may consist in particular in personnel and organisation 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 these grounds. Economic operators should have the possibility to request that contracting authorities examine the compliance measures taken with a view to possible admission to the procurement procedure.	and at effectively preventing further occurrences of the misbehaviour. These measures may consist in particular in personnel and organisation 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 these grounds. Economic operators should have the possibility to request that contracting authorities examine the compliance measures taken with a view to possible admission to the procurement procedure.		
(36) Contracting authorities may require that environmental management measures or schemes are to be applied during the performance of a public contract. Environmental management	(36) Contracting authorities may require that environmental management measures or schemes are to be applied during the performance of a public contract. Environmental management	(36) Contracting authorities may require that environmental management measures or schemes are to be applied during the performance of a public contract. Environmental management schemes, whether or not they are	

<p>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 of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)²¹, 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.</p>	<p>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 of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)²², 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.</p>	<p>registered under Union instruments such as 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)²³, can demonstrate that the economic operator has the technical capability to perform the contract.</p> <p>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.</p>	
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²¹ OJ L 342, 22.12.2009, p. 1.

²² OJ L 342, 22.12.2009, p. 1.

²³ OJ L 342, 22.12.2009, p. 1.

<p>(37) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. These criteria should guarantee that tenders are assessed in conditions of effective competition, also where contracting authorities require high-quality works, supplies and services that are optimally suited to their needs, for instance where the chosen award criteria include factors linked to the production process. As a result, contracting authorities should be allowed to adopt as award criteria either ‘the most economically advantageous tender’ or ‘the lowest cost’, taking into account that in the latter case they are free to set adequate quality standards by using technical specifications or contract performance conditions.</p>	<p>(37) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. These criteria should guarantee that tenders are assessed in conditions of effective competition, also where contracting authorities require high-quality works, supplies and services that are optimally suited to their needs, for instance where the chosen award criteria include factors linked to the production process. As a result, contracting authorities should adopt as award criteria ‘the most economically advantageous tender’ taking into account that it should refer to quality and sustainability standards by using technical specifications or contract performance conditions.</p>	<p>(37) 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 offers the best value for money. For this purpose, contracting authorities should be able to adopt as award criteria either ‘the most economically advantageous tender’ or ‘the lowest cost’, taking into account that in the latter case they are free to set adequate quality standards by using technical specifications or contract performance conditions.</p> <p>In order to encourage a greater quality orientation of public procurement, Member States should be permitted to require the assessment of tenders on the basis of the criterion of the "most economically advantageous tender" where they deem this appropriate.</p> <p>To ensure compliance with the</p>	
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		<p>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.</p>	
		<p>(37a) Under Article 11 of the Treaty on the Functioning of the European Union, environmental protection requirements must be integrated into the definition and implementation of the Union</p>	

		<p>policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting authorities may 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.</p>	
<p>(38) Where contracting authorities choose to award a contract to the most economically advantageous tender, they must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria depends on the subject-matter of the contract since they must allow 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, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they</p>	<p>(38) Contracting authorities awarding a contract according to the most economically advantageous tender criterion, must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria, which may include economic, environmental and social characteristics, depends on the subject-matter of the contract since they must allow 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, and the value for money of each tender to be measured. Furthermore, the chosen</p>	<p>(38) Where contracting authorities award a contract to the most economically advantageous tender, they should determine the economic and qualitative 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 authority. These 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 most economically advantageous tender, a non-exhaustive list of possible award</p>	

<p>should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.</p>	<p>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 requirements that allow the information provided by the tenderers to be effectively verified.</p>	<p>criteria 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.</p> <p>The chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective competition and be accompanied by arrangements that allow the information provided by the tenderers to be effectively verified.</p> <p>In order to ensure best value for money, the contract award decision should not be based on non-cost criteria only. The 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</p>	
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		certain services or setting out fixed prices for certain supplies.	
		(38a) 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 may affect the quality of contract performance and, as a result, the economic value of the tender. This may 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 means of contractual law, that the staff assigned to contract performance effectively fulfil the specified quality standards and that such staff may only be replaced with the consent of the contracting authority which verifies that the replacement staff affords an equivalent level of quality.	

	(38a) In particular for public procurement of food for hospitals, schools, child and elders care, it is necessary to ensure that passive consumers have full access to quality and nutritional products providing the best value for money.		
	(38b) In this respect, contracting authorities may go beyond EU legislation, taking into account stricter environmental consideration and production methodology, including in the formulation of the award criteria, in full respect of EU law.		
		(38b) 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 are compatible with this Directive provided that they are not directly or indirectly	

		<p>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. They may include an obligation for economic operators to foresee compensation mechanisms for risks occurring during the contract performance which could substantially impact the performance, such as price fluctuations. Such compensation mechanisms, which should be established within the parameters specified to that effect in the procurement documents, are potentially beneficial for the contracting authority which would be protected against additional</p>	
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		costs triggered by the realisation of the hedged risks.	
<p>(39) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth. 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 of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles²⁴) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling</p>	<p>(39) Efforts should be made to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth, without encroaching on the powers of contracting entities. In particular public procurement is key 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 of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles) and office</p>	<p>(39) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth. 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.</p> <p>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 of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles²⁶) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling</p>	

²⁴ OJ L 120, 15.5.2009, p. 5.

<p>programme for office equipment²⁵). 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.</p>	<p>equipment (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). 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.</p>	<p>programme for office equipment²⁷). 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.</p>	
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²⁵ OJ L 39, 13.2.2008, p. 1.

²⁶ OJ L 120, 15.5.2009, p. 5.

²⁷ OJ L 39, 13.2.2008, p. 1.

<p>(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as development, production, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed</p>	<p>(40) These sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities can determine the most economically advantageous tender using a life-cycle costing approach, provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties.. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as research, development, production, transport, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored.</p>	<p>(40) These sector-specific measures should be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that 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.</p> <p>This means internal costs, such as development, production, 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</p>	
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its use should be made compulsory.		<p>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.</p> <p>Common methodologies should be developed at Union level for the calculation of life-cycle costs for specific categories of supplies or services.</p>	
(41) Furthermore, in technical specifications and in award criteria, contracting authorities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the public contract. In order to better	(41) Furthermore, in technical specifications, in award criteria and in contract performance clauses , contracting authorities should be allowed to refer to a specific production process including for example social and environmental aspects , a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or	(41) Furthermore, in view of a 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	

<p>integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers</p>	<p>service, provided that they are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may include, in the award criteria and in contract performance clauses, characteristics related to the working, employment and environmental conditions, and require the production of certificate or labels drawn up by independent bodies attesting compliance by the economic operator with rules and standards set in those fields, which apply where the works are executed, services provided or goods produced or supplied, as set out in international conventions, in Union and national law as well as in collective agreements concluded in accordance with national law and practices which respect Union law. Those characteristics may concern among others the protection of health of the staff involved in the production process or the favouring of social</p>	<p>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 commercialisation 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 refering to such a production or provision process are for example that the manufacturing of the purchased goods 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</p>	
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<p>in the framework of the provision of services²⁸ and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, 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 may affect the quality of contract performance and, as a result, the economic value of the tender.</p>	<p>integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with 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 and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as an award criterion the organisation,</p>	<p>pertaining to environmental considerations may include, for example, the delivery, package and disposal of products, and in respect of works and services contracts, waste minimisation or resource efficiency.</p> <p>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.</p>	
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²⁸ OJ L 18, 21.1.1997, p.1.

	qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the economic value of the tender which offers the best value for money.		
		(41a) 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 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, as interpreted by the European Court of Justice 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 Agreement or to Free Trade Agreements to which the Union is party. Thus, requirements concerning the basic working conditions	

		<p>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. The laws, regulations, and collective agreements, at both national and Union level, that are in force in the areas of employment conditions and safety at work should apply during the performance of a public contract, provided that such rules, and their application, comply with Union law. These obligations could hence be mirrored in contract performance clauses. It should also be possible to include clauses ensuring compliance with collective agreements in compliance with Union law in public contracts.</p> <p>Non-compliance with such obligations set by national legislation or collective agreements may be considered to be grave misconduct on the part of the economic operator concerned, liable to exclusion of that economic operator from the</p>	
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		<p>procedure for the award of a public contract. Contract performance conditions may also be intended to favour the protection of the environment or animal welfare and, to comply in substance with fundamental International Labour Organization (ILO) Conventions, and to recruit more disadvantaged persons than are required under national legislation.</p>	
		<p>(41b) 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 may refer, amongst other things, to the employment of long-term job-seekers, the</p>	

		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.	
	(41 a) Taking into account recent case law of the Court of Justice of the EU, contracting authorities can choose an award criterion which refers to the fact that the product concerned is of fair trade origin, including the requirement to pay a minimum and price premium to producers.	(41c) 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 these measures are in conformity with the Treaty.	
(42) 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. In order to prevent possible disadvantages during contract performance, contracting authorities should be	(42) 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. In order to prevent possible disadvantages during contract performance, contracting authorities should be	deleted	

<p>obliged to ask for an explanation of the price charged where a tender significantly undercuts the prices demanded by other tenderers. 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 charged results from non-compliance with mandatory Union legislation in the fields of social, labour or environmental law or international labour law provisions.</p>	<p>obliged to ask for an explanation of the price charged where a tender significantly undercuts the prices demanded by other tenderers. 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 charged results from non-compliance with social, labour or environmental law provisions referred to in the general principles of this Directive.</p>		
<p>(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in</p>	<p>(43) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are directly linked to the subject-matter of the contract and to the principle of the procurement related to compliance with environmental, social and labour law provisions and are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents. They may, in</p>	<p>(43) 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. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Member States should, however, be able to provide for</p>	

<p>achieving integration, the fight against unemployment, protection of the environment or animal welfare. For instance, mention may be made, amongst other things, of the requirements — applicable during performance of the contract — to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.</p>	<p>particular, be intended to favour on-site vocational or professional training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For instance, mention may be made, amongst other things, of the requirements — applicable during performance of the contract — to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.</p>	<p>a derogation from these 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 applies.</p>	
		<p>(43a) 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</p>	

		<p>violations of competition rules or of intellectual property rights. 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 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 the applicable 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</p>	
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		casts serious doubts as to the reliability of the economic operator. National law should provide for a maximum duration for such exclusions.	
	(43 a) The European Commission should assist Member States to provide training and guidance on competitive dialogue to SMEs, providing examples of its applications and value, in order to encourage uptake.		
(44) The laws, regulations and collective agreements, at both national and Union level, that are in force in the areas of employment conditions and safety at work apply during the performance of a public contract, provided that such rules, and their application, comply with Union law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers	(44) Member State should ensure that economic operators comply with the environmental, social and labour law provisions which apply at the place where the works are executed, services provided or goods produced or supplied, as set out in international conventions listed in Annex XI, Union and national law as well as collective agreements concluded in accordance with national law and practices which respect Union law. In cross-border situations, where workers from one Member State provide services in	(44) Allowance should, however, be made for the possibility that economic operators may adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour. These measures may consist in particular in personnel and organisation 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	

in the framework of the provision of services ²⁹ lays down the minimum conditions that must be observed by the host country in respect of such posted workers. Where national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct on the part of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.	another Member State for the purpose of performing a public contract, 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 lays down the minimum conditions that must be observed by the host country in respect of such posted workers. Where national law contains provisions to this effect, non-compliance with those obligations should be considered to be grave misconduct on the part of the economic operator concerned, which may lead to the exclusion of that economic operator from the procedure for the award of a public contract..	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 these grounds. Economic operators should have the possibility to request that compliance measures taken with a view to possible admission to the procurement procedure are examined. However, it should be left to Member States to determine the exact procedural and substantive conditions for the application of this possibility. They are, in particular, free to decide whether they want to leave it to the individual contracting authorities to do the relevant assessments or entrust other authorities on a central or decentral level with this task.	
		(44a) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound	compare with Recital 42

²⁹ OJ L 18, 21.1.1997, p. 1.

		<p>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 legislation or national law compatible with it in the fields of social, labour or environmental law or international labour law provisions.</p>	
<p>(45) It is necessary to clarify the conditions under which modifications of 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</p>	<p>(45) It is necessary to clarify the conditions under which modifications of 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</p>	<p>(45) It is necessary to clarify the conditions under which modifications of 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</p>	

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.	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.	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 of the contract resulting in a minor change of the contract value up to a certain level should always be possible without the need to carry out a new procurement procedure.	
(46) Contracting authorities can be faced with external circumstances that they could not foresee when they awarded the contract. In this case, a certain degree of flexibility is needed to adapt the contract to these 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	(46) Contracting authorities can be faced with external circumstances that they could not foresee when they awarded the contract. In this case, a certain degree of flexibility is needed to adapt the contract to these 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	(46) 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 longer period of time. In this case, a certain degree of flexibility is needed to adapt the contract to these 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	

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.	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.	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.	
(47) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the contract to competition. However, the successful tenderer performing the contract may undergo certain structural changes during the performance of the contract, such as purely internal reorganisations, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all public contracts performed by that undertaking.	(47) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the contract to competition. However, the successful tenderer performing the contract may undergo certain structural changes during the performance of the contract, such as purely internal reorganisations, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all public contracts performed by that undertaking.	(47) 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 may, in particular where the contract has been awarded to more than one undertaking , undergo certain structural changes during the performance of the contract, such as purely internal reorganisations, takeovers , mergers and	

		acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all public contracts performed by that tenderer.	
(48) Contracting authorities should, in the individual contracts themselves, have the possibility to provide for modifications to a contract by way of review 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.	(48) Contracting authorities should, in the individual contracts themselves, have the possibility to provide for modifications to a contract by way of review 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.	(48) Contracting authorities should, in the individual contracts themselves, have the possibility to provide for modifications to a contract by way of review 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.	
	(48 a) Contracting authorities should respect the delay of payment as established in Directive 2011/7/EU.		
		(48aa) Contracting authorities are sometimes faced with circumstances that require the early termination of public contracts in order to comply with obligations stemming from EU law in the field of public procurement. Member States should therefore ensure that contracting authorities have the possibility, under the conditions determined by the applicable	

		national law, to terminate a public contract during its term if so required by EU law.	
		(48a) 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 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.	
(49) The evaluation has shown that Member States do not consistently and systematically monitor the implementation and functioning of public procurement rules. This has a negative impact on the correct	(49) The evaluation has shown that there is still considerable room for improvement in the application of the Union public procurement rules. In view of a more efficient and consistent	(49) The evaluation has shown that there is still considerable room for improvement in the application of the Union public procurement rules. In view of a more efficient and	

<p>implementation of provisions stemming from these directives, which is a major source of cost and uncertainty. Several Member States have appointed a national central body dealing with public procurement issues, but the tasks entrusted to such bodies vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, improve legal certainty for businesses and contracting authorities, and contribute to establishing a level playing field. Such mechanisms could serve as tools for the detection and early resolution of problems, especially with regard to projects cofunded by the Union, and for the identification of structural deficiencies. There is in particular a strong need to coordinate these mechanisms to ensure consistent application, control and monitoring of public procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union.</p>	<p>application of the rules, it is on the one hand 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. This 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. On the other hand, better guidance and assistance 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 ensure correct application of the rules. For that purpose, Member States should ensure that competent</p>	<p>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. This 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. 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 <i>ex-post</i> 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 instances; this should not necessarily require that those having performed the monitoring are given an independent standing before</p>	
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	<p>authorities or structures are in charge of monitoring, implementation and control of public procurement.</p>	<p>courts and tribunals.</p> <p>Better guidance and assistance 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, organisation of 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</p>	
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		consideration for the subsequent detailed analysis of the questions, for instance by pointing to jurisprudence that could be relevant or to guidance notes or other sources having examined the specific question concerned.	
(50) Member States should designate a single national authority in charge of monitoring, implementation and control of public procurement. Such a central body should have first-hand and timely information, particularly in relation to different problems affecting the implementation of public procurement law. It should be able to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice and contribute to the quick identification of solutions. In view of efficiently fighting corruption and fraud, this central body and the general public should also have the possibility to inspect the texts of concluded contracts. High-value contracts should hence be transmitted to the oversight body with a possibility of interested persons to have access to these documents, to the extent that	deleted	deleted	

legitimate public or private interests are not jeopardized.			
<p>(51) Not all contracting authorities may have the internal expertise to deal with economically or technically complex contracts. Against this background, appropriate professional support would be an effective complement to monitoring and control activities. On the one hand, this objective can be achieved by knowledge sharing tools (knowledge centres) offering technical assistance to contracting authorities; on the other hand, business, not least SMEs, should benefit from administrative assistance, in particular when participating in procurement procedures on a cross-border basis.</p>		<p>(51) Council 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. These 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 Council 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</p>	

		<p>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.</p>	
		<p>(51a) In order to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable 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 (macro) level in this area. Any already prepared, appropriate reports can of course be used in this context also.</p>	

		<p>(51b) 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.</p>	
		<p>(51c) 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, SOLVIT and EU Pilot, which are obviously not modified by this Directive. They should, however,</p>	

		be complemented by the designation of one single contact point in each Member States 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 members of the Advisory Committee on Public Procurement, Members of the Procurement Network or national coordinating instances.	
(52) Monitoring, oversight and support structures or mechanisms exist already at national level and can of course be used to ensure monitoring, implementation and control of public procurement and to provide the required support to contracting authorities and economic operators.	(52) Traceability and transparency of decision-making in procurement procedures is essential for ensuring sound procedures, including effectively fighting corruption and fraud. Contracting authorities should keep copies of concluded contracts for high-value contracts to be able to provide access to these documents to interested parties in accordance with applicable rules on access to documentation. Furthermore,	(52) Traceability and transparency of decision-making in procurement procedures is essential for ensuring sound procedures, including efficiently fighting corruption and fraud. Contracting authorities should hence keep copies of concluded high-value contracts, in order to be able to provide access to these documents to interested parties in accordance with applicable rules on access to documents. Furthermore, the essential	

	<p>the essential elements and decisions of individual procurement procedures should be documented in a procurement report. To limit administrative burdens, the procurement report should refer to information already contained in the relevant contract award notices. The electronic systems for publication of these notices, managed by the Commission, should also be improved in view of facilitating data entry while making it easier to extract reports and exchange data between systems.</p>	<p>elements and decisions of individual procurement procedures should be documented in a procurement report. To avoid administrative burden wherever possible, it should be permitted that the procurement report refer to information already contained in the relevant contract award notice. The electronic systems for publication of these notices, managed by the Commission, should also be improved with a view of facilitating the entry of data while making it easier to extract global reports and exchange data between systems.</p>	
		<p>(52a) 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.</p>	

<p>(53) Effective cooperation is necessary to ensure consistent advice and practice within each Member State and across the Union. Bodies designated for monitoring, implementation, control and technical assistance should be able to share information and cooperate; in the same context, the national authority designated by each Member State should act as the preferred contact point with the Commission services for the purpose of collecting data, exchanging information and monitoring the implementation of Union public procurement law.</p>	<p>deleted</p>	<p>deleted</p>	
		<p>(53a) 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 Internal Market Information System (IMI) established by Regulation (EU)</p>	

		<p>No. ... of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System 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. It should therefore be envisaged to launch a pilot project to test the suitability of an expansion of IMI to cover the exchange of information under this Directive.</p>	
	<p>(53a) The way this Directive is transposed is of utmost importance to the efforts of simplification, as well as to ensure an uniform approach to the interpretation and application of the EU rules on public procurement, thus contributing to the necessary legal certainty required by contracting authorities, in particular at sub-central level, and by SMEs alike. The Commission and the Member States should therefore ensure that transposition of this</p>		

	Directive is done having also in mind the major impact of the public procurement national legislation on the process of accessing the European Union funds. Therefore it is of utmost importance for the Member States to avoid as much as possible any fragmentation in the interpretation and application, while contributing as well to the simplification at national level.		
(54) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, 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 Annexes V and XI; the lists of central government authorities are subject to variations due to administrative	(54) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, 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 Annexes V and XI; the lists of central government authorities are subject to variations due to administrative	(54) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, 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 Annexes V and XI; the lists of central government authorities are subject to variations due to administrative	

<p>changes at national level. These are notified to the Commission, which should be empowered to adapt the Annex I; references to the CPV nomenclature may undergo regulatory changes at EU 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 and administrative needs; 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 and administrative needs; and the content of the European Procurement Passport to reflect administrative needs and regulatory changes at both national and EU level; the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to</p>	<p>changes at national level. These are notified to the Commission, which should be empowered to adapt the Annex I; references to the CPV nomenclature may undergo regulatory changes at EU 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 and administrative needs; 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 and administrative needs; and the content of the European Procurement Passport to reflect administrative needs and regulatory changes at both national and EU level; the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to</p>	<p>changes at national level. These are notified to the Commission, which should be empowered to adapt the Annex I; references to the CPV nomenclature may undergo regulatory changes at EU 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 legislative 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 these needs, the Commission should be empowered to keep the list of legislative acts</p>	
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incorporate the measures adopted on a sectoral basis. In order to satisfy these needs, the Commission should be empowered to keep the list of legislative acts including LCC methodologies up-to date.	incorporate the measures adopted on a sectoral basis. In order to satisfy these needs, the Commission should be empowered to keep the list of legislative acts including LCC methodologies up-to date.	including LCC methodologies up-to date.	
(55) It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.	(55) It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.	(55) It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.	
		(55a) In the application of the Directive the Commission should consult the Commission Expert Group on E-Tendering.	
(56) 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, the standard form for the European Procurement Passport and the common template to be used by the oversight bodies	(56) 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, the standard form for the European Procurement Passport, implementing powers should be conferred on the	(56) 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, implementing powers should be conferred on the Commission. Those powers should be exercised	

<p>for drawing up the implementation and statistical report, 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 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 powers³⁰. The advisory procedure should be used for the adoption of these implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, these acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive.</p>	<p>Commission. Those powers should be exercised in accordance with 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 powers²⁴. The advisory procedure should be used for the adoption of these implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, these acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive.</p>	<p>in accordance with 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 powers³¹. The advisory procedure should be used for the adoption of these implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, these acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive.</p>	
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³¹ OJ L 55, 28.2.2011, p. 13.

		<p>(56a) 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 at the latest three years after the entry into force of this Directive. 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.</p> <p>According to its Article XXII(7), the Agreement 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 could also be examined, bearing in mind the impact of inflation; in case the level of thresholds should change as a consequence, the Commission should, where appropriate, adopt a legislative proposal amending the thresholds set out in this Directive.</p>	
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(57) 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 and can therefore 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.	(57) 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 and can therefore 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.	(57) 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 and can therefore 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.	
(58) Directive 2004/18/EC should therefore be repealed.	(58) Directive 2004/18/EC should therefore be repealed.	(58) Directive 2004/18/EC should therefore be repealed.	
(59) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], 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	(59) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], 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	(59) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], 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	

<p>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,</p> <p>HAVE ADOPTED THIS DIRECTIVE:</p>	<p>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,</p> <p>HAVE ADOPTED THIS DIRECTIVE:</p>	<p>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,</p> <p>HAVE ADOPTED THIS DIRECTIVE:</p>	
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TITLE 1 SCOPE, DEFINITIONS AND GENERAL PRINCIPLES	TITLE 1 SCOPE, DEFINITIONS AND GENERAL PRINCIPLES	TITLE 1 SCOPE, DEFINITIONS AND GENERAL PRINCIPLES	
CHAPTER 1 SCOPE AND DEFINITIONS	CHAPTER 1 SCOPE AND DEFINITIONS	CHAPTER 1 SCOPE AND DEFINITIONS	
Section 1 Subject-matter and definitions	Section 1 Subject-matter and definitions	Section 1 Subject-matter and definitions	
<i>Article 1</i> <i>Subject-matter and scope</i>	<i>Article 1</i> <i>Subject matter and scope</i>	<i>Article 1</i> <i>Subject-matter and scope</i>	
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.	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.	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 purchase or other forms of acquisition 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.	2. Procurement within the meaning of this Directive is the acquisition of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities.	2. Procurement within the meaning of this Directive is the purchase or other forms of acquisition by means of a public contract as defined in Article 2(7) 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	

An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project.		or services are intended for a public purpose.	
		3. The application of this Directive is subject to Articles 36, 51, 52, 62 and 346 of the Treaty on the Functioning of the European Union.	
	2a. This Directive is without prejudice to the right of public authorities at all levels to decide whether, how and to what extent they want to perform public functions themselves pursuant to Protocol No 26 annexed to the treaties and Article 14 TFEU.		
	2b. This Directive does not affect the way in which the Member States organise their social security legislation.	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 way in which	

		the Member States organise their social security legislation.	
		5. The scope of this Directive shall not include non-economic services of general interest.	
<i>Article 2 Definitions</i>	<i>Article 2 Definitions</i>	<i>Article 2 Definitions</i>	
For the purposes of this Directive, the following definitions shall apply:	For the purposes of this Directive, the following definitions shall apply:	For the purposes of this Directive, the following definitions shall apply:	
(1) ‘contracting authorities’ means the State, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law;	(1) contracting authorities’ means the State, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law;	(1) ‘contracting authorities’ means the State, regional or local authorities, bodies governed by public law, 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, insofar as corrections or amendments have been made at national level, their successor entities;	(2) ‘central government authorities’ means the contracting authorities listed in Annex I and, insofar as corrections or amendments have been made at national level, their successor entities;	(2) ‘central government authorities’ means the contracting authorities listed in Annex I and, insofar 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 ;	(3) ‘sub-central contracting authorities’ means all contracting authorities which are not central government authorities ;	(3) ‘sub-central contracting authorities’ means all contracting authorities which are not central government authorities; this shall include ‘regional authorities’ and	

		‘local authorities’. Regional authorities are listed non-exhaustively in NUTS 1 and 2, as referred to by Regulation (EC) No. 1059/2003 of the European Parliament and of the Council³² while ‘local authorities’ include all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to by Regulation (EC) No. 1059/2003;	
(4) ‘regional authorities’ include all authorities of the administrative units falling under NUTS 1 and 2, as referred to by Regulation (EC) No. 1059/2003 of the European Parliament and of the Council ³³ ;	(4) ‘sub-central contracting authorities’ means all contracting authorities which are not central government authorities ;	deleted	
(5) ‘local authorities’ include all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to by Regulation (EC) No. 1059/2003;	(5) ‘local authorities’ include all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to by Regulation (EC) No. 1059/2003;	deleted	

³² OJ L 154, 21.6.2003, p. 1.

³³ OJ L 154, 21.6.2003, p. 1.

<p>(6) ‘bodies governed by public law’ means bodies that have all of the following characteristics:</p> <p>(a) they are established for or have the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; for that purpose, a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity does not have the purpose of meeting needs in the general interest, not having an industrial or commercial character;</p> <p>(b) they have legal personality;</p> <p>(c) they are financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those 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</p>	<p>(6) ‘bodies governed by public law’ means bodies that have all of the following characteristics:</p> <p>(a) they are established for or have the specific purpose of meeting needs in the general interest, not having an industrial or commercial character</p> <p>(b) they have legal personality;</p> <p>(c) they are financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those 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.</p>	<p>(6) ‘bodies governed by public law’ means bodies that have all of the following characteristics:</p> <p>(a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;</p> <p>(b) they have legal personality; and</p> <p>(c) they are financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those 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.</p>	
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governed by public law.			
(7) ‘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 within the meaning of this Directive;	(7) ‘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 within the meaning of this Directive;	(7) ‘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 within the meaning of this Directive;	
<p>(8) ‘public works contracts’ means public contracts having as their object one of the following:</p> <p>(a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex II;</p> <p>(b) the execution, or both the design and execution, of a work;</p> <p>(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;</p>	<p>(8) ‘public works contracts’ means public contracts having as their object one of the following:</p> <p>(a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex II;</p> <p>(b) the execution, or both the design and execution, of a work;</p> <p>(c) the realisation of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;</p>	<p>(8) ‘public works contracts’ means public contracts having as their object one of the following:</p> <p>(a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex II;</p> <p>(b) the execution, or both the design and execution, of a work;</p> <p>(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</p>	

		design of the work;	
(9) ‘ 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) ‘ 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) ‘ 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;	
(10) ‘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;	(10) ‘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;	(10) ‘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;	
(11) ‘public service contracts’ means public contracts having as their object the provision of services other than those referred to in point (8);	(11) ‘public service contracts’ means public contracts having as their object the provision of services other than those referred to in point (8);	(11) ‘public service contracts’ means public contracts having as their object the provision of services other than the execution of works referred to in point (8);	
(12) ‘economic operator’ means any natural or legal person or public entity or group of such persons and/or entities which offers the execution of works and/or a work, the supply of products or the provision of services on the market;	(12) ‘economic operator’ means any natural or legal person or public entity or group of such persons and/or entities which offers the execution of works and/or a work, the supply of products or the provision of services on the market;	(12) ‘economic operator’ means any natural or legal person or public entity or group of such persons and/or entities which offers the execution of works and/or a work, the supply of products or the provision of services on the market;	

(13) 'tenderer' means an economic operator that has submitted a tender;	(13) 'tenderer' means an economic operator that has submitted a tender;	(13)'tenderer' means an economic operator that has submitted a tender;	
(14) '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 or in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;	(14) '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 or in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;	(14)'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 or in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;	
(15) 'procurement documents' means all documents 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.	(15) 'procurement documents' 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.	(15) '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.	

<p>(16) ‘centralised purchasing activities’ means activities conducted on a permanent basis, in one of the following forms:</p> <p>(a) the acquisition of supplies and/or services intended for contracting authorities,</p> <p>(b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;</p>	<p>(16) ‘centralised purchasing activities’ means activities conducted on a permanent basis, in one of the following forms:</p> <p>(a) the acquisition of supplies and/or services intended for contracting authorities,</p> <p>(b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;</p>	<p>(16) ‘centralised purchasing activities’ means activities conducted on a permanent basis, in one of the following forms:</p> <p>(a) the purchase or other forms of acquisition of supplies and/or services intended for contracting authorities,</p> <p>(b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;</p>	
<p>(17) ‘ancillary purchasing activities’ means activities consisting in the provision of support to purchasing activities, in particular in the following forms:</p> <p>(a) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;</p> <p>(b) advice on the conduct or design of public procurement procedures;</p>	<p>(17) ‘ancillary purchasing activities’ means activities consisting in the provision of support to purchasing activities, in particular in the following forms:</p> <p>(a) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;</p> <p>(b) advice on the conduct or design of public procurement procedures;</p> <p>(c) preparation and management of procurement procedures on behalf</p>	<p>(17) ‘ancillary purchasing activities’ means activities consisting in the provision of support to purchasing activities, in particular in the following forms:</p> <p>(a) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;</p> <p>(b) advice on the conduct or design of public procurement procedures;</p>	

(c) preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;	and for the account of the contracting authority concerned;	(c) preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;	
(18) ‘central purchasing body’ means a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities;	(18) ‘central purchasing body’ means a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities;	(18) ‘central purchasing body’ means a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities;	
(19) ‘procurement service provider’ means a public or private body which offers ancillary purchasing activities on the market;	(19) ‘procurement service provider’ means a public or private body which offers ancillary purchasing activities on the market;	(19) ‘procurement service provider’ means a public or private body which offers ancillary purchasing activities on the market;	
(20) ‘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;	(20) ‘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;	(20) ‘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;	
(21) ‘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;	(21) ‘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;	(21) ‘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;	

(22) ‘life cycle’ means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation.	(22) ‘life cycle’ means all consecutive or interlinked stages throughout the existence of a product or a works or the provision of a service , including research, development , production, transport, use and maintenance, from raw material acquisition or generation of resources to disposal, clearance and finalisation.	(22) ‘life cycle’ means all consecutive and/or interlinked stages, including production, commercialisation , transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and end of life cycle .	
(23) ‘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.	(23) ‘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;	(23) ‘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.	
	(23a) ‘innovation’ means the implementation of a new or significantly improved product (good or service), or process, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations that help solve societal challenges and/or support the European		

	strategy for smart, sustainable and inclusive growth.		
		(24) ‘Government Procurement Agreement’ means the World Trade Organisation Agreement on Government Procurement; it may also be referred to as the ‘Agreement’.	
<i>Article 3</i> <i>Mixed procurement</i>	<i>Article 3</i> <i>Mixed procurement</i>	<i>Article 3</i> <i>Mixed procurement</i>	
<p>1. 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.</p> <p>In the case of mixed contracts consisting of services within the meaning of Chapter I of Title III and other services or of services and supplies, the main object shall be determined by a comparison of the values of the respective services or supplies.</p>	as proposal	<p>1. 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.</p> <p>In the case of mixed contracts consisting of services within the meaning of Chapter I of Title III and other services or of services and supplies, the main subject shall be determined according to which of the estimated values of the respective services or supplies is the highest.</p>	

<p>2. In the case of contracts which have as their object procurement covered by this Directive as well as procurement or other elements not covered by it or by Directives [replacing 2004/17/EC] or 2009/81/EC³⁴, the part of the contract which constitutes procurement covered by this Directive shall be awarded in accordance with the provisions of this Directive.</p> <p>In the case of mixed contracts containing elements of public contracts and of concessions, the part of the contract which constitutes a public contract covered by this Directive shall be awarded in accordance with the provisions of this Directive.</p> <p>Where the different parts of the contract in question are objectively not separable, the application of this Directive shall be determined on the basis of the main subject of that contract.</p>	<p>as proposal</p>	<p>2. In the case of contracts which have as their subject 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. If so, 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 part concerned.</p> <p>Contracting authorities may add other elements to the procurement of a contract which must be awarded pursuant to the provisions of this Directive. If so, this Directive shall, unless otherwise provided in paragraphs 2a, 3, 3a or 4, apply to the ensuing mixed contract, irrespective of the value of the added elements and irrespective of the legal regime these added elements would otherwise have been subject to.</p> <p>Thus, in the case of mixed contracts containing elements of public contracts and of</p>	
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³⁴ OJ L 217, 20.8.2009, p. 76.

		concessions, the mixed contract shall be awarded in accordance with the provisions of this Directive, provided that the estimated value of the part of the contract which constitutes a public contract covered by this Directive, calculated in accordance with the provisions of Article 5, is equal to or greater than the relevant threshold set out in Article 4.	
		2a. In the case of contracts which have as their subject procurement covered by this Directive as well as procurement for the pursuit of an activity which is subject to the provisions of [Directive 2004/17/EC], the applicable rules shall, paragraph 2 notwithstanding, be determined pursuant to Articles 3 and 3a of [Directive 2004/17/EC].	
		3. In the case of contracts which have as their subject procurement covered by this Directive as well as procurement [...] covered by Directive 2009/81/EC³⁵, the contract shall, paragraph 2 notwithstanding, be awarded in accordance with the	

³⁵ OJ L 217, 20.8.2009, p. 76.

		<p>provisions of Directive 2009/81/EC, provided that the award of a single contract is justified for objective reasons. This sub-paragraph is without prejudice to the thresholds and exclusions for which Directive 2009/81/EC provides.</p> <p>The decision to award a single contract may not, however, be taken for the purpose of excluding contracts from the application of this Directive or Directive 2009/81/EC.</p>	
		<p>3a. In the case of contracts which have as their subject:</p> <p>(a) procurement covered by this Directive;</p> <p>(b) procurement covered by Directive 2009/81/EC; and</p> <p>(c) procurement or other elements not[...] subject to either Directive, then the contract shall not be subject to this Directive, paragraph 2 notwithstanding, provided that the award of a single contract is justified for</p>	

		objective reasons.	
		<p>4. In the case of contracts which have as their subject procurement covered by this Directive as well as procurement or other elements which are covered by Article 346 of the Treaty on the Functioning of the European Union, the contract shall not be subject to this Directive provided that the award of a single contract is justified for objective reasons.</p> <p>The decision to award a single contract may not, however, be taken for the purpose of excluding contracts from the application of this Directive or Directive 2009/81/EC.</p>	
		<p>(5) Subject to the preceding paragraphs of this Article, where the different parts of a given contract are objectively not separable, the application of this Directive shall be determined on the basis of the main subject of that contract.</p>	

SECTION 2 THRESHOLDS		Section 2 Thresholds	
<i>Article 4 Thresholds amounts</i>	<i>Article 4 Thresholds amounts</i>	<i>Article 4 Thresholds amounts</i>	
This Directive shall apply to procurements with a value exclusive of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:	This Directive shall apply to procurements with a value exclusive of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:	This Directive shall apply to procurements with a value exclusive of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:	
(a) EUR 5 000 000 for public works contracts;	(a) EUR 5 000 000 for public works contracts;	(a) EUR 5 000 000 for public works contracts;	
(b) EUR 130 000 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;	(b) EUR 130 000 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;	(b) EUR 130 000 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 200 000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by	(c) EUR 200 000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by	(c) EUR 200 000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities; this threshold	

such authorities.	such authorities.	shall also apply to public supply contracts awarded by central government authorities that operate in the field of defence, where these contracts involve products not covered by Annex III;	
(d) EUR 500 000 for public contracts for social and other specific services listed in Annex XVI.	(d) EUR 750 000 for public contracts for social and other specific services listed in Annex XVI.	(d) EUR 750 000 for public contracts for social and other specific services listed in Annex XVI.	
<i>Article 5</i> <i>Methods for calculating the estimated value of procurement</i>	<i>Article 5</i> <i>Methods for calculating the estimated value of procurement</i>	<i>Article 5</i> <i>Methods for calculating the estimated value of procurement</i>	
<p>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 contract.</p> <p>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 contract.</p>	as proposal	<p>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.</p> <p>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 contract.</p>	

		<p>1a. Where a contracting authority is comprised of separate operational units, values may be estimated at the level of the individual operational unit in respect of its procurement or certain categories thereof for which the unit is independently responsible.</p> <p>Whether a unit is independently responsible for its procurement or certain categories thereof shall be determined according to a global analysis taking into account whether:</p> <ul style="list-style-type: none"> - procurement responsibilities have been devolved to the effect that the unit in question can independently run the procurement procedures and, ultimately, make the buying decision independently of any other part of the contracting authority; - such delegation of procurement responsibility is also reflected in the separation of budgets or, at least, whether the unit concerned disposes of a separate budget line 	
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		<p>for the procurements concerned;</p> <ul style="list-style-type: none"> - such delegation encompasses the actual conclusion of a contract by the individual unit and its financing from a budget over which it disposes; - the procurement is intended to satisfy a demand of that individual unit or whether such procurement is rather intended to satisfy a demand of more units or of the contracting authority as a whole, the procurement of which is merely organised in a decentralised way; and - the contracting authority, while delegating the procurement responsibility to an individual unit, is in fact still aiming at using its overall position as a major purchaser with a view to obtaining more favourable terms. 	
2. 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 single procurement shall therefore not be subdivided with the effect of	as proposal	2. 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.		preventing it from falling within the scope of this Directive, unless justified by objective reasons. Where a separate operational unit as referred to in paragraph 1a carries out separate procurement for which the unit is independently responsible this shall not be considered as a subdivision of procurement for the purposes of the first subparagraph.	
3. This estimate shall be valid at the moment at which the call for competition is sent, or, in cases where such notice is not foreseen, at the moment at which the contracting authority commences the procurement procedure, in particular by defining the essential characteristics of the intended procurement.	as proposal	3. This estimate 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 by contacting economic operators in relation to the procurement.	
4. 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.	as proposal	4. 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.	

5. 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 the 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.	as proposal	5. 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 the 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.	
6. With regard to public works contracts, 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 authorities provided that they are necessary for executing the works.	as proposal	6. With regard to public works contracts, 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 authorities provided that they are necessary for executing the works.	
7. Where a proposed work or purchase of services may result in contracts being awarded at the same time 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	as proposal	7. 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.	

threshold laid down in Article 4, this Directive shall apply to the awarding of each lot.			
<p>8. Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying Article 4(b) and (c).</p> <p>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.</p>	as proposal	<p>8. 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 Article 4(b) and (c).</p> <p>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.</p>	
<p>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</p>	as proposal	<p>9. Paragraphs 7 and 8 notwithstanding, 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</p>	

supplies or the proposed purchase of services has been divided.		which the proposed work, the proposed acquisition of similar supplies or the proposed provision of services has been divided.	
<p>10. 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:</p> <p>(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;</p> <p>(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.</p>	as proposal	<p>10. 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:</p> <p>(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;</p> <p>(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.</p>	

<p>11. 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:</p> <p>(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;</p> <p>(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.</p>	as proposal	<p>11. 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:</p> <p>(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;</p> <p>(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.</p>	
<p>12. With regard to public service contracts, the basis for calculating the estimated contract value shall, where appropriate, be the following:</p> <p>(a) insurance services: the premium payable and other forms of remuneration;</p>	as proposal	<p>12. With regard to public service contracts, the basis for calculating the estimated contract value shall, where appropriate, be the following:</p> <p>(a) insurance services: the premium payable and other forms of remuneration;</p>	

<p>(b) banking and other financial services: the fees, commissions, interest and other forms of remuneration;</p> <p>(c) design contracts: fees, commission payable and other forms of remuneration.</p>		<p>(b) banking and other financial services: the fees, commissions, interest and other forms of remuneration;</p> <p>(c) design contracts: fees, commission payable and other forms of remuneration.</p>	
<p>13. 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:</p> <p>(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;</p> <p>(b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.</p>	as proposal	<p>13. 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:</p> <p>(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;</p> <p>(b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.</p>	

<i>Article 6</i> <i>Revision of the thresholds</i>	<i>Article 6</i> <i>Revision of the thresholds</i>	<i>Article 6</i> <i>Revision of the thresholds</i>	
<p>1. Every two years from 30 June 2014, 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 Government Procurement Agreement and shall, where necessary, revise them.</p> <p>In accordance with the calculation method set out in the Government Procurement Agreement, 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 the last day of 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 Agreement, expressed in SDRs, are observed.</p>	<p>Every two years from 30 June 2014, 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 Government Procurement Agreement and shall, where necessary and after consulting the Member States on the application of the thresholds to certain sectors and types of contacts, revise them. The Commission shall increase the thresholds, where possible, and, should they be established in the Government Procurement Agreement, give priority to increasing them during the next round of negotiations.</p> <p>In accordance with the calculation method set out in the Government Procurement Agreement, 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 the last day of August preceding</p>	<p>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 Government Procurement Agreement and shall, where necessary, revise them.</p> <p>In accordance with the calculation method set out in the Government Procurement Agreement, 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 the last day of 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 Agreement, expressed in SDRs, are observed.</p>	

	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 Agreement, expressed in SDRs, are observed.		
<p>2. When carrying out the revision pursuant to paragraph 1 of this Article, the Commission shall, in addition, revise:</p> <p>(a) the threshold established in point (a) of the first paragraph of Article 12 by aligning it with the revised threshold applying to public works contracts;</p> <p>(b) the threshold established in point (b) of the first paragraph of Article 12 by aligning it with the revised threshold applying to public service contracts awarded by sub-central contracting authorities.</p>	as proposal	<p>2. When carrying out the revision pursuant to paragraph 1 of this Article, the Commission shall, in addition, revise:</p> <p>(a) the threshold established in point (a) of the first paragraph of Article 12 by aligning it with the revised threshold applying to public works contracts;</p> <p>(b) the threshold established in point (b) of the first paragraph of Article 12 by aligning it with the revised threshold applying to public service contracts awarded by sub-central contracting authorities.</p>	
<p>3. Every two years from 1 January 2014, the Commission shall determine the values, in the national currencies of the Member</p>	as proposal	<p>3. Every two years from 1 January 2014, the Commission shall determine the values, in the national currencies of the Member States which are not participating</p>	

<p>States which are not participating in monetary union, of the thresholds referred to in points (a), (b) and (c) of Article 4, revised pursuant to paragraph 1 of this Article.</p> <p>At the same time, the Commission shall determine the value, in the national currencies of the Member States which are not participating in monetary union, of the threshold referred to in point (d) of Article 4.</p> <p>In accordance with the calculation method set out in the Government Procurement Agreement, the determination of such value 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 the last day of August preceding the revision with effect from 1 January.</p>		<p>in monetary union, of the thresholds referred to in points (a), (b) and (c) of Article 4, revised pursuant to paragraph 1 of this Article.</p> <p>At the same time, the Commission shall determine the value, in the national currencies of the Member States which are not participating in monetary union, of the threshold referred to in point (d) of Article 4.</p> <p>In accordance with the calculation method set out in the Government Procurement Agreement, 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 the last day of August preceding the revision with effect from 1 January.</p>	
<p>4. The revised thresholds referred to in paragraph 1 and their corresponding values in the national currencies referred to in paragraph 3 shall be published by the Commission in the <i>Official Journal of the European Union</i> at</p>	<p>as proposal</p>	<p>4. 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</p>	

the beginning of the month of November following their revision.		the second subparagraph of paragraph 3 , shall be published by the Commission in the <i>Official Journal of the European Union</i> at the beginning of the month of November following their revision.	
<p>5. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to adapt the methodology set out in the second subparagraph of paragraph 1 to any change in the methodology provided in the Government Procurement Agreement for the revision of the thresholds referred to in points (a), (b) and (c) of Article 4 and for the determination of the thresholds in the national currencies of the Member States not participating in monetary union, as referred to in paragraph 3 of this Article.</p> <p>It shall also be empowered to adopt delegated acts in accordance with Article 89 to revise the thresholds referred to in points (a), (b) and (c) of Article 4 pursuant to paragraph 1 of this Article. It shall also be empowered to adopt delegated acts in accordance with Article 89 to revise the thresholds referred to in points (a) and (b) of</p>	as proposal	<p>5. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to adapt the methodology set out in the second subparagraph of paragraph 1 to any change in the methodology provided in the Government Procurement Agreement for the revision of the thresholds referred to in points (a), (b) and (c) of Article 4 and for the determination of the thresholds in the national currencies of the Member States not participating in monetary union, as referred to in paragraph 3 of this Article.</p> <p>It shall also be empowered to adopt delegated acts in accordance with Article 89 to revise the thresholds referred to in points (a), (b) and (c) of Article 4 pursuant to paragraph 1 of this Article. It shall also be empowered to adopt delegated acts in accordance with Article 89 to revise the thresholds referred to in points (a) and (b) of the first</p>	

the first paragraph of Article 12 pursuant to paragraph 2 of this Article.		paragraph of Article 12 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 12 and time constraints prevent the use of the procedure set in article 89 and therefore imperative grounds of urgency so require, the procedure provided for in Article 90 shall apply to delegated acts adopted pursuant to the second subparagraph of paragraph 5 of this Article.	as proposal	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 12 and time constraints prevent the use of the procedure set in article 89 and therefore imperative grounds of urgency so require, the procedure provided for in Article 90 shall apply to delegated acts adopted pursuant to the second subparagraph of paragraph 5 of this Article.	

SECTION 3 EXCLUSIONS	SECTION 3 EXCLUSIONS	Section 3 Exclusions	
<i>Article 7</i> <i>Contracts in the water, energy, transport and postal services sectors</i>	<i>Article 7</i> <i>Contracts in the water, energy, transport and postal services sectors</i>	<i>Article 7</i> <i>Contracts in the water, energy, transport and postal services sectors</i>	
This Directive shall not apply to public contracts and design contests which, under [Directive replacing 2004/17/EC], are awarded or organised by contracting authorities exercising one or more of the activities referred to in Articles [5 to 11] of that Directive and are awarded for the pursuit of those activities, or to public contracts excluded from the scope of that Directive under [Articles 15, 20 and 27] thereof.	as proposal	This Directive shall not apply to public contracts and design contests which, under [Directive replacing 2004/17/EC], are awarded or organised by contracting authorities exercising one or more of the activities referred to in Articles [5 to 11] of that Directive and are awarded for the pursuit of those activities, to public contracts excluded from the scope of that Directive under [Articles 15, 20 and 27] thereof or, when awarded by a contracting authority which provides postal services within the meaning point (b) of Article 10(2) of that Directive, to contracts awarded for the pursuit of the following activities: - added value services linked to and provided entirely by electronic means (including the	

		<p>secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);</p> <ul style="list-style-type: none"> - financial services as defined in the CPV under the reference numbers from 66100000-1 to 66720000-3 and in Article 19(c) and including in particular postal money orders and postal giro transfers; - philatelic services - logistics services (services combining physical delivery and/or warehousing with other non-postal functions) 	
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	<p><i>Article 7a</i></p> <p><i>Exclusion for contracts falling under a fixed price regime</i></p> <p>This Directive shall not apply to contracts which are subject by law to a fixed price, where the procured products or services do not differ significantly in terms of their composition or characteristics.</p>		
	<p><i>Article 7b</i></p> <p><i>Exclusion for services awarded on the basis of an exclusive right</i></p> <p>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 published law, regulation or administrative provision which is compatible with the Treaty.</p>		

<i>Article 8</i> <i>Specific exclusions in the field of</i> <i>electronic communications</i>	<i>Article 8</i> <i>Specific exclusions in the field of</i> <i>electronic communications</i>	<i>Article 8</i> <i>Specific exclusions in the field of</i> <i>electronic communications</i>	
<p>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.</p> <p>For the purposes of this Article:</p>	as proposal	<p>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.</p> <p>For the purposes of this Article:</p>	
<p>(a) 'public communications network' means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;</p> <p>(b) 'electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other</p>	as proposal	<p>(a) 'public communications network' means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;</p> <p>(b) 'electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other</p>	

<p>resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;</p> <p>(c) a ‘network termination point’ (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;</p> <p>(d) ‘electronic communications</p>		<p>resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;</p> <p>(c) a ‘network termination point’ (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;</p>	
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<p>services’ means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.</p>		<p>(d) ‘electronic communications service’ means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.</p>	
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<p><i>Article 9</i> <i>Contracts awarded and design contests organised pursuant to international rules</i></p>	<p><i>Article 9</i> <i>Contracts awarded and design contests organised pursuant to international rules</i></p>	<p><i>Article 9</i> <i>Contracts awarded and design contests organised pursuant to international rules</i></p>	
<p>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 of this Directive established by any of the following:</p> <p>(a) an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering works, supplies or services intended for the joint implementation or exploitation of a project by the signatory States;</p> <p>(b) an international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;</p> <p>(c) a particular procedure of an international organisation;</p>	<p>as proposal</p>	<p>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 of this Directive established by any of the following:</p> <p>(a) an international agreement or arrangement concluded in conformity with the Treaty 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;</p> <p>(b) an international agreement or arrangement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;</p>	

<p>(d) procurement rules provided by an international organisation or international financing institution for public contracts and design contests fully financed by this organisation or institution; in the case of public contracts and design contests co-financed to a considerable extent by an international organisation or international financing institution the parties shall agree on applicable procurement procedures, which shall be in conformity with the Treaty.</p> <p>All agreements referred to in point (a) of the first subparagraph shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 91.</p>		<p>(c) an international organisation.</p> <p>All agreements or arrangements referred to in point (a) of the first subparagraph shall be communicated to the Commission, which may consult the Advisory Committee on Public Procurement referred to in Article 91.</p>	
		<p>2. This Directive shall not apply to public contracts and design contests which the contracting authority awards in accordance with procurement rules provided by an international organisation or international financing institution, where the public</p>	

		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.	
<i>Article 10</i> <i>Specific exclusions for service contracts</i>	<i>Article 10</i> <i>Specific exclusions for service contracts</i>	<i>Article 10</i> <i>Specific exclusions for service contracts</i>	
This Directive shall not apply to public service contracts for:	This Directive shall not apply to public service contracts for:	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; however, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;	(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; however, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;	(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, that are awarded by broadcasters, or contracts for broadcasting time that are awarded to audiovisual media service providers;	(b) the acquisition, development, production or co-production of programme material intended for media services, or contracts for broadcasting or distribution and transmission; media services being defined as including all transmission and distribution using any form of electronic network	(b) the acquisition, development, production or co-production of programme material intended for audiovisual media services <u>or radio media services</u> , that are awarded by <u>audiovisual or radio media service providers</u> , or contracts for broadcasting time <u>or programme provision</u> that are awarded to audiovisual <u>or radio</u> media service providers;	
(c) arbitration and conciliation services;	(c) arbitration and conciliation services and any of the following legal services:	(c) arbitration and conciliation services;	
	<p>(i) legal representation of a client in judicial proceedings before courts, tribunals or public authorities by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;</p> <p>(ii) legal services provided by trustees, appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned;</p> <p>(iii) legal services which in the Member State concerned are connected with the exercise of official authority</p>	<p>(ca) any of the following legal services:</p> <p>(i) legal representation of a client in an arbitration or conciliation held in a Member State or in judicial proceedings before the national courts, tribunals or public authorities of a Member State by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;</p>	

	<p>(iv) certification and authentication of documents by notaries;</p>	<p>(i aa) legal representation of a client in an arbitration or conciliation held in a third country or in judicial proceedings before the national courts, tribunals or public authorities of a third country by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;</p> <p>(ia) legal representation of a client in an arbitration or conciliation held before an international arbitration or conciliation instance or in judicial proceedings before the international courts, tribunals or institutions by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;</p>	
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		<p>(i b) legal advice given in anticipation or preparation of any of the proceedings referred to in points (i), (i aa) or (i a) or where there is a concrete likelihood 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;</p> <p>(ii) document certification services which must be provided by notaries;</p> <p>(iii) legal services provided by trustees, appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned;</p>	
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		(iv) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority;	
(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 ³⁶ , central bank services and operations conducted with the European Financial Stability Facility;	(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, or transactions by contracting authorities to raise money or capital , central bank services and operations conducted with the European Financial Stability Facility;	(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 ³⁷ , [...] central bank services and operations conducted with the European Financial Stability Facility;	
		(d a) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;	

³⁶ OJ L 145, 30.4.2004, p. 1.

³⁷ OJ L 145, 30.4.2004, p. 1.

(e) employment contracts;	(e) employment contracts;	(e) employment contracts;	
	(ea) civil defence, civil protection services and danger prevention;		
(f) public passenger transport services by rail or metro.	(f) public passenger transport services by rail or metro.	(f) public passenger transport services by rail or metro.	
	(fa) providing international assistance, including development aid;		
		(g) Contracts for political campaign services, falling within CPV 79341400-0, 92111230-3 and 92111240-6, when awarded by a political party in the context of an election campaign.	
The audiovisual media services referred to in point (b) of the first paragraph shall include any transmission and distribution using any form of electronic network.	deleted	For the purposes of this Article, "audiovisual media services" and "media service providers" shall, respectively, have the same meaning as pursuant to Articles 1(1)(a) and 1(1)(d) of 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,	

		<p>regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)³⁸. "Programme" shall have the same meaning as pursuant to Article 1(1)(b) of Directive 2010/13/EU, 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".</p>	
		<p><i>Article 10a</i> <i>Service contracts awarded on the basis of an exclusive right</i></p>	
		<p>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 published law, regulation or administrative provision which is compatible with the Treaty.</p>	

³⁸ OJ L 95, 15.4.2010, p. 1.

<i>Article 11</i> <i>Relations between public authorities</i>	<i>Article 11</i> <i>Cooperation between public authorities</i>	<i>Article 11</i> <i>Contracts between entities within the public sector</i>	
1. A contract awarded by a contracting authority to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:	1. A contract awarded by a contracting authority to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:	1. A contract awarded by a contracting authority to another legal entity governed by private or public law shall fall outside the scope of this Directive where the following cumulative 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.	(a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments; i.e. it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person;	(a) the contracting authority exercises over the legal entity concerned a control which is similar to that which it exercises over its own departments.	
(b) at least 90 % of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;	(b) at least 80 % of the average total turnover of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;	(b) more than 80% of the activities of that legal entity are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal entities controlled by that contracting authority.	

(c) there is no private participation in the controlled legal person.	(c) there is no private participation in the controlled legal person with the exception of legally enforced forms of private participation, in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authority.	(c) there is no private capital participation in the controlled legal entity.	
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.	deleted	A contracting authority shall be deemed to exercise over a legal entity 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 entity . The control may also be exercised by another entity, which is itself controlled in the same way by the contracting authority. For the determination of the percentage of activities referred to in point (b) of the first subparagraph the average total turnover of the controlled legal entity with respect to services, supplies and works for the three years preceding the contract award shall be taken into	

		<p>consideration.</p> <p>When, because of the date that legal entity was created or commenced activities or because of a reorganisation of its activities, the turnover is either not available for the preceding three years or no longer relevant, it will be sufficient to show that the turnover is credible, particularly by means of business projections.</p>	
<p>2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.</p>	<p>2. Paragraph 1 also applies where a controlled entity, or entities, which is a contracting authority awards a contract to its controlling entity, or entities, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract with the exception of legally enforced forms of private participation in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authority or entity.</p>	<p>2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal entity controlled by the same contracting authority, provided that there is no private capital participation in the legal entity being awarded the public contract.</p>	

3. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a public contract without applying this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:	3. A contracting authority, which does not exercise over a legal person control within the meaning of point (a) of paragraph 1 of this Article , may nevertheless award a public contract outside of the scope of this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:	3. A contracting authority, which does not exercise over a legal entity governed by private or public law control within the meaning of paragraph 1, may nevertheless award a public contract without applying this Directive to that legal entity where the following cumulative conditions are fulfilled:	
(a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments;	(a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments;	(a) the contracting authority exercises jointly with other contracting authorities over that legal entity a control which is similar to that which they exercise over their own departments;	
(b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;	(b) at least 80 % of the average total turnover of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;	(b) more than 80% of the activities of that legal entity are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or by other legal entities controlled by the same contracting authorities;	
(c) there is no private participation in the controlled legal person.	(c) there is no private participation in the controlled legal person with the exception of legally enforced forms of private participation, in conformity with the Treaties, and which do not exert any influence	(c) there is no private capital participation in the controlled legal entity .	

	on the decisions of the controlling contracting authorities.		
For the purposes of point (a), contracting authorities shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:	For the purposes of point (a), contracting authorities shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:	For the purposes of point (a) of the first subparagraph , contracting authorities shall be deemed to exercise joint control over a legal entity where the following cumulative conditions are fulfilled:	
(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities;	(a) the decision-making bodies of the controlled legal person are composed of representatives of the participating contracting authorities; while one representative may represent one or many participating contracting authorities;	(a) the decision-making bodies of the controlled legal entity are composed of representatives of all participating contracting authorities. Individual representatives may represent several or all of the participating contracting authorities;	
(b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;	(b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;	(b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal entity ;	
(c) the controlled legal person does not pursue any interests which are distinct from that of the public authorities affiliated to it;	(c) the controlled legal person does not pursue any interests which are in conflict with that of the public authorities affiliated to it;	(c) the controlled legal entity does not pursue any interests which are distinct from those of the controlling contracting authorities;	

(d) the controlled legal person does not draw any gains other than the reimbursement of actual costs from the public contracts with the contracting authorities.	deleted	(d) the controlled legal entity does not receive from its activities for the controlling authorities or for other legal entities controlled by the same contracting authorities any revenues other than the reimbursement or re-allocation of funds for the performance of the activities concerned.	
		For the determination of the percentage of activities referred to in point (b) of the first subparagraph the average total turnover of the controlled legal entity with respect to services, supplies and works for the three years preceding the contract award shall be taken into consideration. When, because of the date that legal entity was created or commenced activities or because of a reorganisation of its activities, the turnover is either not available for the preceding three years or no more relevant, it will be sufficient to show that the turnover is credible, particularly by means of business projections.	

4. An agreement concluded between two or more contracting authorities shall not be deemed to be a public contract within the meaning of Article 2(6) of this Directive where the following cumulative conditions are fulfilled:	4. An agreement concluded between two or more contracting authorities shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:	4. A contract between two or more contracting authorities shall not be deemed to be a public contract within the meaning of Article 2(6) of this Directive where the following cumulative conditions are fulfilled:	
(a) the agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;	(a) the agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties for the purpose of the performance of a shared public service task or the pooling of resources in order to enable them to perform their own tasks;	(a) the contract is concluded in a framework of genuine cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;	
(b) the agreement is governed only by considerations relating to the public interest;	(b) the agreement is governed only by considerations relating to the public interest;	(b) the implementation of that cooperation is governed solely by considerations relating to the public interest;	
(c) the participating contracting authorities do not perform on the open market more than 10 % in terms of turnover of the activities which are relevant in the context of the agreement;	deleted	(c) the participating contracting authorities perform on the market less than 20% of the activities concerned by the cooperation;	

(d) the agreement does not involve financial transfers between the participating contracting authorities, other than those corresponding to the reimbursement of actual costs of the works, services or supplies;	deleted	(d)the contract does not involve financial transfers between the participating contracting authorities, other than those corresponding to the reimbursement or re-allocation of funds for the works, services or supplies concerned ;	
(e) there is no private participation in any of the contracting authorities involved.	(c) there is no private participation in any of the contracting authorities involved with the exception of legally enforced forms of private participation in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authorities.	(e) there is no private capital participation in any of the contracting authorities involved.	
		For the determination of the percentage of activities referred to in point (c) of the first subparagraph the average total turnover of the contracting authority concerned with respect to services, supplies and works for the three years preceding the conclusion of the contract shall be taken into consideration. When, because of the date that contracting authority was created or commenced activities or because of a reorganisation of	

		its activities, the turnover is either not available for the preceding three years or no more relevant, it will be sufficient to show that the turnover is credible, particularly by means of business projections.	
	<p>4a. This Directive shall not apply to agreements, decisions or other legal instruments, concluded between several contracting authorities as defined in Article 2(1), or groupings of contracting authorities as defined in Article 2(1) which make provision, in the context of the internal institutional and administrative organisation of a Member State and pursuant to applicable national law or regulation , for the transfer of powers or for the transfer of a public service task between the parties.</p> <p>There shall be no private participation in any of the contracting authorities or entities involved.</p>		

<p>5. The absence of private participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the contract or of the conclusion of the agreement.</p> <p>The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures.</p>	<p>5. The absence of private participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the contract or of the conclusion of the agreement.</p>	<p>5. The absence of private capital participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the contract or of the conclusion of the agreement.</p> <p>The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through procurement procedures.</p>	
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SECTION 4 SPECIFIC SITUATIONS	SECTION 4 SPECIFIC SITUATIONS	Section 4 Specific situations	
<i>Article 12</i> <i>Contracts subsidised by</i> <i>contracting authorities</i>	<i>Article 12</i> <i>Contracts subsidised by</i> <i>contracting authorities</i>	<i>Article 12</i> <i>Contracts subsidised by</i> <i>contracting authorities</i>	
This Directive shall apply to the awarding of the following contracts:	as proposal	This Directive shall apply to the awarding of the following contracts:	
<p>(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 5 000 000, where those contracts involve one of the following activities:</p> <p>(i) civil engineering activities within the meaning of Annex II,</p> <p>(ii) building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes;</p>	as proposal	<p>(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 5 000 000, where those contracts involve one of the following activities:</p> <p>(i) civil engineering activities as listed in Annex II,</p> <p>(ii) building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes;</p>	

(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 200 000 and which are connected to a works contract within the meaning of point (a).	as proposal	(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 200 000 and which are connected to a works contract within the meaning of 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 award themselves the subsidised contracts or where they award that contract for and on behalf of other entities.	as proposal	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 contracts or where they award that contract for and on behalf of other entities.	
<i>Article 13</i> <i>Research and development services</i>	<i>Article 13</i> <i>Research and development services</i>	<i>Article 13</i> <i>Research and development services</i>	
1. This Directive shall apply to public service contracts for research and development services with CPV reference numbers 73000000-2 to 73436000-7, except 73200000-4, 73210000-7 or 73220000-0, provided that the	as proposal	1. This Directive shall apply to public service contracts for research and development services with CPV reference numbers 73000000-2 to 73436000-7, (except 73200000-4, 73210000-7, 73220000-0,	

following conditions are both fulfilled:		73400000-6 [R&D services on security and defence materials], 73410000-9 [Military research and technology], 73421000-9 [Development of security equipment], 73422000-6 [Development of firearms and ammunition], 73423000-3 [Development of military vehicles], 73424000-0, 73425000-7, 73426000-4 [Development of military electronic systems], 73431000-2 [Test and evaluation of security equipment], 73432000-9 [Test and evaluation of firearms and ammunition], 73433000-6 [Test and evaluation of military vehicles], 73434000-3, 73435000-0 or 73436000-7 [Test and evaluation of military electronic systems]) provided that the following conditions are both fulfilled:	
(a) the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs,	as proposal	(a) the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs,	

<p>(b) the service provided is wholly remunerated by the contracting authority.</p> <p>This Directive shall not apply to public service contracts for research and development services with CPV reference numbers 73000000-2 to 73436000-7, except 73200000-4, 73210000-7 or 73220000-0 where one of the conditions referred to in points (a) or (b) of the first subparagraph is not met.</p>	as proposal	<p>(b) the service provided is wholly remunerated by the contracting authority.</p>	
<p>2. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the CPV reference numbers referred to in paragraph 1 to reflect changes in the CPV nomenclature provided that such amendments do not imply a modification of the scope of this Directive.</p>	as proposal	<p>2. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the CPV reference numbers referred to in paragraph 1 to reflect changes in the CPV nomenclature provided that such amendments do not imply a modification of the scope of this Directive.</p>	
<p><i>Article 14</i> <i>Defence and security</i></p>	<p><i>Article 14</i> <i>Defence and security</i></p>	<p><i>Article 14</i> <i>Defence and security</i></p>	
<p>1. Subject to Article 346 of the Treaty on the Functioning of the European Union, this Directive shall apply to the awarding of</p>	<p>1. Subject to Article 346 of the Treaty on the Functioning of the European Union, this Directive shall apply to the awarding of</p>	<p>1. Subject to Article 1(3), this Directive shall apply to the awarding of public contracts and to design contests organised in the</p>	

public contracts and to design contests organised in the fields of defence and security, with the exception of the following contracts:	public contracts and to design contests organised in the fields of defence and security, with the exception of the following contracts:	fields of defence and security, with the exception of the following contracts:	
(a) contracts falling within the scope of Directive 2009/81/EC;	a) contracts for which the application of the rules 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 the procurement and performance of the contract must be accompanied by special security measures in accordance with the laws regulations or administrative provisions in force in a Member State where the Member State has determined that the essential interests concerned cannot be guaranteed by less intrusive measures for instance such a referred to paragraph 2;	(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.	(b) contracts awarded in the framework of a cooperative programme referred to in Article 13 (c) of Directive 2009/81/EC;	(b) contracts to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 thereof.	
	(c) contracts 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) contracts awarded in a third country, carried out when forces are deployed outside the territory of the Union where operational needs require them to be concluded with economic operators located in the area of operations.		
2. This Directive shall not apply to public contracts and design contests other than those referred to in paragraph 1 to the extent that the protection of the essential security interests of a Member State cannot be guaranteed in a procurement procedure as provided for in this Directive.	2 This Directive shall not apply to public contracts and design contests other than those referred to in paragraph 1 to the extent that the protection of the essential security interests of a Member State cannot be guaranteed in a procurement procedure as provided for in this Directive. 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	2. This Directive shall not apply to public contracts and design contests not otherwise exempted under paragraph 1 to the extent that: (a) 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 authorities make available throughout the procurement procedure in a procurement procedure as provided	

	<p>nature of information which the contracting authority makes available in a contract award procedure as provided for in this Directive.</p>	<p>for in this Directive;</p> <p>(b) 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</p> <p>(c) the procurement and performance of the contract or 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 where the Member State has determined that the essential interests concerned cannot be guaranteed by less intrusive measures, for instance such as referred to in point (a).</p>	
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CHAPTER II General rules	CHAPTER II General rules	CHAPTER II General rules	
<i>Article 15</i> <i>Principles of procurement</i>	<i>Article 15</i> <i>Principles of procurement</i>	<i>Article 15</i> <i>Principles of procurement</i>	
<p>Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate way.</p> <p>The design of the procurement shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.</p>	<p>1. Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate way.</p> <p>The design of the procurement shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.</p> <p>2. Member States shall ensure that economic operators comply with the environmental, social and labour law provisions which apply at the place where the works are executed, services provided or goods produced or supplied, as set out in international conventions listed in Annex XI, in Union and national law as well as in collective agreements concluded in accordance with national law and practices which respect</p>	<p>Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.</p> <p>The design of the procurement 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.</p>	

	Union law.		
<i>Article 16 Economic operators</i>	<i>Article 16 Economic operators</i>	<i>Article 16 Economic operators</i>	
<p>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.</p> <p>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.</p>	<p>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.</p> <p>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 number and relevant professional qualification levels of the staff to be responsible for the performance of the contract in question.</p>	<p>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.</p> <p>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.</p>	
<p>2. Groups of economic operators may submit tenders or put themselves forward as candidates. Contracting authorities shall not establish specific conditions for</p>	<p>2. Groups of economic operators may submit tenders or put themselves forward as candidates. Contracting authorities shall not establish specific conditions for</p>	<p>2. Groups of economic operators may participate in procurement procedures. Specific conditions relating to economic and financial standing as set out</p>	

<p>participation of such groups in procurement procedures which are not imposed on individual candidates. In order to submit a tender or a request to participate, those groups shall not be required by the contracting authorities to assume a specific legal form.</p> <p>Contracting authorities may establish specific conditions for the performance of the contract by a group, provided that those conditions are justified by objective reasons and proportionate. Those conditions may require a group to assume a specific legal form once it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.</p>	<p>participation of such groups in procurement procedures which are not imposed on individual candidates. In order to submit a tender or a request to participate, those groups shall not be required by the contracting authorities to assume a specific legal form.</p> <p>Contracting authorities shall give the possibility to a temporary association of economic operators to fulfil all technical, legal and financial requirements as a single entity, summing up the individual characteristics of the components of the group.</p> <p>Contracting authorities may establish specific conditions for the performance of the contract by a group, provided that those conditions are justified by objective reasons and proportionate. Those conditions may require a group to assume a specific legal form once it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.</p>	<p>pursuant to Article 56(3), or to criteria relating to technical and professional ability as set out pursuant to Article 56(4), which contracting authorities establish for the participation of such groups and which are not imposed on individual participants, shall be justified by objective reasons and proportionate. Such specific conditions or criteria may be established by the Member States instead of the individual contracting authorities.</p> <p>Conditions for the performance of a contract by such groups, which are not imposed on individual participants, shall also be justified by objective reasons and proportionate. Requiring those groups to appoint a joint representation or a lead partner for the purposes of the procurement procedure or to require information on their constitution shall be deemed to be justified and proportionate.</p> <p>In order to submit a tender or a request to participate, groups of economic operators shall not be</p>	
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		required by the contracting authorities to have a specific legal form. They may, however, be required to assume a specific legal form once they have been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.	
<i>Article 17 Reserved contracts</i>	<i>Article 17 Reserved contracts</i>	<i>Article 17 Reserved contracts</i>	
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 and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers. The call for competition shall make reference to this provision.	as proposal	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 and disadvantaged persons or 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. Member States may also reserve the right to participate in procedures for the award of public service contracts to organisations whose main aim is the integration of former employees of public authorities into the private sector, provided that the following cumulative conditions are fulfilled:	
		(a) at least 75% of the employees of these organisations are, or will be at the relevant time, individuals who have left their position of employment within a contracting authority in order to deliver public services by way of that organisation;	
		(b) the organisation provides its services exclusively for contracting authorities;	
		(c) employee ownership or engagement has, or will have at the relevant time, a significant impact on the governance of the organisation.	
		This provision only applies where the contract awarded is fully performed within the	

		<p>period of three years beginning from the date on which the organisation first begins to supply any services.</p> <p>For the purposes of this paragraph, ‘relevant time’ means the date on which the organisation would be required to begin the supply of services under a contract awarded pursuant to this provision.</p>	
		<p>3. The call for competition shall make reference to this article.</p>	
<i>Article 18 Confidentiality</i>	<i>Article 18 Confidentiality</i>	<i>Article 18 Confidentiality</i>	
<p>1. Unless otherwise provided in this Directive or in the national law 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 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to,</p>	<p>1. Unless otherwise provided in this Directive or in the national law 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 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to,</p>	<p>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 48 and 53 of this Directive, the contracting authority shall not disclose information forwarded to it by economic operators which they have</p>	

technical or trade secrets and the confidential aspects of tenders.	technical or trade secrets and the confidential aspects of tenders	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.	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.	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.	
	2a. This Article shall not prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes.		
<i>Article 19</i> <i>Rules applicable to communication</i>	<i>Article 19</i> <i>Rules applicable to communication</i>	<i>Article 19</i> <i>Rules applicable to communication</i>	
1. Except where use of electronic means is mandatory pursuant to Articles 32, 33, 34, 35(4), 49(2) or 51 of this Directive, contracting authorities may choose between the following means of communication for all communication and information exchange: (a) electronic means in accordance with paragraphs 3, 4 and 5;	1. Except where use of electronic means is mandatory pursuant to Articles 32, 33, 34, 35(4), 49(2) or 51 of this Directive, contracting authorities may choose between the following means of communication for all communication and information exchange: (a) electronic means in accordance with paragraphs 3, 4 and 5;	1. Member States shall ensure that all communication and information exchange under this Directive, in particular e-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	

<p>(b) post or fax;</p> <p>(c) telephone in the cases and circumstances referred to in paragraph 6;</p> <p>(d) a combination of those means.</p> <p>Member States may make mandatory the use of electronic means of communication in other situations than those provided for in Articles 32, 33, 34, 35(2), 49(2) or 51 of this Directive.</p>	<p>(b) post or fax;</p> <p>(d) a combination of those means.</p> <p>Member States may make mandatory the use of electronic means of communication in other situations than those provided for in Articles 32, 33, 34, 35(2), 49(2) or 51 of this Directive.</p>	<p>non-discriminatory, generally available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the procurement procedure.</p> <p>Notwithstanding the first subparagraph, contracting authorities are not obliged to require electronic means of communication in the e-submission process where physical objects, such as models, are involved which cannot be transmitted electronically or where the communication can only be handled by specialised office equipment, not generally available to contracting authorities, or where the use of electronic means would require specialised tools or file formats that are not generally available. That is in particular the case where:</p>	
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		(a) the description of the tenders, due to the specialised nature of the procurement, cannot be rendered using file formats that are generally supported by generally available applications;	
		(b) the applications supporting file formats that are suitable for the description of the tenders are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority;	
		(c) 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 downloadable applications;	
		(d) the procurement documents require the submission of physical or scale models which cannot be submitted using electronic means	
		In respect of communications for which electronic means of communication are not used pursuant to subparagraph 2, communication shall be done by post or by a combination of post and electronic means.	

		<p>Notwithstanding the first subparagraph, contracting authorities are not obliged to require electronic means of communication in the e-submission process where use of means of communication other than electronic means is necessary as part of the requirements that contracting authorities impose pursuant to Article 18(2) in order to protect the confidential nature of information which the contracting authorities make available throughout the procurement procedure.</p> <p>It is the responsibility of the contracting authorities using means of communication other than electronic means for the e-submission to indicate in the individual report referred to in Article 85 the reasons why the use of electronic means, due to the particular nature of the information to be exchanged with the economic operators, would require use of specialised tools or file formats that are not generally available or that the</p>	
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		<p>communication concerned can be handled only through specialised office equipment. Where applicable, contracting authorities shall indicate in the individual report the reasons why use of means of communication other than electronic means is necessary to protect confidentiality.</p>	
		<p>1a. Paragraph 1 notwithstanding, oral communication may be used in respect of communications other than the essential elements of a procurement procedure such as the procurement documents, requests for participation, confirmations of interest and tenders, provided that the content of the oral communication be documented to a sufficient degree. 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.</p>	

<p>2. The means of communication chosen must be generally available and not restrict economic operators' access to the procurement procedure.</p> <p>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.</p>	<p>The means of communication chosen must be generally available, accessible to persons with disabilities, and not restrict economic operators' access to the procurement procedure.</p> <p>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 as well as of information referred to in Article 18 are preserved. They shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.</p>	<p>2. 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.</p>	
<p>3. The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the procurement procedure. The</p>	<p>3. The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the procurement procedure. The</p>		

<p>technical details and characteristics of the devices for the electronic receipts to be deemed in compliance with the first subparagraph of this paragraph are set out in Annex IV.</p> <p>The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the technical details and characteristics set out in Annex IV due to technical developments or administrative reasons.</p> <p>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 89 to establish the mandatory use of specific technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.</p>	<p>technical details and characteristics of the devices for the electronic receipts to be deemed in compliance with the first subparagraph of this paragraph are set out in Annex IV.</p> <p>The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the technical details and characteristics set out in Annex IV due to technical developments or administrative reasons.</p> <p>To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission should recommend use of specific technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication</p>		
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<p>4. Contracting authorities may, where necessary, require the use of tools which are not generally available, provided that they offer alternative means of access.</p> <p>Contracting authorities shall be deemed to offer suitable alternative means of access in any of the following situations:</p>	as proposal	<p>4. 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.</p> <p>Contracting authorities shall be deemed to offer suitable alternative means of access in any of the following situations, where they:</p>	
<p>(a) They offer unrestricted and full direct access by electronic means to these tools from the date of publication of the notice in accordance with Annex IX 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 these tools are accessible;</p>	as proposal	<p>(a) offer unrestricted and full direct access free of charge by electronic means to these tools and devices from the date of publication of the notice in accordance with Annex IX 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 these tools and devices are accessible;</p>	
<p>(b) ensure that tenderers established in other Member States than the contracting authority's may access the procurement procedure through the use of provisional tokens made available online at no extra cost;</p>	as proposal	<p>(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</p>	

		use of provisional tokens made available free of charge online; or	
(c) support an alternative channel for electronic submission of tenders.	as proposal	(c) support an alternative channel for electronic submission of tenders.	
5. The following rules shall apply to devices for the electronic transmission and receipt of tenders and for the electronic receipt of requests to participate:	as proposal	5. 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;	as proposal	(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) devices, methods for authentication and electronic signatures shall comply with the requirements of Annex IV;	as proposal	deleted	
(c) contracting authorities shall specify the level of security required for the electronic means of communication in the various stages of the specific procurement procedure; the level shall be	as proposal	(c) 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	

proportionate to the risks attached;		communication in the various stages of the specific procurement procedure; the level shall be proportionate to the risks attached;	
<p>(d) where advanced Electronic Signatures as defined by Directive 1999/93/EC of the European Parliament and of the Council³⁹ are required, contracting authorities shall, as long as the signature is valid, accept signatures supported by a qualified electronic certificate referred to in the Trusted List provided for in the Commission Decision 2009/767/EC⁴⁰, created with or without a secure signature creation device, subject to compliance with the following conditions:</p> <p>(i) they must establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU⁴¹ and put in</p>	as proposal	<p>(d) where Member States, or contracting authorities acting within an overall framework established by the Member State concerned, conclude that the level of risks, assessed in conformity with point c, is such that advanced Electronic Signatures as defined by Directive 1999/93/EC of the European Parliament and of the Council⁴² are required, contracting authorities shall accept signatures supported by a qualified electronic certificate referred to in the Trusted List provided for in the Commission Decision 2009/767/EC⁴³, created with or without a secure signature creation device, subject to compliance with the following conditions:</p> <p>(i) they must establish the</p>	

³⁹ OJ L 13, 19.1.2000, p. 12.

⁴⁰ OJ L 274, 20.10.2009, p. 36.

⁴¹ OJ L 53, 26.2.2011, p. 66.

<p>place necessary measures to be able to process these formats technically;</p> <p>(ii) where a tender is signed with the support of a qualified certificate that is included in the Trusted list, they must not apply additional requirements that may hinder the use of those signatures by tenderers.</p>		<p>required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU⁴⁴ and put in place necessary measures to be able to process these formats technically;</p> <p>(ii) where a tender is signed with the support of a qualified certificate that is included in the Trusted list, they must not apply additional requirements that may hinder the use of those signatures by tenderers.</p> <p>In respect of documents used in the context of a procurement procedure that are signed by a competent authority of a Member State, the competent issuing authority may establish the required advanced signature format according to the requirements set out in Article 1(2) of Decision 2011/130/EU; they shall put in place necessary</p>	
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⁴² OJ L 13, 19.1.2000, p. 12.

⁴³ OJ L 274, 20.10.2009, p. 36.

⁴⁴ OJ L 53, 26.2.2011, p. 66.

		<p>measures to be able to process these formats technically by including the information required for the purpose of processing the signature in the document concerned. Such documents must contain in the electronic signature or in the electronic document carrier information on existing validation possibilities that allow to validate the received electronic signature online, free of charge and in a way that is understandable for non-native speakers.</p> <p>Contracting authorities may indicate in the procurement documents that other advanced Electronic Signatures as defined by Directive 1999/93/EC will be accepted, provided that the electronic signature or the electronic document carrier contain information on existing validation possibilities that allow to validate the received electronic signature online, free of charge and in a way that is understandable for non-native speakers.</p>	
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<p>6. The following rules shall apply to the transmission of requests to participate:</p> <p>(a) requests to participate in procedures for the award of public contracts may be made in writing or by telephone; in the latter case, a written confirmation must be sent before expiry of the time limit set for their receipt;</p> <p>(b) contracting authorities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof.</p> <p>For the purposes of point (b), the contracting authority shall indicate in the contract notice or in the invitation to confirm interest that it requires requests to participate made by fax to be confirmed by post or by electronic means and the time limit for sending such confirmation.</p>	<p>6. The following rules shall apply to the transmission of requests to participate:</p> <p>(a) requests to participate in procedures for the award of public contracts may be made in writing;</p> <p>(b) contracting authorities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof.</p> <p>For the purposes of point (b), the contracting authority shall indicate in the contract notice or in the invitation to confirm interest that it requires requests to participate made by fax to be confirmed by post or by electronic means and the time limit for sending such confirmation.</p>		
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<p>7. Member States shall ensure that, at the latest 2 years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.</p>	<p>7. Member States shall ensure that, at the latest 2 years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.</p> <p>For works contracts above the threshold set out in Article 4, Member States <i>may require the</i> use by both contracting authorities and tenderers of <i>building information electronic modelling tools</i> following the general timescales for the implementation of electronic procurement set out in the first subparagraph.</p>		
<p>This obligation shall not apply where the use of electronic means would require specialised tools or file formats that are not generally available in all the Member States within the meaning of paragraph 3. It is the responsibility of the contracting authorities using other means of communication for submission of tenders to demonstrate in the procurement</p>	<p>as proposal</p>		

<p>documents that the use of electronic means, due to the particular nature of the information to be exchanged with the economic operators, would require specialised tools or file formats that are not generally available in all the Member States.</p> <p>Contracting authorities shall be deemed to have legitimate reasons not to request electronic means of communication in the submission process in the following cases:</p> <p>(a) the description of the technical specifications, due to the specialised nature of the procurement, cannot be rendered using file formats that are generally supported by commonly used applications;</p> <p>(b) the applications supporting file formats that are suitable for the description of the technical specifications are under a proprietary licensing schema and cannot be made available for downloading or remote use by the contracting authority;</p> <p>(c) the applications supporting file formats that are suitable for the</p>			
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description of the technical specifications use file formats that cannot be handled by any other open or downloadable applications.			
		<p>7a. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the technical details and characteristics set out in Annex IV due to technical developments.</p> <p>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 89 to establish the mandatory use of such specific technical standards, in particular with regard to the use of e-submission, electronic catalogues and means for electronic authentication, only where technical standards have been thoroughly tested and proved their usefulness in practice. Before making use of any technical standard mandatory, the Commission shall also</p>	

		carefully consider the costs that this may entail, in particular in terms of adaptations to existing e-procurement solutions, including infrastructure, processes or software.	
8. Contracting authorities may use the data processed electronically for public procurement procedures in order to prevent, detect and correct errors occurring at each stage by developing appropriate tools.	as proposal		
<i>Article 20 Nomenclatures</i>	<i>Article 20 Nomenclatures</i>	<i>Article 20 Nomenclatures</i>	
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 ⁴⁵ .	as proposal	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 ⁴⁶ .	
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to adapt the reference numbers used in Annex II and XVI, whenever changes in the CPV nomenclature	as proposal	2. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to adapt the reference numbers used in Annex II and XVI, whenever changes in the CPV nomenclature	

⁴⁵ OJ L 340, 16.12.2002, p. 1.

⁴⁶ OJ L 340, 16.12.2002, p. 1.

must be reflected in this Directive and they do not imply a modification of the scope of this Directive.		must be reflected in this Directive and they do not imply a modification of the scope of this Directive.	
<i>Article 21 Conflicts of interests</i>	<i>Article 21 Conflicts of interests</i>	<i>Article 21 Conflicts of interests</i>	
<p>1. Member States shall provide for rules to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including the design and preparation of the procedure, the drawing-up of the procurement documents, the selection of candidates and tenderers and the award of the contract, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.</p> <p>The notion of conflict of interests shall at least cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective</p>	<p>Member States shall put in place mechanisms to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures so as to avoid any distortion of competition and ensure equal treatment of all economic operators.</p> <p>The concept of conflicts of interests shall at least cover any situation where staff or decision-making 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 or common interest which might be perceived to compromise their impartiality</p>	<p>Member States shall ensure that contracting authorities take appropriate measures to effectively prevent, identify and remedy conflicts of interests arising in the conduct of procurement procedures so as to avoid any distortion of competition and ensure equal treatment of all economic operators.</p> <p>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</p>	

<p>performance of their duties.</p> <p>For the purposes of this Article, ‘private interests’ means any family, emotional life, economic, political or other shared interests with the candidates or the tenderers, including conflicting professional interests.</p> <p>2. The rules referred to in paragraph 1 shall apply to conflicts of interests involving at least the following categories of persons:</p> <p>(a) staff members of the contracting authority, procurement service providers or staff members of other service providers who are involved in the conduct of the procurement procedure;</p> <p>(b) the chairperson of the contracting authority and members of decision-making bodies of the contracting authority who, without necessarily being involved in the conduct of the procurement procedure, may nevertheless influence the outcome of that procedure.</p> <p>3. Member States shall ensure in particular:</p>	<p>and independence in the context of the procurement procedure .</p>	<p>and independence in the context of the procurement procedure.</p>	
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<p>(a) that staff members referred to in paragraph 2(a) are required to disclose any conflict of interests in relation to any of the candidates or tenderers, as soon as they become aware of such conflicts, in order to enable the contracting authority to take remedial action;</p> <p>(b) that candidates and tenderers are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; the contracting authority shall indicate in the individual report referred to in Article 85 whether any candidate or tenderer has submitted a declaration.</p> <p>In the event of a conflict of interests, the contracting authority shall take appropriate measures. Those measures may include the recusal of the staff member in question from involvement in the</p>			
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<p>affected procurement procedure or the re-assignment of the staff member's duties and responsibilities. Where a conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.</p> <p>Where privileged links are identified, the contracting authority shall immediately inform the oversight body designated in accordance with Article 84 and take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. Where the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.</p> <p>4. All measures taken pursuant to this Article shall be documented in the individual report referred to in Article 85.</p>			
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<p><i>Article 22</i> <i>Illicit conduct</i></p> <p>Candidates shall be required at the beginning of the procedure to provide a declaration on honour that they have not undertaken and will not undertake to:</p> <p>(a) unduly influence the decision-making process of the contracting authority or obtain confidential information that may confer upon them undue advantages in the procurement procedure;</p> <p>(b) enter into agreements with other candidates and tenderers aimed at distorting competition;</p> <p>(c) deliberately provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.</p>	<p><i>Article 22</i> <i>Illicit conduct</i></p> <p>as proposal</p>	<p>deleted</p>	
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TITLE II RULES ON PUBLIC CONTRACTS	TITLE II RULES ON PUBLIC CONTRACTS	TITLE II RULES ON PUBLIC CONTRACTS	
CHAPTER I <i>Procedures</i>	CHAPTER I <i>Procedures</i>	CHAPTER I <i>Procedures</i>	
<i>Article 23</i> <i>Conditions relating to the</i> <i>Government Procurement</i> <i>Agreement and other international</i> <i>agreements</i>	<i>Article 23</i> <i>Conditions relating to the</i> <i>Government Procurement</i> <i>Agreement and other international</i> <i>agreements</i>	<i>Article 23</i> <i>Conditions relating to the</i> <i>Government Procurement</i> <i>Agreement and other international</i> <i>agreements</i>	
1. As far as covered by Annexes I, II, IV and V and the General Notes to the European Union's Appendix 1 to the Government Procurement Agreement and by the other international agreements by which the Union is bound, as listed in Annex V to this Directive, 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. By applying this Directive to	1. As far as covered by Annexes I, II, IV and V and the General Notes to the European Union's Appendix 1 to the Government Procurement Agreement and by the other international agreements by which the Union is bound — including commitments within the framework of bilateral trade agreements — as listed in Annex V to this Directive, 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	As far as covered by Annexes I, II, IV and V and the General Notes to the European Union's Appendix 1 to the Government Procurement Agreement 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.	

<p>economic operators of the signatories to those agreements, contracting authorities shall comply with those agreements.</p> <p>2. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex V, where necessary due to the conclusion of new international agreements or modification of existing international agreements.</p>	<p>works, supplies, services and economic operators of the Union. By applying this Directive to economic operators of the signatories to those agreements, contracting authorities shall comply with those agreements.</p> <p>2. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex V, where necessary due to the conclusion of new international agreements or modification of existing international agreements.</p>		
<p><i>Article 24</i> <i>Choice of procedures</i></p>	<p><i>Article 24</i> <i>Choice of procedures</i></p>	<p><i>Article 24</i> <i>Choice of procedures</i></p>	
<p>1. In awarding their public contracts, contracting authorities shall apply the national procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 30, a call for competition has been published in accordance with this Directive.</p> <p>Member States shall provide that contracting authorities may apply open or restricted procedures as regulated in this Directive.</p>	<p>1. In awarding their public contracts, contracting authorities shall apply the national procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 30, a call for competition has been published in accordance with this Directive.</p> <p>Member States shall provide that contracting authorities may apply open or restricted procedures as regulated in this Directive.</p>	<p>1. In awarding their public contracts, contracting authorities shall apply the national procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 30, a call for competition has been published in accordance with this Directive.</p> <p>1a. Member States shall provide that contracting authorities may apply open or restricted procedures as regulated in this Directive.</p>	

<p>Member States may provide that contracting authorities may apply innovation partnerships as regulated in this Directive.</p> <p>They may also provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue in any of the following cases:</p> <p>(a) with regard to works, where the works contract has as its object both the design and the execution of works within the meaning of Article 2(8) or where negotiations are needed to establish the legal or financial makeup of the project;</p> <p>(b) in respect of public works contracts, for works which are performed solely for purposes of research or innovation, testing or development and not with the aim of ensuring profitability or recovering research and development costs;</p> <p>(c) with regard to services or supplies, where the technical specifications cannot be established with sufficient</p>	<p>Member States shall provide that contracting authorities may apply innovation partnerships as regulated in this Directive.</p> <p>Member States shall provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue in any of the following cases:</p> <p>(a) with regard to works, where the works contract has as its object both the design and the execution of works within the meaning of Article 2(8) or where negotiations are needed to establish the legal or financial makeup of the project;</p> <p>(b) in respect of public works contracts, for works which are performed solely for purposes of research or innovation, testing or development and not with the aim of ensuring profitability or recovering research and development costs;</p> <p>(c) with regard to services or supplies, where the technical specifications cannot be established with sufficient</p>	<p>1b. Member States may provide that contracting authorities may apply innovation partnerships as regulated in this Directive.</p> <p>1c. Member States may also provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue in the following situations:</p> <p>a) with regard to works, supplies or services fulfilling one of the following criteria:</p> <p>i) where the needs of the contracting authority cannot be met without adaptation of readily available solutions</p> <p>ii) they include design or innovative solutions</p> <p>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</p>	
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<p>precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references within the meaning of points 2 to 5 of Annex VIII;</p> <p>(d) in the event of irregular or unacceptable tenders within the meaning of Article 30(2)(a) in response to an open or a restricted procedure;</p> <p>(e) due to specific circumstances related to the nature or the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.</p> <p>Member States may decide not to transpose into their national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedures.</p>	<p>precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references within the meaning of points 2 to 5 of Annex VIII;</p> <p>(c a) with regard to knowledge based services;</p> <p>(d) in the event of irregular or unacceptable tenders within the meaning of Article 30(2)(a) in response to an open or a restricted procedure;</p> <p>(e) where contracting authorities justify in the call for competition that due to specific circumstances related to the nature, the legal or financial makeup or the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.</p> <p>(ea) where the specific procurement requirements of the contracting authority cannot be met without exclusive recourse to</p>	<p>or because of the risks attaching to them</p> <p>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 VIII;</p> <p>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 need not publish a contract notice where they include in the procedure all of, and only, the tenderers which satisfy the criteria set out in Article 55 to 63 and which, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the procurement procedure.</p>	
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	standardised solutions.		
<p>2. The call for competition may be made by one of the following means:</p> <p>(a) a contract notice pursuant to Article 47,</p> <p>(b) where the contract is awarded by restricted or competitive procedure with negotiation by a sub-central contracting authority, by means of a prior information notice pursuant to Article 46(2).</p> <p>In the case referred to in point (b), 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 52.</p>	<p>2. The call for competition shall be made by a contract notice pursuant to Article 47.</p> <p>Where the contract is awarded by restricted or competitive procedure with negotiation by a sub-central contracting authority, Member States shall provide, notwithstanding the 1st subparagraph, that the call for competition may be made by means of a prior information notice pursuant to Article 46(2). They may also reserve this possibility to specific categories of sub-central contracting authorities.</p> <p>Where the call for competition is made by means of a prior information notice pursuant to Article 46(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 52.</p>	<p>2. The call for competition shall be made by a contract notice pursuant to Article 47.</p> <p>Where the contract is awarded by restricted or competitive procedure with negotiation by a sub-central contracting authority, Member States may, notwithstanding the first subparagraph of this paragraph, provide that the call for competition may be made by means of a prior information notice pursuant to Article 46(2). They may also reserve this possibility to specific categories of sub-central contracting authorities.</p> <p>Where the call for competition is made by means of a prior information notice pursuant to Article 46(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 52.</p>	

3. Member States may provide that contracting authorities may apply a negotiated procedure without prior publication only in the specific cases and circumstances referred to expressly in Article 30.	3. In the specific cases and circumstances referred to expressly in Article 30 , Member States shall provide that contracting authorities may apply a negotiated procedure without prior publication. Member States shall not allow the use of this procedure in any other cases than those referred to in Article 30.	3. In the specific cases and circumstances referred to expressly in Article 30 , Member States may provide that contracting authorities may apply a negotiated procedure without prior publication. Member States shall not allow the use of this procedure in any other cases than those referred to in Article 30.	
<i>Article 25</i> <i>Open procedure</i>	<i>Article 25</i> <i>Open procedure</i>	<i>Article 25</i> <i>Open procedure</i>	
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 40 days from the date on which the contract notice was sent. The tender shall be accompanied by the requested information for qualitative selection.	as proposal	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 is not 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 20 days, provided that both of the following conditions are fulfilled:	as proposal	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 has included all the information required for the contract notice in section I of part B of Annex VI, insofar as that information is available at the time the prior information notice is published;	as proposal	(a) the prior information notice included all the information required for the contract notice in section I of part B of Annex VI, insofar as that information was available at the time the prior information notice was published;	
(b) it was sent for publication between 45 days and 12 months before the date on which the contract notice was sent.	as proposal	(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 authorities renders impracticable the time limit laid down in the	as proposal	3. Where a state of urgency duly substantiated by the contracting authorities renders impracticable the time limit laid down in the second subparagraph of paragraph	

second subparagraph of paragraph 1, they may fix a time limit which shall be not less than 20 days from the date on which the contract notice was sent.		1, they 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 where it accepts that tenders may be submitted by electronic means in accordance with Article 19(3), (4) and (5).	as proposal	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 first subparagraph of Article 19(1), and Articles 19(4) and (5) .	
<i>Article 26</i> <i>Restricted procedure</i>	<i>Article 26</i> <i>Restricted procedure</i>	<i>Article 26</i> <i>Restricted procedure</i>	
1. In restricted procedures any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection. 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.	as proposal	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 VI 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 is sent.	
<p>2. Only those economic operators invited by the contracting authority following their assessment of the requested information 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 64.</p> <p>The minimum time limit for the receipt of tenders shall be 35 days from the date on which the invitation to tender is sent.</p>	as proposal	<p>2. Only those economic operators invited 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 64.</p> <p>The minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation to tender is sent.</p>	
<p>3. Where contracting authorities have published a prior information notice which is not 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 15 days, provided that all of the following conditions are fulfilled:</p>	as proposal	<p>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:</p>	
<p>(a) the prior information notice has included all the information required for the contract notice</p>	as proposal	<p>(a) the prior information notice included all the information required in section I of part B of Annex VI, insofar as that</p>	

in section I of part B of Annex VI, insofar as that information is available at the time the prior information notice is published;		information was available at the time the prior information notice was published;	
(b) it was sent for publication between 45 days and 12 months before the date on which the contract notice was sent.	as proposal	(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. 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 candidates have the same time to prepare and submit their tenders. Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least 10 days from the date of the invitation to tender.	4. Member States shall 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 candidates have the same time to prepare and submit their tenders. In the absence of an agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least 10 days from the date of the invitation to tender.	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 may be reduced by five days where the contracting authority accepts that tenders may be submitted by electronic means in conformity	as proposal	5. The time limit for receipt of tenders provided for in paragraph 2 may be reduced by five days where the contracting authority accepts that tenders may be submitted by electronic means in conformity with Article 19(1), and Articles	

with Article 19(3), (4) and (5).		19(4) and (5).	
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:	as proposal	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;	as proposal	(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 be not less than 10 days from the date on which the invitation to tender is sent.	as proposal	(b) a time limit for the receipt of tenders which shall be not less than 10 days from the date on which the invitation to tender was sent.	
<i>Article 27</i> <i>Competitive procedure with negotiation</i>	<i>Article 27</i> <i>Competitive procedure with negotiation</i>	<i>Article 27</i> <i>Competitive procedure with negotiation</i>	
1. In competitive procedures with negotiation, any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection. In the contract notice or in the invitation to confirm interest	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 VI parts B and C by providing the information for qualitative selection that is requested by the contracting authority.	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 VI parts B or C as the case may be by providing the information for qualitative selection that is requested by the contracting	

<p>contracting authorities shall describe the procurement and the minimum requirements to be met and specify the award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations. In the technical specifications, contracting authorities shall specify which parts thereof define the minimum requirements.</p> <p>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; the minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation is sent. Article 26 (3) to (6) shall apply.</p>	<p>In the procurement documents, contracting authorities shall indicate which elements define the minimum requirements to be met. The indications shall be sufficiently precise as to enable economic operators to identify the precise nature and scope of the procurement and decide whether to request to participate in the procedure.</p> <p>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; the minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation is sent. Article 26 (3) to (6) shall apply.</p>	<p>authority. In the procurement documents, contracting authorities shall indicate which elements thereof define the minimum requirements to be met.</p> <p>The indications 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.</p> <p>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 26(3) to (6) shall apply.</p>	
<p>2. Only those economic operators invited by the contracting authority following their assessment of the requested information may submit a written tender which shall be the basis for the subsequent</p>	<p>2. Only those economic operators invited by the contracting authority following their assessment of the requested information may submit an initial tender which shall be the basis for the subsequent</p>	<p>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</p>	

negotiations. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.	negotiations. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.	negotiations. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.	
<p>3. Contracting authorities shall negotiate with tenderers the tenders submitted by them to improve the content of the offers in order to better correspond to the award criteria and minimum requirements referred to in the second subparagraph of paragraph 1.</p> <p>The following shall not be changed in the course of the negotiations:</p> <p>(a) the description of the procurement;</p> <p>(b) the part of the technical specifications which define the minimum requirements;</p> <p>(c) the award criteria.</p>	<p>3. Contracting authorities shall negotiate with tenderers the tenders submitted by them, to improve the content of the offers in order to better correspond to the award criteria and minimum requirements referred to in the second subparagraph of paragraph 1.</p> <p>The minimum requirements, the object of the procurement, and the award criteria shall not be subject to negotiations.</p>	<p>3. Unless otherwise provided for in [...] paragraph 3b of this Article, 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 6, to improve the content thereof.</p> <p>The minimum requirements and the award criteria shall not be subject to negotiations.</p>	
		<p>3b. Contracting authorities may award contracts on the basis of the initial tenders without negotiation where they have indicated in the contract notice, the invitation to confirm interest or in another procurement document, that they reserve the</p>	

		possibility to do so.	
<p>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 take particular care to ensure that all tenderers, whose tenders have not been eliminated pursuant to paragraph 5, are informed in writing of any changes to the technical specifications other than those setting out the minimum requirements, in adequate time to allow such tenderers to modify and re-submit amended tenders following these changes, as appropriate.</p> <p>Contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate 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 solutions or other</p>	<p>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 take particular care to ensure that all tenderers, whose tenders have not been eliminated pursuant to paragraph 5, are informed in writing of any changes to the technical specifications or other procurement documents, other than those setting out the minimum requirements, providing sufficient time for such tenderers to modify and re-submit amended tenders following these changes.</p> <p>In accordance with Article 18, contracting authorities shall not reveal to the other participants confidential information communicated by a candidate 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.</p>	<p>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 take particular care to ensure that all tenderers, whose tenders have not been eliminated pursuant to paragraph 5, are informed in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements, in adequate time to allow such tenderers to modify and re-submit, as appropriate, amended tenders following these changes.</p> <p>In accordance with Article 18, 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</p>	

confidential information.		specific information.	
5. 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 the procurement documents. In the contract notice, the invitation to confirm interest or the procurement documents, the contracting authority shall indicate whether it will use this option.	as proposal	5. 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 this option.	
6. 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. They shall assess the tenders as negotiated on the basis of the initially indicated award criteria and award the contract in accordance with Articles 66 to 69.	as proposal	6. 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 assess the final tenders on the basis of the initially indicated award criteria and award the contract in accordance with Articles 66 to 69.	

<i>Article 28 Competitive dialogue</i>	<i>Article 28 Competitive dialogue</i>	<i>Article 28 Competitive dialogue</i>	
<p>1. In competitive dialogues, any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection.</p> <p>The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice is sent.</p> <p>Only those economic operators invited by the contracting authority following the assessment of the requested information 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 64. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).</p>	<p>1. In competitive dialogues, any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection.</p> <p>The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice is sent.</p> <p>Only those economic operators invited by the contracting authority following the assessment of the requested information may participate in the dialogue. Contracting authorities shall have the option of appointing from among their staff a project leader to guarantee compliance with reasonable deadlines by means of effective coordination at each stage of the dialogue. The number of suitable candidates to be invited to participate in the procedure may be limited in accordance with Article 64.</p>	<p>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.</p> <p>The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice was sent.</p> <p>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 64. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).</p>	
2. Contracting authorities shall set out their needs and requirements in	as proposal	2. Contracting authorities shall set out their needs and requirements in	

the contract notice and they shall define these needs and requirements in the 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.		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.	
<p>3. Contracting authorities shall open, with the candidates selected in accordance with the relevant provisions of Articles 54 to 65, 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 contract with the chosen candidates during this dialogue.</p> <p>During the dialogue, contracting authorities shall ensure equality of treatment among all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.</p> <p>Contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate</p>	<p>3. Contracting authorities shall open, with the candidates selected in accordance with the relevant provisions of Articles 54 to 65, 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 contract with the chosen candidates during this dialogue.</p> <p>During the dialogue, contracting authorities shall ensure equality of treatment among all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.</p> <p>In accordance with Article 18, contracting authorities shall not reveal to the other participants solutions proposed or other confidential information</p>	<p>3. Contracting authorities shall open, with the participants selected in accordance with the relevant provisions of Articles 54 to 65, 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.</p> <p>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.</p> <p>In accordance with Article 18, contracting authorities shall not reveal to the other participants</p>	

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 solutions or other specific confidential information.	communicated by a candidate 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.	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 defined 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 this option.	as proposal	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 defined 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 this option.	
5. The contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.	5. The contracting authority may either set a limited timeframe for the dialogue, which figures in the contract notice or continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.	5. The contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.	

<p>6. Having declared that the dialogue is concluded and having so informed the participants, contracting authorities 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.</p>	<p>6. Having declared that the dialogue is concluded and having so informed the participants, contracting authorities shall ask each participant 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.</p> <p>These tenders may be clarified, specified and fine-tuned at the request of the contracting authority. However, such clarification, specification, fine-tuning 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.</p>	<p>6. Having declared that the dialogue is concluded and having so informed the remaining participants, contracting authorities 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.</p> <p>These tenders may be clarified, specified and fine-tuned at the request of the contracting authority. However, such clarification, specification, fine-tuning 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.</p>	
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<p>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.</p> <p>Where necessary, in order to finalise financial commitments or other terms of the contract, the contracting authority may negotiate the final terms of the contract with the tenderer identified as having submitted the most economically advantageous tender in accordance with Article 66(1)(a) provided such negotiations do not have the effect of 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.</p>	<p>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.</p> <p>At the request of the contracting authority, the tenderer identified as having submitted the most economically advantageous tender in accordance with Article 66(1) may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of 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.</p>	<p>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.</p> <p>Where necessary, in order to finalise financial commitments or other terms of the contract, the contracting authority may negotiate the final terms of the contract with the tenderer identified as having submitted the most economically advantageous tender in accordance with Article 66(1)(a) provided such negotiations do 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.</p>	
<p>8. The contracting authorities may specify prizes or payments to the participants in the dialogue.</p>	<p>8. The contracting authorities shall specify prizes or payments to the participants in the dialogue on terms laid down by the contract.</p>	<p>8. The contracting authorities may specify prizes or payments to the participants in the dialogue.</p>	

<p><i>Article 29</i></p> <p><i>Innovation partnership</i></p>	<p><i>Article 29</i></p> <p><i>Innovation partnership</i></p>	<p><i>Article 29</i></p> <p><i>Innovation partnership</i></p>	
<p>1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for 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 agreed performance levels and costs.</p>	<p>1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for 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 agreed performance levels and costs. The contract setting up the innovation partnership shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).</p>	<p>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.</p> <p>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. 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.</p> <p>The contracting authority may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.</p>	

		<p>The minimum time limit for receipt of requests to participate shall be 30 <u>days</u> 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 procedure. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64. The contracts shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).</p>	
<p>2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply or the provision of the services. It shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate</p>	<p>2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, which may include the manufacturing of the supply or the provision of the services or the completion of the works. The partnership shall set intermediate targets to be attained by the partner and provide for remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each</p>	<p>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 agreed performance levels and maximum costs.</p> <p>The innovation partnership shall be structured in successive stages following the sequence of steps in the research and innovation</p>	

the partnership and launch a new procurement procedure for the remaining phases, provided that it has acquired the relevant intellectual property rights.	stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided the contracting authority has indicated in the procurement documents under which conditions it may make use of this discretion to terminate the partnership.	process, which may include the manufacturing of the supply, 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 stage 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 that and the conditions under which it may make use of these possibilities.	
3. The contract shall be awarded in accordance with the rules for a competitive procedure with negotiation set out in Article 27.	3. The contract shall be awarded according to this paragraph. In the procurement documents, contracting authorities shall indicate which elements define the minimum requirements to be met. The indications shall be sufficiently precise so as to	3. Unless otherwise provided for in this Article, the contract shall be awarded in accordance with the rules set out in Article 27(3), (3b), (4), (5) and Article 66(6).	

	<p>enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.</p> <p>The minimum time limit for receipt of requests to participate shall be 35 days from the date on which the contract notice is sent, or where a prior information notice is used as a means of calling for competition, 35 days from the date on which the invitation to confirm interests is sent. The minimum time limit for the receipt of initial tenders shall be 35 days from the date on which the invitation is sent.</p> <p>Contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted, to improve the content to ensure that these tenders better fulfil the award criteria specified in the procurement documents.</p> <p>During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a</p>		
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	<p>discriminatory manner which may give some tenderers an advantage over others. They shall take particular care to ensure that all tenderers, whose tenders have not been eliminated, are informed in writing of any changes to the technical specifications of other procurement documents other than those setting out the minimum requirements, providing sufficient time to allow such tenderers to modify and re-submit amended tenders following these changes.</p> <p>In accordance with Article 18, contracting authorities shall not reveal to the other participants confidential information communicated by a candidate 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.</p> <p>The minimum requirements and the award criteria shall not be subject to negotiations.</p>		
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	<p>Once the deadline for submitting tenders has expired, and before proceeding to their examination, contracting authorities may specify a weighting attached to the subheadings of an award criterion defined in advance in accordance with Article 66(5), provided that</p> <p>(a) the contract award criteria set out in the contract documents or the contract notice are unaltered;</p> <p>(b) this does not include new elements which would have affected the preparation of the tenders;</p> <p>(c) this does not give rise to discrimination against any one of the tenderers.</p> <p>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</p>		
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	confirm interest or in the procurement documents, the contracting authority shall clearly indicate whether it will use this option.		
<p>In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the tenderers' capacity and experience in the field of research and development and of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.</p> <p>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. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).</p>	<p>In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the candidates' capacity in the field of research and development and of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.</p> <p>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.</p>	<p>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.</p> <p>Only those economic operators invited by the contracting authority following its assessment of the information provided may submit research and innovation projects aimed at meeting the needs identified by the contracting authority.</p> <p>In the procurement documents, the contracting authority shall indicate the regime applicable to intellectual property rights. In the case of an innovation partnership with several partners, the contracting authority shall not reveal to the other partners solutions proposed or other confidential information communicated by a</p>	

		partner in the framework of the partnership 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.	
<p>4. The structure of the partnership and, in particular, the duration and value of the different phases shall 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 value and duration of a contract for the purchase of the resulting supply, service or works shall remain within appropriate limits, taking into account the need to recover the costs, including those incurred in developing an innovative solution, and to achieve an adequate profit.</p> <p>Contracting authorities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition.</p>	<p>4. The contracting authorities shall ensure that the structure of the partnership and, in particular, the duration and value of the different phases shall 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.</p>	<p>4. 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 purchased shall not be disproportionate in relation to the investment for their development.</p>	

<i>Article 30</i> <i>Use of the negotiated procedure</i> <i>without prior publication</i>	<i>Article 30</i> <i>Use of the negotiated procedure</i> <i>without prior publication</i>	<i>Article 30</i> <i>Use of a negotiated procedure</i> <i>without prior publication</i>	
1. Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication only in the cases laid down in paragraphs (2) to (5).	as proposal	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. In any other cases, the use of this procedure is not allowed.	
2. The negotiated procedure without prior publication may be foreseen for public works contracts, public supply contracts and public service contracts in any of the following cases:	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:	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 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 or the national oversight body designated according to Article 84 where	(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure, a restricted procedure or a negotiated procedure with prior publication , provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission or the Member States' competent authorities where they so request.	(a) where no tenders or no suitable tenders or no requests to participate or no suitable requests for participation 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.	

they so request.		<p>A tender shall be considered not to be suitable where it is irrelevant to the contract, being 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 shall or may be excluded pursuant to Article 55 or does not meet the selection criteria set out by the contracting authority pursuant to Article 56;</p>	
(b) where the aim of the procurement is the creation or obtention of a work of art;	(b) where the aim of the procurement is the creation or obtention of a work of art or an artistic performance;	deleted	
(c) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons: (i) the absence of competition for technical reasons;	(c) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons: (i) the absence of competition for technical reasons; (ii) the protection of patents,	(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	

<p>(ii) the protection of patents, copyrights or other intellectual property rights;</p> <p>(iii) the protection of other exclusive rights.</p> <p>This exception only applies 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;</p>	<p>copyrights or other intellectual property rights;</p> <p>(iii) the protection of other exclusive rights, including ownership of a property site.</p> <p>This exception only applies when the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;</p>	<p>of a unique work of art or artistic performance;</p> <p>– (ii) competition is absent for technical reasons;</p> <p>(iii) the protection of exclusive rights, including intellectual property rights;</p> <p>The exceptions set out in points (ii) and (iii) 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;</p>	
<p>(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by force majeure, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;</p>	<p>(d) insofar 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, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;</p>	<p>(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable for the contracting authority, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.</p>	

<p>For the purposes of point (a), a tender shall be considered not to be suitable where:</p> <ul style="list-style-type: none"> – it is irregular or unacceptable, and – it is completely irrelevant to the contract, being incapable of meeting the contracting authority's needs as specified in the procurement documents. <p>In particular, tenders shall be considered to be irregular, where they do not comply with the procurement documents or where the prices offered are sheltered from normal competitive forces.</p> <p>In particular, tenders shall be considered to be unacceptable in any of the following cases:</p> <ul style="list-style-type: none"> (a) they have been received late; (b) they have been submitted by tenderers that do not have the requisite qualifications; (c) their price either exceeds the contracting authority's budget as determined prior to the launching of the procurement 	<p>as proposal</p>	<p>---</p>	
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<p>procedure; the prior determination of the budget must be documented in writing;</p> <p>(d) they have been found to be abnormally low in accordance with Article 69.</p>			
<p>3. The negotiated procedure without prior publication may be foreseen for public supply contracts:</p>	as proposal	<p>3. The negotiated procedure without prior publication may be used for public supply contracts:</p>	
<p>(a) where the products involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;</p>	as proposal	<p>(a) where the products involved are manufactured purely for the purpose of research, experimentation, study or development; however, contracts awarded pursuant to this provision shall not include quantity production to establish commercial viability or to recover research and development costs;</p>	
<p>(b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different</p>	as proposal	<p>(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</p>	

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;		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 or other similar markets such as electricity exchanges;	as proposal	(c) for supplies quoted and purchased on a commodity market;	
(d) for the purchase of supplies 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.	as proposal	(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 foreseen 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 applicable rules, to the	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 applicable rules, to the winner or	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 foreseen in the design	

winner or one of the winners of the design contest; in the latter case, all winners must be invited to participate in the negotiations.	one of the winners of the design contest; in the latter case, all winners must be invited to participate in the negotiations.	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.	
<p>5. The negotiated procedure without prior publication may be foreseen 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 according to a procedure in accordance with Article 24(1). The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.</p> <p>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.</p>	<p>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 according to a procedure in accordance with Article 24(1). The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.</p> <p>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.</p>	<p>5. The negotiated procedure without prior publication may be foreseen 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 according to a procedure in accordance with Article 24(1). The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.</p> <p>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.</p>	

This procedure may be used only during the three years following the conclusion of the original contract.	This procedure may be used only during the three years following the conclusion of the original contract.	This procedure may be used only during the three years following the conclusion of the original contract.	
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CHAPTER II Techniques and instruments for electronic and aggregated procurement	CHAPTER II Techniques and instruments for electronic and aggregated procurement	CHAPTER II <i>Techniques and instruments for electronic and aggregated procurement</i>	
<i>Article 31</i> <i>Framework agreements</i>	<i>Article 31</i> <i>Framework agreements</i>	<i>Article 31</i> <i>Framework agreements</i>	
<p>1. Contracting authorities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.</p> <p>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.</p> <p>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.</p>	<p>1. Contracting authorities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.</p> <p>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.</p> <p>The term of a framework agreement shall not exceed five years, save in the following cases:</p> <p>(a) the subject of the framework agreement concerns works or services that will take longer</p>	<p>1. Contracting authorities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.</p> <p>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.</p> <p>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.</p>	

	<p>than five years to carry out; or</p> <p>(b) economic operators need to make investments for which the amortisation period is longer than five years or which are linked to maintenance, the recruitment of suitable staff to perform the contract or the training of staff to perform the contract.</p> <p>The term of a framework agreement shall be based on the lifecycle of the work, service or supply.</p>		
<p>2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.</p> <p>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 originally party to the framework agreement.</p> <p>Contracts based on a framework agreement may under no</p>	<p>2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.</p> <p>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 originally party to the framework agreement.</p> <p>Contracts based on a framework agreement may under no</p>	<p>2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.</p> <p>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.</p> <p>Contracts based on a framework</p>	

<p>circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.</p> <p>Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.</p>	<p>circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.</p> <p>Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.</p> <p>After conclusion of the framework agreement, the number of participating contracting authorities may only be increased where the following conditions are met:</p> <p>(a) the framework agreement has been concluded by a central purchasing body;</p> <p>(b) the possibility of such an increase is expressly provided for in the contract notice;</p> <p>(c) the scope for the increase can be determined on the basis of clear criteria; and</p> <p>(d) all parties to the framework agreement agree to the increase.</p>	<p>agreement may under no circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.</p>	
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<p>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.</p> <p>For the award of those contracts, contracting authorities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.</p>	<p>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.</p> <p>For the award of those contracts, contracting authorities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.</p>	<p>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.</p> <p>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.</p>	
<p>4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways:</p>	<p>4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways:</p>	<p>4. Where a framework agreement is concluded with more than one economic operator, it shall be performed in one of the following ways:</p>	
<p>(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</p>	<p>(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;</p>	<p>(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</p>	

conditions shall be indicated in the procurement documents;		the framework agreement;	
		<p>(aa) 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 (b), 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.</p>	

		<p>These procurement documents shall also specify which terms may be subject to reopening of competition.</p> <p>The possibilities provided for under the first subparagraph of point aa 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, regardless of whether all the terms governing the provision of the works, services and supplies concerned under other lots have been set out.</p>	
(b) 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.	(b) 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.	(b) 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 who are parties to the framework agreement.	

5. The competition referred to in paragraph (4)(b) 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 specifications of the framework agreement, in accordance with the following procedure:	5. The competition referred to in paragraph (4)(b) 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 specifications of the framework agreement, in accordance with the following procedure:	5. The competitions referred to in points (aa) and (b) 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;	(a) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;	(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	(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;	(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;	

tenders;			
(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;	(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;	(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 specifications of the framework agreement.	(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 specifications of the framework agreement.	(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.	
<i>Article 32</i> <i>Dynamic purchasing systems</i>	<i>Article 32</i> <i>Dynamic purchasing systems</i>	<i>Article 32</i> <i>Dynamic purchasing systems</i>	
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	1. For commonly used goods and services 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	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	

process, open throughout its validity to any economic operator that satisfies the selection criteria.	operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.	throughout the 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 award contracts 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; the number of candidates to be admitted to the system shall not be limited in accordance with Article 64. All communications in the context of a dynamic purchasing system shall only be made with electronic means in accordance with Article 19(2) to (6).	2. In order to award contracts 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; the number of candidates to be admitted to the system shall not be limited in accordance with Article 64. All communications in the context of a dynamic purchasing system shall only be made with electronic means in accordance with Article 19(2) to (6).	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; the number of candidates to be admitted to the system shall not be limited in accordance with Article 64. Where contracting authorities have divided the system into categories of products or services in accordance with paragraph 1 of this Article, they shall specify the	

		<p>applicable selection criteria for each category.</p> <p>Article 26 notwithstanding, the following time limits shall apply:</p>	
		<p>(a) A 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.</p>	
		<p>(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 26(4) shall apply. Article 26(3) and (5) shall not apply.</p>	

		2a. All communications in the context of a dynamic purchasing system shall only be made with electronic means in accordance with Article 19 (1), (2), (4) and (5) .	
3. For the purposes of awarding contracts under a dynamic purchasing system, contracting authorities shall:	3. For the purposes of awarding contracts under a dynamic purchasing system, contracting authorities shall:	3. 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;	(a) publish a call for competition making it clear that a dynamic purchasing system is involved and describe how the procedure operates;	(a) publish a call for competition making it clear that a dynamic purchasing system is involved;	
(b) indicate in the specifications at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;	(b) indicate in the specifications at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;	(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 purchasing system, the electronic equipment used and the technical connection arrangements and specifications;	
		(ba) indicate any division into categories of products or services and the characteristics defining them;	

(c) offer unrestricted and full direct access, as long as the system is valid, to the specifications and to any additional documents in conformity with Article 51.	(c) offer unrestricted and full direct access, as long as the system is valid, to the specifications and to any additional documents in conformity with Article 51.	(c) offer unrestricted and full direct access, as long as the system is valid, to the procurement documents in conformity with Article 51.	
<p>4. Contracting authorities shall give any economic operator, throughout the entire duration 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 according to the selection criteria within 10 working days following their receipt.</p> <p>The contracting authority shall inform the economic operator referred to in the first subparagraph at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.</p>	<p>4. Contracting authorities shall give any economic operator, throughout the entire duration 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 according to the selection criteria within 10 working days following their receipt.</p> <p>The contracting authority shall inform the economic operator referred to in the first subparagraph at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.</p>	<p>4. 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 according to the selection criteria within 10 working days following their receipt. This 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.</p> <p>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</p>	

		<p>evaluation period provided that no invitation to tender is issued during the extended evaluation period. In the procurement documents they shall indicate the length of the extended period that they intend to apply.</p> <p>The contracting authority shall inform the economic operator concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.</p>	
<p>5. Contracting authorities shall invite all qualified participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 52.</p> <p>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.</p>	<p>5. Contracting authorities shall invite all qualified participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 52.</p> <p>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.</p>	<p>5. Contracting authorities shall invite all admitted participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 52. Where the dynamic procurement 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.</p> <p>They shall award the contract to the tenderer that submitted the best tender on the basis of the award</p>	

		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.	
		<p>(5a) 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 57(1), within five working days from the date on which that request is transmitted.</p> <p>Article 57(2) to (4) shall apply throughout the entire period of validity of the dynamic purchasing system.</p>	
6. Contracting authorities shall indicate the duration of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in duration, using the following standard forms:	6. Contracting authorities shall indicate the duration of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in duration, using the following standard forms:	6. 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 duration is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;	(a) where the duration is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;	(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 48.	(b) where the system is terminated, a contract award notice referred to in Article 48.	(b) where the system is terminated, a contract award notice referred to in Article 48.	
7. No charges may be billed to the interested economic operators or to parties to the dynamic purchasing system.	7. No charges may be billed during the award procedure to the interested economic operators or to parties to the dynamic purchasing system.	No charges may be billed to the economic operators interested in or party to the dynamic purchasing system.	
<i>Article 33</i> <i>Electronic auctions</i>	<i>Article 33</i> <i>Electronic auctions</i>	<i>Article 33</i> <i>Electronic auctions</i>	
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 use a repetitive electronic process (electronic auction), which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.	1. For commonly used goods and services , 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 use a repetitive electronic process (electronic auction), which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation	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.	

	methods.	As certain public service contracts and certain public works contracts having as their subject-matter intellectual performances, such as the design of works, cannot be ranked using automatic evaluation methods, such contracts shall not be the object of electronic auctions.	
<p>2. In open, restricted 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 tender specifications can be established with precision.</p> <p>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 31(4)(b) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 32.</p>	<p>2. In open, restricted 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 tender specifications can be established with precision.</p> <p>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 31(4)(b) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 32.</p>	<p>2. In open, restricted 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 procurement documents, in particular the technical specifications, can be established with precision.</p> <p>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 31(4)(aa) or (b) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 32.</p>	

3. The electronic auction shall be based on one of the the following criteria:	3. The electronic auction shall be based on prices and/or on the new values of certain elements of the tenders indicated in the specifications.	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 to the tender offering the lowest cost;	deleted	(a) solely on prices where the contract is awarded on the basis of price only under the award criterion of the lowest cost;	
(b) on prices and/or on the new values of the features of the tenders indicated in the specifications where the contract is awarded to the most economically advantageous tender.	deleted	(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 to the most economically advantageous tender 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 specifications shall include at least the information set out in Annex VII.	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 specifications shall include at least the information set out in Annex VII.	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 VII.	
5. Before proceeding with an electronic auction, contracting authorities shall make a full initial	5. Before proceeding with an electronic auction, contracting authorities shall make a full initial	5. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in	

<p>evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.</p> <p>A tender shall be considered admissible where it has been submitted by a qualified tenderer and is in conformity with the technical specifications.</p> <p>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.</p>	<p>evaluation of the tenders in accordance with the award criteria and with the weighting fixed for them.</p> <p>A tender shall be considered admissible where it has been submitted by a qualified tenderer and is in conformity with the technical specifications.</p> <p>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.</p>	<p>accordance with the award criterion or criteria and with the weighting fixed for them.</p> <p>A tender shall be considered admissible where it has been submitted by a tenderer, who has not been excluded pursuant to Article 55 and who meets the selection criteria, and whose tender is in conformity with the technical specifications without being irregular, unacceptable or unsuitable.</p> <p>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.</p>	
<p>6. Where the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied</p>	<p>6. The invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance</p>	<p>6. Where the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied</p>	

<p>by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 66(5).</p> <p>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. 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 the specifications. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.</p> <p>Where variants are authorised, a separate formula shall be provided for each variant.</p>	<p>with the weighting provided for in the first subparagraph of Article 66(5)</p> <p>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. 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 the specifications. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.</p> <p>Where variants are authorised, a separate formula shall be provided for each variant.</p>	<p>by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 66(5).</p> <p>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. 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.</p> <p>Where variants are authorised, a separate formula shall be provided for each variant.</p>	
<p>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</p>	<p>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</p>	<p>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</p>	

and they may, where this has been previously indicated, communicate other information concerning other prices or values submitted as well as announcing the number of participants in any specific phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.	and they may, where this has been previously indicated, communicate other information concerning other prices or values submitted as well as announcing the number of participants in any specific phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.	and they may, where this has been previously indicated, communicate other information concerning other prices or values submitted as well as announcing the number of participants in any specific 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:	8. Contracting authorities shall close an electronic auction in one or more of the following manners:	8. Contracting authorities shall close an electronic auction in one or more of the following manners:	
(a) at the previously indicated date and time;	(a) at the previously indicated date and time;	(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;	(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;	(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.	(c) when the previously indicated number of phases in the auction has been completed.	(c) when the previously indicated number of phases in the auction has been completed.	

Where the contracting authorities have decided to close an electronic auction in accordance with point (c), possibly in combination with the arrangements laid down in point (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.	Where the contracting authorities have decided to close an electronic auction in accordance with point (c), possibly in combination with the arrangements laid down in point (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.	Where the contracting authorities intend to close an electronic auction in accordance with point (c), possibly in combination with the arrangements laid down in point (b), 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 66 on the basis of the results of the electronic auction.	9. After closing an electronic auction contracting authorities shall award the contract in accordance with Article 66 on the basis of the results of the electronic auction.	9. After closing an electronic auction contracting authorities shall award the contract in accordance with Article 66 on the basis of the results of the electronic auction.	
<i>Article 34</i> <i>Electronic catalogues</i>	<i>Article 34</i> <i>Electronic catalogues</i>	<i>Article 34</i> <i>Electronic catalogues</i>	
<p>1. Where contracting authorities require the use of electronic means of communication pursuant to Article 19, they may require tenders to be presented in the format of an electronic catalogue.</p> <p>Member States may render the use of electronic catalogues mandatory in connection with certain types of procurement.</p> <p>Tenders presented in the form of an electronic catalogue may be</p>	as proposal	<p>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.</p> <p>Member States may render the use of electronic catalogues mandatory in connection with certain types of procurement.</p> <p>Tenders presented in the form of an</p>	

accompanied by other documents, completing the tender.		electronic catalogue may be accompanied by other documents, completing the tender.	
<p>2. Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a specific procurement procedure in accordance with the technical specifications and format established by the contracting authority.</p> <p>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 19.</p>	as proposal	<p>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.</p> <p>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 19.</p>	
3. Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting authorities shall:	as proposal	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;	as proposal	(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 specifications all the necessary information pursuant to Article 19(5) concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.	as proposal	(b) indicate in the procurement documents all the necessary information pursuant to Article 19(5) 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 case, contracting authorities shall use one of the following alternative methods:	as proposal	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 case, contracting authorities shall use one of the following alternative methods:	
(a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the specific contract in question;	as proposal	(a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the specific contract in question;	

<p>(b) notify tenderers that they intend to collect from the catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the specific contract in question (hereinafter ‘punch out’); provided that the use of this method has been announced in the procurement documents for the framework agreement.</p>	<p>as proposal</p>	<p>(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 specific contract in question ; provided that the use of this method has been announced in the procurement documents for the framework agreement.</p>	
<p>5. Where contracting authorities reopen competition for specific contracts in accordance with point (b) of paragraph (4), they shall specify 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.</p> <p>Contracting authorities shall allow for an adequate period between the notification and the actual collection of information.</p> <p>Before awarding the contract,</p>	<p>as proposal</p>	<p>5. Where contracting authorities reopen competition for specific contracts in accordance with point (b) of paragraph (4), they shall specify 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.</p> <p>Contracting authorities shall allow for an adequate period between the notification and the actual collection of information.</p> <p>Before awarding the contract,</p>	

contracting authorities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm the correctness of the tender thus constituted.		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 through a punch out 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. This catalogue shall be completed subsequently by the candidates, when they are informed of the contracting authority's intention to constitute tenders by means of a punch out. The punch out shall be conducted in conformity with point (b) of paragraph 4 and paragraph 5.	as proposal	<p>6. Contracting authorities may award contracts based on a dynamic purchasing system by requiring that offers for a specific contract shall be presented in the format of an electronic catalogue.</p> <p>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. This 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 in point</p>	

		(b) of paragraph (4).	
<i>Article 35</i> <i>Centralised purchasing activities</i> <i>and central purchasing bodies</i>	<i>Article 35</i> <i>Centralised purchasing activities</i> <i>and central purchasing bodies</i>	<i>Article 35</i> <i>Centralised purchasing activities</i> <i>and central purchasing bodies</i>	
1. Contracting authorities may purchase works, supplies and/or services from or through a central purchasing body.	1. Contracting authorities may purchase works, supplies and/or services from or through a central purchasing body.	<p>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 Article 2(16).</p> <p>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 Article 31(2) second subparagraph, by using a framework agreement concluded by a central purchasing body offering the centralised purchasing activity referred to in point b of Article 2(16). Where a dynamic purchasing system which is operated by a central</p>	

		<p>purchasing body may be used by other contracting authorities, this shall be mentioned in the call for competition setting up the system.</p> <p>In relation to subparagraphs 1 and 2, Member States may provide that certain procurements shall be made by having recourse to central purchasing bodies or to one or more specific central purchasing bodies.</p>	
2. Member States shall provide for the possibility for contracting authorities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.	2. Member States shall provide for the possibility for contracting authorities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.	deleted	
3. A contracting authority fulfils its obligations pursuant to this Directive when it procures by having recourse to centralised purchasing activities, to the extent that the procurement procedures concerned and their performance are conducted by the central procurement body alone in all its	3. A contracting authority fulfils its obligations pursuant to this Directive when it procures by having recourse to centralised purchasing activities, to the extent that the procurement procedures concerned and their performance are conducted by the central procurement body in all its stages	3. A contracting authority fulfils its obligations pursuant to this Directive when it purchases supplies or services from a central purchasing body offering the centralised purchasing activity referred to in point a of Article 2(16).	

<p>stages from the publication of the call for competition to the end of the execution of the ensuing contract or contracts.</p> <p>However, where certain stages of the procurement procedure or the performance of the ensuing contracts are carried out by the contracting authority concerned, the contracting authority continues to be responsible for fulfilling the obligations pursuant to this Directive in respect of the stages it conducts.</p>	<p>from the publication of the call for competition to the end of the execution of the ensuing contract or contracts</p> <p>However, where certain stages of the procurement procedure or the performance of the ensuing contracts are carried out by the contracting authority concerned, the contracting authority continues to be responsible for fulfilling the obligations pursuant to this Directive in respect of the stages it conducts.</p>	<p>Furthermore, a contracting authority also fulfils its obligations pursuant to this Directive where it purchases works, supplies and 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 Article 31(2) second subparagraph, by using a framework agreement concluded by the central purchasing body offering the centralised purchasing activity referred to in point b of Article 2(16).</p> <p>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:</p> <ul style="list-style-type: none"> (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 	
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		<p>has been concluded by a central purchasing body;</p> <p>(c) pursuant to Article 31(4)(a) or (aa), 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.</p>	
4. All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements of Article 19.	4. All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements of Article 19.	4. 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 19.	
5. Contracting authorities may, without applying the procedures provided for in this Directive, choose a central purchasing body to provide centralised purchasing activities, including where the central purchasing body is remunerated for so doing.	5. Contracting authorities may, without applying the procedures provided for in this Directive, choose a central purchasing body to provide centralised purchasing activities, including where the central purchasing body is remunerated for so doing.	5. 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.	

6. Central purchasing bodies shall ensure the documentation of all transactions performed in the course of the execution of the contracts, framework agreements or dynamic purchasing systems they conclude in the course of their central purchasing activities.	6. Central purchasing bodies shall ensure the documentation of all transactions performed in the course of the execution of the contracts, framework agreements or dynamic purchasing systems they conclude in the course of their central purchasing activities.		
<i>Article 36</i> <i>Ancillary purchasing activities</i>	<i>Article 36</i> <i>Ancillary purchasing activities</i>		
The providers of ancillary purchasing activities shall be chosen in accordance with the procurement procedures set out in this Directive.	The providers of ancillary purchasing activities shall be chosen in accordance with the procurement procedures set out in this Directive.	deleted	
<i>Article 37</i> <i>Occasional joint procurement</i>	<i>Article 37</i> <i>Occasional joint procurement</i>	<i>Article 37</i> <i>Occasional joint procurement</i>	
1. One or more contracting authorities may agree to perform certain specific procurements jointly.	1. Two or more contracting authorities may agree to perform certain specific procurements jointly.	1. Member States may provide that two or more contracting authorities may agree to perform certain specific procurements jointly.	
2. Where one contracting authority alone conducts the procurement procedures concerned in all its stages from the publication of the call for competition to the end of the performance of the ensuing contract or contracts, that	as proposal	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	

<p>contracting authority shall have sole responsibility for fulfilling the obligations pursuant to this Directive.</p> <p>However, where the conduct of the procurement procedures and the performance of the ensuing contracts is carried out by more than one of the participating contracting authorities, each shall continue to be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.</p>		<p>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.</p> <p>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.</p>	
<p><i>Article 38</i> <i>Joint procurement between contracting authorities from different Member States</i></p>	<p><i>Article 38</i> <i>Joint procurement between contracting authorities from different Member States</i></p>	<p><i>Article 38</i> <i>Procurement implicating contracting authorities from different Member States</i></p>	
<p>1. Without prejudice to Article 11, contracting authorities from different Member States may jointly award public contracts by</p>	<p>1. Without prejudice to Article 11, contracting authorities from different Member States may jointly award public contracts by</p>	<p>1. Without prejudice to Article 11, contracting authorities from different Member States may act jointly in the award of</p>	

using one of the means described in this Article.	using one of the means described in this Article.	public contracts by using one of the means provided 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 the Member State where they are located.	
		A Member State shall not prohibit its contracting authorities from using centralised purchasing activities offered by central purchasing bodies established in another Member State [...]. In respect of centralised purchasing activities offered by a central purchasing body established 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 Article 2(16).	
2. Several contracting authorities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.	2. Several contracting authorities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.	deleted	
		<p>2a. The provision of the centralised purchasing activities as defined in point a and b of Article 2(16) 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.</p> <p>The national provisions of the Member State where the central purchasing body is located shall also apply to the following:</p>	

		(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 Article 31(4)(a) or (aa) of which of the economic operators, party to the framework agreement, shall perform a given task.	
3. Several contracting authorities from different Member States may jointly award a public contract. In that case, the participating contracting authorities shall conclude an agreement that determines:	3. Several contracting authorities from different Member States may jointly award a public contract. In that case, the participating contracting authorities shall conclude an agreement that determines:	3. 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 Article 31(2) second subparagraph, award contracts based on the framework agreement or on the dynamic purchasing system. Unless the necessary provisions have been regulated by an international agreement concluded between the Member States concerned, the participating contracting authorities shall conclude	

		an agreement that determines:	
(a) which national provisions shall apply to the procurement procedure.	(a) which national provisions shall apply to the procurement procedure.	(a) the responsibilities of the parties and the ensuing applicable national provisions;	
(b) the internal organisation of the procurement procedure, including the management of the procedure, the sharing of responsibilities, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.	(b) the internal organisation of the procurement procedure, including the management of the procedure, the sharing of responsibilities, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.	(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.	
When determining the applicable national law in accordance with point (a), contracting authorities may choose the national provisions of any Member State in which at least one of the participating authorities is located.	When determining the applicable national law in accordance with point (a), contracting authorities shall choose the national provisions of any Member State in which at least one of the participating authorities is located.	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 the responsibilities and the applicable national law in accordance with point (a), contracting authorities may choose to allocate responsibilities to one or more of the participating contracting authorities and the ensuing applicable national provisions of any Member State in which at least one of the participating authorities is located. The allocation of	

		responsibilities and the ensuing applicable national law shall be mentioned in the procurement documents for jointly awarded public contracts.	
4. Where several contracting authorities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) N° 1082/2006 of the European Parliament and of the Council ⁴⁷ or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national procurement rules of one of the following Member States:	4. Where several contracting authorities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) N° 1082/2006 of the European Parliament and of the Council ⁴⁸ or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national procurement rules of one of the following Member States:	4. Where several contracting authorities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) N° 1082/2006 of the European Parliament and of the Council ⁴⁹ or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint legal 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 legal entity has its registered office;	(a) the national provisions of the Member State where the joint legal entity has its registered office;	(a) the national provisions of the Member State where the joint legal entity has its registered office;	

⁴⁷ OJ L 210 of 31.7.2006, p. 19

⁴⁸ OJ L 210 of 31.7.2006, p. 19

⁴⁹ OJ L 210 of 31.7.2006, p. 19

(b) the national provisions of the Member State where the joint legal entity is carrying out its activities.	(b) the national provisions of the Member State where the joint legal entity is carrying out its activities.	(b) the national provisions of the Member State where the joint legal entity is carrying out its activities.	
This agreement may either apply for an undetermined period, when fixed in the constitutive act of the joint legal entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.	This agreement may either apply for an undetermined period, when fixed in the constitutive act of the joint legal entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.	The agreement referred to in the first subparagraph may either apply for an undetermined period, when fixed in the constitutive act of the joint legal entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.	
<p>5. In the absence of an agreement determining the applicable public procurement law, the national legislation governing the contract award shall be determined following the rules set out below:</p> <p>(a) where the procedure is conducted or managed by one participating contracting authority on behalf of the others, the national provisions of the Member State of that contracting authority shall apply;</p> <p>(b) where the procedure is not conducted or managed by one participating contracting authority on behalf of the</p>	<p>5. In the absence of an agreement determining the applicable public procurement law under paragraph 3, the national legislation governing the contract award shall be determined following the rules set out below:</p> <p>(a) where the procedure is conducted or managed by one participating contracting authority on behalf of the others, the national provisions of the Member State of that contracting authority shall apply;</p> <p>(b) where the procedure is not conducted or managed by one participating contracting</p>	deleted	

<p>others, and</p> <p>(i) concerns a works contract, contracting authorities shall apply the national provisions of the Member State where most of the works are located;</p> <p>(ii) concerns a service or supply contract, contracting authorities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;</p> <p>(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.</p>	<p>authority on behalf of the others, and</p> <p>(i) concerns a works contract, contracting authorities shall apply the national provisions of the Member State where most of the works are located;</p> <p>(ii) concerns a service or supply contract, contracting authorities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;</p> <p>(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.</p>		
<p>6. In the absence of an agreement determining the applicable public procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting</p>	<p>6. In the absence of an agreement determining the applicable public procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting</p>	<p>deleted</p>	

<p>authorities from different Member States shall be determined following the following rules:</p> <p>(a) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply.</p> <p>(b) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply.</p> <p>(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting authorities shall apply the national provisions of the Member State where the legal entity has its registered office.</p>	<p>authorities from different Member States shall be determined following the following rules:</p> <p>(a) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply.</p> <p>(b) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply.</p> <p>(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting authorities shall apply the national provisions of the Member State where the legal entity has its registered office.</p>		
<p>7. One or more contracting authorities may award individual contracts under a framework agreement concluded by or jointly with a contracting authority located</p>	<p>7. One or more contracting authorities may award individual contracts under a framework agreement concluded by or jointly with a contracting authority located</p>	<p>deleted</p>	

in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities to award the individual contracts.	in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities to award the individual contracts.		
8. Decisions on the award of public contracts in cross-border public procurement shall be subject to the ordinary review mechanisms available under the national law applicable.	8. Decisions on the award of public contracts in cross-border public procurement shall be subject to the ordinary review mechanisms available under the national law applicable.	8. Decisions on the award of public contracts in cross-border public procurement shall be subject to the ordinary review mechanisms available under the national law which applies to the award procedure pursuant to paragraphs 2a, 3 or 4.	
9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive 89/665/EEC ⁵⁰ located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting authorities established on their territory participating in the relevant cross-border public procurement procedure.	9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive 89/665/EEC ⁵¹ located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting authorities established on their territory participating in the relevant cross-border public procurement procedure.	deleted	

⁵⁰ OJ L 395, 30.12. 1989, p. 33.

⁵¹ OJ L 395, 30.12. 1989, p. 33.

CHAPTER III Conduct of the procedure	CHAPTER III Conduct of the procedure	CHAPTER III Conduct of the procedure	
SECTION 1 PREPARATION	SECTION 1 PREPARATION	Section 1 Preparation	
<i>Article 39</i> <i>Preliminary market consultations</i>	<i>Article 39</i> <i>Preliminary market consultations</i>	<i>Article 39</i> <i>Preliminary market consultations</i>	
<p>1. Before launching a procurement procedure, contracting authorities may conduct market consultations in order to assess the structure, capability and capacity of the market and to inform economic operators of their procurement plans and requirements.</p> <p>For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants, provided that such advice does not have the effect of precluding competition and does not result in a violation of the principles of non-discrimination and transparency.</p>	<p>1. Before launching a procurement procedure, contracting authorities may conduct market consultations in order to assess the structure, capability and capacity of the market and to inform economic operators of their procurement plans and requirements.</p> <p>For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants,</p>	<p>Before launching a procurement procedure, contracting authorities may conduct market consultations with a view to the preparation of the procurement and to inform economic operators of their procurement plans and requirements.</p> <p>For this purpose, contracting authorities may for example seek or accept advice from independent experts or authorities or from market participants which 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.</p>	
2. Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting authority or has	2. Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting authority or has	<i>Article 39a</i> <i>Prior involvement of candidates or tenderers</i>	

<p>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.</p> <p>Such measures shall include the communication to the other candidates and tenderers of any 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.</p> <p>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</p>	<p>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.</p> <p>Such measures shall include the communication to the other candidates and tenderers of any 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. Contracting authorities shall:</p> <p>(i) clarify in their invitation to participate in a consultation what information will be considered relevant and thus may be shared with all potential bidders; and</p> <p>(ii) set out in detail the rights of and procedures available to consultation participants that allow them to protect confidential information.</p>	<p>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 39 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.</p> <p>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.</p> <p>Prior to any such exclusion, candidates or tenderers shall be</p>	
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report required by Article 85.	<p>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.</p> <p>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 85.</p>	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 85.	
<i>Article 40</i> <i>Technical specifications</i>	<i>Article 40</i> <i>Technical specifications</i>	<i>Article 40</i> <i>Technical specifications</i>	
<p>1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.</p> <p>These characteristics may also refer to the specific process of</p>	<p>1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.</p> <p>These characteristics may also refer to the specific process of</p>	<p>1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.</p> <p>These characteristics may also refer to the specific process or method of production or</p>	

<p>production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.</p> <p>The technical specifications shall also specify whether the transfer of intellectual property rights will be required.</p> <p>For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.</p> <p>Where mandatory accessibility standards are adopted by a legislative act of the Union,</p>	<p>production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.</p> <p>The technical specifications shall also specify whether the transfer of intellectual property rights will be required.</p> <p>For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.</p> <p>For all procurement, technical specifications shall be drawn up so as to ensure that the products, services and works subject to the contract meet the requirements of data protection law at the time of the design of the processing of personal data (data protection by design)</p> <p>Where mandatory accessibility standards are adopted by a</p>	<p>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.</p> <p>For all procurement which is intended for use by natural persons, whether general public or staff of the contracting authority, those 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.</p> <p>Where mandatory accessibility standards are adopted by a legislative act of the Union, technical</p>	
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technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.	legislative 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.	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 guarantee equal access of economic operators to the procurement procedure and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.	2. Technical specifications shall guarantee equal access of economic operators to the procurement procedure and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.	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:	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:	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;	(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;	(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;	

<p>(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when 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’;</p>	<p>(b) by reference to technical specifications and, in order of preference, and without discrimination as to development method, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when 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’;</p>	<p>(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’;</p>	
<p>(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;</p>	<p>(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;</p>	<p>(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;</p>	

(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.	(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.	(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, 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".	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, 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".	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".	

<p>5. Where a contracting authority uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by whatever appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.</p>	<p>5. Where a contracting authority uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by whatever appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.</p>	<p>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 42, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.</p>	
<p>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</p>	<p>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</p>	<p>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</p>	

<p>established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.</p> <p>In its tender, the tenderer shall prove by any appropriate means, including those referred to in Article 42, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.</p>	<p>established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.</p> <p>In its tender, the tenderer shall prove by any appropriate means, including those referred to in Article 42, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.</p>	<p>established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.</p> <p>In its tender, the tenderer shall prove by any appropriate means, including those referred to in Article 42, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.</p>	
<p><i>Article 41</i> <i>Labels</i></p>	<p><i>Article 41</i> <i>Certificates and labels</i></p>	<p><i>Article 41</i> <i>Labels</i></p>	
<p>1. Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, provided that all of the following conditions are fulfilled:</p>	<p>1. Where contracting authorities lay down in the technical specifications, the award criteria or the contract performance clauses environmental, social or other requirements or criteria, they may require a specific label or certificate as means of proof that these works, services or supplies correspond to such requirements or criteria provided that all of the following conditions</p>	<p>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 clauses, require and refer to a specific label as means of proof that the works, services or supplies correspond to such requirements or criteria, provided that all of the following</p>	

	are fulfilled:	conditions are fulfilled:	
(a) the requirements for the label only concern characteristics 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;	(a) the requirements to be met in order to obtain the label or the certificate are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;	(a) the requirements to be met in order to obtain the label 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 requirements for the label are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;	(b) the requirements to be met in order to obtain the label or the certificate are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;	(b) the requirements to be met in order to obtain the label are based on objectively verifiable and non-discriminatory criteria;	
(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,	(c) the labels or certificates are established in an open and transparent procedure in which all relevant stakeholders, including governmental and non governmental organisations, have a substantial role. ,	(c) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, manufacturers, distributors and non-governmental organisations, may participate;	
(d) the labels are accessible to all interested parties;	(d) the labels or certificates are accessible to all interested parties;	(d) the labels are accessible to all interested parties;	

<p>(e) the criteria of the label are set by a third party which is independent from the economic operator applying for the label.</p>	<p>(e) the requirements to be met in order to obtain the label, or the certificate are set by a third party which is independent from the economic operator applying for the label or certificate. The third party may be a specific national or governmental body or organisation.</p>	<p>(e) the requirements to be met in order to obtain the label are set by a third party which is independent from the economic operator applying for the label.</p>	
<p>Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.</p>	<p>Contracting authorities requiring a specific label or certificate shall accept all equivalent labels that fulfil the requirements of the specific label or certificate indicated by the contracting authorities. Contracting authorities shall also accept other appropriate means of proving such requirements, which may include a technical dossier of the manufacturer or other appropriate means of proof where the economic operator concerned has no access to the label, or no possibility of obtaining them within the relevant time limit, provided that the lack of access is not attributable to the economic operator concerned. It shall be the responsibility of the tenderer to prove equivalence with the label requested.</p>	<p>Contracting authorities requiring a specific label shall accept all equivalent labels that use the requirements of the specific label indicated by the contracting authorities. Contracting authorities shall accept other appropriate means of proving such requirements, which may include a technical dossier of the manufacturer, where the economic operator concerned has no possibility of obtaining the label within the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned.</p>	

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 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.	Where a label or certificate 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 may define the technical specification by reference to the detailed specifications of that label or certificate , 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.	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.	
<i>Article 42</i> <i>Test reports, certification and other means of proof</i>	<i>Article 42</i> <i>Test reports, certification and other means of proof</i>	<i>Article 42</i> <i>Test reports, certification and other means of proof</i>	
1. Contracting authorities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with the technical specifications. Where contracting authorities require the submission of	Contracting authorities may require that economic operators provide a test report from a recognised 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 clauses .	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 clauses .	

⁵² OJ L 218, 13.8.2008, p. 30.

certificates drawn up by recognised bodies attesting conformity with a particular technical specification, certificates from equivalent other recognised bodies shall also be accepted by the contracting authorities.	Where contracting authorities require the submission of certificates drawn up by a specific conformity assessment body , certificates from equivalent other recognised bodies shall also be accepted by the contracting authorities.	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 Council⁵².	
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 has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.	Contracting authorities shall accept other appropriate and equivalent means of proof than those referred to in paragraph 1, which may include a technical dossier of the manufacturer where the economic operator concerned has 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	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 has 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	

	not attributable to the economic operator concerned. It shall be the responsibility of the tenderer to prove equivalence with the certificates or test reports requested.	economic operator concerned.	
3. Recognised bodies within the meaning of paragraph 1 of this Article shall be test and calibration laboratories and any certification and inspection bodies accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council ⁵³ .	3. Recognised bodies within the meaning of paragraph 1 of this Article shall be test and calibration laboratories and any certification and inspection bodies accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council.		
4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with Article 40(6), Article 41 and paragraphs 1, 2 and 3 of this Article to prove compliance with technical requirements. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.	4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with Article 40(6), Article 41 and paragraphs 1, 2 and 3 of this Article. The competent authorities of the Member State of establishment of the economic operator shall provide this information in accordance with Article 88.	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 40(6), Article 41 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 88.	

⁵³ OJ L 218, 13.8.2008, p. 30.

<i>Article 43 Variants</i>	<i>Article 43 Variants</i>	<i>Article 43 Variants</i>	
1. Contracting authorities may authorise 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 variants. Variants shall not be authorised without such indication.	1. Contracting authorities shall authorise tenderers to submit variants, along with a basic proposal, as long as they are linked to the subject matter of the contract. In duly justified cases, contracting authorities may decide not to authorise variants, provided that they indicate the reasons for their decision 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.	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 variants. Variants shall not be authorised without such indication.	
2. Contracting authorities authorising variants shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not	2. Variants shall be authorised in the procurement documents which define the minimum requirements to be met by the variants and any requirements for their presentation. These minimum requirements are mandatory to ensure that variants will not affect the subject matter of the contract. They shall also ensure that the chosen award criteria can be usefully applied to variants	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	

variants.	meeting those minimum requirements as well as to conforming tenders which are not variants.	award criteria can be applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.	
<p>3. Only variants meeting the minimum requirements laid down by the contracting authorities shall be taken into consideration.</p> <p>In procedures for awarding public supply or service contracts, contracting authorities that have authorised 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.</p>	<p>3. Only variants meeting the minimum requirements laid down by the contracting authorities shall be taken into consideration.</p> <p>In procedures for awarding public supply or service contracts, contracting authorities 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.</p>	<p>3. Only variants meeting the minimum requirements laid down by the contracting authorities shall be taken into consideration.</p> <p>In procedures for awarding public supply or service contracts, contracting authorities that have authorised 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.</p>	
<i>Article 44</i> <i>Division of contracts into lots</i>	<i>Article 44</i> <i>Division of contracts into lots</i>	<i>Article 44</i> <i>Division of contracts into lots</i>	
<p>1. Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not</p>	<p>1. To facilitate greater access to public procurement by small and medium-sized enterprises, public contracts may be subdivided into lots.</p> <p>Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one</p>	<p>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.</p> <p>Where the contracting authority, for supply and service contracts which it estimates to have a value equal to or greater than</p>	

<p>deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.</p> <p>Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one or more lots only.</p>	<p>or more lots only.</p>	<p>EUR 500 000 and for works contracts which it estimates to have a value equal to or greater than the threshold provided for in point (a) of Article 4, determined in accordance with Article 5, decides to award the contract without a separation into lots, the procurement documents or the individual report referred to in Article 85 shall include an indication of the main reasons for the contracting authority's decision.</p>	
<p>2. Contracting authorities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.</p>	<p>2. Contracting authorities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.</p>	<p>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.</p> <p>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-</p>	

		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.	
<p>3. Where more than one lot may be awarded to the same tenderer, contracting authorities may provide that they will either award a contract per lot or one or more contracts covering several or all lots.</p> <p>Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.</p> <p>Contracting authorities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 66 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article</p>	deleted	<p>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 to do so and indicated the lots or groups of lots that may be combined.</p> <p>For this purpose contracting authorities shall first determine which tenders best fulfil the award criteria set out pursuant to Article 66 for each individual lot. Where a comparative assessment establishes that the tenders submitted by a particular tenderer for a specific combination of lots would, taken as whole, better fulfil the award criteria set out pursuant to Article 66 with regard to these lots, the</p>	

66 are better fulfilled with regard to all the lots covered by that contract. Contracting authorities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.		contracting authority may award a contract combining the lots in question to that tenderer. Contracting authorities shall specify the methods and criteria they intend to use for such a comparative assessment in the procurement documents. Such methods and criteria shall be transparent, objective and non-discriminatory.	
4. Contracting authorities may require that all contractors coordinate their activities under the direction of the economic operator to which has been awarded a lot involving the coordination of the entire project or its relevant parts.	4. Contracting authorities may require that all contractors coordinate their activities under the direction of the economic operator to which has been awarded a lot involving the coordination of the entire project or its relevant parts.	4. Member States may replace 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. The first subparagraph of paragraph 2 and, where appropriate, paragraph 3 of this Article shall apply.	
<i>Article 45</i> <i>Setting time limits</i>	<i>Article 45</i> <i>Setting time limits</i>	<i>Article 45</i> <i>Setting time limits</i>	
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	as proposal	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 24 to 30.		minimum time limits set out in Articles 25 to 29 .	
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 shall be extended so that all economic operators concerned may be aware of all the information needed to produce tenders.	as proposal	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 25 to 29, shall be fixed so that all economic operators concerned may be aware of all the information needed to produce tenders.	

		<p>3. Where, for whatever reason, additional information, although requested in good time, is not supplied within the time limits set out in Article 51(2) or where significant changes are made to the procurement documents, the contracting authority 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.</p> <p>The length of the extension shall be proportionate to the importance of the information or change.</p>	
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SECTION 2 PUBLICATION AND TRANSPARENCY	SECTION 2 PUBLICATION AND TRANSPARENCY	Section 2 Publication and transparency	
<i>Article 46 Prior information notices</i>	<i>Article 46 Prior information notices</i>	<i>Article 46 Prior information notices</i>	
1. Contracting authorities may make known their intentions of planned procurements through the publication of a prior information notice as soon as possible after the beginning of the budgetary year. Those notices shall contain the information set out in Annex VI part B section I. They shall be published either by the Commission or by the contracting authorities on their buyer profiles in accordance with point 2(b) of Annex IX. Where the notice is published by the contracting authorities on their buyer profile, they shall send a notice of the publication on their buyer profile in accordance with point 3 of Annex IX.	as proposal	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 VI part B section I. They shall be published either by the Commission or by the contracting authorities on their buyer profiles in accordance with point 2(b) of Annex IX. Where the notice is published by the contracting authorities on their buyer profile, they shall send a notice of the publication on their buyer profile in accordance with point 3 of Annex IX. Those notices shall contain the information set out in Annex VI part A.	

2. For restricted and competitive procedures with negotiation, sub-central contracting authorities may use a prior information notice as a call for competition pursuant to Article 24(2), provided that the notice fulfils all of the following conditions:	as proposal	2. For restricted and competitive procedures with negotiation, sub-central contracting authorities may, to the extent provided for in Article 24(2) , use a prior information notice as a call for competition pursuant to Article 24(2), 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;	as proposal	(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 competitive procedure with negotiation without further publication of a call for competition and invites interested economic operators to express their interest in writing;	as proposal	(b) it indicates that the contract will be awarded by restricted or competitive procedure with negotiation without further publication of a call for competition and invites interested economic operators to express their interest in writing;	
(c) it contains, in addition to the information set out in Annex VI part B section I, the information set out in Annex VI part B section II;	as proposal	(c) it contains, in addition to the information set out in Annex VI part B section I, the information set out in Annex VI part B section II;	
(d) it has been published not more than 12 months prior to the date	as proposal	(d) it has been sent for publication between 35	

on which the invitation referred to in Article 52(1) is sent.		days and 12 months prior to the date on which the invitation referred to in Article 52(1) is sent.	
Such notices shall not be published on a buyer profile.	as proposal	Such notices shall not be published on a buyer profile; however, the additional publication at national level pursuant to Article 50, if any, may be made on a buyer profile. The period covered by the prior information notice shall at the most be a 12-month period 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.	
<i>Article 47</i> <i>Contract notices</i>	<i>Article 47</i> <i>Contract notices</i>	<i>Article 47</i> <i>Contract notices</i>	
All contracting authorities may use a contract notice as a means of calling for competition in respect of all procedures. Such notices shall contain the information set out in Annex VI part C and shall be published in accordance with	as proposal	Contract notices shall be used as a means of calling for competition in respect of all procedures, without prejudice to Article 24(2) and Article 30. Contract notices shall contain the information set out in Annex VI part C and shall be published in accordance with	

Article 49.		Article 49.	
<i>Article 48</i> <i>Contract award notices</i>	<i>Article 48</i> <i>Contract award notices</i>	<i>Article 48</i> <i>Contract award notices</i>	
<p>1. Not later than 48 days after the award of a contract or the conclusion of a framework agreement, contracting authorities shall send a contract award notice on the results of the procurement procedure.</p> <p>Such notices shall contain the information set out in Annex VI part D and be published in accordance with Article 49.</p>	<p>1. Not later than 14 days after the award of a contract or the conclusion of a framework agreement, contracting authorities shall send a contract award notice on the results of the procurement procedure. In case of an incomplete or incoherent contract award notice, the Commission will contact the Contracting Authority with the aim to receive completion or clarification of the contract award notice.</p> <p>Such notices shall contain the information set out in Annex VI part D and be published in accordance with Article 49.</p>	<p>1. Not later than 48 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.</p> <p>Such notices shall contain the information set out in Annex VI part D and be published in accordance with Article 49.</p>	
<p>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 does not intend to award further contracts during the 12-month period covered by the prior information notice, the contract award notice</p>	as proposal	<p>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</p>	

<p>shall contain a specific indication to that effect.</p> <p>In the case of framework agreements concluded in accordance with Article 31, contracting authorities shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement.</p>		<p>the prior information notice, the contract award notice shall contain a specific indication to that effect.</p> <p>In the case of framework agreements concluded in accordance with Article 31, 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 48 days of the end of each quarter.</p>	
<p>3. Contracting authorities shall send a notice of the result of the award of contracts based on a dynamic purchasing system within 48 days of the award of each contract. They may, however, group such notices on a quarterly</p>	<p>as proposal</p>	<p>3. Contracting authorities shall send a notice of the result of the award of contracts based on a dynamic purchasing system within 48 days of the award of each contract. They may, however, group such</p>	

basis. In that case, they shall send the grouped notices within 48 days of the end of each quarter.		notices on a quarterly basis. In that case, they shall send the grouped notices within 48 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 economic operators, public or private, or might prejudice fair competition between them.	as proposal	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 economic operators, public or private, or might prejudice fair competition between them.	
<i>Article 49</i> <i>Form and manner of publication of notices</i>	<i>Article 49</i> <i>Form and manner of publication of notices</i>	<i>Article 49</i> <i>Form and manner of publication of notices</i>	
1. Notices referred to in Articles 46, 47 and 48 shall include the information set out in Annex VI in the format of standard forms, including standard forms for corrigenda. The Commission shall establish	as proposal	1. Notices referred to in Articles 46, 47 and 48 shall include the information set out in Annex VI in the format of standard forms, including standard forms for corrigenda.	

those standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.		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 91.	
2. Notices referred to in Articles 46, 47 and 48 shall be drawn up, transmitted by electronic means to the Commission 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 the Commission shall be borne by the Union.	as proposal	2. Notices referred to in Articles 46, 47 and 48 shall be drawn up, transmitted by electronic means to the Commission 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 the Commission shall be borne by the Union.	
3. Notices referred to in Article 46(2) and Article 47 shall be published in full in an official language of the Union as chosen by the contracting authority. That language version shall constitute the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages.	as proposal	3. Notices referred to in Articles 46, 47 and 48 shall be published in full in the official language(s) of the Union as 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.	

4. The Commission shall ensure that the full text and the summary of prior information notices referred to in Article 46(2) and calls for competition setting up a dynamic purchasing system, as referred to in Article 32(3)(a) continue to be published:	as proposal	4. The Commission shall ensure that the full text and the summary of prior information notices referred to in Article 46(2) and calls for competition setting up a dynamic purchasing system, as referred to in Article 32(3)(a) 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 48 indicating that no further contracts will be awarded during the 12-month period covered by the call for competition;	as proposal	(a) in the case of prior information notices, for 12 months or until receipt of a contract award notice as provided for in Article 48 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 48	

		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.	as proposal	(b) in the case of calls for competition setting up a dynamic purchasing system, for the period of validity of the dynamic purchasing system.	
<p>5. Contracting authorities shall be able to supply proof of the dates on which notices are dispatched.</p> <p>The Commission 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.</p>	as proposal	<p>5. Contracting authorities must be able to supply proof of the dates on which notices are dispatched.</p> <p>The Commission 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.</p>	
6. Contracting authorities may publish notices for public contracts that are not subject to the publication requirement laid down in this Directive provided those notices are sent to the Commission by electronic means in accordance	as proposal	6. Contracting authorities may publish notices for public contracts that are not subject to the publication requirement laid down in this Directive provided those notices are sent to the	

with the format and procedures for transmission indicated in Annex IX.		Commission by electronic means in accordance with the format and procedures for transmission indicated in Annex IX.	
<i>Article 50</i> <i>Publication at national level</i>	<i>Article 50</i> <i>Publication at national level</i>	<i>Article 50</i> <i>Publication at national level</i>	
1. Notices referred to in Articles 46, 47 and 48 and the information contained therein shall not be published at national level before the publication pursuant to Article 49.	as proposal	1. Notices referred to in Articles 46, 47 and 48 and the information contained therein shall not be published at national level before the date on which they are sent to the Commission.	
2. Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission or published on a buyer profile, but shall indicate the date of dispatch of the notice to the Commission or its publication on the buyer profile.	as proposal	2. Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission or published on a buyer profile, but shall indicate the date of dispatch of the notice to the Commission or its publication on the buyer profile.	

3. Prior information notices shall not be published on a buyer profile before the dispatch to the Commission of the notice of their publication in that form. They shall indicate the date of that dispatch.	as proposal	3. Prior information notices shall not be published on a buyer profile before the dispatch to the Commission of the notice of their publication in that form. They shall indicate the date of that dispatch.	
<i>Article 51</i> <i>Electronic availability of procurement documents</i>	<i>Article 51</i> <i>Electronic availability of procurement documents</i>	<i>Article 51</i> <i>Electronic availability of procurement documents</i>	
1. Contracting authorities shall offer unrestricted and full direct access free of charge by electronic means to the procurement documents from the date of publication of the notice in accordance with Article 49 or 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 this documentation is accessible.	as proposal	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 the notice in accordance with Article 49 or 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 this documentation is accessible. Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be	

		<p>offered for one of the reasons set out in the second subparagraph of Article 19(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 electronically in accordance with paragraph 2 of this Article. 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 Articles 25(3), 26(6) and in the last subparagraph of Article 27(1).</p> <p>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 18(2), they shall indicate in the notice or the invitation to confirm</p>	
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		<p>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 Articles 25(3), 26(6) and in the last subparagraph of Article 27(1).</p>	
<p>2. Provided that it has been requested in good time, the contracting authorities or competent departments shall supply additional information relating to the specifications and any supporting documents not later than six days before the deadline fixed for the receipt of tenders. In the event of an accelerated procedure as referred to in Articles 25(3) and 26(5), that period shall be four days.</p>	as proposal	<p>2. Provided that it has been requested in good time, the contracting authorities shall supply 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 Articles 25(3) and 26(6), that period shall be four days.</p>	

	2a. This additional information shall be provided to all tenderers taking part in the procurement procedure.		
<i>Article 52</i> <i>Invitations to submit a tender or to participate in the dialogue; invitations to confirm interest</i>	<i>Article 52</i> <i>Invitations to submit a tender or to participate in the dialogue; invitations to confirm interest</i>	<i>Article 52</i> <i>Invitations to submit a tender or to participate in the dialogue; invitations to confirm interest</i>	
<p>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.</p> <p>Where a prior information notice is used as a call for competition pursuant to Article 46(2), contracting authorities shall simultaneously and in writing invite the economic operators having expressed their interest to confirm their continuing interest.</p>	as proposal	<p>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.</p> <p>Where a prior information notice is used as a call for competition pursuant to Article 46(2), contracting authorities shall simultaneously and in writing invite the economic operators which have expressed their interest to confirm their continuing interest.</p>	

<p>2. The invitations referred to in paragraph 1 shall include a reference to the electronic address on which the specifications or the descriptive document and any other supporting documents have been made directly available by electronic means. In addition, they shall include the information set out in Annex X.</p>	<p>2. The invitations referred to in paragraph 1 shall include a reference to the electronic address at which the specifications or the descriptive document and any other supporting documents are accessible to tenderers. In addition, they shall include the information set out in Annex X.</p>	<p>2. The invitations referred to in paragraph 1 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 these documents have not been the subject of unrestricted and full direct access, free of charge, for the reasons set out in the second and third subparagraph of Article 51(1) and have not already been made otherwise available. In addition, the invitations referred to in paragraph 1 shall include the information set out in Annex X.</p>	
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<i>Article 53</i> <i>Informing candidates and tenderers</i>	<i>Article 53</i> <i>Informing candidates and tenderers</i>	<i>Article 53</i> <i>Informing candidates and tenderers</i>	
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.	as proposal	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 party concerned, the contracting authority shall as quickly as possible, and in any case within 15 days from receipt of a written request, inform:	as proposal	2. On request from the party concerned, the contracting authority shall as quickly as possible, and in any case 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,	as proposal	(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 40(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,	as proposal	(b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in Article 40(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,	as proposal	(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.	as proposal	(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 paragraph 1, 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, 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 them.	as proposal	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, 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 them.	
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SECTION 3 CHOICE OF PARTICIPANTS AND AWARD OF CONTRACTS	SECTION 3 CHOICE OF PARTICIPANTS AND AWARD OF CONTRACTS	Section 3 Choice of participants and award of contracts	
<i>Article 54</i> <i>General principles</i>	<i>Article 54</i> <i>General principles</i>	<i>Article 54</i> <i>General principles</i>	
1. Contracts shall be awarded on the basis of the criteria laid down in Articles 66 to 69, provided that the following cumulative conditions are fulfilled:	1. Contracts shall be awarded on the basis of the criteria laid down in Articles 66 to 69, provided that the following cumulative conditions are fulfilled:	1. Contracts shall be awarded on the basis of criteria laid down in accordance with Articles 66 to 69, provided that the contracting authority has verified in accordance with Articles 56a to 58 that the following cumulative 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 Article 43;	(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 Article 43;	(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 43;	

(b) the tender comes from a tenderer that is not excluded in accordance with Articles 21 and 55 and that meets the selection criteria set out by the contracting authority in accordance with Article 56 and, where appropriate, the non-discriminatory rules and criteria referred to in Article 64.	(b) the tender comes from a tenderer that is not excluded in accordance with Articles 21 and 55 and that meets the selection criteria set out by the contracting authority in accordance with Article 56 and, where appropriate, the non-discriminatory rules and criteria referred to in Article 64.	(b) the tender comes from a tenderer that is not excluded in accordance with Article 55 and that meets the selection criteria set out by the contracting authority in accordance with Article 56 and, where applicable , the non-discriminatory rules and criteria referred to in Article 64.	
2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.	2. Contracting authorities shall not award a contract to the tenderer submitting the best tender where it has been established, based on clear and sufficient evidence , that the tender does not comply with the environmental, social and labour law provisions referred to Article 15(2) .		
3. In open procedures, contracting authorities may decide to examine tenders before verifying the fulfilment of the selection criteria, provided that the relevant	3. In open procedures, contracting authorities may decide to examine tenders before verifying the fulfilment of the selection criteria, provided that the relevant	2. In open procedures, contracting authorities may decide to examine tenders before verifying the absence of grounds for exclusion and fulfilment of the	

provisions of this section are observed, including the rule that the contract shall not be awarded to a tenderer that should have been excluded pursuant to Article 55 or that does not meet the selection criteria set out by the contracting authority, in accordance with subsection 1 of this section.	provisions of this section are observed, including the rule that the contract shall not be awarded to a tenderer that should have been excluded pursuant to Article 55 or that does not meet the selection criteria set out by the contracting authority, in accordance with subsection 1 of this section.	selection criteria in accordance with subsection 1 of this section. Where they make use of this possibility, they shall ensure that the verification of the grounds for exclusion and the selection criteria is done in an impartial and open manner so that no contract is awarded to a tenderer that should have been excluded pursuant to Article 55 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. Contracting authorities may at any moment 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 procedure, in one of the situations referred to in Article 55(1) to (3).	
		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 authorities may, unless otherwise provided by the applicable 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 authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not	

		<p>comply with applicable obligations established by Union law or national law compatible with it in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. For the purpose of this paragraph, 'best tender' means any tender which is better than that submitted by the tenderer to whom the contract is awarded.</p>	
<p>4. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex XI, where necessary due to the conclusion of new international agreements or modification of existing international agreements.</p>	<p>4. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex XI, where necessary due to the conclusion of new international agreements or modification of existing international agreements</p>	<p>6. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex XI, 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.</p>	

SUBSECTION 1 CRITERIA FOR QUALITATIVE SELECTION	SUBSECTION 1 CRITERIA FOR QUALITATIVE SELECTION	Subsection 1 Criteria for qualitative selection	
<i>Article 55</i> <i>Exclusion grounds</i>	<i>Article 55</i> <i>Exclusion grounds</i>	<i>Article 55</i> <i>Exclusion grounds</i>	
1. Any candidate or tenderer that has been the subject of a conviction by final judgment for one of the following reasons shall be excluded from participation in a public contract:	1. Any candidate or tenderer that has been the subject of a conviction by final judgment for one of the following reasons shall be excluded from participation in a public contract:	1. Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they are 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(1) of Council Framework Decision 2008/841/JHA;	(a) participation in a criminal organisation, as defined in Article 2(1) of Council Framework Decision 2008/841/JHA;	(a) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA ⁵⁵ ;	
(b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or	(b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of	(b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of	

OJ L 300, 11.11.2008, p. 42.

⁵⁵ OJ L 300, 11.11.2008, p. 42.

officials of Member States of the European Union ⁵⁶ and Article 2 of Council Framework Decision 2003/568/JHA ⁵⁷ as well as corruption as defined in the national law of the contracting authority or the economic operator;	Member States of the European Union ⁵⁸ and Article 2 of Council Framework Decision 2003/568/JHA ⁵⁹ as well as corruption as defined in the national law of the contracting authority or the economic operator;	the European Communities or officials of Member States of the European Union ⁶⁰ and Article 2(1) of Council Framework Decision 2003/568/JHA ⁶¹ 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 financial interests of the European Communities ⁶² ;	(c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European Communities;	(c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests ;	

⁵⁶ OJ C 195, 25.6.1997, p. 1.
⁵⁷ OJ L 192, 31.7.2003, p. 54.
⁵⁸ OJ C 195, 25.6.1997, p. 1.
⁵⁹ OJ L 192, 31.7.2003, p. 54.
⁶⁰ OJ C 195, 25.6.1997, p. 1.
⁶¹ OJ L 192, 31.7.2003, p. 54.
⁶² OJ C 316, 27.11.1995, p. 48.

OJ C 316, 27.11.1995, p. 48.

(d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA respectively, or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;	(d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA ⁶⁵ respectively, or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;	(d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA ⁶⁶ respectively, or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;	
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OJ L 164, 22.6.2002, p.3.

⁶⁵ OJ L 164, 22.6.2002, p.3.

⁶⁶ OJ L 164, 22.6.2002, p. 3.

(e) money laundering, as defined in Article 1 of Council Directive 91/308/EEC ⁶⁷ .	(e) money laundering, as defined in Article 1 of Council Directive 91/308/EEC. (ea) participation in exploitation of human trafficking and child labour covered by 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.	(e) money laundering or terrorist financing , as defined in Article 1 of Directive 2005/60/EC ⁶⁸ .	
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⁶⁷ OJ L 166, 28.6.1991, p. 77.

⁶⁸ OJ L 309, 25.11.2005, p. 15.

<p>The obligation to exclude a candidate or tenderer from participation in a public contract shall also apply where the conviction by final judgment has condemned company directors or any other any persons having powers of representation, decision or control in respect of the candidate or tenderer.</p>	<p>The obligation to exclude a candidate or tenderer from participation in a public contract shall also apply where the conviction by final judgment has condemned company directors or any other any persons having powers of representation, decision or control in respect of the candidate or tenderer. Where they arise in the course of the procedure to select the contractor, the reasons for exclusion listed in the first subparagraph shall likewise serve to exclude the company concerned from the contract award procedure.</p>	<p>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.</p>	
<p>2. Any economic operator shall be excluded from participation in a contract where the contracting authority is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions 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.</p>	<p>2. Any economic operator shall be excluded from participation in a contract where the contracting authority is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions 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.</p>	<p>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 jurisdictional or administrative decision</p>	

		<p>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.</p> <p>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 is aware 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 due taxes or social security contributions, including, where applicable, any interest accrued or fines.</p>	
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		<p>2a. Member States may provide for a derogation from the mandatory exclusion provided for in paragraphs 1 and 2 for overriding requirements in the general interest.</p> <p>Member States may also provide for a derogation from the mandatory exclusion provided in paragraph 2, where only minor amounts of taxes or social security contributions are unpaid.</p>	
3. A contracting authority may exclude from participation in a public contract any economic operator if one of the following conditions is fulfilled:	3. A contracting authority may exclude from participation in a public contract any economic operator if one of the following conditions is fulfilled:	3. 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 it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with	(a) where it is aware of any serious or repeated violations of obligations in the field of social, environmental or labour law, as referred to in Article 15(2);	(a) where it is aware of any violation of applicable obligations established by Union law or national law compatible with it in the field of social and labour law or environmental law or of the international social and environmental	

international provisions also includes compliance in an equivalent manner.		law provisions listed in Annex XI;	
(b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it has entered into an arrangement with creditors, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;	<p>(b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;</p> <p>For the purposes of applying point (b), a contracting authority cannot exclude from participation in a public contract an economic operator which has entered into an arrangement with creditors or whose assets are under administration if the economic operator can prove that it is capable of pursuing its activities for the foreseeable duration of contract.</p>	(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 any means that the economic operator is guilty of other grave professional misconduct;	deleted	(c) where the contracting authority can demonstrate by any means that the economic operator is guilty of a grave professional misconduct;	

<p>(d) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature with the same contracting authority.</p> <p>In order to apply the ground for exclusion referred to in point (d) of the first subparagraph, contracting authorities shall provide a method for the assessment of contractual performance that is based on objective and measurable criteria and applied in a systematic, consistent and transparent way. Any performance assessment shall be communicated to the contractor in question, which shall be given the opportunity to object to the findings and to obtain judicial protection.</p>	<p>(d) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature whether deliberately or through negligence;</p> <p>(da) where a conflict of interests could not have been effectively remedied according to the procedure laid down in Article 21(3).</p> <p>deleted</p>	<p>(d) where the contracting authority can demonstrate the presence of plausible indicators showing that the economic operator has entered into agreements with other economic operators aimed at distorting competition;</p>	
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		(e) where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract or a prior contract with a contracting entity which led to early termination of that prior contract, damages or other comparable sanctions;	
		(f) 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 57;	
		(g) where the economic operator has undertaken to unduly influence the decision-making process	

		<p>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.</p>	
<p>4. Any candidate or tenderer that is in one of the situations referred to in paragraphs 1, 2 and 3 may provide the contracting authority with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion.</p> <p>For this purpose, the candidate or tenderer shall prove that it has compensated 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 personal measures that are appropriate to prevent further criminal offences or misconduct. Contracting</p>	<p>4. Any candidate or tenderer that is in one of the situations referred to in paragraphs 1, 2 and 3 may provide the contracting authority with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion.</p> <p>For this purpose, the candidate or tenderer shall prove that it has compensated 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 personal measures that are appropriate to prevent further criminal offences or misconduct. Contracting authorities</p>	<p>4. Any economic operator that is in one of the situations referred to in paragraphs 1 and 3 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.</p> <p>For this purpose, the economic operator shall prove that it has paid or undertaken to pay</p>	

<p>authorities shall evaluate the measures taken by the candidates and tenderers taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the contracting authority considers the measures to be insufficient, it shall state the reasons for its decision.</p>	<p>shall evaluate the measures taken by the candidates and tenderers taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the contracting authority considers the measures to be insufficient, it shall state the reasons for its decision.</p>	<p>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.</p> <p>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.</p> <p>An economic operator which has been excluded by final judgment from participating in procurement procedures shall not be entitled to make use of the possibility</p>	
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		provided under the present paragraph during the period of exclusion resulting from that judgment.	
		4a. 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 4 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 the first paragraph and three years from the date of the relevant event in the cases referred to in paragraph (3).	

5. Member States shall ensure that contracting authorities and economic operators can easily obtain information and assistance with regard to the application of this Article through the liaison point provided for in Article 88.	5. Member States shall ensure that contracting authorities and economic operators can easily obtain information and assistance with regard to the application of this Article through the liaison point provided for in Article 88.	deleted	
6. Member States shall make available to other Member States, upon request, any information related to the exclusion grounds listed in this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.	6. Member States shall make available to other Member States, upon request, any information related to the exclusion grounds listed in this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.	deleted	
<i>Article 56</i> <i>Selection criteria</i>	<i>Article 56</i> <i>Selection criteria</i>	<i>Article 56</i> <i>Selection criteria</i>	
1. Contracting authorities may establish conditions for participation relating to:	1. Contracting authorities may establish conditions for participation relating to:	1. Selection criteria may relate to:	
(a) suitability to pursue the professional activity;	(a) suitability to pursue the professional activity;	(a) suitability to pursue the professional activity;	
(b) economic and financial standing;	(b) economic and financial standing;	(b) economic and financial standing;	

(c) technical and professional ability.	(c) technical and professional ability.	(c) technical and professional ability.	
<p>They are not obliged to impose all the conditions listed in paragraphs 2, 3 and 4, but they shall not provide requirements other than those listed.</p> <p>Contracting authorities shall limit any conditions for participation to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the commercial and technical abilities to perform the contract to be awarded. All requirements shall be related and strictly proportionate to the subject-matter of the contract, taking into account the need to ensure genuine competition.</p>	<p>They are not obliged to impose all the conditions listed in paragraphs 2, 3 and 4, but they shall not provide requirements other than those listed.</p> <p>Contracting authorities shall limit any conditions for participation to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the commercial and technical abilities to perform the contract to be awarded. All requirements shall be linked to the subject-matter of the contract, taking into account the need to ensure genuine competition.</p>	<p>Contracting authorities may only impose criteria referred to in paragraphs 2, 3 and 4 of this Article 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.</p>	
<p>2. With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled on one of the professional or trade registers kept in their Member State of establishment, as described in Annex XII.</p> <p>In procedures for the award of</p>	<p>2. With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled on one of the professional or trade registers kept in their Member State of establishment, as described in Annex XII.</p> <p>In procedures for the award of</p>	<p>2. With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled on one of the professional or trade registers kept in their Member State of establishment, as described in Annex XII or to comply</p>	

public service contracts, insofar as candidates or tenderers 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.	public service contracts, insofar as candidates or tenderers 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.	with any other request set out in that Annex. In procurement procedures for services , insofar 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 sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance. The minimum yearly turnover shall not exceed three times the estimated contract value, except in	3. With regard to sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance. The minimum yearly turnover shall not exceed two times the estimated contract value, except in duly	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	

<p>duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.</p> <p>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 by reference to groups of lots for the event that the successful tenderer is awarded several lots to be executed at the same time.</p> <p>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.</p>	<p>justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.</p> <p>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 by reference to groups of lots for the event that the successful tenderer is awarded several lots to be executed at the same time.</p> <p>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.</p>	<p>by the contract or that the annual accounts show a minimum ratio, for instance, between assets and liabilities. They may also require a minimum level of professional risk indemnity insurance.</p> <p>The minimum yearly turnover that economic operators are required to have shall not exceed at the most three times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.</p> <p>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</p>	
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		<p>the event that the successful tenderer is awarded several lots to be executed at the same time.</p> <p>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 procurements to be awarded under the system.</p>	
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<p>4. With regard to technical and professional ability, contracting authorities may require that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard. Contracting authorities may conclude that economic operators will not perform the contract to an appropriate quality standard where the contracting authority established that they have conflicting interests which may negatively affect the performance of the contract.</p> <p>In procedures for awarding public contracts having as their object supplies requiring siting or installation work, the provision of services or the execution of works, the 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.</p>	<p>4. With regard to technical and professional ability, contracting authorities may require that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard. Contracting authorities may conclude that economic operators will not perform the contract to an appropriate quality standard where the contracting authority established that they have conflicting interests which may negatively affect the performance of the contract.</p> <p>In procedures for awarding public contracts having as their object supplies requiring siting or installation work, the provision of services or the execution of works, the 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.</p>	<p>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.</p> <p>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 in question has conflicting interests which may negatively affect the performance of the contract.</p> <p>In procurement procedures for supplies requiring siting</p>	
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		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.	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.	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.	
		<i>Article 56a</i> <i>Means of proof</i>	
		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 XIV as evidence for the absence of grounds for exclusion as referred to in Article 55(4) and for the fulfilment of the selection	

		<p>criteria in accordance with Article 56.</p> <p>Contracting authorities shall not require means of proof other than those referred to in this Article and in Article 61; furthermore in respect of Article 62, economic operators may rely on any appropriate means to prove to the contracting authority that they will have the necessary resources at their disposal.</p>	
		<p>2. Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in Article 55 apply to the economic operator:</p> <p>(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</p>	

		administrative authority in the 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 3 of that Article, a certificate issued by the competent authority in the Member State concerned;	
		(c) where the country in question does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1, 2 and point (b) of paragraph 3 of that Article, they may be replaced by a declaration on oath or, in Member States where there is no provision for declarations on oath, by a solemn	

		<p>declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country where the economic operator is established.</p> <p>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 these do not cover all the cases specified in paragraphs 1, 2 and point (b) of paragraph 3 of Article 55. Such official declarations shall be made available through the online repository of certificates (e-certis)</p>	
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		referred to in Article 58.	
		<p>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 XIV, part 1.</p> <p>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.</p>	
		<p>4. Evidence of the economic operators' technical abilities may be provided by one or more of the means listed in Annex XIV, part 2, according to the nature, quantity or importance, and use of the works, supplies or services.</p>	

		5. Upon request, Member States shall make available to other Member States any information relating to the grounds for exclusion listed in Article 55, the suitability to pursue the professional activity, and the financial and technical capacities of tenderers referred to in Article 56, and any information relating to the means of proof referred to in this Article.	
<i>Article 57 Self-declarations and other means of proof</i>	<i>Article 57 Self-declarations and other means of proof</i>	<i>Article 57 Self-declarations and other facilitating measures</i>	
1. Contracting authorities shall accept self-declarations as preliminary evidence that candidates and tenderers fulfil any of the following conditions:	as proposal	1. At the time of submission of requests to participate or of tenders, contracting authorities shall accept updated self-declarations as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the relevant economic operator fulfils any of the following conditions:	

(a) they are not in one of the situations referred to in Article 55 in which economic operators shall or may be excluded;	as proposal	(a) it is not in one of the situations referred to in paragraphs 1 and 2 and in point (b) of paragraph 3 of Article 55 in which economic operators shall or may be excluded;	
(b) they meet the selection criteria that have been set out pursuant to Article 56;	as proposal	(b) it meets the selection criteria that have been set out pursuant to Article 56;	
(c) where applicable, they meet the objective rules and criteria that have been set out pursuant to Article 64;	as proposal	(c) where applicable, it fulfils the objective rules and criteria that have been set out pursuant to Article 64.	
		The self-declaration shall consist of a formal statement by the economic operator that the relevant ground for exclusion does not apply and/or that the selection criterion is fulfilled and provide the pertinent information as required by the contracting authority. It shall further identify the public authority or third party responsible for establishing the supporting document and contain a formal statement to the effect that the economic operator will be able, upon request and without delay to provide that	

		<p>supporting document.</p> <p>Where the contracting authority can obtain the supporting documents directly by accessing a database pursuant to paragraph 3, the self-declaration 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.</p>	
(d) they will be able, upon request and without delay, to provide the supporting documentation that contracting authorities have required in accordance with Articles 59, 60 and, where appropriate, Articles 61 and 63.	as proposal		
<p>2. A contracting authority may ask a candidate or tenderer at any moment during the procedure to submit all or parts of the required documentation where this appears necessary to ensure the proper conduct of the procedure.</p> <p>Before awarding the contract, the contracting authority shall require the tenderer to which it has</p>	as proposal	<p>2. A contracting authority may ask tenderers and candidates at any moment during the procedure to submit all or part of the supporting documents where, in the view of the contracting authority, this is necessary to ensure the proper conduct of the procedure.</p>	

<p>decided to award the contract to submit the documentation in accordance with Articles 59 and 60 and, where appropriate, Article 61. The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant to Articles 59, 60 and 61.</p>		<p>Before awarding the contract, the contracting authority shall, except in respect of contracts based on framework agreements where these are concluded in accordance with Article 31(3) or Article 31(4)(a), require the tenderer to which it has decided to award the contract to submit up to date supporting documents in accordance with Article 56a and, where appropriate, Article 61, unless the contracting authority having awarded contract or concluded the framework agreement already possesses these documents or can obtain these documents or the relevant information by accessing a database pursuant to paragraph 3. The contracting authority may invite economic operators to supplement or clarify the certificates received pursuant to Articles 56a and 61.</p>	
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	2a. An extension may be granted for the submission of declarations and proof requested by the contracting authority which were not provided by the deadline for submitting tenders.		
<p>3. Contracting authorities shall not require certificates other than those referred to in Articles 60 and 61; in respect of Article 62, economic operators may rely on any appropriate means to prove to the contracting authority that they will have at their disposal the resources necessary.</p> <p>Candidates and tenderers shall not be required to re-submit a certificate or other documentary evidence that has already been submitted to the same contracting authority within the past four years in an earlier procedure and is still valid.</p>	<p>3. Contracting authorities shall not require certificates other than those referred to in Articles 60 and 61; in respect of Article 62, economic operators may rely on any appropriate means to prove to the contracting authority that they will have at their disposal the resources necessary.</p> <p>Candidates and tenderers shall not be required to re-submit a certificate or other documentary evidence that has already been submitted to the same contracting authority within the past two years in an earlier procedure and is still valid. The contracting authority is however entitled to demand more recent evidence in case of questionable validity during the procedure.</p>	<p>3. Paragraph 2 notwithstanding, economic operators shall not be required to submit supporting documents or other documentary evidence where and insofar as the contracting authority has the possibility to obtain the certificates or the relevant information directly by accessing a database in any Member State of the European Union 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.</p> <p>For the purpose of the first subparagraph, Member States shall ensure that databases which contain</p>	

		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.	
4. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information related to the exclusion grounds listed in Article 55, to the suitability, financial and technical capacities of tenderers described in Article 56 and to the content or nature of the means of proof indicated in this Article.	as proposal	4. Upon request, Member States shall make available to other Member States any information related to the databases referred to in this Article.	

<i>Article 58</i> <i>Online repository of certificates (e-Certis)</i>	<i>Article 58</i> <i>Online repository of certificates (e-Certis)</i>	<i>Article 58</i> <i>Online repository of certificates (e-Certis)</i>	
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 is constantly kept up to date.	as proposal	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. Recourse to e-Certis shall become obligatory and contracting authorities shall be obliged to require only such of types of certificates or forms of documentary evidence that are available in e-Certis at the latest 2 years after the date provided for in Article 92(1).	as proposal	2. Contracting authorities shall have recourse to e-Certis and contracting authorities shall require primarily such types of certificates or forms of documentary evidence that are covered by e-Certis.	

<p style="text-align: center;"><i>Article 59</i> <i>European Procurement Passport</i></p> <p>1. National authorities shall issue, at the request of an economic operator established in the relevant Member State and fulfilling the necessary conditions, a European Procurement Passport. The European Procurement Passport shall contain the particulars set out in Annex XIII and shall be drawn up on the basis of a standard form.</p> <p>The Commission shall be empowered to adopt delegated acts in accordance with Article 89 in order to modify Annex XIII due to technical progress or for administrative reasons. It shall also establish the standard form for the European Procurement Passport. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.</p>	<p style="text-align: center;"><i>Article 59</i> <i>European Procurement Passport</i></p> <p>1. National authorities shall issue, at the request of an economic operator established in the relevant Member State and fulfilling the necessary conditions, a European Procurement Passport. The European Procurement Passport shall contain the particulars set out in Annex XIII and shall be drawn up on the basis of a standard form.</p> <p>The Commission shall be empowered to adopt delegated acts in accordance with Article 89 in order to modify Annex XIII due to technical progress or for administrative reasons. It shall also establish, by means of implementing acts, the standard form for the European Procurement Passport. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.</p>	<p>deleted</p>	
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2. At the latest 2 years after the date provided for in Article 92(1), the passport shall be provided exclusively in electronic form.	2. At the latest two years after the date provided for in Article 92(1), the passport shall be provided exclusively in electronic form.	deleted	
3. The authority issuing the passport shall seek the relevant information directly from the competent authorities, except where prohibited by national rules on the protection of personal data.	3. The authority issuing the passport shall seek the relevant information directly from the competent authorities, except where prohibited by national rules on the protection of personal data and except where the information can only be gathered from the economic operator itself. In these cases, the economic operator shall deliver the information to the authority in order to obtain the European Procurement Passport.	deleted	
4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than six months earlier.	4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the nature of the individual case or the fact that the passport was issued more than one year earlier. In that cases the contracting authority may request more recent or other	deleted	

	<p>types of certificates concerning topics listed in Annex XIII.</p> <p>The European Procurement Passport must be signed by the economic operator, thereby guaranteeing the validity of the information in the European Procurement Passport.</p>		
<p>5. Member States shall make available to other Member States, upon request, any information relating to the authenticity and content of the European Procurement Passport. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.</p>	<p>as proposal</p>	<p>deleted</p>	

<p style="text-align: center;"><i>Article 60 Certificates</i></p> <p>1. Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in Article 55 apply to the economic operator:</p> <p>(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 country of origin or the country where the economic operator is established showing that those requirements have been met;</p> <p>(b) as regards paragraph 2 and point (b) of paragraph 3 of that Article, a certificate issued by the competent authority in the Member State concerned;</p> <p>(c) where the country in question does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1, 2</p>	<p style="text-align: center;"><i>Article 60 Certificates</i></p> <p>as proposal</p>	<p style="text-align: center;">deleted</p>	
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<p>and point (b) of paragraph 3 of that Article, they may be replaced by an official declaration to that effect by the national liaison point designated in accordance with Article 88.</p> <p>2. 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 XIV, part 1.</p> <p>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.</p> <p>3. Evidence of the economic operators' technical abilities may be provided by one or more of the means listed in Annex XIV, part 2, according to the nature, quantity or importance, and use of the works, supplies or services.</p> <p>4. Upon request, Member States shall make available to other Member States, in accordance with</p>			
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Article 88, any information relating to the evidence on exclusion grounds, the documents attesting the suitability to pursue the professional activity, and financial and technical capacities of tenderers, as well as any other means of proof referred to in paragraphs 1, 2 and 3 of this Article.			
<i>Article 61</i> <i>Quality assurance standards and environmental management standards</i>	<i>Article 61</i> <i>Quality assurance standards and environmental management standards</i>	<i>Article 61</i> <i>Quality assurance standards and environmental management standards</i>	
1. 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, contracting authorities shall 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 from economic	as proposal	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	

operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.		other evidence of equivalent quality assurance measures where the economic operator concerned has no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator.	
2. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council ⁶⁹ or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall	2. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council ⁴¹ or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall	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 European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management systems as recognized in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council ⁷⁰ or other environmental management standards based on the	

⁶⁹ OJ L 342, 22.12.2009, p. 1.

⁷⁰ OJ L 342, 22.12.2009, p. 1.

<p>recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.</p>	<p>recognise equivalent certificates from bodies established in other Member States. For services this may be Ecolabel certificates which also include environmental management criteria. They shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits. In order not to discriminate those tenderers who invest time and money for certificates or test reports, the burden for providing equivalence should be placed on the tenderer claiming equivalence.</p>	<p>relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures where the economic operator concerned has 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.</p> <p>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 of this Article.</p>	
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3. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the documents produced as evidence of compliance with quality and environmental standards referred to in paragraphs 1 and 2 of this Article.	as proposal		
<i>Article 62</i> <i>Reliance on the capacities of other entities</i>	<i>Article 62</i> <i>Reliance on the capacities of other entities</i>	<i>Article 62</i> <i>Reliance on the capacities of other entities</i>	
1. With regard to criteria relating to economic and financial standing as set out pursuant to Article 56(3), and to criteria relating to technical and professional ability as set out pursuant to Article 56(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. It shall in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect. In the case of economic and financial standing, contracting authorities	as proposal	1. With regard to criteria relating to economic and financial standing as set out pursuant to Article 56(3), and to criteria relating to technical and professional ability as set out pursuant to Article 56(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 e of	

<p>may require that the economic operator and those entities are jointly liable for the execution of the contract.</p> <p>Under the same conditions, a group of economic operators as referred to in Article 16 may rely on the capacities of participants in the group or of other entities.</p>		<p>Annex XIV, 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.</p> <p>The contracting authority shall, in accordance with Articles 56a to 58, verify 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 pursuant to Article 55. An entity which does not meet a relevant selection</p>	
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		<p>criterion, or in respect of which there are grounds for exclusion may be excluded.</p> <p>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.</p> <p>Under the same conditions, a group of economic operators as referred to in Article 16 may rely on the capacities of participants in the group or of other entities.</p>	
2. In the case of works contracts, service contracts and siting and 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 a tender is submitted by a group of economic operators as referred to in Article 6,	as proposal	2. Member States may provide that 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,	

a participant in the group.		where the tender is submitted by a group of economic operators as referred to in Article 16 , by a participant in that group.	
<i>Article 63</i> <i>Official lists of approved economic operators and certification by bodies established under public or private law</i>	<i>Article 63</i> <i>Official lists of approved economic operators and certification by bodies established under public or private law</i>	<i>Article 63</i> <i>Official lists of approved economic operators and certification by bodies established under public or private law</i>	
<p>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 VIII.</p> <p>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.</p>	as proposal	<p>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 VIII.</p> <p>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.</p>	

<p>2. Member States shall adapt the conditions for registration on the lists referred to in paragraph 1 and for the issue of certificates by certification bodies to the provisions of this subsection.</p> <p>Member States shall also adapt those conditions to Article 62 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 in 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.</p>	<p>as proposal</p>	<p>2. Member States shall adapt the conditions for registration on the lists referred to in paragraph 1 and for the issue of certificates by certification bodies to the provisions of this subsection.</p> <p>Member States shall also adapt those conditions to Article 62 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 in 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.</p>	
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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 in the list or to obtain certification and the classification given in that list.	as proposal	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 in the 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 list or certificate.	as proposal	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 list or certificate.	
5. Information that can be deduced from registration on official lists or certification shall not be questioned without justification. With regard	as proposal	5. Information that can be deduced from registration on official lists or certification shall not be questioned without justification. With	

<p>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.</p> <p>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.</p>		<p>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.</p> <p>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.</p>	
<p>6. The requirements of proof for the criteria for qualitative selection encompassed by the list or certificate shall comply with Articles 59, 60 and, where appropriate, Article 61. For any registration of economic operators of other Member States in an official list or for their certification, no further proof or statements shall be required other than those requested of national economic operators.</p> <p>Economic operators may request at any time their registration in an</p>	<p>as proposal</p>	<p>6. The requirements of proof for the criteria for qualitative selection encompassed by the list or certificate shall comply with Article 56a and, where appropriate, Article 61. For any registration of economic operators of other Member States in an official list or for their certification, no further proof or statements shall be required other than those requested of national economic operators.</p> <p>Economic operators may</p>	

official list or for 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 list or of the competent certification body.		request at any time their registration in an official list or for 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 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.	as proposal	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, in accordance with Article 88, any information relating to the documents produced as evidence that the economic operators fulfil the requirements to be registered in the list of approved economic operators or as evidence that economic operators from	as proposal	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 in the list of approved economic operators or as	

another Member State possess an equivalent certification. .		evidence that economic operators from another Member State possess an equivalent certification.	
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SUBSECTION 2 REDUCTION OF NUMBERS OF CANDIDATES, TENDERS AND SOLUTIONS	SUBSECTION 2 REDUCTION OF NUMBERS OF CANDIDATES, TENDERS AND SOLUTIONS	Subsection 2 Reduction of numbers of candidates, tenders and solutions	
<i>Article 64</i> <i>Reduction of the number of otherwise qualified candidates to be invited to participate</i>	<i>Article 64</i> <i>Reduction of the number of otherwise qualified candidates to be invited to participate</i>	<i>Article 64</i> <i>Reduction of the number of otherwise qualified candidates to be invited to participate</i>	
<p>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 a sufficient number of qualified candidates is available.</p> <p>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.</p>	<p>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, according to paragraph 2 of qualified candidates is available.</p>	<p>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 a sufficient number of qualified candidates is available.</p>	

<p>2. 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 shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.</p> <p>The contracting authorities shall invite a number of candidates at least equal to the minimum number. Where the number of candidates meeting the selection criteria and the minimum levels of ability as referred to in Article 56(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 other economic operators that did not request to participate, or candidates that do not have the required capabilities.</p>	<p>as proposal</p>	<p>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.</p> <p>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 shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.</p> <p>The contracting authorities shall invite a number of candidates at least equal to the minimum number. Where the number of candidates meeting the selection criteria</p>	
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		<p>and the minimum levels of ability as referred to in Article 56(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 other economic operators that did not request to participate, or candidates that do not have the required capabilities.</p>	
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<i>Article 65</i> <i>Reduction of the number of tenders and solutions</i>	<i>Article 65</i> <i>Reduction of the number of tenders and solutions</i>	<i>Article 65</i> <i>Reduction of the number of tenders and solutions</i>	
Where contracting authorities exercise the option of reducing the number of tenders to be negotiated as provided for in Article 27(5) or of solutions to be discussed as provided for in Article 28(4), they shall do so by applying the award criteria stated in the contract notice, in the specifications or in the descriptive document. In the final stage, the number arrived at shall make for genuine competition insofar as there are enough solutions or qualified candidates.	as proposal	Where contracting authorities exercise the option of reducing the number of tenders to be negotiated as provided for in Article 27(5) or of solutions to be discussed as provided for in Article 28(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 insofar as there are enough solutions, qualified candidates or tenderers .	

SUBSECTION 3 AWARD OF THE CONTRACT	SUBSECTION 3 AWARD OF THE CONTRACT	SUBSECTION 3 AWARD OF THE CONTRACT	
<i>Article 66</i> <i>Contract award criteria</i>	<i>Article 66</i> <i>Contract award criteria</i>	<i>Article 66</i> <i>Contract award criteria</i>	
1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which contracting authorities shall base the award of public contracts shall be one of the following:	1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criterion on which contracting authorities shall base the award of public contracts shall be the most economically advantageous tender .	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 one of the following criteria :	
(a) the most economically advantageous tender;	deleted	(a) the most economically advantageous tender;	
(b) the lowest cost.	deleted	(b) the lowest cost.	
Costs may be assessed, on the choice of the contracting authority, on the basis of the price only or using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 67.	deleted	Cost may be assessed, at the choice of the contracting authority, on the basis of the price only or using a cost-effectiveness approach, such as life-cycle costing under the conditions set out in Article 67. Member States may provide that all or certain	

		types of contracts shall be awarded by means of the criterion of the most economically advantageous tender as referred to in point (a) of paragraph 1 and in paragraph 2.	
<p>2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:</p> <p>(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character;</p> <p>(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of</p>	<p>2. The most economically advantageous tender referred to paragraph 1, from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. The criteria related to the most economically advantageous tender may include, in addition to the price or costs, qualitative, environmental and social considerations, such as</p> <p>(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, innovative character, and environmental characteristics, including cost-effectiveness of short-distance procurement where relevant;</p> <p>(b) wherever relevant for the performance of the contract, qualification and experience of the</p>	<p>2. The most economically advantageous tender referred to in point (a) of paragraph 1 shall be identified by an assessment on the basis of award criteria affecting the value of the tender from the point of view of the contracting authority.</p> <p>Those criteria shall include, in addition to the price or cost, other criteria linked to the subject-matter of the public contract in question, for instance quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental and social characteristics, innovative aspects, conditions of commercialisation, after-sales service and technical assistance, delivery</p>	

<p>the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent organisation and quality;</p> <p>(c) after-sales service and technical assistance, delivery date and delivery period or period of completion;</p> <p>(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.</p>	<p>staff assigned to performing the contract in question may be taken into consideration;</p> <p>(c) after-sales service, technical assistance, and delivery conditions such as delivery date and delivery period or period of completion;</p> <p>(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.</p>	<p>conditions such as delivery date, delivery process and delivery period or period of completion. Where the quality of the staff employed can significantly impact the level of performance of the contract, the organisation, qualification and experience of the staff assigned to performing the contract in question may also be taken into consideration.</p> <p>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.</p>	
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3. Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender as referred to in point (a) of paragraph 1 and in paragraph 2.	deleted	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 the specific process of production, provision or commercialisation of those works, supplies or services, or - in 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 confer an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. Contracting authorities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether	3 Award criteria shall not confer an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. Contracting authorities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether	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	

the tenders meet the award criteria.	the tenders meet the award criteria.	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.	
<p>5. In the case referred to in point (a) of paragraph 1 the contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.</p> <p>Those weightings may be expressed by providing for a range with an appropriate maximum spread.</p> <p>Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.</p>	<p>4. The contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.</p> <p>Those weightings may be expressed by providing for a range with an appropriate maximum spread.</p> <p>Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.</p>	<p>5. In the case referred to in point (a) of paragraph 1, 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.</p> <p>Those weightings may be expressed by providing for a range with an appropriate maximum spread.</p> <p>Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.</p>	

		6 . When the legislation of the Member State concerned provides for it, contracting authorities may, after the time limit for the submission of tenders has expired and before having accessed their content, specify the weighting attached to the subheadings of an award criterion as defined in advance in accordance with paragraph 5, provided that	
		a) doing so does not alter the criteria for the award of the contract set out in the procurement documents or the contract notice;	
		b) the weighting does not contain elements which, if they had been known to the tenderers at the time of the preparation of the tenders, could have affected that preparation;	

		c) the weighting was not adopted on the basis of matters likely to give rise to discrimination against one of the tenderers.	
<i>Article 67</i> <i>Life-cycle costing</i>	<i>Article 67</i> <i>Life-cycle costing</i>	<i>Article 67</i> <i>Life-cycle costing</i>	
1. Life-cycle costing shall to the extent relevant cover the following costs over the life cycle of a product, service or works as defined in point (22) of Article 2:	1. Life-cycle costing shall to the extent relevant cover part or all of the following costs borne by contracting authorities over the life cycle of a product, service or works as defined in point (22) of Article 2:	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) internal costs, including costs relating to acquisition, such as production costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs and	(a) internal costs, including costs relating to acquisition, such as production costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs and	(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) external environmental costs directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.	(b) external costs such as social or environmental costs , directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation 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; these 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 methodology used for the calculation of the life-cycle costs. The methodology used must fulfil all of the following conditions:	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 . The method used for the assessment of those life-cycle costs must fulfil all of the following conditions:	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 these data .	

		The method used for the assessment of costs imputed to environmental externalities shall fulfil all of the following conditions:	
(a) it has been drawn up on the basis of scientific information or is based on other objectively verifiable and non-discriminatory criteria;	(a) it has been drawn up in close consultation with stakeholders and is based on objectively verifiable and non-discriminatory criteria;	(a) it is based on objectively verifiable and non-discriminatory criteria;	
(b) it has been established for repeated or continuous application;	deleted	(b) it has been established for repeated or continuous application;	
<p>(c) it is accessible to all interested parties.</p> <p>Contracting authorities shall allow economic operators, including economic operators from third countries, to apply a different methodology for establishing the life-cycle costs of their offer, provided that they prove that this methodology complies with the requirements set out in points a, b and c and is equivalent to the methodology indicated by the contracting authority.</p>	<p>(c) it is accessible to all interested parties.</p> <p>(ca) the data required can be provided with reasonable effort by normally diligent economic operators, including operators from third countries.</p>	(c) it is accessible to all interested parties;	

		<p>(d) the data required can be provided with reasonable effort by normally diligent economic operators, including operators from third countries party to the Agreement or other international agreements by which the Union is bound.</p>	
<p>3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).</p> <p>A list of such legislative and delegated acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.</p>	<p>3. Any common methodology for the calculation of life-cycle costs adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation or as part of a European technical specification shall be deemed to meet the criteria set out in paragraph 2 and may be included in the award criteria referred to in Article 66(1).</p> <p>A list of such legislative and delegated acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation,</p>	<p>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 costs imputed to environmental externalities.</p> <p>A list of such legislative acts, and where necessary the delegated acts supplementing them, is set out in Annex XV.</p> <p>The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of that list, when</p>	

	such amendments prove necessary.	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 legislation.	
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<p><i>Article 68</i> <i>Impediments to award</i></p> <p>Contracting authorities shall not award the contract to the tenderer submitting the best tender where one of the following conditions is fulfilled:</p> <p>(a) the tenderer is not able to provide the certificates and documents required pursuant to Articles 59, 60 and 61;</p> <p>(b) the declaration provided by the tenderer pursuant to Article 22 is false;</p> <p>(c) the declaration provided by the tenderer pursuant to Article 21(3)(b) is false.</p>	<p><i>Article 68</i> <i>Impediments to award</i></p> <p>as proposal</p>	deleted	
<p><i>Article 69</i> <i>Abnormally low tenders</i></p>	<p><i>Article 69</i> <i>Abnormally low tenders</i></p>	<p><i>Article 69</i> <i>Abnormally low tenders</i></p>	
<p>1. Contracting authorities shall require economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:</p> <p>(a) the price or cost charged is more than 50 % lower than the</p>	<p>1. Where tenders appear to be abnormally low in relation to the works, supplies or services, the contracting authority shall require economic operators to explain the price or costs proposed in the tender.</p>	<p>1. Where tenders appear to be abnormally low in relation to the works, supplies or services, the contracting authority may require, or be obliged by a Member State to require, economic operators to explain the</p>	

<p>average price or costs of the remaining tenders</p> <p>(b) the price or cost charged is more than 20 % lower than the price or costs of the second lowest tender;</p> <p>(c) at least five tenders have been submitted.</p> <p>2. Where tenders appear to be abnormally low for other reasons, contracting authorities may also request such explanations.</p>		<p>price or costs proposed in the tender.</p>	
<p>3. The explanations referred to in paragraphs 1 and 2 may in particular relate to:</p> <p>(a) the economics of the construction method, the manufacturing process or the services provided;</p> <p>(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;</p>	<p>2. The explanations referred to in paragraph 1 may in particular relate to:</p> <p>(a) the economics of the construction method, the manufacturing process or the services provided;</p> <p>(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;</p> <p>(c) the originality of the work,</p>	<p>2. The explanations referred to in paragraph 1 may in particular relate to:</p> <p>(a) the economics of the construction method, the manufacturing process or the services provided;</p> <p>(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work</p>	

<p>(c) the originality of the work, supplies or services proposed by the tenderer;</p> <p>(d) compliance, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or of the environmental law or of the international social and environmental law provisions listed in Annex XI or, where not applicable, with other provisions ensuring an equivalent level of protection;</p> <p>(e) the possibility of the tenderer obtaining State aid.</p>	<p>supplies or services proposed by the tenderer;</p> <p>(d) compliance with social, environmental and labour law provisions referred to in Article 15(2);</p> <p>(da) compliance with subcontracting requirements set out in Article 71;</p> <p>(e) the possibility of the tenderer obtaining State aid.</p>	<p>or for the supply of the goods or services;</p> <p>(c) the originality of the work, supplies or services proposed by the tenderer;</p> <p>(d) compliance // with obligations established by Union legislation in the field of social and labour law or of the international social and environmental law provisions listed in Annex XI or, where not applicable, with other provisions ensuring an equivalent level of protection;</p> <p>(e) the possibility of the tenderer obtaining State aid.</p>	
<p>4. The contracting authority shall verify the information provided by consulting the tenderer. It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.</p>	<p>3. The contracting authority shall verify the information provided by consulting the tenderer. It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.</p>	<p>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</p>	

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.	Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with social, environmental and labour law provisions referred to in Article 15(2) nor with data protection law.	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 established by Union law or national law compatible with it in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.	
5. 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 of the Treaty. Where the contracting authority rejects a tender in those circumstances, it shall inform the	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 of the Treaty. Where the contracting authority rejects a tender in those circumstances, it shall inform the	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 of the Treaty.	

Commission thereof.	Commission thereof.	Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.	
6. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the evidence and documents produced in relation to details listed in paragraph 3.	5. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the evidence and documents produced in relation to details listed in paragraph 3.	5. Upon request, Member States shall make available to other Member States by way 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.	

	<p>Article 69a</p> <p>Tenders comprising products originating in third countries</p> <p>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.</p> <p>2. Contracting authorities may ask tenderers to provide information on the origin of the products in their tender, and their value. Statements on the tenderer's honour shall be accepted as a preliminary means of proof. A contracting authority can ask, at any time in the procedure, for part or all of the documentation required. Any tender submitted for the award of a supply contract may be rejected where the value of the</p>		
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	<p>products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, 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.</p> <p>3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 66 , preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this article, if the price difference does not exceed 3 %.</p> <p>However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting authority to acquire equipment having technical</p>		
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	<p>characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.</p> <p>4. For the purposes of this Article, those third countries to which the benefit of the provisions 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.</p> <p>5. The Commission shall submit an annual report to the European Parliament and the Council, commencing in the second half of the first year following the entry into force of this Directive, 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</p>		
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	<p>practice of all the agreements which have been concluded.</p> <p>The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may, in the light of these developments, amend the provisions of this Article.</p>		
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	<p>Article 69b</p> <p>Relations with third countries as regards works, supplies and service contracts</p> <p>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 works, supplies or service contracts in third countries.</p> <p>2. The Commission shall report to the European Parliament and the Council before 31 December 2014, 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 WTO.</p> <p>3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation where it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context</p>		
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	<p>of the award of service contracts, a third country:</p> <p>(a) does not grant Union undertakings effective access comparable to that granted by the Union to undertakings from that third country;</p> <p>(b) does not grant Union undertakings national treatment or the same competitive opportunities as are available to national undertakings; or</p> <p>c) grants undertakings from other third countries more favourable treatment than Union undertakings</p> <p>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 social and environmental law provisions listed in Annex XI when these undertakings have tried to secure the award of contracts in third countries.</p> <p>5. In the circumstances referred</p>		
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	<p>to in paragraphs 3 and 4, the Commission may at any time propose that the Council decide to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:</p> <p>(a) undertakings governed by the law of the third country in question;</p> <p>(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;</p> <p>(c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.</p> <p>The Council shall act, by qualified majority, as soon as possible.</p> <p>The Commission may propose these measures on its own initiative or at the request of a Member State.</p> <p>6. This Article shall be without</p>		
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	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.		
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CHAPTER IV Contract performance	CHAPTER IV Contract performance	CHAPTER IV <i>Contract performance</i>	
<i>Article 70</i> <i>Conditions for performance of contracts</i>	<i>Article 70</i> <i>Conditions for performance of contracts</i>	<i>Article 70</i> <i>Conditions for performance of contracts</i>	
Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.	Contracting authorities may lay down special conditions linked to the subject matter and relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may include economic, innovative, environmental, social or employment-related considerations.	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 66(3) and indicated in the call for competition or in the procurement documents . Those conditions may, in particular, concern social and environmental considerations.	
<i>Article 71</i> <i>Subcontracting</i>	<i>Article 71</i> <i>Subcontracting</i>	<i>Article 71</i> <i>Subcontracting</i>	
1. In the procurement documents, the contracting authority may ask or may be required by a Member State to ask the tenderer to indicate	1. In the procurement documents, the contracting authority shall ask the tenderer to indicate in its tender any share of the contract it may	In the procurement documents, the contracting authority may ask or may be required by a Member State to ask the tenderer to indicate	

<p>in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.</p> <p>2. 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 main contractor. In such case, Member States shall put in place 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.</p> <p>3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.</p>	<p>intend to subcontract to third parties.</p> <p>1a. After the tenderer has been selected, it shall indicate to the contracting authorities the name, contact details and legal representatives of the subcontractors and any changes related to this information during the course of the contract. This information shall be provided to the tenderer by each subcontractor in the subcontracting chain through the latter's direct contractor. The information shall be updated during the course of the contract.</p> <p>2. 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 main contractor. In such case, Member States shall put in place 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</p>	<p>in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors. Such an indication shall be without prejudice to the question of the principal economic operator's liability.</p>	
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	<p>documents.</p> <p>3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.</p> <p>3a. Member States shall ensure that subcontractors also respect all mandatory legal, regulatory and administrative provisions in force in the Member State of contract performance, which includes the obligations referred to in Article 15(2). To this end, Member States may provide for a system of liability throughout the subcontracting chain so that the direct contractor of a subcontractor is liable in the event the subcontractor fails to comply with one of these provisions or is insolvent. When a direct contractor is insolvent, such system should foresee that the next solvent direct contractor up the subcontracting chain, including the main contractor, is liable.</p> <p>3b. Member States may provide for more stringent liability rules under national law.</p>		
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<i>Article 72</i> <i>Modification of contracts during their term</i>	<i>Article 72</i> <i>Modification of contracts during their term</i>	<i>Article 72</i> <i>Modification of contracts during their term</i>	
1. A substantial modification of the provisions of a public contract during its term shall be considered as a new award for the purposes of this Directive and shall require a new procurement procedure in accordance with this Directive.	1. A substantial modification of the provisions of a public contract during its term shall be considered as a new award for the purposes of this Directive and shall require a new procurement procedure in accordance with this Directive.	1. A substantial modification of the provisions of a public contract or a framework agreement during its term shall be considered as a new award for the purposes of this Directive and shall require a new procurement procedure in accordance with this Directive. In the cases referred to in paragraphs 3, 4 or 5, modifications shall not be considered as substantial.	
2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded. In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:	2. Without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met: (-a) it alters the nature of the contract; (-aa) it entails replacement of the contractual partner;	2. A modification of a contract or a framework agreement during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract or the framework agreement materially different in character from the one initially concluded. In any case, without prejudice to paragraphs 3, 4 or 5 , a modification shall be considered substantial where one 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 selection of other candidates than those initially selected or would have allowed for awarding the contract to another tenderer;	(a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the selection of other candidates than those initially selected or would have allowed for awarding the contract to another tenderer;	(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 an offer 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 in favour of the contractor;	(b) the modification changes the economic balance of the contract in favour of the contractor;	(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 considerably to encompass supplies, services or works not	(c) the modification extends the subject of the contract considerably to encompass supplies, services or works not	(c) the modification extends the scope of the contract or framework agreement	

initially covered.	initially covered.	considerably.	
<p>3. The replacement of the contractual partner shall be considered a substantial modification within the meaning of paragraph 1.</p> <p>However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations 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.</p>	<p>Paragraph 2, point (-aa), shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations, transfer of capital or assets between undertakings or the taking-on of a contractual partner after his insolvency, by 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 in case of the take-over of the main contractors' signatory status by the contracting authority accordingly to the Member State provisions in line with Article 71.</p>	<p>3. Modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the initial procurement documents in clear, precise and unequivocal review 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.</p>	
<p>4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 and where it is below 5% of the price of the initial contract,</p>	<p>4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 or where it is below 10 % of the price of the initial</p>	<p>4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set</p>	

provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.	contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.	out in Article 4 and where it is below 10% of the initial contract value for service and supply contracts and below 15% of the initial contract value for works contracts, provided that the modification does 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.	
5. Contract modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the procurement documents in clear, precise and unequivocal review 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.	5. Contract modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the procurement documents in clear, precise and unequivocal review clauses or options or in the form of a price revision clause. 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.		

<p>6. By way of derogation from paragraph 1, a substantial modification shall not require a new procurement procedure where the following cumulative conditions are fulfilled:</p> <p>(a) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;</p> <p>(b) the modification does not alter the overall nature of the contract;</p> <p>(c) any increase in price is not higher than 50 % of the value of the original contract.</p> <p>Contracting authorities shall publish in the <i>Official Journal of the European Union</i> a notice on such modifications. Such notices shall contain the information set out in Annex VI part G and be published in accordance</p>	<p>6. By way of derogation from paragraph 1, a substantial modification shall not require a new procurement procedure where the following cumulative conditions are fulfilled:</p> <p>(a) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;</p> <p>(b) the modification does not alter the overall nature of the contract;</p> <p>(c) any increase in price is not higher than 50 % of the value of the original contract.</p> <p>Contracting authorities shall publish in the Official Journal of the European Union a notice on such modifications. Such notices shall contain the information set out in Annex VI part G and be published in accordance with Article 49.</p>	<p>5. A modification shall not be considered to be substantial within the meaning of paragraph 1, where the following cumulative conditions are fulfilled:</p> <p>(a) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;</p> <p>(b) the modification does not alter the overall nature of the contract;</p> <p>(c) any increase in price is not higher than 50 % of the value of the original contract or framework agreement.</p> <p>Contracting authorities shall publish in the <i>Official Journal of the European Union</i> a notice on such modifications. Such notices shall contain the information set out in Annex VI part G and be</p>	
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with Article 49.		published in accordance with Article 49.	
	<p>6a. For the purpose of the calculation of the price mentioned in paragraphs 4 and 6(c) of this Article, the updated price shall be the reference value when the contract includes an indexation clause.</p>	<p>6. Without prejudice to paragraph 3, the substitution of a new contractor for the one to which the contracting authority had initially awarded the contract shall be considered a substantial modification within the meaning of paragraph 1.</p> <p>However, the first subparagraph shall not apply in the event of 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</p>	

		Directive.	
<p>7. Contracting authorities shall not have recourse to modifications of the contract in the following cases:</p> <p>(a) where the modification would aim at remedying deficiencies in the performance of the contractor or the consequences, which can be remedied through the enforcement of contractual obligations;</p> <p>(b) where the modification would aim at compensating risks of price increases that have been hedged by the contractor.</p>	<p>7. Contracting authorities may not invoke the provisions of this Article concerning modifications of the contract where the modification would aim at compensating risks of price increases that have been hedged by the contractor.</p>		

<i>Article 73</i> <i>Termination of contracts</i>	<i>Article 73</i> <i>Termination of contracts</i>	<i>Article 73</i> <i>Termination of contracts</i>	
Member States shall ensure that contracting authorities have the possibility, under the conditions determined by the applicable national contract law, to terminate a public contract during its term, where one of the following conditions is fulfilled:	1. Member States shall ensure that contracting authorities have the possibility, under the conditions determined by the applicable national contract law, to terminate a public contract during its term, where one of the following conditions is fulfilled:	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 it turns out that	
(a) the exceptions provided for in Article 11 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 11(4);	(a) the exceptions provided for in Article 11 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 11(4), except for legally enforced forms of private participation;	(a) the exceptions provided for in Article 11 cease to apply following a participation by private undertakings in the legal person awarded the contract pursuant to Article 11(5);	
(b) a modification of the contract constitutes a new award within the meaning of Article 72;	(b) a modification of the contract constitutes a new award within the meaning of Article 72;	(b) the contract has been subject to a substantial modification that constitutes a new award within the meaning of Article 72;	
(c) the Court of Justice of the European Union finds, in a procedure pursuant to Article 258 of the Treaty, that a Member State has failed to fulfil its obligations under the Treaties due to the fact that a contracting authority belonging	(c) the Court of Justice of the European Union finds, in a procedure pursuant to Article 258 of the Treaty, that a Member State has failed to fulfil its obligations under the Treaties due to the fact that a contracting authority belonging to that Member State has	(c) the contractor has been, at the time of contract award, in one of the situations referred to in Article 55 (1) and should therefore have been excluded from the procurement procedure;	

to that Member State has awarded the contract in question without complying with its obligations under the Treaties and this Directive.	awarded the contract in question without complying with its obligations under the Treaties and this Directive.		
		(d) 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 of the Treaty.	
	2. Member States shall ensure that contracting authorities have the possibility, under the conditions determined by the applicable national contract law, to terminate a framework agreement during its term, where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under the agreement.		

Title III Particular procurement regimes	Title III Particular procurement regimes	TITLE III PARTICULAR PROCUREMENT REGIMES	
CHAPTER I <i>Social and other specific services</i>	CHAPTER I <i>Social and other specific services</i>	CHAPTER I <i>Social and other specific services</i>	
<i>Article 74</i> <i>Award of contracts for social and other specific services</i>	<i>Article 74</i> <i>Award of contracts for social and other specific services</i>	<i>Article 74</i> <i>Award of contracts for social and other specific services</i>	
Contracts for social and other specific services listed in Annex XVI shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in Article 4 (d).	Contracts for social and other specific services listed in Annex XVI shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in Article 4 (d).	Public contracts for social and other specific services, such as hotel and restaurant services or certain legal, rescue or administrative services , listed in Annex XVI shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in Article 4(d).	
<i>Article 75</i> <i>Publication of notices</i>	Article 75 Publication of notices	<i>Article 75</i> <i>Publication of notices</i>	
1. Contracting authorities intending to award a public contract for the services referred to in Article 74 shall make known their intention by means of a contract notice.	1. Contracting authorities intending to award a public contract for the services referred to in Article 74 shall make known their intention by means of a prior information	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	

	notice, which shall be published continuously and contain the information set out in Annex VI part H. The prior information notice shall indicate that the contract will be awarded without further publication and invite interested economic operators to express their interest in writing.	means:	
		(a) by means of a contract notice, which shall contain the information referred to in Annexe VI Part H, in accordance with the standard forms referred to in Article 49;	
		(b) by means of a prior information notice, which shall be published continuously and contain the information set out in Annex VI part I. The prior information notice shall refer specifically to the types of services that will be the subject of the contracts to be	

		<p>awarded. It shall indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing.</p> <p>The first subparagraph shall, however, not apply where a negotiated procedure without prior publication could have been used in conformity with the provisions of Article 30 for the award of a public service contract.</p>	
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.	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.	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 Annexes VI Part J, in accordance with the standard forms referred to in Article 49. They may,	

		however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 48 days of the end of each quarter.	
3. The notices referred to in paragraphs 1 and 2 shall contain the information referred to in Annexes VI Part H and I, in accordance with the standard forms. The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.	3. The notice referred to in paragraph 2 shall contain the information referred to in Annex VI Part I, in accordance with the standard forms. The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.	3. The Commission shall establish the standard forms referred to in paragraphs 1 and 2 by means of implementing acts . Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.	
4. The notices referred to in paragraphs 1 and 2 shall be published in accordance with Article 49.	The notices referred to in paragraphs 1 and 2 shall be published in accordance with Article 49.	4. The notices referred to in this Article shall be published in accordance with Article 49.	
<i>Article 76</i> <i>Principles of awarding contracts</i>	<i>Article 76</i> <i>Principles of awarding contracts</i>	<i>Article 76</i> <i>Principles of awarding contracts</i>	
1. Member States shall put in place appropriate procedures for the award of contracts subject to this Chapter, ensuring full compliance with the principles of transparency and equal treatment of economic	1. Member States shall put in place simplified procedures in accordance with Article 75(1) , for the award of contracts subject to this Chapter, ensuring full compliance with the principles of	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	

operators and allowing contracting authorities to take into account the specificities of the services in question.	transparency and equal treatment of economic operators and allowing contracting authorities to take into account the specificities of the services in question.	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, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation. Member States may also provide that the choice of the service provider shall not be made solely on the basis of the price for the provision of the service.	2. Member States shall ensure that contracting authorities may take into account the need to ensure high 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 shall ensure that the choice of the service provider is not made solely on the basis of the price for the provision of the service but takes into account quality and sustainability criteria for social services as set out above .	2. Member States shall ensure that contracting authorities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation. Member States may also provide that the choice of the service provider shall not be made solely on the basis of the price for the provision of the service.	

CHAPTER II RULES GOVERNING DESIGN CONTESTS	CHAPTER II RULES GOVERNING DESIGN CONTESTS	CHAPTER II RULES GOVERNING DESIGN CONTESTS	
<p><i>Article 77</i> <i>General provisions</i></p> <p>1. The rules for the organisation of design contests shall be in conformity with this Chapter and shall be communicated to those interested in participating in the contest.</p> <p>2. The admission of participants to design contests shall not be limited:</p> <p>(a) by reference to the territory or part of the territory of a Member State;</p> <p>(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.</p>	<p><i>Article 77</i> <i>General provisions</i></p> <p>as proposal</p>		

<i>Article 78 Scope</i>	<i>Article 78 Scope</i>	<i>Article 78 Scope</i>	
This Chapter shall apply to:	as proposal	This Chapter shall apply to:	
(a) design contests organised as part of a procedure leading to the award of a public service contract;	as proposal	(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.	as proposal	(b) design contests with prizes or payments to participants.	
In the cases referred to in point (a), 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.	as proposal	<p>In the cases referred to in point (a), 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.</p> <p>In the cases referred to in (b), 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 30(4) if the contracting authority has announced its intention to award such contract in the contest notice.</p>	

<i>Article 79 Notices</i>	<i>Article 79 Notices</i>	<i>Article 79 Notices</i>	
<p>1. Contracting authorities that intend to carry out a design contest shall make known their intention by means of a contest notice.</p> <p>Where they intend to award a subsequent service contract pursuant to Article 30(3), this shall be indicated in the contest notice.</p>	as proposal	<p>1. Contracting authorities that intend to carry out a design contest shall make known their intention by means of a contest notice.</p> <p>Where they intend to award a subsequent service contract pursuant to Article 30(4), this shall be indicated in the contest notice.</p>	
<p>2. Contracting authorities that have held a design contest shall send a notice of the results of the contest in accordance with Article 49 and shall be able to prove the date of dispatch.</p> <p>Where the release of information on the outcome of the contest would impede law enforcement, be contrary to the public interest, or 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.</p>	as proposal	<p>2. Contracting authorities that have held a design contest shall send a notice of the results of the contest in accordance with Article 49 and shall be able to prove the date of dispatch.</p> <p>Where the release of information on the outcome of the contest would impede law enforcement, be contrary to the public interest, or prejudice the legitimate commercial interests of a particular enterprise, whether public or private, or might prejudice fair competition between service providers,</p>	

		such information may be withheld from publication.	
<p>3. The notices referred to in paragraphs 1 and 2 of this Article shall be published in accordance with Article 49(2) to (6) and Article 50. They shall include the information set out in Annex VI part G in the format of the standard forms.</p> <p>The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.</p>	as proposal	<p>3. The notices referred to in paragraphs 1 and 2 of this Article shall be published in accordance with Article 49(2) to (6) and Article 50. They shall include the information set out respectively in Annex VI parts E and F in the format of the standard forms.</p> <p>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 91.</p>	
<i>Article 80</i> <i>Rules on the organisation of design contests and the selection of participants</i>	<i>Article 80</i> <i>Rules on the organisation of design contests and the selection of participants</i>	<i>Article 80</i> <i>Rules on the organisation of design contests and the selection of participants</i>	
<p>1. When organising design contests, contracting authorities shall apply procedures which are adapted to the provisions of this Directive.</p>	as proposal	<p>1. When organising design contests, contracting authorities shall apply procedures which are adapted to the provisions of Title I and this Chapter.</p>	

		1a. 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.	
2. 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.	as proposal	2. 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.	

<i>Article 81 Composition of the jury</i>	<i>Article 81 Composition of the jury</i>	<i>Article 81 Composition of the jury</i>	
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.	as proposal	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.	
<i>Article 82 Decisions of the jury</i>	<i>Article 82 Decisions of the jury</i>	<i>Article 82 Decisions of the jury</i>	
1. The jury shall be autonomous in its decisions or opinions.	as proposal	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.	as proposal	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	as proposal	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	

may need clarification.		any points that may need clarification.	
4. Anonymity shall be observed until the jury has reached its opinion or decision.	as proposal	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.	as proposal	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.	as proposal	6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.	

TITLE IV GOVERNANCE	TITLE IV GOVERNANCE	TITLE IV GOVERNANCE	
<i>Article 83 Enforcement</i>	<i>Article 83 Implementation and enforcement by competent authorities and structures</i>	<i>Article 83 Enforcement</i>	
In conformity with Council Directive 89/665/EEC, Member States shall ensure correct application of this Directive by effective, available and transparent mechanisms which complement the system in place for the review of decisions taken by contracting authorities.	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 or structures. They shall indicate to the Commission all authorities or structures competent for these tasks.	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 these tasks.	
	1a. Member States shall ensure that the application of public procurement rules is monitored including the implementation of projects co-financed by the Union with a view to detecting threats to the financial interests of the Union. This monitoring shall be used to prevent, detect and adequately report possible	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 [...]	

	<p>instances of procurement fraud, corruption, conflict of interest and other serious irregularities.</p> <p>Where monitoring authorities or structures identify specific violations or systemic problems, they shall ensure that those problems are referred to national auditing authorities, courts or tribunals or other appropriate authorities or structures, such as the ombudsman, national Parliaments or committees thereof.</p>	<p>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.</p>	
	<p>1b. The results of the monitoring activities pursuant to paragraph 1a shall be made available to the public through appropriate means of information. In particular, Member States shall publish, at least biennially, an overview of the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, hereunder possible cases of fraud and other illegal behaviours. Member States shall</p>	<p>3. The results of the monitoring activities pursuant to paragraph 2 shall be made available to the public through appropriate means of information.</p> <p>Member States shall transmit to the Commission every three years, a monitoring report covering, where applicable, information on the most frequent sources of wrong</p>	

⁷¹ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124 of 20.5.2003, p. 36.

	<p>transmit to the Commission on a biennial basis, a general overview of their national sustainable procurement policies, describing the relevant national action plans and initiatives and, where known, their practical implementation. They shall also indicate the success rate of SMEs in public procurement; where it is lower than 50 % in terms of values of contracts awarded to SMEs, Member States shall indicate whether any initiatives are in place to increase this success rate.</p> <p>On the basis of the data received, the Commission shall regularly issue a report on the implementation and best practices of such policies in the internal market.</p>	<p>application or of legal uncertainty, including possible structural or recurring problems in the application of the rules.</p> <p>On the basis of the data received, the Commission shall regularly issue a report on the implementation and best practices of such policies in the Internal Market.</p> <p>The Commission may, at most every three years, request Member States to provide information on the practical implementation of national strategic procurement policies, 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.</p> <p>For the purposes of this paragraph, SME shall be</p>	
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		understood as defined in Commission Recommendation 2003/361/EC⁷¹.	
	1c. Member States shall ensure that 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.	5. Member States shall ensure that guidance on the interpretation and application of the Union public procurement law is available to assist contracting authorities and economic operators in correctly applying the Union public procurement rules.	
	1d. 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 contact point for cooperation with the Commission as regards the application of Union law and the implementation of the budget from the Union on the basis of Article 17 TFEU and Article 317 TFEU.	6. 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.	

	<p>1e. 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:</p> <p>(a) 1 000 000 EUR in the case of public supply contracts or public service contracts;</p> <p>(b) 10 000 000 EUR in the case of public works contracts.</p>	<p>7. 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:</p> <p>(a) 1 000 000 EUR in the case of public supply contracts or public service contracts;</p> <p>(b) 10 000 000 EUR in the case of public works contracts.</p> <p>They shall grant access to these 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.</p>	
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<p style="text-align: center;"><i>Article 84</i> <i>Public oversight</i></p> <p>1. Member States shall appoint a single independent body responsible for the oversight and coordination of implementation activities (hereinafter 'the oversight body'). Member States shall inform the Commission of their designation.</p> <p>All contracting authorities shall be subject to such oversight.</p> <p>2. The competent authorities involved in the implementation activities shall be organised in such a manner that conflicts of interests are avoided. The system of public oversight shall be transparent. For this purpose, all guidance and opinion documents and an annual report illustrating the implementation and application of rules laid down in this Directive shall be published.</p> <p>The annual report shall include the following:</p> <p>(a) an indication of the success rate of small and medium-sized enterprises (SMEs) in public</p>	deleted	deleted	
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<p>procurement; where the percentage is lower than 50 % in terms of values of contracts awarded to SMEs, the report shall provide an analysis of the reasons therefore;</p> <p>(b) a global overview of the implementation of sustainable procurement policies, including on procedures taking into account considerations linked to the protection of the environment, social inclusion including accessibility for persons with disabilities, or fostering innovation;</p> <p>(c) information on the monitoring and follow-up of breaches to procurement rules affecting the budget of the Union in accordance with paragraphs 3 to 5 of the present article;</p> <p>(d) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those affecting projects cofinanced by the budget of the Union.</p>			
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<p>3. The oversight body shall be responsible for the following tasks:</p> <p>(a) monitoring the application of public procurement rules and the related practice by contracting authorities and in particular by central purchasing bodies;</p> <p>(b) providing legal advice to contracting authorities on the interpretation of public procurement rules and principles and on the application of public procurement rules in specific cases;</p> <p>(c) issuing own-initiative opinions and guidance on questions of general interest pertaining to the interpretation and application of public procurement rules, on recurring questions and on systemic difficulties related to the application of public procurement rules, in the light of the provisions of this Directive and of the relevant case-law of the Court of Justice of the European Union;</p> <p>(d) establishing and applying</p>			
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<p>comprehensive, actionable 'red flag' indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities;</p> <p>(e) drawing the attention of the national competent institutions, including auditing authorities, to specific violations detected and to systemic problems;</p> <p>(f) examining complaints from citizens and businesses on the application of public procurement rules in specific cases and transmitting the analysis to the competent contracting authorities, which shall have the obligation to take it into account in their decisions or, where the analysis is not followed, to explain the reasons for disregarding it;</p> <p>(g) monitoring the decisions taken by national courts and authorities following a ruling given by the Court of Justice of the European Union on the basis of Article 267 of the Treaty or findings of the</p>			
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<p>European Court of Auditors establishing violations of Union public procurement rules related to projects cofinanced by the Union; the oversight body shall report to the European Anti-Fraud Office any infringement to Union procurement procedures where these were related to contracts directly or indirectly funded by the European Union.</p> <p>The tasks referred to in point (e) shall be without prejudice to the exercise of rights of appeal under national law or under the system established on the basis of Directive 89/665/EEC.</p> <p>Member States shall empower the oversight body to seize the jurisdiction competent according to national law for the review of contracting authorities' decisions where it has detected a violation in the course of its monitoring and legal advising activity.</p> <p>4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the oversight</p>			
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<p>body shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.</p> <p>The Commission may in particular refer to the oversight body the treatment of individual cases where a contract is not yet concluded or a review procedure can still be carried out. It may also entrust the oversight body with the monitoring activities necessary to ensure the implementation of the measures to which Member States are committed in order to remedy a violation of Union public procurement rules and principles identified by the Commission.</p> <p>The Commission may require the oversight body to analyse alleged breaches to Union public procurement rules affecting</p>			
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<p>projects co-financed by the budget of the Union. The Commission may entrust the oversight body to follow-up certain cases and to ensure that the appropriate consequences of breaches to Union public procurement rules affecting projects co-financed are taken by the competent national authorities which will be obliged to follow its instructions.</p> <p>5. The investigation and enforcement activities carried out by the oversight body to ensure that contracting authorities' decisions comply with this Directive and the principles of the Treaty shall not replace or prejudice the institutional role of the Commission as guardian of the Treaty. When the Commission decides to refer the treatment of an individual case pursuant to paragraph 4, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.</p> <p>6. Contracting authorities shall transmit to the national oversight body the full text of all concluded contracts with a value equal to or</p>			
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<p>greater than</p> <p>(a) 1 000 000 EUR in the case of public supply contracts or public service contracts;</p> <p>(b) 10 000 000 EUR in the case of public works contracts.</p> <p>7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the oversight body shall, upon written request, give unrestricted and full direct access, free of charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.</p> <p>Access to the parts that may be released shall be given within a reasonable delay and no later than 45 days from the date of the request.</p>			
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<p>The applicants filing a request for access to a contract shall not need to show any direct or indirect interest related to that particular contract. The recipient of information should be allowed to make it public.</p> <p>8. A summary of all the activities carried out by the oversight body in accordance with paragraphs 1 to 7 shall be included in the annual report referred to in paragraph 2.</p>			
<p><i>Article 85</i> <i>Individual reports on procedures for the award of contracts</i></p>	<p><i>Article 85</i> <i>Individual reports on procedures for the award of contracts</i></p>	<p><i>Article 85</i> <i>Individual reports on procedures for the award of contracts</i></p>	
<p>For every contract or framework agreement, and every time a dynamic purchasing system is established, contracting authorities shall draw up a written report which shall include at least the following:</p>	<p>For all procurements with a value equal to or greater than the thresholds laid down in Article 4 of this Directive, contracting authorities shall draw up a written report which shall include at least the following:</p>	<p>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:</p>	

(a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;	(a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;	(a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;	
(b) the names of the successful candidates or tenderers and the reasons for their selection;	(b) where applicable, the results of the qualitative selection and/or reduction of numbers pursuant to Article 64 and 65, namely (i) the names of the selected candidates or tenderers and the reasons for their selection;	(b) where applicable, the results of the qualitative selection and/or reduction of numbers pursuant to Articles 64 and 65, namely: - names of the selected candidates or tenderers and the reasons for their selection; - the names of the candidates or tenderers rejected and the reasons for their rejection;	
(c) the names of the candidates or tenderers rejected and the reasons for their rejection;	(ii) the names of the candidates or tenderers rejected and the reasons for their rejection;		

(d) the reasons for the rejection of tenders found to be abnormally low;	(c) the reasons for the rejection of tenders found to be abnormally low;	(c) the reasons for the rejection of tenders found to be abnormally low;	
(e) 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;	(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 information on their subcontractors including their names, contact details and legal representatives	(d) the name of the successful tenderer and the reasons why its tender was selected;	
	(e) for competitive procedures with negotiations and competitive dialogues, the circumstances laid down in Article 24 which justify the use of this procedure;	(e) for competitive procedures with negotiation[...] and competitive dialogues, the circumstances laid down in Article 24 justifying the use of these procedures;	
(f) for negotiated procedures without prior publication, the circumstances referred to in Article 30 which justify the use of this procedure;	(f) for negotiated procedures without prior publication, the circumstances referred to in Article 30 which justify the use of this procedure;	(f) for negotiated procedures without prior publication, the circumstances referred to in Article 30 which justify the use of this procedure;	

(g) where necessary, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system	(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	(g) where necessary, 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 necessary, the reasons why other means of communication than electronic means for the e-submission have been used;	
(h) where applicable, conflicts of interests detected and subsequent measures taken.	(h) where applicable, conflicts of interests detected and subsequent measures taken.	(i) where applicable, conflicts of interests detected and subsequent measures taken.	
	To the extent that the contract award notice drawn up pursuant to Article 48 contains the information required in this paragraph, contracting authorities may refer to that notice.	This report shall not be required in respect of contracts based on framework agreements where these are concluded in accordance with Article 31(3) or Article 31(4)(a). To the extent that the contract award notice drawn up pursuant to Article 48 or Article 75(2)	

		contains the information required in this paragraph, contracting authorities may refer to that notice.	
The contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall document all stages in the procurement procedure, including all communications with economic operators and internal deliberations, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.	The 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 in the procurement procedure, on communications with economic operators, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.	2. The 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 at least for a period of three years from the date of award of the contract.	

The report, or its main elements, shall be communicated to the Commission or to the national oversight body where they so request.	The report, or its main elements, shall be communicated to the Commission or to the competent authorities or structures referred to in Article 83 where they so request.	3. The report, or its main elements, shall be communicated to the Commission or the national authorities, bodies or structures referred to in Article 83 where they so request.	
<i>Article 86</i> <i>National reporting and lists of contracting authorities</i>	<i>Article 86</i> <i>National reporting</i>	<i>Article 86</i> <i>Statistical information</i>	
1. The bodies established or appointed in accordance with Article 84 shall forward to the Commission an implementation and statistical report on each year, based on a standard form, not later than 31 October of the following year.	1. Member States shall forward to the Commission a statistical report on each year, based on a standard form, not later than 31 October of the following year.	1. The Commission shall review the quality and completeness of data that can be extracted from the notices, referred to in Articles 46, 47, 48, 75 and 79, which are published in accordance with Annex IX. Where the quality and completeness of the data referred to in the first subparagraph of this Article is not compliant with the obligations stipulated in Articles 46(1), 47, 48(1), 75(2) and 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.	
<p>2. The report referred to in paragraph 1 shall contain at least the following information:</p> <p>(a) a complete and up-to-date list of all central government authorities, sub-central contracting authorities and bodies governed by public law, including sub-central authorities and associations of contracting authorities awarding public contracts or framework agreements, indicating for each authority the unique identification number where such number is provided for in national legislation; this list shall be grouped by type of authority;</p> <p>(b) a complete and up-to-date list of all central purchasing bodies;</p> <p>(c) for all contracts above the thresholds laid down in Article</p>	<p>2. The report referred to in paragraph 1 shall contain at least the following information:</p> <p>(a) a list of all central government authorities, sub-central contracting authorities and bodies governed by public law, which have awarded public contracts or concluded framework agreements during the year concerned, indicating for each authority the unique identification number where such number is provided for in national legislation; this list shall be grouped by type of authority;</p> <p>(b) a list of all central purchasing bodies which have awarded public contracts or concluded framework agreements during the year concerned;</p> <p>(c) for all contracts above the thresholds laid down in Article 4 of this Directive the number and</p>	<p>2. Every three years, 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 of this Directive, indicating an estimation of the aggregated total value of such procurement during the period concerned. This estimation may in particular be based on data available under national publication requirements or on sample-based estimates.</p> <p>This report may be integrated in the report referred to in Article 83 paragraph 3.</p>	

<p>4 of this Directive:</p> <p>(i) the number and value of contracts awarded broken down for each type of authority by procedure and by works, supplies and services identified by division of the CPV nomenclature;</p> <p>(ii) where the contracts have been concluded under the negotiated procedure without prior publication, the data referred to in point (i) shall also be broken down according to the circumstances referred to in Article 30 and shall specify the number and value of contracts awarded, by Member State and third country of the successful contractor;</p> <p>(d) for all contracts which fall below the thresholds laid down in Article 4 of this Directive, but would be covered by this Directive if their value exceeded the threshold, the number and value of contracts awarded broken down by each</p>	<p>value of contracts awarded broken down for each type of authority by procedure and by works, supplies and services;</p>		
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type of authority.			
<p>3. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 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;</p> <p>The Commission may periodically publish the list of bodies governed by public law transmitted according to point (a) of paragraph 2 for information in the <i>Official Journal of the European Union</i>.</p>	<p>3. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 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;</p> <p>The Commission may periodically publish the list of bodies governed by public law transmitted according to point (a) of paragraph 2 for information in the Official Journal of the European Union.</p>	deleted	
<p>4. 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.</p>	<p>4. 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.</p>	deleted	

5. The Commission shall establish the standard form for the annual implementation and statistical report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.	5. The Commission shall establish the standard form for the annual statistical report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.	deleted	
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<p style="text-align: center;"><i>Article 87</i> <i>Assistance to contracting authorities and businesses</i></p> <p>1. Member States shall make available technical support structures in order to provide legal and economic advice, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and advice on individual questions.</p> <p>2. With a view to improving access to public procurement for economic operators, in particular SMEs, and in order to facilitate correct understanding of the provisions of this Directive, Member States shall ensure that appropriate assistance can be obtained, including by electronic means or using existing networks dedicated to business assistance.</p> <p>3. Specific administrative assistance shall be available to economic operators intending to participate in a procurement procedure in another Member State. Such assistance shall at least</p>	<p style="text-align: center;"><i>Article 87</i> <i>Assistance to contracting authorities</i></p> <p>Member States shall make available technical support structures in order to provide legal and economic information, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain technical assistance and information on individual questions, in particular in relation to provisions contained in Articles 54, 55 and 71.</p>	deleted	
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<p>cover administrative requirements in the Member State concerned, as well as possible obligations related to electronic procurement.</p> <p>Member States shall ensure that interested economic operators have easy access to appropriate information on the obligations relating to taxes, environmental protection, and to social and labour law obligations, which are in force in the Member State, in the region or locality where the works are to be carried out or the services are to be provided and which will be applicable to the works carried out on site or to the services provided during the performance of the contract.</p> <p>4. For the purposes of paragraphs 1, 2 and 3, Member States may appoint a single body or several bodies or administrative structures. Member States shall ensure due coordination between those bodies and structures.</p>			
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<i>Article 88 Administrative cooperation</i>	<i>Article 88 Administrative cooperation</i>	<i>Article 88 Administrative cooperation</i>	
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 40, 41, 42, 55, 57, 59, 60, 61, 63 and 69. They shall ensure the confidentiality of the information which they exchange.	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 40, 41, 42, 55, 57, 59, 60, 61, 63 and 69. They shall ensure the confidentiality of the information which they exchange.	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 40, 41, 42, 55, 56a , 57, 61, 63 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 legislation provided for in Directives 95/46/EC of the European Parliament and of the Council ⁷² and 2002/58/EC of the European Parliament and of the Council ⁷³ .	2. The competent authorities of all Member States concerned shall exchange information in compliance with personal data protection legislation provided for in Directives 95/46/EC of the European Parliament and of the Council ⁷⁴ and 2002/58/EC of the European Parliament and of the Council ⁷⁵ .	2. The competent authorities of all Member States concerned shall exchange information in compliance with personal data protection legislation provided for in Directives 95/46/EC of the European Parliament and of the Council ⁷⁶ and 2002/58/EC of	[

⁷² OJ L 281, 23.11.1995, p. 31.

⁷³ OJ L 201, 31.7.2002, p. 37.

⁷⁴ OJ L 281, 23.11.1995, p. 31.

⁷⁵ OJ L 201, 31.7.2002, p. 37.

		the European Parliament and of the Council ⁷⁷ .	
3. For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States, the oversight bodies and the Commission. Member States shall publish and regularly update the list of liaison points. The oversight body shall be in charge of the coordination of such liaison points.	deleted	Replaced by Recital 53a.]	
4. The exchange of information shall take place via the Internal Market Information system established pursuant to Regulation (EU) N° XXX/XXXX of the European Parliament and Council ⁷⁸ [proposal for a Regulation of the European Parliament and Council on the administrative cooperation through the Internal Market Information System ('the IMI Regulation') COM(2011) 522].	4. The exchange of information shall take place via the Internal Market Information system established pursuant to Regulation (EU) N° XXX/XXXX of the European Parliament and Council ⁷⁹ [proposal for a Regulation of the European Parliament and Council on the administrative cooperation through the Internal Market Information System ('the IMI Regulation') COM(2011) 522].	deleted	

⁷⁶ OJ L 281, 23.11.1995, p. 31.

⁷⁷ OJ L 201, 31.7.2002, p. 37.

⁷⁸ OJ L [...]

⁷⁹ OJ L [...]

Member States shall supply information requested by other Member States within the shortest possible period of time.	Member States shall supply information requested by other Member States within the shortest possible period of time.		
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TITLE V DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS	TITLE V DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS	TITLE V DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS	
<i>Article 89 Exercise of the delegation of powers</i>	<i>Article 89 Exercise of the delegation of powers</i>	<i>Article 89 Exercise of the delegation of powers</i>	
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	as proposal	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	
2. The delegation of power referred to in Articles 6, 13, 19, 20, 23, 54, 59, 67 and 86 shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of the present Directive].	as proposal	2. The delegation of power referred to in Articles 6, 13, 19, 20, 54 and 67 shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of the present Directive].	
3. The delegation of power referred to in Articles 6, 13, 19, 20, 23, 54, 59, 67 and 86 may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power	as proposal	3. The delegation of power referred to in Articles 6, 13, 19, 20, 54 and 67 may be revoked at any time by the European Parliament or by the Council. A revocation decision 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 <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.		specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> 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.	as proposal	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 this Article 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	as proposal	5. A delegated act adopted pursuant to this Article 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 initiative of the European Parliament or the Council.		the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.	
<i>Article 90 Urgency procedure</i>	<i>Article 90 Urgency procedure</i>	<i>Article 90 Urgency procedure</i>	
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.	as proposal	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 89(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 the Council.	as proposal	2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 89(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 the Council.	

<i>Article 91 Committee procedure</i>	<i>Article 91 Committee procedure</i>	<i>Article 91 Committee procedure</i>	
1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306/EEC ⁸⁰ . That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	as proposal	1. The Commission shall be assisted by the Advisory Committee on Public Procurement established by Council Decision 71/306/EEC ⁸¹ . That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	
2. Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.	as proposal	2. Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.	
<i>Article 92 Transposition</i>	<i>Article 92 Transposition</i>	<i>Article 92 Transposition and transitional provisions</i>	
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2014 at the latest. They shall forthwith communicate to the Commission the text of those provisions. When Member States adopt those	as proposal	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 months following the entry into force pursuant to Article 95 . They shall forthwith communicate to the	

⁸⁰ OJ L 185, 16.8.1971, p. 15.

⁸¹ OJ L 185, 16.8.1971, p. 15.

provisions, 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.		Commission the text of those provisions.	
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.	as proposal	<p>2. Notwithstanding paragraph 1, Member States may postpone the application of Article 19(1) until 54 months after the entry into force of this Directive, except where use of electronic means is mandatory pursuant to Articles 32, 33, 34, 35(4), 49(2) or 51.</p> <p>Notwithstanding paragraph 1, the application of Article 19(1) for central purchasing bodies pursuant to Articles 35(4) may be postponed by Member States until 36 months after the entry into force of this Directive.</p> <p>Where a Member State chooses to postpone the application of Article 19(1), that Member State shall</p>	

		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 19;	
		(b) post;	
		(c) fax;	
		(d) a combination of those means.	
		2a. Notwithstanding paragraph 1, Member States may postpone the application of Article 58(2) until [until 54 months after the entry into force of this Directive].	

		<p>3. When Member States adopt the measures referred to in paragraphs 1, 2 and 2a, 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.</p>	
		<p>4. 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.</p>	
<i>Article 93 Repeals</i>	<i>Article 93 Repeals</i>	<i>Article 93 Repeals</i>	
<p>Directive 2004/18/EC shall be repealed with effect from 30 June 2014.</p> <p>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 XVII.</p>	as proposal	<p>Directive 2004/18/EC shall be repealed with effect from 24 months following the entry into force pursuant to Article 95.</p> <p>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</p>	

		XVII.	
<i>Article 94 Review</i>	<i>Article 94 Review</i>	<i>Article 94 Review</i>	
<p>The Commission shall review the economic effects on the internal market resulting from the application of the thresholds set in Article 4 and report thereon to the European Parliament and the Council by 30 June 2017.</p> <p>In the event of any change to the threshold amounts applicable under the Agreement, the report shall, where appropriate, be followed by a legislative proposal amending the thresholds set out in this Directive.</p>	as proposal	<p>The Commission shall review 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 in Article 4 and report thereon to the European Parliament and the Council by [3 years later than the date provided for in Article 92(1)].</p> <p>In the event of any change to the threshold amounts applicable under the Agreement, the report shall, where appropriate, be followed by a legislative proposal amending the thresholds set out in this Directive.</p>	

<i>Article 95 Entry into force</i>	<i>Article 95 Entry into force</i>	<i>Article 95 Entry into force</i>	
This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	as proposal	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	
<i>Article 96 Addressees</i>	<i>Article 96 Addressees</i>	<i>Article 96 Addressees</i>	
<p>This Directive is addressed to the Member States.</p> <p>Done at Brussels,</p> <p><i>For the European Parliament</i></p> <p><i>The President</i></p>	as proposal	<p>This Directive is addressed to the Member States.</p> <p>Done at Brussels,</p> <p><i>For the European Parliament</i></p> <p><i>The President</i></p>	

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Proposal for a Directive of the European Parliament and of the Council on public procurement

Annex VI - Part H

COMMISSION PROPOSAL

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, *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. *Where appropriate, email or internet
address at which the specifications and any
supporting documents will be available.*

EP IMCO AMENDMENTS

PART H

INFORMATION TO BE INCLUDED
IN ***PRIOR INFORMATION 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.

deleted

COUNCIL GENERAL APPROACH

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.

3. *Type of contracting authority and main activity exercised.*

deleted

4. *Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.*

deleted

5. CPV Nomenclature reference No(s); *where the contract is divided into lots, this information shall be provided for each lot.*

2. Brief description of the contract in question including the estimated total value of the contract and CPV Nomenclature reference No(s).

2. 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.

3. **Brief description of the contract in question including CPV Nomenclature reference No(s).**

6. 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

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

7. *Description of the services and where applicable, incidental works and supplies to be procured*

b) time-frame for delivery or provision of goods, works or services and duration of the contract.

8. *Estimated total value of contract(s); where the contract is divided into lots, this information shall be provided for each lot.*

deleted

9. Conditions for participation, including

(a) where appropriate, indication whether the 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 execution of the service is reserved by law, regulation or administrative provision to a particular profession.

10. Time limit(s) for contacting the contracting authority in view of participation.

11. Brief description of the main features of the award procedure to be applied.

12. Any other relevant information.

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.

deleted

d) Brief description of the main features of the award procedure to be applied.

deleted

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.

Proposal for a Directive of the European Parliament and of the Council on public procurement

Annex VIII

COMISSION PROPOSAL

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 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

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Annex VIII

Definition of certain technical specifications

For the purposes of this Directive:

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(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

COUNCIL GENERAL APPROACH

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

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;

production processes, methods, at any stage of the life cycle of the works;; 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, methods at any stage of the life cycle of the supply or service and conformity assessment procedures;

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

(2) "standard" means a technical specification approved by a recognised **standardising body** for repeated or continuous **application, compliance** with which **is** not compulsory and which falls into one of the following categories:

(a) international standard: a standard adopted by an international standards organisation and made available to the general public,

(b) European standard: a standard adopted by a European standards organisation and made available to the general public,

(c) national standard: a standard adopted by a national standards organisation and made available to the general public;

(3) "European technical approval" means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body

(2) "standard" means a technical specification **established by consensus and** approved by a recognised **standardisation organisation** for repeated or continuous **use** with which **compliance** not compulsory and which falls into one of the following categories

(a) international standard: a standard adopted by an international standards organisation and made available to the general public,

(b) European standard: a standard adopted by a European standards organisation and made available to the general public,

(c) national standard: a standard adopted by a national standards organisation and made available to the general public;

(3) "European technical approval" means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European

supply or service and conformity assessment procedures;

(2) (a) "standard" means a technical specification approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

(i) international standard: a standard adopted by an international standards organisation and made available to the general public,

(ii) European standard: a standard adopted by a European standards organisation and made available to the general public,

(iii) national standard: a standard adopted by a national standards 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 Regulation (EU) No 305/2011 of the European Parliament and of the Council of**

designated for this purpose by the Member State;

(4) "Common technical specification" means a technical specification laid down in accordance with a procedure recognised by the Member States or in accordance with Articles 9 and 10 of Parliament and Council Regulation [XXX] on European standardisation [and 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, 2009/105/EC and 2009/23/EC of the European Parliament and the Council] which has been published in the *Official Journal of the European Union*;

(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.

technical approvals are issued by an approval body designated for this purpose by the Member State;

(4) "Common technical specification" means a technical specification laid down in accordance with a procedure recognised by the Member States or, in ***the field of information and communication technologies***, in accordance with Articles 9 and 10 of Parliament and Council Regulation [XXX] on European standardisation [and 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, 2009/105/EC and 2009/23/EC of the European Parliament and the Council] which has been published in the *Official Journal of the European Union*;

(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.

9 March 2011 laying down harmonised conditions for the marketing of construction products⁸² ;

(4) "Common technical specification" means a technical specification laid down in accordance with a procedure recognised by the Member States [or in accordance with Articles 9 and 10 Regulation (EU) **.../2012 of the European Parliament and the Council** on European standardisation which has been published in the *Official Journal of the European Union*.]

(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

⁸² OJ L 88, 4.4.2011, p. 5

Proposal for a Directive of the European Parliament and of the Council on public procurement

Annex XIII

COMISSION PROPOSAL

The European Procurement Passport contains the following particulars:

(a) Identification of the economic operator;

(b) Certification that the economic operator has not been the subject of a conviction by final judgment for one of the reasons listed in Article 55(1);

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The European Procurement Passport contains the following particulars:

(a) Identification of the economic operator, *company registration number, name, address, bank*;

(aa) Description of the economic operator, in particular year of establishment, corporate form, owner(s) of the economic operator, members of the board, industry code, short description of the main services and/or main products sold by the economic operator;

(b) Certification that the economic operator has not been the subject of a conviction by final judgment for one of the reasons listed in Article 55(1);

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(c) Certification that the economic operator is not the subject of insolvency or winding-up proceedings as referred to in Article 55(3)(b) ;

(d) Where applicable, certification of enrolment in a professional or trade register prescribed in the Member State of establishment, as referred to in Article 56(2);

(ca) Certification that the economic operator has fulfilled its obligations in relation to payment of taxes or social security systems according to individual Member States laws as referred to in Article 55(2);

(c) Certification that the economic operator is not the subject of insolvency or winding-up proceedings as referred to in Article 55(3)(b);

(ca) A declaration on honour, in accordance with Article 22;

(d) Where applicable, certification of enrolment in a professional or trade register prescribed in the Member State of establishment, as referred to in Article 56(2);

(da) Key economic indicators of the economic operator for the last three accounting years or, in the case of economic operators which have been in business for less than three years, since the date of commencement of business: gross sales, EBIT and solvency ratio;

(db) Key organisational indicators of the economic operator, or in the case of economic operators which have been in business for less than three years, since the date of

commencement of business: average number of employees during the last three accounting years and number of employees by the end of the last accounting year;

(e) Where applicable, certification that the economic operator possesses a particular authorisation or is member of a particular organisation within the meaning of Article 56(2);

(f) Indication of the period of validity of the Passport, which shall be not less than **6 months**.

(e) Where applicable, certification that the economic operator possesses a particular authorisation or is member of a particular organisation within the meaning of Article 56(2);

(f) Indication of the period of validity of the Passport, which shall be not less than **12 months**.

Proposal for a Directive of the European Parliament and of the Council on public procurement

Annex XVI

COMISSION PROPOSAL

CPV Code	Description
79611000-0 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)	Health <i>and</i> social services

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CPV Code	Description
79611000-0 75200000-8; 75231200-6; 75231240-8 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2) <i>and</i> 98133100-5 and 98200000-5	Health, social <i>and</i> <i>related</i> services

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	Health, social and related services

75121000-0,
75122000-7,
75124000-1; from
79995000-5 to
79995200-7; from
80100000-5 to
80660000-8
(except
80533000-9,
80533100-0,
80533200-1);
from 92000000-1
to 92700000-8
(except
92230000-2,
92231000-9,
92232000-6)

Administrative
educational,
healthcare and
cultural services

75121000-0,
75122000-7,
75124000-1; from
79995000-5 to
79995200-7; from
80100000-5 to
80660000-8
(except
80533000-9,
80533100-0,
80533200-1);
from 92000000-1
to 92700000-8
(except
92230000-2,
92231000-9,
92232000-6)

Administrative
educational,
healthcare and
cultural services

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]
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

Administrative
social,
educational,
healthcare and
cultural services

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]*

75300000-9	Compulsory social security services	75300000-9	Compulsory social security services ⁸³	75300000-9	Compulsory social security services ⁸⁴
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services	75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services	75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services

⁸³ [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.

⁸⁴ 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.

98000000-3	Other community, social and personal services	98000000-3 , 55521100-9	Other community, social and personal 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. Religious services
				98131000-0	
98120000-0	Services furnished by trade unions	98120000-0	Services furnished by trade unions		
98131000-0	Religious services	98131000-0 <i>From 79600000-0 to 79635000-4 (except for 79611000-0, 79632000-3, 79633000-0), and from 98500000-8 to 98514000-9</i>	Religious services <i>Personnel placement and supply services apart from employment contracts</i>		

From 80100000-5 to 80660000-8 (except 80533000- 9, 80533100-0, 80533200-1)

from 79100000-5 to 79140000-7, including

Education and vocational education services

Legal services to the extent that they are not excluded under Article 10(c)

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