

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on procurement by entities operating in the water, energy, transport and postal services sectors

2011/0439 (COD)

COMMISSION PROPOSAL	EP IMCO AMENDMENTS¹	COUNCIL GENERAL APPROACH²	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
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¹ Based on final report adopted in IMCO on 24 January 2013 (A7-0034/2013)..

² Based on document 18011/12

<p>(1) In the light of the results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation³ it appears appropriate to maintain rules on procurement by entities operating in the water, energy, transport and postal services sectors, since national authorities continue to be able to influence the behaviour of those entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies. Another reason to continue to regulate procurement in those sectors is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the service concerned.</p>	<p>(1) In the light of the results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation it appears appropriate to maintain rules on procurement by entities operating in the water, energy, transport and postal services sectors, since national authorities continue to be able to influence the behaviour of those entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies. Another reason to continue to regulate procurement in those sectors is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the service concerned.</p>	<p>(1) In the light of the results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation it appears appropriate to maintain rules on procurement by entities operating in the water, energy, transport and postal services sectors, since national authorities continue to be able to influence the behaviour of those entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies.</p> <p>Another reason to continue to regulate procurement in those sectors is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the service concerned.</p>	<p>(1) In the light of the results of the Evaluation on the Impact and Effectiveness of EU Public Procurement Legislation it appears appropriate to maintain rules on procurement by entities operating in the water, energy, transport and postal services sectors, since national authorities continue to be able to influence the behaviour of those entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies.</p> <p>Another reason to continue to regulate procurement in those sectors is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the service concerned.</p>
<p>(2) In order to guarantee the opening up to competition of procurement by entities operating in the water, energy, transport and postal services sectors, provisions should be drawn</p>	<p>(2) In order to guarantee the opening up to competition of procurement by entities operating in the water, energy, transport and postal services sectors, provisions should be drawn up</p>	<p>(2) In order to guarantee the opening up to competition of procurement by entities operating in the water, energy, transport and postal services sectors, provisions</p>	<p>(2) In order to guarantee the opening up to competition of procurement by entities operating in the water, energy, transport and postal services sectors, provisions</p>

³ SEC(2011) 853 Final of 27.6.2011

<p>up coordinating procurement procedures in respect of contracts above a certain value. Such coordination is needed to ensure the effect of the principles of the Treaty on the Functioning of the European Union and in particular the free movement of goods, the freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. In view of the nature of the sectors affected by such coordination, the latter should, while safeguarding the application of those principles, establish a framework for sound commercial practice and should allow maximum flexibility.</p>	<p>coordinating procurement procedures in respect of contracts above a certain value. Such coordination is needed to ensure the effect of the principles of the Treaty on the Functioning of the European Union and in particular the free movement of goods, the freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. In view of the nature of the sectors affected by such coordination, the latter should, while safeguarding the application of those principles, establish a framework for sound commercial practice and should allow maximum flexibility <i>at every level of the public procurement procedure, particularly favouring small and medium-sized enterprises. Public procurement rules have to respect the distribution of competences as enshrined in Article 14 TFEU and in Protocol (No 26) on Services of General Interest. The application of those rules should not interfere with the freedom of public authorities to decide how they carry out their public service tasks. [Am. 1]</i></p>	<p>should be drawn up coordinating procurement procedures in respect of contracts above a certain value. Such coordination is needed to ensure the effect of the principles of the Treaty on the Functioning of the European Union and in particular the free movement of goods, the freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. In view of the nature of the sectors affected by such coordination, the latter should, while safeguarding the application of those principles, establish a framework for sound commercial practice and should allow maximum flexibility.</p>	<p>should be drawn up coordinating procurement procedures in respect of contracts above a certain value. Such coordination is needed to ensure the effect of the principles of the Treaty on the Functioning of the European Union and in particular the free movement of goods, the freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. In view of the nature of the sectors affected by such coordination, the latter should, while safeguarding the application of those principles, establish a framework for sound commercial practice and should allow maximum flexibility.</p>
<p>(3) For procurement the value of which is lower than the thresholds</p>	<p>(3) For procurement the value of which is lower than the thresholds triggering</p>	<p>(3) For procurement the value of which is lower than the thresholds</p>	<p>(3) For procurement the value of which is lower than the thresholds</p>

<p>triggering the application of the provisions of Union coordination, it is advisable to recall the case-law developed by the Court of Justice according to which the rules and principles of the Treaty apply.</p>	<p>the application of the provisions of Union coordination, it is advisable to recall the case-law developed by the Court of Justice according to which the rules and principles of the Treaty apply.</p>	<p>triggering the application of the provisions of Union coordination, it is advisable to recall the case-law developed by the Court of Justice according to which the rules and principles of the Treaty apply.</p>	<p>triggering the application of the provisions of Union coordination, it is advisable to recall the case-law developed by the Court of Justice according to which the rules and principles of the Treaty apply.</p>
<p>(4) Public procurement plays a key role in the Europe 2020 strategy⁴ 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 sectors⁵ 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 contracts⁶ have to be revised</p>	<p>(4) 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</p>	<p>(4) Public procurement plays a key role in the Europe 2020 strategy⁷ 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 sectors⁸ 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</p>	<p>(4) Public procurement plays a key role in the Europe 2020 strategy¹⁰ 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 sectors¹¹ 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</p>

4 COM(2010) 2020 final, 3.3-2010.

5 OJ L 134, 30.4.2004, p. 1.

6 OJ L 134, 30.4.2004, p. 114.

7 COM(2010) 2020 final, 3.3-2010.

<p>and modernised in order to increase the efficiency of public spending, facilitating in particular 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.</p>	<p>spending, <i>ensure value for money, facilitate equal access and fair participation of small and medium-sized enterprises and craftsmen</i> in public procurement, <i>both at local and Union-wide level</i>, and enable procurers to make better use of public procurement in support of <i>sustainable production and consumption</i>. 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. [Am. 2]</p>	<p>service contracts⁹ have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular 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.</p>	<p>service contracts¹² have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular 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.</p>
	<p><i>(4a) The internal market and international markets are increasingly interlinked, therefore Union values, such as transparency, a principled stance against corruption, the principle of reciprocity and the advancement of social and human rights should be appropriately promoted in procurement policies.</i></p>		<p>(4a)When implementing this Directive, the United Nations Convention on the Rights of Persons with Disabilities¹³ should be taken into account, in particular in the connection with the choice of means of communications, technical specifications, award criteria and contract performance conditions.</p>

8 OJ L 134, 30.4.2004, p. 1.

10 COM(2010) 2020 final, 3.3-2010.

11 OJ L 134, 30.4.2004, p. 1.

9 OJ L 134, 30.4.2004, p. 114.

12 OJ L 134, 30.4.2004, p. 114.

¹³ Approved by Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L 23, 27.1.2010, p. 35).

	[Am. 3]		
	<i>(4b) It is also appropriate to recall that this Directive should neither affect the social security legislation of the Member States nor should it deal with the liberalisation of services of general economic interest, reserved to public or private entities, or with the privatisation of public entities providing services. It should equally be recalled that Member States are free to organise the provision of compulsory social services or of other services such as postal services either as services of general economic interest or as non-economic services of general interest or as a mixture thereof. It is appropriate to clarify that non-economic services of general interest should not fall within the scope of this Directive. [Am. 4]</i>		
(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 entities may contribute to the protection of the environment and the promotion of sustainable	(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 entities may contribute to the protection of the environment and the promotion of sustainable development, whilst	--- [...]	

<p>development, whilst ensuring that they can obtain the best value for money for their contracts.</p>	<p>ensuring that they can obtain the best value for money for their contracts. [Am. 5]</p>		
<p>(6) It is appropriate that the notion of procurement or the definition of what constitutes a single procurement are as close as possible to those applied pursuant to Directive [...] of the European Parliament and of the Council of [...] on public procurement¹⁴, having due regard for the specificities of the sectors covered by this Directive. 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. Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting entity, 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 narrow time frame.</p>	<p>(6) It is appropriate that the notion of procurement or the definition of what constitutes a single procurement are as close as possible to those applied pursuant to Directive [...] of the European Parliament and of the Council of [...] on public procurement, having due regard for the specificities of the sectors covered by this Directive. 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. Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting entity, 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 narrow time frame. [Am. 6]</p>	<p>(6) It is appropriate that the notion of procurement [...] is as close as possible to that applied pursuant to Directive of the European Parliament and of the Council of ...on public procurement]¹⁵, having due regard for the specificities of the sectors covered by this Directive. [...]</p>	<p>(6) It is appropriate that the notion of procurement is as close as possible to that applied pursuant to Directive of the European Parliament and of the Council of ...on public procurement]¹⁶, having due regard for the specificities of the sectors covered by this Directive.</p>

¹⁴ See p. [] of this Official Journal.

¹⁵ See p. [] of this Official Journal.

¹⁶ See p. [] of this Official Journal.

<p>NB! Utilities Directive: “means other than procurement within the meaning of Article 1(2)”;</p> <p>Classic (Recital 3a): “by means other than public contracts within the meaning of Article 2(7)”.</p> <p>As this does not entail any difference as to substance and “by means other than works, supplies or services contracts within the meaning of Article 2(7)” seems somewhat heavy, it is proposed to maintain the difference.</p>		<p>(6a) It should be recalled that nothing in this Directive obliges Member States to contract out or externalise the provision of services that they wish to provide themselves or to organise by means other than procurement within the meaning of Article 1(2). The provision of 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 the provision of certain services to the community, such as the supply of drinking water.</p>	<p>(6a) It should be recalled that nothing in this Directive obliges Member States to contract out or externalise the provision of services that they wish to provide themselves or to organise by means other than procurement within the meaning of Article 1(2). The provision of 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 the provision of certain services to the community, such as the supply of drinking water.</p>
		<p>(6aa) 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</p>	<p>(6b) 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</p>

		<p>services either as services of general economic interest or as non-economic services of general interest or as a mixture thereof. It is appropriate to clarify that non-economic services of general interest should not fall within the scope of this Directive.</p>	<p>of general economic interest or as non-economic services of general interest or as a mixture thereof. It is appropriate to clarify that non-economic services of general interest should not fall within the scope of this Directive.</p>
			<p>(6c) It should finally be recalled that this Directive is without prejudice to the freedom of national, regional and local authorities to define, in conformity with Union law, services of general economic interest, their scope and the characteristics of the service to be provided, including any conditions regarding the quality of the service, in order to pursue its public policy objectives. It should also be without prejudice to the power of national, regional and local authorities to provide, commission and finance services of general economic interest in accordance with Article 14 TFEU and Protocol No 26 annexed to the Treaties. In addition, this Directive does not deal with the funding of services of general economic interest or with systems of aids granted by Member States, in particular in the social field, in</p>

			accordance with Union rules on competition.
		<p>(6b) A contract shall be deemed to be a works contract only if its subject matter specifically covers the execution of activities listed in Annex I, even if the contract covers the provision of other services necessary for the execution of such activities. Service contracts, in particular in the sphere of property management services, may, in certain circumstances, include works. However, 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 service contract as a works contract.</p> <p>However, in view of the diversity of works contracts, contracting entities should be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. It is not the intention of this Directive to prescribe either</p>	<p>(6bd) A contract should be deemed to be a works contract only if its subject matter specifically covers the execution of activities listed in Annex I, even if the contract covers the provision of other services necessary for the execution of such activities. Service contracts, in particular in the sphere of property management services, may, in certain circumstances, include works.</p> <p>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 service contract as a works contract.</p> <p>However, in view of the diversity of works contracts, contracting entities should be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. It is not the intention of this Directive to prescribe either</p>

		<p>joint or separate contract awards.</p> <p>(6c) 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.</p>	<p>joint or separate contract awards.</p> <p>(6ee) The realisation of a work corresponding to the requirements specified by a contracting <u>entity</u> requires that the <u>entity</u> 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. <u>Whether the contractor realises all or part of the work by his own means or ensures their realisation by other means should not change the classification of the contract as a works contract, as long as the contractor assumes a direct or indirect obligation that is legally enforceable to ensure that the works will be realised.</u></p>
		<p>(6d) 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</p>	<p>(6f) 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</p>

		jurisprudence as a key to the understanding of the definition itself without the intention to alter the understanding of the concept as elaborated by the jurisprudence.	key to the understanding of the 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. 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.	For that purpose, it should be clarified that a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity should not be considered as being a "body governed by public law" since the needs in the general interest, that it has been set up to meet or been given the task of meeting, can be deemed to have an industrial or commercial character. Similarly, the condition relating to the origin of the funding of the body considered, has also been examined 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.
		(6e) In the case of mixed contracts, the applicable rules	(6e) In the case of mixed contracts, the applicable rules

		<p>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 entities 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 entity to regard the various aspects making up a mixed contract as indivisible should not be sufficient, but should be supported by objective evidence capable of justifying them and of establishing the need to conclude a single contract. Such a justified need to conclude a single contract could for instance be present in case of the construction of one single building, a part of which to be used directly by the contracting entity concerned and another part to be operated on a concessions basis, for instance to provide</p>	<p>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 entities 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 entity to regard the various aspects making up a mixed contract as indivisible should not be sufficient, but should be supported by objective evidence capable of justifying them and of establishing the need to conclude a single contract. Such a justified need to conclude a single contract could for instance be present in case of the construction of one single building, a part of which to be used directly by the contracting entity concerned and another part to be operated on a concessions basis, for instance to provide parking facilities to the public. It</p>
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		parking facilities to the public.	<u>should be clarified that the need to conclude a single contract may be due to reasons both of a technical nature and of an economical nature.</u>
		(6f) In the case of mixed contracts, which can be separated, contracting entities 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 entities choose to include other elements in the procurement, whatever their value and whatever the legal regime the added elements would otherwise have been subject to, the main principle should be that where a contract should be awarded pursuant to the provisions of this Directive, if awarded on its own, then this Directive should continue to apply to the entire mixed contract.	(6f) In the case of mixed contracts, which can be separated, contracting entities are, of course, always free to award separate contracts for the separate parts of the mixed contract, in which case the provisions applicable to each separate part should be determined exclusively in function of the characteristics of that specific contract. On the other hand, where contracting entities choose to include other elements in the procurement, whatever their value and whatever the legal regime the added elements would otherwise have been subject to, the main principle should be that where a contract should be awarded pursuant to the provisions of this Directive, if awarded on its own, then this Directive should continue to apply to the entire mixed contract.
		(6g) However, special provisions should be foreseen for mixed contracts involving defence or security aspects or parts not	(6g) However, special provisions should be foreseen for mixed contracts involving defence or security aspects or parts not falling

		<p>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.</p>	<p>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. <u>It should be clarified that contracting entities should not be prevented from choosing to apply this Directive to certain mixed contracts instead of applying Directive 2009/81/EC.</u></p>
		<p>(6h) Furthermore, contracts may be awarded for the purpose of meeting the requirements of several activities, possibly subject to different legal regimes. It should be clarified that the legal regime applicable to a single contract intended to cover several activities should be subject to the rules applicable to the activity for which it is principally intended. Determination of the activity for which the contract is principally intended may be based on an analysis of the requirements which the specific contract must meet, carried out by the</p>	<p>(6h) Furthermore, contracts may be awarded for the purpose of meeting the requirements of several activities, possibly subject to different legal regimes. It should be clarified that the legal regime applicable to a single contract intended to cover several activities should be subject to the rules applicable to the activity for which it is principally intended. Determination of the activity for which the contract is principally intended may be based on an analysis of the requirements which the specific contract must meet, carried out by the contracting</p>

		<p>contracting entity for the purposes of estimating the contract value and drawing up the procurement documents. In certain cases, such as the purchase of a single piece of equipment for the pursuit of activities for which information allowing an estimation of the respective rates of use would be unavailable, it might be objectively impossible to determine for which activity the contract is principally intended. The rules applicable to such cases should be indicated.</p>	<p>entity for the purposes of estimating the contract value and drawing up the procurement documents. In certain cases, such as the purchase of a single piece of equipment for the pursuit of activities for which information allowing an estimation of the respective rates of use would be unavailable, it might be objectively impossible to determine for which activity the contract is principally intended. The rules applicable to such cases should be indicated.</p>
		<p>(6i) 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</p>	<p>(6i) 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</p>

		<p>economic operator, whether or not they are "legal persons" in any and all relations.</p>	<p>operator, whether or not they are "legal persons" in any and all relations.</p>
<p>Aligned on CL Rec 4h</p>			<p>(6j) It should be clarified that groups of economic operators, including where they have come together in the form of a temporary association, may participate in award procedures without it being necessary for them to take on a specific legal form. To the extent this is necessary, for instance where joint and several liability is required, a specific form may be required where they are awarded the contract.</p> <p>It should also be clarified that contracting entities should be able to set out explicitly how groups of economic operators are to meet the criteria and requirements for qualification and qualitative selection set out in Articles 71 to 75 which are required of economic operators participating on their own.</p> <p>Performance of contracts by groups of economic operators may necessitate setting conditions, which are not imposed on individual participants. Such conditions, which should be justified by objective reasons and proportionate, could for</p>

			instance include requiring the appointment of a joint representation or a lead partner for the purposes of the procurement procedure or requiring information on their constitution.
(7) To ensure a real opening up of the market and a fair balance in the application of procurement rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty on the Functioning of the European Union, that the rules governing the system of property ownership in Member States are not prejudiced.	(7) To ensure a real opening up of the market and a fair balance in the application of procurement rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty on the Functioning of the European Union, that the rules governing the system of property ownership in Member States are not prejudiced.	(7) To ensure a real opening up of the market and a fair balance in the application of procurement rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty on the Functioning of the European Union, that the rules governing the system of property ownership in Member States are not prejudiced.	(7) To ensure a real opening up of the market and a fair balance in the application of procurement rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty on the Functioning of the European Union, that the rules governing the system of property ownership in Member States are not prejudiced.
(8) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting authorities nor public undertakings within the meaning of this Directive are subject to its provisions only to the extent	(8) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting authorities nor public undertakings within the meaning of this Directive are subject to its provisions only to the extent that they exercise one of the	(8) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting authorities nor public undertakings within the meaning of this Directive are subject to its provisions only to the extent	(8) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting authorities nor public undertakings within the meaning of this Directive are subject to its provisions only to the extent

<p>that they exercise one of the activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive. This legislation should include Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas¹⁷, Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity¹⁸, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service¹⁹, Directive</p>	<p>activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive. This legislation should include Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, Directive 94/22/EC of the European Parliament and of the Council of 20 May 1994 on the conditions for granting and using authorisations for</p>	<p>that they exercise one of the activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive.</p> <p>This legislation should include Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC²², Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC²³, Directive 97/67/EC of the European Parliament and of the Council of 15</p>	<p>that they exercise one of the activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive.</p> <p>This legislation should include Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC²⁷, Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC²⁸, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on</p>
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¹⁷ OJ L 204, 21.7.1998, p. 1
¹⁸ OJ L 27, 30.1.1997, p. 20.
¹⁹ OJ L 15, 21.1.1998, p. 14.
²² OJ L 211, 14.8.2009, p. 94

<p>94/22/EC of the European Parliament and of the Council of 20 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons²⁰ and 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 1107/70²¹.</p>	<p>the prospection, exploration and production of hydrocarbons and 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.</p>	<p>December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service²⁴, Directive 94/22/EC of the European Parliament and of the Council of 20 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons²⁵ and 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 1107/70²⁶.</p> <p>It should also be clarified that this</p>	<p>common rules for the development of the internal market of Community postal services and the improvement of quality of service²⁹, Directive 94/22/EC of the European Parliament and of the Council of 20 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons³⁰ and 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 1107/70³¹.</p> <p>It should also be clarified that this list of legislation is not exhaustive</p>
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²³ OJ L 211, 14.8.2009, p. 55
²⁷ OJ L 211, 14.8.2009, p. 94
²⁸ OJ L 211, 14.8.2009, p. 55
²⁰ OJ L 164, 30.6.1994, p. 3.
²¹ OJ L 315, 3.12.2007, p. 1.
²⁴ OJ L 15, 21.1.1998, p. 14.
²⁵ OJ L 164, 30.6.1994, p. 3.
²⁶ OJ L 315, 3.12.2007, p. 1.
²⁹ OJ L 15, 21.1.1998, p. 14.
³⁰ OJ L 164, 30.6.1994, p. 3.
³¹ OJ L 315, 3.12.2007, p. 1.

		<p>list of legislation is not exhaustive and that rights in any form, including by way of acts of concession, which have been granted by means of other procedures based on objective criteria and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of defining the scope of this Directive rationae personae. The concept of exclusive rights should also be used in the context of determining whether use of a negotiated procedure without prior call for competition would be justified because the works, supplies or services can be supplied only by a particular economic operator because of the protection of certain exclusive rights.</p> <p>However, bearing in mind the different ratio legis behind these provisions, it should be clarified that the notion of exclusive rights does not need to have the same meaning in the two contexts. It should thus be clarified that an entity, which has won the exclusive right to provide a given service in a given geographic area</p>	<p>and that rights in any form, including by way of acts of concession, which have been granted by means of other procedures based on objective criteria and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of defining the scope of this Directive rationae personae. The concept of exclusive rights should also be used in the context of determining whether use of a negotiated procedure without prior call for competition would be justified because the works, supplies or services can be supplied only by a particular economic operator because of the protection of certain exclusive rights.</p> <p>However, bearing in mind the different ratio legis behind these provisions, it should be clarified that the notion of exclusive rights does not need to have the same meaning in the two contexts. It should thus be clarified that an entity, which has won the exclusive right to provide a given service in a given geographic area following a procedure based on objective</p>
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		<p>following a procedure based on objective criteria for which adequate transparency has been ensured would not, if a private body, be a contracting entity itself, but would, nevertheless, be the only entity that could provide the service concerned in that area.</p>	<p>criteria for which adequate transparency has been ensured would not, if a private body, be a contracting entity itself, but would, nevertheless, be the only entity that could provide the service concerned in that area.</p>
			<p>(8aaa) Certain entities are active in the fields of production, transmission and/or distribution of both heat and cooling. There may be some uncertainty as to which rules apply to respectively heat and cooling related activities. It should therefore be clarified that contracting authorities, public undertakings and private companies, which are active in the heating sector are subject to this Directive; however, in the case of private undertakings on the additional condition of operating on the basis of special or exclusive rights. On the other hand, contracting authorities operating in the cooling field are subject to the rules of [Directive 2004/18/EC], whereas public undertakings and private undertakings, irrespectively of whether these latter operate on the basis of special or exclusive rights,</p>

			are not subject to procurement rules. It should finally be clarified that contracts awarded for the pursuit of both heating and cooling contracts should be examined under the provisions on contracts for the pursuit of several activities to determine which procurement rules, if any, will govern their award.
			(8aa) Before envisaging any change to the scope of the Directives for this sector, the situation of the cooling sector should be examined in order to obtain sufficient information, in particular in respect of the competitive situation, the degree of cross-border procurement and the views of stakeholders. Given that the application of the Concessions Directive to this sector could have a substantial impact in terms of market-opening, it would be appropriate to conduct the examination when assessing the impact of the Concessions Directive.
		(8a) Without in any way extending the scope of the Directive, it should be clarified that production and wholesale of electricity are covered when the	(8a) Without in any way extending the scope of the Directive, it should be clarified that production, wholesale and retail sale of electricity are covered

		Directive refers to the supply of electricity.	when the Directive refers to the supply of electricity.
<p>(9) Contracting entities that operate in the drinking water sector may also deal with other activities relating to water, such as projects in the field of hydraulic engineering, irrigation, land drainage or the disposal and treatment of sewage. In such case, contracting entities should be able to apply the procurement procedures provided for in this Directive in respect of all their activities relating to water, whichever part of the "water cycle" is concerned. However, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area in which it will be used.</p>	<p>(9) Contracting entities that operate in the drinking water sector may also deal with other activities relating to water, such as projects in the field of hydraulic engineering, irrigation, land drainage or the disposal and treatment of sewage. In such case, contracting entities should be able to apply the procurement procedures provided for in this Directive in respect of all their activities relating to water, whichever part of the "water cycle" is concerned. However, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area in which it will be used.</p>	<p>(9) Contracting entities that operate in the drinking water sector may also deal with other activities relating to water, such as projects in the field of hydraulic engineering, irrigation, land drainage or the disposal and treatment of sewage. In such case, contracting entities should be able to apply the procurement procedures provided for in this Directive in respect of all their activities relating to water, whichever part of the "water cycle" is concerned. However, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area in which it will be used.</p>	<p>(9) Contracting entities that operate in the drinking water sector may also deal with other activities relating to water, such as projects in the field of hydraulic engineering, irrigation, land drainage or the disposal and treatment of sewage. In such case, contracting entities should be able to apply the procurement procedures provided for in this Directive in respect of all their activities relating to water, whichever part of the "water cycle" is concerned. However, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area in which it will be used.</p>
<p>(10) It is appropriate to exclude procurement made for the purpose of exploring for oil and gas as that sector has consistently been found to be subject to such competitive pressure that the procurement discipline brought about by the EU procurement rules is no longer needed.</p>	<p>(10) It is appropriate to exclude procurement made for the purpose of exploring for oil and gas as that sector has consistently been found to be subject to such competitive pressure that the procurement discipline brought about by the EU procurement rules is no longer needed.</p>	<p>(10) It is appropriate to exclude procurement made for the purpose of exploring for oil and gas as that sector has consistently been found to be subject to such competitive pressure that the procurement discipline brought about by the EU procurement rules is no longer needed. As extraction of oil and gas continues to fall within the scope of this Directive, there</p>	<p>(10) It is appropriate to exclude procurement made for the purpose of exploring for oil and gas as that sector has consistently been found to be subject to such competitive pressure that the procurement discipline brought about by the EU procurement rules is no longer needed. As extraction of oil and gas continues to fall within the scope of this Directive, there might be a</p>

		<p>might be a need to distinguish between exploration and extraction. In doing so, "exploration" should be considered to include the activities that are undertaken in order to verify whether (commercially exploitable) oil and gas is present in a given zone, whereas "extraction" should be considered as the "production" of oil and gas. In line with established practice in merger cases, "production" should be taken to include also 'development', i.e. the setting up of adequate infrastructure for future production (oil platforms, pipelines, terminals, etc.).</p>	<p>need to distinguish between exploration and extraction. In doing so, "exploration" should be considered to include the activities that are undertaken in order to verify whether (commercially exploitable) oil and gas is present in a given zone, whereas "extraction" should be considered as the "production" of oil and gas. In line with established practice in merger cases, "production" should be taken to include also 'development', i.e. the setting up of adequate infrastructure for future production (oil platforms, pipelines, terminals, etc.).</p>
<p>(11) Contracts may be awarded for the purpose of meeting the requirements of several activities, possibly subject to different legal regimes. It should be clarified that the legal regime applicable to a single contract intended to cover several activities should be subject to the rules applicable to the activity for which it is principally intended. Determination of the activity for which the contract is principally intended may be based on an analysis of the requirements which the specific contract must meet,</p>	<p>(11) Contracts may be awarded for the purpose of meeting the requirements of several activities, possibly subject to different legal regimes. It should be clarified that the legal regime applicable to a single contract intended to cover several activities should be subject to the rules applicable to the activity for which it is principally intended. Determination of the activity for which the contract is principally intended may be based on an analysis of the requirements which the specific contract must meet, carried out by the contracting entity for the</p>	<p>---</p>	

<p>carried out by the contracting entity for the purposes of estimating the contract value and drawing up the procurement documents. In certain cases, such as the purchase of a single piece of equipment for the pursuit of activities for which information allowing an estimation of the respective rates of use would be unavailable, it might be objectively impossible to determine for which activity the contract is principally intended. The rules applicable to such cases should be indicated.</p>	<p>purposes of estimating the contract value and drawing up the procurement documents. In certain cases, such as the purchase of a single piece of equipment for the pursuit of activities for which information allowing an estimation of the respective rates of use would be unavailable, it might be objectively impossible to determine for which activity the contract is principally intended. The rules applicable to such cases should be indicated.</p>		
<p>(12) 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 conflicts of interest. Given the differences in the decision-making processes of respectively contracting authorities and undertakings, it is appropriate to limit such provisions to procurement carried out by the former.</p>	<p>(12) 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 conflicts of interest. <i>In addition, in order to guarantee efficient protection of ‘whistleblowers’, Member States should ensure that any staff member who reports undisclosed conflicts in good faith is protected against retaliation, harassment or deleterious</i></p>	<p>deleted</p>	<p>(12) Contracting entities should make use of all possible means at their disposal under national law in order to prevent distortions in procurement procedures stemming from conflicts of interest. This could include procedures in order to identify, prevent and remedy conflicts of interests.</p>

	<p><i>actions. In this context, retaliation means any direct or indirect detrimental action recommended, threatened or taken against an individual because of such action.</i></p> <p>Given the differences in the decision-making processes of respectively contracting authorities and undertakings, it is appropriate to limit such provisions to procurement carried out by the former. [Am. 7]</p>		
<p>(13) 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.</p>	<p>(13) 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.</p>	<p>deleted</p>	<p>Deleted</p>
<p>(14) 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</p>	<p>(14) 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</p>	<p>(14) 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</p>	<p>(14) 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</p>

<p>(1986 to 1994)³², 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 entities fulfil the obligations under those agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.</p>	<p>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 the Agreement, as well as by other relevant international agreements by which the Union is bound, contracting entities fulfil the obligations under those agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.</p>	<p>(1986 to 1994)³³, 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 entities should fulfil the obligations under those agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.</p>	<p>(1986 to 1994)³⁴, 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 entities should fulfil the obligations under those agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.</p>
<p>(15) The Agreement applies to contracts above certain thresholds, set in the Agreement and expressed as special drawing rights. The thresholds laid down by this</p>	<p>(15) 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</p>	<p>(15) The Agreement applies to contracts above certain thresholds, set in the Agreement and expressed as special drawing rights. The thresholds laid down by this</p>	<p>(15) The Agreement applies to contracts above certain thresholds, set in the Agreement and expressed as special drawing rights. The thresholds laid down by this</p>

³² OJ L 336, 23.12.1994, p. 1.

³³ OJ L 336, 23.12.1994, p. 1.

³⁴ OJ L 336, 23.12.1994, p. 1.

<p>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. To avoid a multiplication of thresholds it is furthermore appropriate, without prejudice to the international commitments of the Union, to continue to apply the same thresholds to all contracting entities, regardless of the sector in which they operate.</p>	<p>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. To avoid a multiplication of thresholds it is furthermore appropriate, without prejudice to the international commitments of the Union, to continue to apply the same thresholds to all contracting entities, regardless of the sector in which they operate.</p>	<p>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. To avoid a multiplication of thresholds it is furthermore appropriate, without prejudice to the international commitments of the Union, to continue to apply the same thresholds to all contracting entities, regardless of the sector in which they operate.</p>	<p>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> <p><u>Apart from these periodic mathematical adjustments, an increase of the thresholds set in the Agreement should be explored during the next round of negotiations.</u></p> <p>To avoid a multiplication of thresholds it is furthermore appropriate, without prejudice to the international commitments of the Union, to continue to apply the same thresholds to all contracting entities, regardless of the sector in which they operate.</p>
		<p>(15a) It should be clarified that, for the estimation of the value of a contract, all revenues have to be taken into account, whether received from the contracting entity or from third parties.</p>	<p>(15a) It should be clarified that, for the estimation of the value of a contract, all revenues have to be taken into account, whether received from the contracting entity or from third parties.</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 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.</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 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.</p>
			<p><i>(15b)</i> For the purposes of estimating the value of a given procurement, it should be clarified that it should be allowed to base the estimation of the value on a subdivision of the procurement only where this is justified by objective reasons. For instance, it could be justified to estimate contract values at the level of a separate operational unit of the contracting entity provided that the unit in question is independently responsible for its procurement. This can be assumed where the separate operational unit independently runs the procurement procedures and makes the buying decisions, disposes of a separate budget line</p>

			for the procurements concerned, concludes the contract independently and finances it from a budget over which it disposes. A subdivision is not justified where the contracting entity merely organises a procurement in a decentralised way.
(16) The results of the Evaluation demonstrated that the exclusion of certain services from the full application of this directive should be reviewed. As a result, the full application of the 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).	(16) The results of the Evaluation demonstrated that the exclusion of certain services from the full application of this directive should be reviewed. As a result, the full application of the 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). [Am. 8]	(16) The results of the Evaluation suggested that the exclusion of certain services from the full application of this directive should be reviewed. As a result, the full application of the Directive is extended to a number of services [...]	(16) The results of the Evaluation suggested that the exclusion of certain services from the full application of this directive should be reviewed. As a result, the full application of the Directive is extended to a number of services.
	<i>(16a) Service contracts in the fields of civil defence, civil protection, and hazard prevention should be excluded from the scope of this Directive. Those fields include, in particular, emergency rescue work, which should be defined as separate from ambulance services. In order to ensure successful civil protection and emergency response in the interests of the general public, it should be sufficient to apply the principles of the Treaties. [Am. 9]</i>		
(17) Other categories of services	(17) Other <i>The results of the</i>	(17) Certain categories of	(17) Certain categories of

<p>continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for contracts for those services, with a higher threshold of EUR 1 000 000. In the particular context of procurement in those sectors, 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 those services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles</p>	<p><i>Commission Staff Working Paper of 27 June 2011 entitled ‘Evaluation Report - the Impact and Effectiveness of EU Public Procurement Legislation’ demonstrated that the exclusion of certain services from the full application of the Directive should be reviewed. Some</i> categories of services continue by their very nature to have a limited cross-border dimension, namely <i>for example</i> what are known as services to the person, such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for public contracts for these services, with a higher threshold of EUR 1 000 000. 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 those services, Member States should be given wide discretion to organise the</p>	<p>services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for contracts for those services, with a higher threshold of EUR 1 000 000.</p> <p>In the particular context of procurement in those sectors, 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 those services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that</p>	<p>services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for contracts for those services, with a higher threshold of EUR 1 000 000.</p> <p>In the particular context of procurement in those sectors, 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 those services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate.</p>
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<p>of transparency and equal treatment and making sure that contracting entities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee³⁵.</p> <p>Member States and/or contracting entities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.</p>	<p>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 entities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee. Member States and/or contracting entities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination. <i>This Directive should not apply to tried and tested</i></p>	<p>imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting entities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee³⁶.</p> <p>Member States and/or contracting entities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of</p>	<p>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 entities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee³⁷.</p> <p>When determining the procedures to be used for the award of contracts for services to the person, Member States should keep Protocol (No 26) on Services of General Interest and Article 14 TFEU in mind. In so doing, Member States should also pursue the objectives of simplification and alleviating the administrative burden for contracting entities and economic operators; it should be clarified that so doing might also entail relying on rules applicable to service contracts not subject to the specific regime.</p> <p>Member States and/or contracting</p>
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36 SPC/2010/10/8 Final of 6.10.2010.

37 SPC/2010/10/8 Final of 6.10.2010.

	<p><i>procedures in Member States that are based on the users' free choice of service providers for services of general interest (i.e. voucher system, free choice model, triangular relationship) provided that account is taken of the Treaties' general principles of equal treatment and transparency. [Am. 10]</i></p>	<p>transparency and non-discrimination.</p>	<p>entities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.</p>
		<p>(17a) 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 1 000 000. 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.</p>	<p>(17a) 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 1 000 000. 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.</p>
		<p>(17b) Similarly, certain legal</p>	<p>(17b) Similarly, certain legal</p>

		<p>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 should therefore only be covered by the particular regime set out for social and other specific services, as from a threshold of EUR 1 000 000. 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>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 should therefore only be covered by the particular regime set out for social and other specific services, as from a threshold of EUR 1 000 000. 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>(17c) 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</p>	<p>(17c) 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. <u>In so far as they are not excluded from the scope of the directive, they</u></p>

		<p>out for social and other specific services. To the extent that their provision is actually based on contracts, other categories of services, such as investigation and security services, would normally only be likely to present a cross-border interest as of a threshold of EUR 1 000 000 and should consequently only be subject to the particular regime set out for social and other specific services.</p>	<p>should 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 investigation and security services, would normally only be likely to present a cross-border interest as of a threshold of EUR 1 000 000 and should consequently only be subject to the particular regime set out for social and other specific services.</p>
			<p>(17ca) <u>In order to ensure continuity of public services this Directive should allow that participation in procurement procedures for certain services in the fields of health, social and cultural services could be reserved for organisations based on employee ownership or active participation in the governance and for existing organisations such as cooperatives to participate in delivering these services to end users. This provision is limited in scope exclusively to certain health, social and related services, certain education and training services, library, archives, museums and other cultural services, sporting</u></p>

			services, and services for private households, and is not intended to cover any of the exclusions otherwise provided for by this Directive. Such procurement procedures shall be subject to the rules on publicity applicable to services in the light regime.
		(17d) 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.	(17d) 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.
(18) 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	(18) 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	(18) 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	(18) 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

<p>to clarify to what extent this directive should be applied to procurement governed by specific international rules.</p>	<p>extent this directive should be applied to procurement governed by specific international rules. <i>The Union institutions should, in particular, take into account the changes provided for in this Directive and adjust their own procurement rules accordingly to reflect those changes.</i> [Am. 11]</p>	<p>to clarify to what extent this directive should be applied to procurement governed by specific international rules.</p>	<p>clarify to what extent this directive should be applied to procurement governed by specific international rules.</p>
			<p>18aa It should be recalled that arbitration and conciliation services and other similar forms of alternative dispute resolution are usually provided by</p> <p>bodies or individuals which are agreed on, or selected, in a manner</p> <p>which cannot be governed by procurement rules [Cf. Recital 26 of Directive 2004/18/EC]. It should be clarified that the Directive should not apply to service contracts for the provision of such services, whatever their denomination under national law.</p>
	<p><i>(18a) 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 those reasons, an exception should</i></p>	<p>(18a) 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</p>	<p>(18a) 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</p>

	<p><i>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-production and broadcasting of such programmes. [Am. 12]</i></p>	<p>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.</p>	<p>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.</p>
		<p>(18b) 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</p>	<p>(18b) 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</p>

		<p>connection with the issue or other operations concerning securities or other financial instruments, should be excluded from the scope of the Directive.</p>	<p>connection with the issue or other operations concerning securities or other financial instruments, should be excluded from the scope of the Directive.</p>
		<p>(18c) 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 1107/70³⁸ explicitly provides that Directives 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</p>	<p>(18c) 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 1107/70³⁹ explicitly provides that Directives 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</p>

³⁸ OJ L 315, 3.12.2007, p. 1

³⁹ OJ L 315, 3.12.2007, p. 1

		<p>provided explicitly that the provisions of this Directive should not be applicable to 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 service contracts for public passenger transport services by rail or metro have to be awarded by a contract award procedure following their general public procurement rules.</p>	<p>explicitly that the provisions of this Directive should not be applicable to 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 service contracts for public passenger transport services by rail or metro have to be awarded by a contract award procedure following their general public procurement rules.</p>
			<p><u>(18ca) This Directive should not apply to certain emergency services where these are performed by non-profit organisations or associations, since the particular nature of these organisations would be difficult to preserve in case the service providers would have to be chosen in accordance with the procedures set out in this Directive. However, the exclusion should not be extended beyond the strict necessary; it should therefore be</u></p>

			<p>set out explicitly that patient transport ambulance services should not be excluded. In that context it is furthermore necessary to clarify that CPV Group 601 “Land Transport Services” does not cover ambulance services, to be found in CPV class 8514. It should therefore be clarified that services within CPV code 85143000-3 consisting exclusively of patient transport ambulance services should be subject to the light regime; consequently, contracts for the provision of ambulance services in general would also be subject to the light regime if the value of the patient transport ambulance services were greater than the value of other ambulance services;</p>
		<p>(18d) 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 service contract may be awarded to that contracting authority or</p>	<p>(18d) 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 service contract may be awarded to that contracting authority or</p>

		association thereof without the Directive being applied.	association thereof without the Directive being applied.
(19) 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. As this jurisprudence would be equally applicable to public authorities when operating in the sectors covered by this directive, it is appropriate to ensure that the same rules apply in both this directive and Directive [.../.../EU][on public procurement].	(19) 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. As this jurisprudence would be equally applicable to public authorities when operating in the sectors covered by this directive, it is appropriate to ensure that the same rules apply in both this directive and Directive [.../.../EU][on public procurement].	(19) There is considerable legal uncertainty as to how far contracts concluded between contracting authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted differently between Member States and even between contracting authorities. As this jurisprudence would be equally applicable to public authorities when operating in the sectors covered by this directive, it is appropriate to ensure that the same rules apply and are interpreted in the same way in both this directive and Directive [.../.../EU on public procurement.	(19) There is considerable legal uncertainty as to how far contracts concluded between contracting authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted differently between Member States and even between contracting authorities. As this jurisprudence would be equally applicable to public authorities when operating in the sectors covered by this directive, it is appropriate to ensure that the same rules apply and are interpreted in the same way in both this directive and Directive [.../.../EU on public procurement.
(20) It is appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity the provision of such services, supply or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for	(20) It is appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity the provision of such services, supply or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of	(20) It is appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity the provision of such services, supply or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for	(20) Many contracting entities are organised as an economic group which may comprise a series of separate undertakings; often each of these undertakings have a specialised role in the overall context of the economic group. It is therefore appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity the provision of such services, supply or works to the

<p>the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.</p>	<p>carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.</p>	<p>the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.</p>	<p>group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.</p>
<p>(21) It is also appropriate to clarify the relations between the provisions on cooperation between public authorities and the provisions on the award of contracts to</p>	<p>(21) It is also appropriate to clarify the relations between the provisions on cooperation between public authorities and the provisions on the award of contracts to affiliated undertakings or in</p>	<p>(21) It is also appropriate to clarify the relations between the provisions on cooperation between public authorities and the provisions on the award of contracts to</p>	<p>(21) It is also appropriate to clarify the relations between the provisions on cooperation between public authorities and the provisions on the award of contracts to</p>

affiliated undertakings or in the context of joint ventures.	the context of joint ventures.	affiliated undertakings or in the context of joint ventures.	affiliated undertakings or in the context of joint ventures.
			<p>(21aa) Companies should be considered to be affiliated where a direct or indirect dominant influence exist between the contracting entity and the undertaking concerned or where both are subject to the dominant influence of another undertaking; in this context, private participation should, <i>per se</i>, not be relevant. Verification of whether an undertaking is affiliated to a given contracting entity or not should be as easy to perform as possible. Consequently, and given that the possible existence of such direct or indirect dominant influence will already have to be verified for the purposes of deciding whether the annual accounts of the undertakings and entities concerned should be consolidated, undertakings should be considered to be affiliated wherever their annual accounts are consolidated. However, Union rules on consolidated accounts are not applicable in a certain number of cases, for instance because of the size of the undertakings involved</p>

			<p>or because certain conditions relating to their legal form are not met. In such cases, where the Seventh Council Directive 83/349/EEC⁴⁰ is not applicable, it will be necessary to examine whether a direct or indirect dominant influence is present based on ownership, financial participation or the rules governing these undertakings.</p>
		<p>(21a) 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 entity concerned; this should not exclude that the service provider having carried out these activities could publish an account thereof as long as the contracting entity retains the exclusive right to use the outcome of the R&D in the conduct of its own affairs. However any fictitious sharing of the results of the R&D or any</p>	<p>(21a) 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 entity concerned; this should not exclude that the service provider having carried out these activities could publish an account thereof as long as the contracting entity retains the exclusive right to use the outcome of the R&D in the conduct of its own affairs. However any fictitious sharing of the results of the R&D or any</p>

⁴⁰ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

		symbolic participation in the remuneration of the service provider will not prevent the application of this Directive.	symbolic participation in the remuneration of the service provider will not prevent the application of this Directive.
(22) This Directive should apply neither to contracts intended to permit the performance of an activity referred to in Articles 5 to 11 nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to maintain the procedure, applicable to all sectors covered by this Directive that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Union law in this area.	(22) This Directive should apply neither to contracts intended to permit the performance of an activity referred to in Articles 5 to 11 nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to maintain the procedure, applicable to all sectors covered by this Directive that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Union law in this area.	(22) This Directive should apply neither to contracts intended to permit the performance of an activity that is subject to this Directive nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to maintain the procedure, applicable to all sectors, or parts thereof , covered by this Directive that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Union law in this area. For the sake of legal certainty it should be clarified that all Decisions adopted prior to the entry into force of this Directive concerning the applicability of the corresponding provisions set out	(22) This Directive should apply neither to contracts intended to permit the performance of an activity that is subject to this Directive nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to maintain the procedure, applicable to all sectors, or parts thereof , covered by this Directive that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Union law in this area. For the sake of legal certainty it should be clarified that all Decisions adopted prior to the entry into force of this Directive concerning the applicability of the corresponding provisions set out in Article 30 of Directive

		in Article 30 of Directive 2004/[...]17/EC continue to be applicable.	2004/[...]17/EC continue to be applicable.
(23) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. This assessment is, however, limited by the applicable short deadlines and by having to be based on the information available to the Commission – either from already available sources or from the information obtained in the context of the application pursuant to Article 28 - which can not be supplemented by more time consuming methods, including notably public inquiries of economic operators concerned. The assessment of direct exposure to competition that can be carried out in the context of this directive is consequently without prejudice to the full-fledged application of competition law.	(23) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. This assessment is, however, limited by the applicable short deadlines and by having to be based on the information available to the Commission – either from already available sources or from the information obtained in the context of the application pursuant to Article 28 - which can not be supplemented by more time consuming methods, including notably public inquiries of economic operators concerned. The assessment of direct exposure to competition that can be carried out in the context of this directive is consequently without prejudice to the full-fledged application of competition law.	(23) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned or of the concerned parts thereof. This assessment is, however, limited by the applicable short deadlines and by having to be based on the information available to the Commission – either from already available sources or from the information obtained in the context of the application pursuant to Article 28 - which can not be supplemented by more time consuming methods, including notably public inquiries of economic operators concerned. The assessment of direct exposure to competition that can be carried out in the context of this directive is consequently without prejudice to the full-fledged application of competition law.	(23) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned or of the concerned parts thereof. This assessment is, however, limited by the applicable short deadlines and by having to be based on the information available to the Commission – either from already available sources or from the information obtained in the context of the application pursuant to Article 28 - which can not be supplemented by more time consuming methods, including notably public inquiries of economic operators concerned. The assessment of direct exposure to competition that can be carried out in the context of this directive is consequently without prejudice to the full-fledged application of competition law.
		(23a) Assessing whether a given sector, or parts thereof, are directly exposed to competition should be examined in respect of the specific area in which the activity, or the parts thereof	(23a) Assessing whether a given sector, or parts thereof, are directly exposed to competition should be examined in respect of the specific area in which the activity, or the parts thereof

		<p>concerned, are carried out by the relevant economic operators, the so-called relevant geographical market. As this notion is crucial for the assessment, it should be given an appropriate definition, based on existing notions in Union law. It should also be clarified that the relevant geographical market might not coincide with the territory of the Member State concerned; consequently, decisions concerning the applicability of the exemption could be limited to parts of the territory of the Member State concerned.</p>	<p>concerned, are carried out by the relevant economic operators, the so-called relevant geographical market. As this notion is crucial for the assessment, it should be given an appropriate definition, based on existing notions in Union law. It should also be clarified that the relevant geographical market might not coincide with the territory of the Member State concerned; consequently, decisions concerning the applicability of the exemption could be limited to parts of the territory of the Member State concerned.</p>
<p>(24) The implementation and application of appropriate Union legislation opening a given sector, or a part of it, will be considered to provide sufficient grounds for assuming that there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. It is appropriate that this annex should currently refer to Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas</p>	<p>(24) The implementation and application of appropriate Union legislation opening a given sector, or a part of it, will be considered to provide sufficient grounds for assuming that there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. It is appropriate that this annex should currently refer to Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC , Directive 2009/72/EC of</p>	<p>(24) The implementation and application of appropriate Union legislation opening a given sector, or a part of it, will be considered to provide sufficient grounds for assuming that there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. [...]</p>	<p>(24) The implementation and application of appropriate Union legislation opening a given sector, or a part of it, will be considered to provide sufficient grounds for assuming that there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. <u>When updating, the Commission should in particular take into account the possible adoption of measures entailing a genuine opening up to competition of sectors other than those for which a legislation is</u></p>

<p>and repealing Directive 2003/55/EC⁴¹, Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC⁴² and Directive 94/22/EC.</p>	<p>the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, and Directive 94/22/EC <i>and Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways</i>¹.</p> <p>_____</p> <p>¹ OJ L 237, 24.8.1991, p. 25.</p> <p>[Am. 13]</p>		<p>already mentioned in Annex III, such as that of national railway passenger transports.</p>
		<p>(24a) Where free access to a given market is not presumed on the basis of the implementation of appropriate Union legislation, it should be demonstrated that, de jure and de facto, such access is free. Where a Member State extends the application of a Union legal act opening up a given sector to competition to situations falling outside the scope of that legal act, for instance by applying Directive 94/22/EC to the coal sector or Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways to</p>	<p>(24a) Where free access to a given market is not presumed on the basis of the implementation of appropriate Union legislation, it should be demonstrated that, de jure and de facto, such access is free. Where a Member State extends the application of a Union legal act opening up a given sector to competition to situations falling outside the scope of that legal act, for instance by applying Directive 94/22/EC to the coal sector or Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012</p>

41 OJ L 211, 14.8.2009, p. 94

42 OJ L 211, 14.8.2009, p. 55

		<p>passenger service at the national level, this circumstance should be taken into account when assessing whether access to the sector concerned is free, de jure and de facto.</p>	<p>establishing a single European railway area⁴³ to passenger service at the national level, this circumstance should be taken into account when assessing whether access to the sector concerned is free, de jure and de facto.</p>
		<p>(24b) Independent national authorities, such as sectoral regulators or competition authorities, normally possess specialised know-how, information and knowledge that would be pertinent when assessing whether a given activity or parts thereof are directly exposed to competition on markets to which access is not limited. Requests for exemption should therefore where appropriate be accompanied by, or incorporate, a recent position on the competitive situation in the sector concerned, adopted by an independent national authority that is competent in relation to the activity concerned.</p> <p>In the absence of a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the</p>	<p>(24b) Independent national authorities, such as sectoral regulators or competition authorities, normally possess specialised know-how, information and knowledge that would be pertinent when assessing whether a given activity or parts thereof are directly exposed to competition on markets to which access is not limited. Requests for exemption should therefore where appropriate be accompanied by, or incorporate, a recent position on the competitive situation in the sector concerned, adopted by an independent national authority that is competent in relation to the activity concerned.</p> <p>In the absence of a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the</p>

⁴³ OJ L 343, 14.12.2012, p. 32

		activity concerned, more time would be needed for the assessment of a request for exemption. The periods of which the Commission dispose for its assessments of such requests should therefore be modulated accordingly.	activity concerned, more time would be needed for the assessment of a request for exemption. The periods of which the Commission dispose for its assessments of such requests should therefore be modulated accordingly.
		(24c) The Commission should always be obliged to examine requests, which are in conformity with the detailed rules for the application of the procedures for establishing whether a given activity, or parts thereof, are directly exposed to competition on markets to which access is not restricted. It should, however, also be clarified that the complexity of such requests may be such that it might not always be possible to ensure the adoption within the applicable deadlines of implementing acts establishing whether a given activity or parts thereof are directly exposed to competition on markets to which access is not restricted.	(24c) The Commission should always be obliged to examine requests, which are in conformity with the detailed rules for the application of the procedures for establishing whether a given activity, or parts thereof, are directly exposed to competition on markets to which access is not restricted. It should, however, also be clarified that the complexity of such requests may be such that it might not always be possible to ensure the adoption within the applicable deadlines of implementing acts establishing whether a given activity or parts thereof are directly exposed to competition on markets to which access is not restricted.
		(24d) It should be clarified that the Commission should have the possibility to require Member States or contracting entities to provide or to supplement or	(24d) It should be clarified that the Commission should have the possibility to require Member States or contracting entities to provide or to supplement or clarify

		<p>clarify information. The Commission should set an appropriate time limit for so doing which, having due regard also to the need to meet the deadlines set for the Commission's adoption of its implementing act, should take into account factors such as the complexity of the information requested and whether the information is readily accessible.</p>	<p>information. The Commission should set an appropriate time limit for so doing which, having due regard also to the need to meet the deadlines set for the Commission's adoption of its implementing act, should take into account factors such as the complexity of the information requested and whether the information is readily accessible.</p>
		<p>(24e) Employment and occupation contribute to integration in society and are key elements in guaranteeing equal opportunities for all. In this context, sheltered workshops can play a significant role. The same is true for other social businesses whose main aim is to support the social and professional integration or reintegration of disabled and disadvantaged persons, such as 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</p>	<p>(24e) Employment and occupation contribute to integration in society and are key elements in guaranteeing equal opportunities for all. In this context, sheltered workshops can play a significant role. The same is true for other social businesses whose main aim is to support the social and professional integration or reintegration of disabled and disadvantaged persons, such as unemployed, members of disadvantaged minorities or otherwise socially marginalised groups. However, such workshops or businesses might not be able to obtain contracts under normal conditions of competition. Consequently, it is appropriate to provide that Member States should be able to reserve the right</p>

		<p>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>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>(24f) In view of an appropriate integration of environmental, social and labour requirements in public procurement procedures it is of particular importance that Member States and contracting entities take relevant measures to ensure compliance with obligations in the fields of environmental, social and labour law that apply at the place where the works are executed or the services provided and result from laws, regulations, decrees and decisions, at both national and Union level, as well as from collective agreements, provided that such rules, and their application, comply with Union law. Equally, obligations stemming from international agreements ratified by all Member States and</p>

			<p>listed in Annex XIV should apply during contract performance. However, this should in no way prevent the application of terms and conditions of employment which are more favourable to workers.</p> <p>The relevant measures should be applied in conformity with the basic principles of European Union law, notably with a view to ensure equal treatment. Such relevant measures 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 ensures equal treatment and does not discriminate directly or indirectly against economic operators and workers from other Member States.</p>
			<p>(24g) Services should be considered to be provided at the place at which the characteristic performances are executed; when services are provided at a distance, for example services provided by call centres, the services will be</p>

			<p>considered to be provided at the place where the services are executed, irrespective of the places and Member States to which the services are directed.</p>
			<p>(24h) The relevant obligations could be mirrored in contract clauses. It should also be possible to include clauses ensuring compliance with collective agreements in compliance with Union law in public contracts. Non-compliance with the relevant obligations may be considered to be grave misconduct on the part of the economic operator concerned, liable to exclusion of that economic operator from the procedure for the award of a public contract.</p> <p>(24i) Control of the observance of these environmental, social and labour law provisions should be performed at the relevant stages of the procurement procedure, that is when applying the general principles governing the choice of participants and the award of contracts [Article 70], when applying the exclusion criteria [Article 74] and when applying the provisions concerning abnormally low tenders [Article 79]. The</p>

			necessary verification for that purpose should be carried out in accordance with the relevant provisions of Title II, Chapter III, section 3 [Articles 70 to 79], of this Directive, in particular those governing means of proof and self-declarations.
			(24j) 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.
(25) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Contracting entities should make the best strategic use of public procurement to spur innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public	(25) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Contracting entities should make the best strategic use of public procurement to spur 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	(25) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Contracting entities should make the best strategic use of public procurement to spur innovation. Buying innovative goods, works and services plays a key role in improving the efficiency and quality	(25) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Contracting entities should make the best strategic use of public procurement to spur innovation. Buying innovative goods, works and services plays a key role in improving the efficiency and quality

<p>services while addressing major societal challenges. It contributes to achieving best value for money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth. This directive should contribute to facilitating 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 entities 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 performance levels and costs. The partnership should be structured in such a way that it can provide the necessary “market-pull”</p>	<p>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. <i>An innovative procurement model is detailed in the Commission’s communication of 14 December 2007 entitled ‘Driving innovation to ensure high quality public services in Europe’.</i> This <i>model promotes the take-up in the procurement of research and development services which do not fall within the scope of this Directive. That model, which has been incorporated into this Directive, is recognised and will be available for all contracting entities to consider.</i> This directive <i>This Directive</i> should <i>however</i> contribute to facilitating <i>the public</i> procurement of innovation <i>more generally</i>, and help Member States in achieving the Innovation Union targets. <i>Where a need for the development of</i></p>	<p>of public services while addressing major societal challenges. It contributes to achieving best value for money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth.</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 procurement⁴⁴, 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 available as hitherto, but this directive should also contribute to facilitating procurement of innovation and help Member States in achieving the Innovation Union</p>	<p>of public services while addressing major societal challenges. It contributes to achieving best value for money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth.</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 procurement⁴⁵, 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 available as hitherto, but this directive should also contribute to facilitating procurement of innovation and help Member States in achieving the Innovation Union</p>
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44 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.

45 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>incentivising the development of an innovative solution without foreclosing the market.</p>	<p><i>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 entities should have access to a specific procurement procedure in respect of contracts falling within the scope of this Directive. This new procedure should therefore be provided for which allows allow contracting entities to establish a long-term an innovation partnership for the development and subsequent purchase of a new, innovative product, service 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 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 an innovative solution solutions without foreclosing the market. Contracting entities should therefore</i></p>	<p>targets. [...]</p>	<p>targets.</p>
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	<p><i>not misuse innovation partnerships to prevent, restrict or distort competition. In addition, when setting the terms and conditions for procurement, contracting entities should be allowed to establish innovative characteristics, including best available techniques, as a criterion relating to the subject of the contract concerned. [Am. 14]</i></p>		
		<p>(25a) Because of the importance of innovation, contracting entities should be encouraged to allow variants as often as possible; their attention should consequently be drawn to the need of defining the minimum requirements to be met by variants before indicating that variants may be submitted.</p>	<p>(25a) Because of the importance of innovation, contracting entities should be encouraged to allow variants as often as possible; their attention should consequently be drawn to the need of defining the minimum requirements to be met by variants before indicating that variants may be submitted.</p>
		<p>(25b) Where a need for the development of an innovative product or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be met by solutions already available on the market, contracting entities should have access to a specific procurement procedure in respect of contracts falling within the scope of this Directive. This specific procedure should allow contracting entities to establish a long-term innovation partnership for the</p>	<p>(25b) Where a need for the development of an innovative product or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be met by solutions already available on the market, contracting entities should have access to a specific procurement procedure in respect of contracts falling within the scope of this Directive. This specific procedure should allow contracting entities to establish a long-term innovation partnership for the</p>

		<p>development and subsequent purchase of a new, innovative product, service or works provided that such innovative product or service or innovative works can be delivered to agreed performance levels and costs, without the need for a separate procurement procedure for the purchase. The Innovation partnership should be based on the procedural rules that apply to negotiated procedures with prior call for competition and contracts should be awarded on the sole basis of the 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. Contracting entities 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</p>	<p>development and subsequent purchase of a new, innovative product, service or works provided that such innovative product or service or innovative works can be delivered to agreed performance levels and costs, without the need for a separate procurement procedure for the purchase. The Innovation partnership should be based on the procedural rules that apply to negotiated procedures with prior call for competition and contracts should be awarded on the sole basis of the best price quality ratio, which is most suitable for comparing tenders for innovative solutions. Whether in respect of very large projects or smaller innovative projects, the innovation partnership should be structured in such a way that it can provide the necessary “market-pull” incentivising the development of an innovative solution without foreclosing the market. Contracting entities should 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</p>
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		could contribute to avoiding such effects.	effects.
		(25c) Experience has shown that the competitive dialogue, which is provided for under Directive 2004/18/EC, has been of use in cases where contracting authorities are unable to define the means of satisfying their needs or of assessing what the market can offer in terms of technical, financial or legal solutions. This situation may arise in particular with innovative projects, the implementation of major integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing. Member States should therefore be allowed to place this tool at the disposal of contracting entities.	(25c) Experience has shown that the competitive dialogue, which is provided for under Directive 2004/18/EC, has been of use in cases where contracting authorities are unable to define the means of satisfying their needs or of assessing what the market can offer in terms of technical, financial or legal solutions. This situation may arise in particular with innovative projects, the implementation of major integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing. Member States should therefore be allowed to place this tool at the disposal of contracting entities. <i>Where relevant, contracting authorities should be encouraged to appoint a project leader to ensure good cooperation between the economic operators and the contracting authority during the award procedure.</i>
(26) In view of the detrimental effects on competition, negotiated procedures without a call for competition should only be used in	(26) In view of the detrimental effects on competition, negotiated procedures without a call for competition should only be used in very	(26) In view of the detrimental effects on competition, negotiated procedures without a call for competition should only be used in	(26) In view of the detrimental effects on competition, negotiated procedures without a prior call for competition should only be used in

<p>very exceptional circumstances. This exception should be limited to 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 a call for competition, where the situation of exclusivity has not been created by the contracting entity itself with a view to the future procurement procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.</p>	<p>exceptional circumstances. This exception should be limited to 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 a call for competition, where the situation of exclusivity has not been created by the contracting entity itself with a view to the future procurement procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.</p>	<p>very exceptional circumstances. This exception should be limited to cases where publication is either not possible, for reasons of extreme urgency brought about by events unforeseeable for and not attributable to the contracting entity, or where it is clear from the outset that publication would not trigger more competition or better procurement outcomes, not least because there is objectively only one economic operator that can perform the contract. This is the case for works of art, where the identity of the artist intrinsically determines the unique character and value of the art object itself. Exclusivity can also arise from other reasons, but only situations of objective exclusivity can justify the use of the negotiated procedure without a call for competition, where the situation of exclusivity has not been created by the contracting entity itself with a view to the future procurement procedure. [...]</p>	<p>very exceptional circumstances. This exception should be limited to cases where publication is either not possible, for reasons of extreme urgency brought about by events unforeseeable for and not attributable to the contracting entity, or where it is clear from the outset that publication would not trigger more competition or better procurement outcomes, not least because there is objectively only one economic operator that can perform the contract. This is the case for works of art, where the identity of the artist intrinsically determines the unique character and value of the art object itself. Exclusivity can also arise from other reasons, but only situations of objective exclusivity can justify the use of the negotiated procedure without a prior call for competition, where the situation of exclusivity has not been created by the contracting entity itself with a view to the future procurement procedure. [...]</p>
		<p>Contracting entities relying on this exception should provide reasons why there are no reasonable alternatives or substitutes such as using alternative distribution channels</p>	<p>Contracting entities relying on this exception should provide reasons why there are no reasonable alternatives or substitutes such as using alternative distribution channels including outside the</p>

		including outside the Member State of the contracting entity or considering functionally comparable works, supplies and services.	Member State of the contracting entity or considering functionally comparable works, supplies and services.
		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.	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.
		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 exchanges, where the regulated and supervised multilateral trading structure naturally guarantees	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 exchanges, where the regulated and supervised multilateral trading structure naturally guarantees

		market prices.	market prices.
			(26a) It should be clarified that the provisions concerning protection of confidential information do not in any way prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes. [Am. 107] [This solution could also be applied for the Classic Directive as a new Recital 18a to take into account AM 92]
(27) 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	(27) 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	(27) 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	(27) 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

<p>prevent, detect and correct errors that occur during procurement procedures.</p>	<p>occur during procurement procedures. <i>In addition, the submission of building information electronic modelling tools for works contracts should be encouraged in order 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.</i> [Am. 15]</p>	<p>the procedure, including the transmission of requests for participation and, in particular, the transmission of the tenders (e-submission) should be made mandatory. Member States and contracting entities should remain free to go further if they so wish. It should also be clarified that mandatory use of electronic means of communications pursuant to this Directive should not, however, oblige contracting entities to carry out electronic processing of tenders, nor should it mandate electronic evaluation or automatic processing. Furthermore, pursuant to this Directive, no elements of the public procurement process after the award of the contract should be covered by the obligation to use electronic means of communication nor should internal communication within the contracting entity.</p>	<p>the procedure, including the transmission of requests for participation and, in particular, the transmission of the tenders (e-submission) should be made mandatory. Member States and contracting entities should remain free to go further if they so wish. It should also be clarified that mandatory use of electronic means of communications pursuant to this Directive should not, however, oblige contracting entities to carry out electronic processing of tenders, nor should it mandate electronic evaluation or automatic processing. Furthermore, pursuant to this Directive, no elements of the public procurement process after the award of the contract should be covered by the obligation to use electronic means of communication nor should internal communication within the contracting entity.</p>
		<p>(27a) The obligation to use electronic means at all stages of the procurement procedure would not be appropriate where the use of electronic means would require specialised tools or file formats that are not generally available</p>	<p>[(27a) Contracting entities should, except in certain specific situations, use electronic means of communication which are non-discriminatory, generally available and interoperable with the information and communication</p>

		<p>nor where the communications concerned could only be handled using specialised office equipment. Contracting entities should therefore not be obliged to require the use of electronic means of communication in the submission process in certain cases. 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 entities 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 entities using electronic means.</p>	<p>technology products in general use and do not restrict economic operators' access to the procurement procedure. Such means of communication should also take accessibility for persons with disabilities into due account. It should be clarified that the obligation to use electronic means at all stages of the procurement procedure would 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 equipment. Contracting entities should therefore not be obliged to require the use of electronic means of communication in the submission process in certain cases, which should be listed exhaustively. 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 entities 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</p>
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			<p>the contracting entities using electronic means. In such situations, the model should be transmitted to the contracting entities 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> <p>It is appropriate to clarify that, where necessary for technical reasons, contracting entities should be able to set a maximum limit to the size of the files that may be submitted.</p>
		<p>In such situations, the model should be transmitted to the contracting entities by post. 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>	
		<p>It is appropriate to clarify that, where necessary for technical reasons, contracting entities should be able to set a maximum limit to the size of the files that may be submitted.</p>	
			(27aa) There may be exceptional

			<p>cases in which contracting entities should be allowed not to use electronic means of communication where so doing would be necessary in order to protect the particularly sensitive nature of information. It should be clarified that where the use of electronic tools which are not generally available can offer the necessary level of protection, such electronic tools should be used. Such may for instance be the case where contracting entities require the use of dedicated secure means of communication to which they offer access as provided for in Article 33(4).</p>
		<p>(27b) 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</p>	<p>(27b) 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</p>

		<p>required, economic operators would, in the absence of standardisation, be required to customise their own catalogues to each procurement procedure, which would entail providing very similar information in different formats depending on the specifications of the contracting entities concerned. Standardising the catalogue formats would thus improve the level of interoperability, enhance efficiency and would also - and perhaps above all - reduce the effort required of economic operators.</p>	<p>operators would, in the absence of standardisation, be required to customise their own catalogues to each procurement procedure, which would entail providing very similar information in different formats depending on the specifications of the contracting entities concerned. Standardising the catalogue formats would thus improve the level of interoperability, enhance efficiency and would also - and perhaps above all - reduce the effort required of economic operators.</p>
		<p>(27c) When considering whether there is a need to ensure or enhance interoperability between differing technical formats or process and messaging standards by rendering the use of specific standards mandatory, and if so which standards to impose, the Commission should take the utmost account of the opinions of the stakeholders concerned. It should also consider the extent to which a given standard has already been used in practice by economic operators and contracting entities and how well</p>	<p>(27c) When considering whether there is a need to ensure or enhance interoperability between differing technical formats or process and messaging standards by rendering the use of specific standards mandatory, and if so which standards to impose, the Commission should take the utmost account of the opinions of the stakeholders concerned. It should also consider the extent to which a given standard has already been used in practice by economic operators and contracting entities and how well it</p>

		<p>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.</p>	<p>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.</p>
		<p>Where the standards concerned are not developed by an international, European or national standardisation organisation, they should meet the requirements applicable to ICT standards as set out in Regulation (EU) .../2012 on European standardisation.</p>	<p>Where the standards concerned are not developed by an international, European or national standardisation organisation, they should meet the requirements applicable to ICT standards as set out in Regulation (EU) 1025/2012 on European standardisation.</p>
		<p>(27d) Before specifying the level of security required for the electronic means of communications to be used at the various stages of the award procedure, Member States and contracting entities should evaluate the proportionality between on the one hand the requirements aimed at ensuring correct and reliable identification of the senders of the communication concerned as well as the integrity of its content and</p>	<p>(27d) Before specifying the level of security required for the electronic means of communications to be used at the various stages of the award procedure, Member States and contracting entities should evaluate the proportionality between on the one hand the requirements aimed at ensuring correct and reliable identification of the senders of the communication concerned as well as the integrity of its content and</p>

		<p>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 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>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 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>(27e) 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,</p>	<p>(27e) 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,</p>

		provided that its content is documented to a sufficient degree. This is necessary to ensure an adequate level of transparency that allows for a verification of whether the principle of equal treatment has been adhered to. In particular, it is essential that oral communications with tenderers which could have an impact on the content and assessment of the tenders be documented to a sufficient extent and by appropriate means, such as written or audio records or summaries of the main elements of the communication.	provided that its content is documented to a sufficient degree. This is necessary to ensure an adequate level of transparency that allows for a verification of whether the principle of equal treatment has been adhered to. In particular, it is essential that oral communications with tenderers which could have an impact on the content and assessment of the tenders be documented to a sufficient extent and by appropriate means, such as written or audio records or summaries of the main elements of the communication.
	<i>(27a) In order to ensure confidentiality during the procedure, contracting entities 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 entity liable if harm can be clearly demonstrated by the economic operator. [Am. 16]</i>		-
(28) 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	(28) 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	(28) 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	(28) 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

<p>prices and transaction costs, and to improving and professionalising procurement management. This can be achieved by concentrating purchases either by the number of contracting entities involved or by volume and value over time. However, the aggregation and centralisation of purchases should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, as well as market access opportunities for small and medium-sized enterprises.</p>	<p>costs, and to improving and professionalising procurement management. This can be achieved by concentrating purchases either by the number of contracting entities involved or by volume and value over time. However, the aggregation and centralisation of purchases should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, as well as market access opportunities for small and medium-sized enterprises. <i>The Commission should provide guidance to Member States and contracting entities on the required monitoring of aggregated and centralised purchases to avoid excessive concentration of purchasing power and collusion.</i> [Am. 17]</p>	<p>prices and transaction costs, and to improving and professionalising procurement management. This can be achieved by concentrating purchases either by the number of contracting entities involved or by volume and value over time. However, the aggregation and centralisation of purchases should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, as well as market access opportunities for small and medium-sized enterprises.</p>	<p>prices and transaction costs, and to improving and professionalising procurement management. This can be achieved by concentrating purchases either by the number of contracting entities involved or by volume and value over time. However, the aggregation and centralisation of purchases should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, as well as market access opportunities for small and medium-sized enterprises.</p>
<p>(29) The instrument of framework agreements can be an efficient procurement technique throughout Europe; however, there is a need to enhance competition by improving transparency of and access to procurement carried out by means of framework agreements. It is therefore appropriate to revise the provisions applicable to those agreements, notably by providing for mini-competitions for the award of</p>	<p>(29) The instrument of framework agreements can be an efficient procurement technique throughout Europe; however, there is a need to enhance competition by improving transparency of and access to procurement carried out by means of framework agreements. It is therefore appropriate to revise the provisions applicable to those agreements, notably by providing for mini-competitions for the award of specific contracts based on</p>	<p>(29) The instrument of framework agreements can be an efficient procurement technique throughout Europe; however, there is a need to enhance competition by improving transparency of and access to procurement carried out by means of framework agreements. It is therefore appropriate to revise the provisions applicable to those agreements, notably by providing for [...] the award of specific</p>	<p>(29) The instrument of framework agreements can be an efficient procurement technique throughout Europe; however, there is a need to enhance competition by improving transparency of and access to procurement carried out by means of framework agreements. It is therefore appropriate to revise the provisions applicable to those agreements, notably by providing for the award of specific contracts based</p>

<p>specific contracts based on the agreement and by limiting the duration of framework agreements.</p>	<p>the agreement and by limiting the duration of framework agreements. [Am. 18]</p>	<p>contracts based on the agreement to be awarded on the basis of objective rules and criteria, for instance following a mini-competition, and by limiting the duration of framework agreements.</p> <p>In this context, it should 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 the framework agreement does not need to coincide with the duration of that framework agreement.</p>	<p>on the agreement to be awarded on the basis of objective rules and criteria, for instance following a mini-competition, and by limiting the duration of framework agreements.</p>
			<p>29a It should also be clarified that while contracts based on a framework agreement are to be awarded before the end of the term of the framework agreement itself, the duration of the individual contracts based on a framework agreement does not need to coincide with the duration of that framework agreement, but may, as appropriate, be shorter or longer. In particular, it should be allowed to set the length of individual contracts based on a framework agreement taking</p>

			<p>account of factors such as the time needed for their performance; where maintenance of equipment with an expected useful life of more than <u>eight</u> years is included or where extensive training of staff to perform the contract is needed.</p> <p>It should also be clarified that there may be cases in which the length of the framework agreements themselves should be allowed to be longer than <u>eight</u> years. Such cases, which should be duly justified, in particular by the subject of the framework agreement, may arise for instance where economic operators need to dispose of equipment for which the amortisation period is longer than <u>eight</u> years and which must be available at any time over the entire duration of the framework agreement. <u>In the particular context of utilities providing essential services to the public there may be cases where there will be a need for both longer framework agreements as well as for longer duration of individual contracts, for instance in the case of framework agreements aimed at ensuring ordinary and</u></p>
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			<p>extraordinary maintenance of networks which may require expensive equipment to be operated by personnel having received highly specialised ad-hoc training aimed at ensuring continuation of the services and minimisation of possible disruptions.</p>
<p>(30) In view of the experience acquired, there is also a need to adjust the rules governing dynamic purchasing systems to enable contracting entities to take full advantage of the possibilities afforded by 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 those systems. Thus any economic operator who submits a request to participate and meets the selection criteria should be allowed to take part in procurement procedures carried out through the dynamic purchasing system. This purchasing technique allows the contracting entity to have a particularly broad range of tenders and hence to ensure optimum use of</p>	<p>(30) In view of the experience acquired, there is also a need to adjust the rules governing dynamic purchasing systems to enable contracting entities to take full advantage of the possibilities afforded by 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 those systems. Thus any economic operator who submits a request to participate and meets the selection criteria should be allowed to take part in procurement procedures carried out through the dynamic purchasing system. This purchasing technique allows the contracting entity to have a particularly broad range of tenders and hence to ensure optimum use of funds through broad competition.</p>	<p>(30) In view of the experience acquired, there is also a need to adjust the rules governing dynamic purchasing systems to enable contracting entities to take full advantage of the possibilities afforded by that instrument. The systems need to be simplified, in particular they should be operated in the form of a restricted procedure, hence eliminating the need for indicative tenders, which have been identified as one of the major burdens associated with dynamic purchasing systems. Thus any economic operator who submits a request to participate and meets the selection criteria should be allowed to take part in procurement procedures carried out through the dynamic purchasing system over its period of validity.</p> <p>This purchasing technique allows</p>	<p>(30) In view of the experience acquired, there is also a need to adjust the rules governing dynamic purchasing systems to enable contracting entities to take full advantage of the possibilities afforded by that instrument. The systems need to be simplified, in particular they should be operated in the form of a restricted procedure, hence eliminating the need for indicative tenders, which have been identified as one of the major burdens associated with dynamic purchasing systems. Thus any economic operator who submits a request to participate and meets the selection criteria should be allowed to take part in procurement procedures carried out through the dynamic purchasing system over its period of validity.</p> <p>This purchasing technique allows the</p>

funds through broad competition.		the contracting entity to have a particularly broad range of tenders and hence to ensure optimum use of funds through broad competition in respect of commonly used or off-the-shelf goods, works or services which are generally available on the market.	contracting entity to have a particularly broad range of tenders and hence to ensure optimum use of funds through broad competition in respect of commonly used or off-the-shelf goods, works or services which are generally available on the market.
		(30a) 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 requirements for documentation set out by the contracting entities, where applicable in accordance with the simplified provisions of Directive 2004/18/EC. However, when a dynamic purchasing system is first set up, contracting entities 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	(30a) 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 requirements for documentation set out by the contracting entities, where applicable in accordance with the simplified provisions of Directive 2004/18/EC. However, when a dynamic purchasing system is first set up, contracting entities 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

		<p>been examined.</p> <p>Contracting entities should be free to organise the way in which they intend to examine the requests for participation, for instance by deciding to conduct such examinations only once a week, provided the deadlines for the examination of each request of admission are observed.</p> <p>Contracting entities using the exclusion or selection criteria provided for under Directive 2004/18/EC in the context of a dynamic purchasing system, should apply the relevant provisions of that Directive in the same way as contracting authorities operating a dynamic purchasing system pursuant to Directive 2004/18/EC.</p>	<p>been examined.</p> <p>Contracting entities should be free to organise the way in which they intend to examine the requests for participation, for instance by deciding to conduct such examinations only once a week, provided the deadlines for the examination of each request of admission are observed.</p> <p>Contracting entities using the exclusion or selection criteria provided for under Directive 2004/18/EC in the context of a dynamic purchasing system, should apply the relevant provisions of that Directive in the same way as contracting authorities operating a dynamic purchasing system pursuant to Directive 2004/18/EC.</p>
		<p>(30b) In order to further the possibilities of SMEs to participate in a large-scale dynamic purchasing system, for instance one that is operated by a central purchasing body, the contracting authority or entity concerned should be able to articulate the system in objectively defined categories of products, works or services. Such categories</p>	<p>(30b) In order to further the possibilities of SMEs to participate in a large-scale dynamic purchasing system, for instance one that is operated by a central purchasing body, the contracting authority or entity concerned should be able to articulate the system in objectively defined categories of products, works or services. Such categories should be</p>

		should be defined by reference to objective factors which may for instance include the maximum allowable size of specific contracts to be awarded within the category concerned or a specific geographic area in which subsequent specific contracts are to be performed.	defined by reference to objective factors which may for instance include the maximum allowable size of specific contracts to be awarded within the category concerned or a specific geographic area in which subsequent specific contracts are to be performed.
		Where a dynamic purchasing system is divided into categories, the contracting authority or entity should apply selection criteria that are proportional to the characteristics of the category concerned.	Where a dynamic purchasing system is divided into categories, the contracting authority or entity should apply selection criteria that are proportional to the characteristics of the category concerned.
		(30c) It should be clarified that electronic auctions are typically not suitable for certain works contracts and certain service contracts having as their subject-matter intellectual performances, such as the design of works, because only the elements suitable for automatic evaluation by electronic means, without any intervention and/or appreciation by the contracting entity, namely elements which are quantifiable so that they can be expressed in figures or percentages, may be the object of electronic auctions.	(30c) It should be clarified that electronic auctions are typically not suitable for certain works contracts and certain service contracts having as their subject-matter intellectual performances, such as the design of works, because only the elements suitable for automatic evaluation by electronic means, without any intervention and/or appreciation by the contracting entity, namely elements which are quantifiable so that they can be expressed in figures or percentages, may be the object of electronic auctions.
		It should, however, also be clarified that electronic auctions	It should, however, also be clarified that electronic auctions

		<p>may be used in a procurement procedure for the purchase of a specific intellectual property right. It is also appropriate to recall that while contracting entities to apply selection criteria enabling them to reduce the number of candidates or tenderers as long as the auction has not yet started, no further reduction of the number of tenderers participating in the electronic auction should be allowed after the auction has started.</p>	<p>may be used in a procurement procedure for the purchase of a specific intellectual property right. It is also appropriate to recall that while contracting entities to apply selection criteria enabling them to reduce the number of candidates or tenderers as long as the auction has not yet started, no further reduction of the number of tenderers participating in the electronic auction should be allowed after the auction has started.</p>
<p>(31) 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 such use 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 agreement or where a dynamic purchasing system is being used and where sufficient guarantees are offered in respect of ensuring traceability, equal</p>	<p>(31) 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 such use complies with the rules of this Directive and the principles of equal treatment, non-discrimination and transparency. <i>In addition, the handling of data in this context should be conducted in accordance with national and Union data protection law.</i> In particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used and</p>	<p>(31) 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 use of electronic means of communication is required. Electronic catalogues help to increase competition and streamline</p>	<p>(31) 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 entities may require electronic catalogues in all available procedures where the use of electronic means of communication is required. Electronic catalogues help to increase competition and streamline public purchasing, particularly in</p>

<p>treatment and predictability, contracting entities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues. In line with the requirements of the rules for electronic means of communication, contracting entities should avoid unjustified obstacles to economic operators' access to procurement procedures in which tenders are to be presented in the form of electronic catalogues and which guarantee compliance with the general principles of non-discrimination and equal treatment.</p>	<p>where sufficient guarantees are offered in respect of ensuring traceability, equal treatment and predictability, contracting entities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues. In line with the requirements of the rules for electronic means of communication, contracting entities should avoid unjustified obstacles to economic operators' access to procurement procedures in which tenders are to be presented in the form of electronic catalogues and which guarantee compliance with the general principles of non-discrimination and equal treatment. [Am. 19]</p>	<p>public purchasing, particularly in terms of savings in time and money. Certain rules should however be laid down to ensure that such use complies with the rules of this Directive and the principles of equal treatment, non-discrimination and transparency. [...]</p>	<p>terms of savings in time and money. Certain rules should however be laid down to ensure that such use complies with the rules of this Directive and the principles of equal treatment, non-discrimination and transparency. [...]</p>
		<p>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</p>	<p>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 -</p>

		<p>active examination - correspond to the requirements of the contracting entity. In so doing, economic operators should be allowed to copy information contained in their general catalogue, but they should not be allowed to submit the general catalogue as such. Furthermore, where sufficient guarantees are offered in respect of ensuring traceability, equal treatment and predictability, contracting entities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues, in particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used.</p>	<p>correspond to the requirements of the contracting entity. In so doing, economic operators should be allowed to copy information contained in their general catalogue, but they should not be allowed to submit the general catalogue as such. Furthermore, where sufficient guarantees are offered in respect of ensuring traceability, equal treatment and predictability, contracting entities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues, in particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used.</p>
		<p>Where tenders have been generated by the contracting entity, the economic operator concerned should be given the possibility to verify that the tender thus constituted by the contracting entity does not contain any material errors. Where material errors are present, the economic operator should not be bound by the tender generated by the contracting entity unless the</p>	<p>Where tenders have been generated by the contracting entity, the economic operator concerned should be given the possibility to verify that the tender thus constituted by the contracting entity does not contain any material errors. Where material errors are present, the economic operator should not be bound by the tender generated by the contracting entity unless the error</p>

		error is corrected.	is corrected.
		<p>In line with the requirements of the rules for electronic means of communication, contracting entities should avoid unjustified obstacles to economic operators' access to procurement procedures in which tenders are to be presented in the form of electronic catalogues and which guarantee compliance with the general principles of non-discrimination and equal treatment.</p>	<p>In line with the requirements of the rules for electronic means of communication, contracting entities should avoid unjustified obstacles to economic operators' access to procurement procedures in which tenders are to be presented in the form of electronic catalogues and which guarantee compliance with the general principles of non-discrimination and equal treatment.</p>
<p>(32) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions or awarding contracts/framework agreements for other contracting authorities or for contracting entities. 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 entities, 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</p>	<p>(32) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions or awarding contracts/framework agreements for other contracting authorities or for contracting entities. In view of the large volumes purchased, such techniques help increase competition and professionalise public purchasing, <i>Specific attention should be paid to the accessibility of any such procedures for small and medium-sized enterprises</i>. Provision should therefore be made for a Union definition of central purchasing bodies dedicated to contracting entities, without preventing the continuation of less institutionalised and systematic common purchasing or the established practice of having recourse to service</p>	<p>(32) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions, managing dynamic purchasing systems or awarding contracts/framework agreements for other contracting authorities or contracting entities, with or without remuneration. The contracting 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 professionalise public purchasing. Provision should therefore be made for a Union definition of central purchasing bodies dedicated to</p>	<p>(32) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions, managing dynamic purchasing systems or awarding contracts/framework agreements for other contracting authorities or contracting entities, with or without remuneration. The contracting entities for whom a framework agreement is concluded should be able to use it for individual or repetitive purchases. In view of the large volumes purchased, such techniques may help increase competition and should professionalise public purchasing. Provision should therefore be made for a Union definition of central purchasing</p>

<p>procedures on behalf and for the account of a contracting entity. 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 entities 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 entity conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.</p>	<p>providers that prepare and manage procurement procedures on behalf and for the account of a contracting entity. 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 entities 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 entity conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts. [Am. 20]</p>	<p>contracting entities [...] and it should be clarified that central purchasing bodies operate in two different manners.</p>	<p>bodies dedicated to contracting entities [...] 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.</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 entities.</p>
		<p>Such intermediary role might in some cases be carried out by</p>	<p>Such intermediary role might in some cases be carried out by</p>

		conducting the relevant award procedures autonomously, without detailed instructions from the contracting entities concerned; in other cases, by conducting the relevant award procedures under the instructions of the contracting entities concerned, on their behalf and for their account.	conducting the relevant award procedures autonomously, without detailed instructions from the contracting entities concerned; in other cases, by conducting the relevant award procedures under the instructions of the contracting entities concerned, on their behalf and for their account.
		Furthermore, rules should be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, also in the case of remedies, among the central purchasing body and the contracting entities 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 entity conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.	Furthermore, rules should be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, also in the case of remedies, among the central purchasing body and the contracting entities 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 entity conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.
		(32a) Contracting entities should be allowed to award a service contract for the provision of	(32a) Contracting entities should be allowed to award a service contract for the provision of

		<p>centralised purchasing activities to a central purchasing body without applying the procedures provided for in this Directive; it should also be permitted that such service contracts include the provision of ancillary purchasing activities. Such service contracts for the provision of ancillary purchasing activities should, when performed otherwise than by a central purchasing body in connection with its provision of central purchasing activities to the contracting entity concerned, be awarded in accordance with 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>centralised purchasing activities to a central purchasing body without applying the procedures provided for in this Directive; it should also be permitted that such service contracts include the provision of ancillary purchasing activities. Such service contracts for the provision of ancillary purchasing activities should, when performed otherwise than by a central purchasing body in connection with its provision of central purchasing activities to the contracting entity concerned, be awarded in accordance with 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>(32b) 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</p>	<p>(32b) 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</p>

		<p>recourse to service providers that prepare and manage procurement procedures on behalf and for the account of a contracting entity and under its instructions. On the contrary, certain features of joint procurement should be clarified because of the important role joint procurement may play, not least in connection with innovative projects.</p>	<p>recourse to service providers that prepare and manage procurement procedures on behalf and for the account of a contracting entity and under its instructions. On the contrary, certain features of joint procurement should be clarified because of the important role joint procurement may play, not least in connection with innovative projects.</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 entities, each conducting a separate procurement procedure, to situations where the contracting entities concerned jointly conduct one procurement procedure either by acting together or by entrusting one contracting entities with the management of the procurement procedure on behalf of all contracting entities.</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 entities, each conducting a separate procurement procedure, to situations where the contracting entities concerned jointly conduct one procurement procedure either by acting together or by entrusting one contracting entities with the management of the procurement procedure on behalf of all contracting entities.</p>
		<p>Where different contracting entities are jointly conducting a procurement procedure, they should be jointly responsible for</p>	<p>Where different contracting entities are jointly conducting a procurement procedure, they should be jointly responsible for</p>

		fulfilling their obligations under this Directive. However, where only parts of the procurement procedure are jointly conducted by the contracting entities, joint responsibility should only apply to those parts of the procedure that have been carried out together.	fulfilling their obligations under this Directive. However, where only parts of the procurement procedure are jointly conducted by the contracting entities, joint responsibility should only apply to those parts of the procedure that have been carried out together.
		Each contracting entity should be solely responsible in respect of procedures or parts of procedures it conducts on its own, such as the awarding of a contract, the conclusion of a framework agreement, the operation of a dynamic purchasing system or the reopening of competition under a framework agreement.	Each contracting entity should be solely responsible in respect of procedures or parts of procedures it conducts on its own, such as the awarding of a contract, the conclusion of a framework agreement, the operation of a dynamic purchasing system or the reopening of competition under a framework agreement.
(33) 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	(33) 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	(33) 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	(33) 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

<p>use electronic means of communication in all procurement procedures after a transition period of two years.</p>	<p>procurement procedures after a transition period of two years. <i>So as to ensure continued legal certainty, those provisions should not affect existing arrangements at national level for publishing information on public procurement contracts for amounts below the thresholds set in this Directive.. [Am. 21]</i></p>	<p>use electronic means of communication in all procurement procedures after a transition period of thirty months.</p>	<p>use electronic means of communication in all procurement procedures after a transition period of thirty months.</p>
<p>(34) Joint awarding of contracts by contracting entities from different Member States currently encounters specific legal difficulties, with special reference to conflicts of national laws. Despite the fact that Directive 2004/17/EC implicitly allowed for cross-border joint public procurement, in practice several national legal systems have explicitly or implicitly rendered cross-border joint procurement legally uncertain or impossible. Contracting entities from different Member States may be interested in cooperating and in jointly awarding 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 entity. Therefore</p>	<p>(34) Joint awarding of contracts by contracting entities from different Member States currently encounters specific legal difficulties, with special reference to conflicts of national laws. Despite the fact that Directive 2004/17/EC implicitly allowed for cross-border joint public procurement, in practice several national legal systems have explicitly or implicitly rendered cross-border joint procurement legally uncertain or impossible. Contracting entities from different Member States may be interested in cooperating and in jointly awarding 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 entity. Therefore new rules on cross-border joint procurement</p>	<p>(34) Joint awarding of contracts by contracting entities from different Member States currently encounters specific legal difficulties concerning conflicts of national laws. Despite the fact that Directive 2004/17/EC implicitly allowed for cross-border joint public procurement, contracting entities are still facing considerable legal and practical difficulties in purchasing from central purchasing bodies in other Member States or jointly awarding contracts. In order to allow contracting entities to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting entity, these difficulties should be remedied.</p>	<p>(34) Joint awarding of contracts by contracting entities from different Member States currently encounters specific legal difficulties concerning conflicts of national laws. Despite the fact that Directive 2004/17/EC implicitly allowed for cross-border joint public procurement, contracting entities are still facing considerable legal and practical difficulties in purchasing from central purchasing bodies in other Member States or jointly awarding contracts. In order to allow contracting entities to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting entity, these difficulties should be remedied. Therefore new rules on cross-border</p>

<p>new rules on cross-border joint procurement designating the applicable law should be established in order to facilitate cooperation between contracting entities across the Single Market. In addition, contracting entities 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>designating the applicable law should be established in order to facilitate cooperation between contracting entities across the Single Market. In addition, contracting entities 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. <i>Similarly, in the context of cross-border public procurement, it is essential to clarify the aspects relating to intellectual property law.</i> [Am. 22]</p>	<p>Therefore new rules on cross-border joint procurement [...] should be established in order to facilitate cooperation between contracting entities [...] 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 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). In addition, contracting entities 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>joint procurement should be established in order to facilitate cooperation between contracting entities 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 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). In addition, contracting entities 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 entities should not make use of the possibilities for cross-border joint procurement for the purpose of</p>	<p>However, contracting entities should not make use of the possibilities for cross-border joint procurement for the purpose of</p>

		<p>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>	<p>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>
<p>(35) The technical specifications drawn up by purchasers need to allow 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. 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</p>	<p>The technical specifications drawn up by purchasers need to allow public procurement to be opened up <i>open</i> to competition <i>as well as to achieve objectives of sustainability</i>. 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, <i>standards and technical specifications in the marketplace, including those drawn up on the basis of performance criteria linked to the life cycle and the sustainability of the production process of the works, supplies and services</i>. 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</p>	<p>(35) It is necessary that the technical specifications drawn up by 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. 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</p>	<p>(35) The technical specifications drawn up by purchasers need to allow public procurement to be <i>open</i> to competition <i>as well as to achieve objectives of sustainability</i>. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions, <i>standards and technical specifications in the marketplace, including those drawn up on the basis of performance criteria linked to the life cycle and the sustainability of the production process of the works, supplies and services</i>. 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,</p>

<p>reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety must be considered by the contracting entities. 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>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 other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety must be considered by the contracting entities. 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. <i>In order not to discriminate against tenderers who invest time and money for certificates or test reports, the burden to provide equivalence should be placed on the tenderer claiming equivalence.</i>[Am. 23]</p>	<p>performance related requirements are also appropriate means to favour innovation in public procurement and should be used as widely as possible. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety should be considered by the contracting entities. 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>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 standard or, in the absence thereof, to a national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety should be considered by the contracting entities. It should be the responsibility of the economic operator to prove equivalence with the requested label.</p> <p>To prove 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</p>
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			reports, or no possibility of obtaining them within the relevant time limits <u>provided that the economic operator concerned thereby proves that the works, supplies or services meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.</u>
		(35a) For all procurement intended for use by persons, whether general public or staff of the contracting entity, it is necessary that contracting entities 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.	(35a) For all procurement intended for use by persons, whether general public or staff of the contracting entity, it is necessary that contracting entities 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.
(36) Contracting entities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-) national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging	(36) Contracting entities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels <i>or certificates</i> , such as the European Eco-label, (multi-) national eco-labels or any other label <i>or certificate</i> 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	(36) Contracting entities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-) national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging	(36) Contracting entities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-) national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is

<p>requirements. It is furthermore essential that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and that the label is accessible and available to all interested parties.</p>	<p>that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors, and environmental organisations <i>and social partners</i>, can participate, and that the label is accessible and available to all interested parties. [Am. 24]</p>	<p>requirements. It is furthermore essential that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and that the label is accessible and available to all interested parties. It should be avoided that references to labels would have the effect of restricting innovation.</p>	<p>furthermore essential that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and that the label is accessible and available to all interested parties. It should be clarified that stakeholders could be public or private bodies, businesses or any sort of non-governmental organizations (organizations that are not a part of a government and are not conventional for-profit businesses).</p> <p>It should equally be clarified that specific national or government bodies or organizations may be involved in setting up label requirements that may be used in connection with procurement by public authorities without these bodies or organizations losing their status as third parties.</p> <p>It should be avoided that references to labels would have the effect of restricting innovation.</p>
(37) For all procurement intended	(37) For all procurement intended for	deleted	

<p>for use by persons, whether general public or staff of the contracting entity, it is necessary that contracting entities 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>use by persons, whether general public or staff of the contracting entity, it is necessary that contracting entities 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><i>(37a) 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). [Am. 25]</i></p>		<p>(37a) When drawing up technical specifications, contracting authorities should take into account requirements ensuing from Union law in the field of data protection law, notably in relation to the design of the processing of personal data (data protection by design).</p>
<p>(38) In order to encourage the involvement of small and medium-sized enterprises (SMEs) in the procurement market, it should be provided explicitly that contracts may be divided into lots, whether homogenous or heterogeneous. Where contracts are divided into lots, contracting entities may, for</p>	<p><i>(38) Public procurement should be adapted to the needs of small and medium-sized enterprises (SMEs). Contracting entities 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</i></p>	<p>(38) In order to encourage the involvement of small and medium-sized enterprises (SMEs) in the procurement market, it should be provided explicitly that contracts may be divided into lots [...]. Such division could be done on a quantitative basis, making the size of the individual contracts</p>	<p>(38) Public procurement should be adapted to the needs of small and medium-sized enterprises (SMEs). Contracting entities should be encouraged to make use of the Code of Best Practices set out in the Commission Staff Working Document of 25 June 2008 entitled ‘European Code of Best Practices</p>

<p>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><i>Procurement Contracts</i>⁴⁶ providing guidance on how they may apply the public procurement framework in a way that facilitates SME participation. In order to encourage the involvement of small and medium-sized enterprises (SMEs) in the procurement market, and to enhance competition, contracting entities it should be provided explicitly that encouraged in particular to give consideration to dividing contracts may be divided into lots, whether homogenous or heterogeneous especially for products that require quality for welfare, such as food for passive consumers in hospitals, schools, care for children and older people. Where contracts are divided into lots, contracting entities 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. [Am. 26]</p>	<p>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 entity, which, in accordance with the relevant rules on the calculation of the estimated value of procurement, should also be allowed to award some of the lots without applying the procedures of this Directive.</p>	<p>Facilitating Access by SMEs to Public Procurement Contracts⁴⁷, providing guidance on how they may apply the public procurement framework in a way that facilitates SME participation. To that end, it should be provided explicitly that contracts may be divided into lots [...]. Such division could be done on a quantitative basis, making the size of the individual contracts better correspond to the capacity of SMEs, or on a qualitative basis, in accordance with the different trades and specialisations involved, to adapt the content of the individual contracts more closely to the specialised sectors of SMEs and/or in accordance with different subsequent project phases. The size and subject-matter of the lots should be determined freely by the contracting entity, which, in accordance with the relevant rules on the calculation of the estimated value of procurement, should also be allowed to award some of the lots without applying the</p>
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⁴⁶ SEC(2008)2193.

⁴⁷ SEC(2008)2193.

			procedures of this Directive.
		Member States should remain free to go further in their efforts to facilitate the involvement of SMEs in the public procurement market, by introducing an obligation to consider the appropriateness of dividing contracts into lots to smaller contracts, by requiring contracting entities to provide a justification for a decision not to divide contracts into lots or by rendering a division into lots obligatory under certain conditions.	Member States should remain free to go further in their efforts to facilitate the involvement of SMEs in the public procurement market, by introducing an obligation to consider the appropriateness of dividing contracts into lots to smaller contracts, by requiring contracting entities to provide a justification for a decision not to divide contracts into lots or by rendering a division into lots obligatory under certain conditions.
		With the same purpose, Member States should also be free to provide mechanisms for direct payments to subcontractors.	With the same purpose, Member States should also be free to provide mechanisms for direct payments to subcontractors.
		(38a) Where contracts are divided into lots, contracting entities should , for instance in order to preserve competition or to ensure reliability of supply, be allowed to limit the number of lots for which an economic operator may tender; they may also <u>should also be allowed to</u> limit the number of lots that may be awarded to any one tenderer.	(38a) Where contracts are divided into lots, contracting entities should , for instance in order to preserve competition or to ensure reliability of supply, be allowed to limit the number of lots for which an economic operator may tender; they <u>should also be allowed to</u> limit the number of lots that may be awarded to any one tenderer.
		Furthermore, contracting entities should be able to require that all contractors coordinate their performance of the contract under	However, the objective of facilitating greater access to public procurement by SMEs might be hampered if contracting entities would be obliged

		<p>the direction of the economic operator to whom a lot involving the coordination of the entire project or its relevant parts has been awarded.</p>	<p>to award the contract lot by lot even where this would entail having to accept substantially less advantageous solutions compared to an award grouping several or all of the lots. Where the possibility to apply such a method has been clearly indicated beforehand, it should therefore be possible for contracting entities to conduct a comparative assessment of the tenders in order to establish whether the tenders submitted by a particular tenderer for a specific combination of lots would, taken as whole, fulfil the award criteria set out pursuant to Article 76 with regard to these lots better than the tenders for the individual lots concerned seen in isolation. If so, then the contracting entities should be allowed to award a contract combining the lots in question to the tenderer concerned. It should be clarified that contracting entities should conduct such a comparative assessment by first determining which tenders best fulfil the award criteria set out pursuant to Article 76 for each individual lot and then comparing it with the tenders submitted by a particular tenderer for a specific combination of lots, taken as whole.</p>
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		<p>(38b) In order to make procedures faster and more efficient, time limits for participation in procurement procedures should be kept as short as possible without creating undue barriers to access for economic operators from across the Internal Market and in particular SMEs. It should therefore be kept in mind that, when fixing the time limits for the receipt of tenders and requests to participate, contracting entities should take account in particular of the complexity of the contract and the time required 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 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 applicable to</p>	<p>(38b) In order to make procedures faster and more efficient, time limits for participation in procurement procedures should be kept as short as possible without creating undue barriers to access for economic operators from across the Internal Market and in particular SMEs. It should therefore be kept in mind that, when fixing the time limits for the receipt of tenders and requests to participate, contracting entities should take account in particular of the complexity of the contract and the time required 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 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 applicable to open procedures in line with the</p>
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		<p>open procedures 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 entities should have the opportunity to further shorten the time limits for receipt of tenders in open procedures in cases where a state of urgency renders the regular time limit in open procedures impracticable, but does not make an open procedure with shortened deadline impossible.</p>	<p>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 entities should have the opportunity to further shorten the time limits for receipt of tenders in open procedures in cases where a state of urgency renders the regular time limit in open procedures impracticable, but does not make an open procedure with shortened deadline impossible.</p>
		<p>Only in exceptional situations where extreme urgency brought about by events unforeseeable by the contracting entity concerned that are not attributable to that contracting entity makes it impossible to conduct a regular procedure even with shortened time limits, contracting entities should, insofar as strictly necessary, have the possibility to award contracts by negotiated procedure without prior call for competition. This may be case where natural catastrophes require immediate action.</p>	<p>Only in exceptional situations where extreme urgency brought about by events unforeseeable by the contracting entity concerned that are not attributable to that contracting entity makes it impossible to conduct a regular procedure even with shortened time limits, contracting entities should, insofar as strictly necessary, have the possibility to award contracts by negotiated procedure without prior call for competition. This may be case where natural catastrophes require immediate action.</p>
			<p>(38ba) It should be clarified that</p>

			<p>the need to ensure that economic operators dispose of sufficient time in which to draw up responsive tenders may entail that the time limits which were set initially may have to be prolonged. Such would in particular be the case where significant changes are made to the procurement documents. It should also be specified that, in this context, significant changes should be understood as covering changes, in particular to the technical specifications, in respect of which economic operators would need to dispose of additional time in order to understand and respond appropriately. It should, however, be clarified that such changes should not be so substantial that the admission of other candidates than those initially selected would have been allowed for or additional participants in the procurement procedure would have been attracted; such could in particular be the case where the changes renders the contract or the framework agreement materially different in character from the one initially set out in the procurement documents.</p>
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		<p>(38c) 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 entities, without candidates or tenderer having to request such information. It should also be recalled that Directive 92/13/EEC provides for an obligation for contracting entities, 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 reasons, which contracting entities should be required to give except where there would be serious grounds for not doing so. These grounds should be set out in the Directive. To ensure the necessary transparency in the context of procurement procedures involving</p>	<p>(38c) 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 entities, without candidates or tenderer having to request such information. It should also be recalled that Directive 92/13/EEC provides for an obligation for contracting entities, 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 reasons, which contracting entities should be required to give except where there would be serious grounds for not doing so. These grounds should be set out in the Directive. To ensure the necessary transparency in the context of procurement procedures involving</p>
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		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.	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.
(39) Insofar as compatible with the need to ensure the objective of sound commercial practice while allowing for maximum flexibility, it is appropriate to provide for the application of Directive [2004/18/EC] on public procurement in respect of requirements concerning economic and financial capacity and documentary evidence. It is therefore foreseen that contracting entities may apply the selection criteria provided for in Directive [2004/18/EC] and that, where they do, they are then obliged to apply the provisions concerning notably the ceiling to requirements on minimum turnover as well as on self-certification.	(39) Insofar as compatible with the need to ensure the objective of sound commercial practice while allowing for maximum flexibility, it is appropriate to provide for the application of Directive [2004/18/EC] on public procurement in respect of requirements concerning economic and financial capacity and documentary evidence. It is therefore foreseen that contracting entities may apply the selection criteria provided for in Directive [2004/18/EC] and that, where they do, they are then obliged to apply the provisions concerning notably the ceiling to requirements on minimum turnover as well as on self-certification.	(39) Insofar as compatible with the need to ensure the objective of sound commercial practice while allowing for maximum flexibility, it is appropriate to provide for the application of Directive 2004/18/EC on public procurement in respect of requirements concerning economic and financial capacity and documentary evidence. It is therefore foreseen that contracting entities may apply the selection criteria provided for in Directive 2004/18/EC and that, where they do, they are then obliged to apply the provisions concerning notably the ceiling to requirements on minimum turnover as well as on self-certification.	(39) Insofar as compatible with the need to ensure the objective of sound commercial practice while allowing for maximum flexibility, it is appropriate to provide for the application of Directive 2004/18/EC on public procurement in respect of requirements concerning economic and financial capacity and documentary evidence. It is therefore foreseen that contracting entities may apply the selection criteria provided for in Directive 2004/18/EC and that, where they do, they are then obliged to apply the provisions concerning notably the ceiling to requirements on minimum turnover as well as on use of the European Single Procurement Document.
	<i>(39a) Member States should adopt measures to promote the access of SMEs to public procurement, in particular through improved information and guidance on tendering and on the new</i>		---

	<p><i>opportunities offered by the modernised Union legal framework, and to foster the exchange of best practice and the organisation of training and events involving contracting entities and SMEs.</i></p> <p>[Am. 27]</p>		
		<p>(39a) Contracting entities may require that environmental management measures or schemes are to be applied during the performance of a contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)⁴⁸, 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</p>	<p>(39a) Contracting entities may require that environmental management measures or schemes are to be applied during the performance of a contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)⁴⁹, 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</p>

⁴⁸ OJ L 342, 22.12.2009, p. 1.

⁴⁹ OJ L 342, 22.12.2009, p. 1.

		<p>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>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>(39bb) The notion of award criteria is central to this Directive, it is therefore important that the relevant provisions are presented in as simple and streamlined a way as possible. This may be obtained by using the terminology "most economically advantageous tender" as the overriding concept as all winning tenders should finally be chosen in accordance with what the individual contracting entity considers to be the economically best solution among those offered. To avoid confusion with the award criterion that is currently known as the "most economically advantageous tender" in Directives 2004/17/EC and 2004/18/EC, a different terminology should be used to cover that concept, the "best price-quality ratio"; consequently, it should be interpreted in accordance with the relative</p>

			<p>jurisprudence under those Directives, except where there is a clearly materially different solution in this Directive.</p>
		<p>(39b) 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 entities 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. 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</p>	<p>(39b) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment, with a view to ensuring an objective comparison of the relative value of the tenders in order to determine, in conditions of effective competition, which tender is the most economically advantageous tender. It should be set out explicitly that the most economically advantageous tender should be assessed on the basis of the best price-quality ratio which should always include a price or cost element. It should equally be clarified that such assessment of the most economically advantageous tender could also be carried out on the basis of either price or cost effectiveness only. It is furthermore appropriate to recall that contracting entities are free to set adequate quality standards by using technical specifications or contract performance conditions.</p>

		appropriate.	In order to encourage a greater quality orientation of public procurement, Member States should be permitted to prohibit or restrict use of price only or cost only to assess the most economically advantageous tender where they deem this appropriate.
		To ensure compliance with the principle of equal treatment in the award of contracts, contracting entities should be obliged to create the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied in the contract award decision.	To ensure compliance with the principle of equal treatment in the award of contracts, contracting entities should be obliged to create the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied in the contract award decision.
		Contracting entities should therefore be obliged to indicate the contract award criteria and the relative weighting given to each of those criteria. Contracting entities should, however, be permitted to derogate from that obligation to indicate the weighting of the criteria in duly justified cases for which they must be able to give reasons, where the weighting cannot be established in advance, in particular because of the complexity of the contract. In such cases, they should indicate	Contracting entities should therefore be obliged to indicate the contract award criteria and the relative weighting given to each of those criteria. Contracting entities should, however, be permitted to derogate from that obligation to indicate the weighting of the criteria in duly justified cases for which they must be able to give reasons, where the weighting cannot be established in advance, in particular because of the complexity of the contract. In such cases, they should indicate the

		the criteria in decreasing order of importance.	criteria in decreasing order of importance.
		(39c) 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 entities 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.	(39c) 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 entities 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.
		(39d) Where contracting entities [...] award a contract to the most economically advantageous tender, they should determine the economic and qualitative award criteria linked to the subject-matter of the contract on the basis of which they will assess tenders in order to identify the most economically advantageous tender from the view of the contracting entity. These criteria should thus allow for a comparative assessment of the level of performance offered by each tender to be assessed in the	(39d) When assessing the best price-quality ratio contracting entities should determine the economic and qualitative award criteria linked to the subject-matter of the contract on the basis of which they will assess tenders in order to identify the most economically advantageous tender from the view of the contracting entity. These criteria should thus allow for a comparative assessment of the level of performance offered by each tender to be assessed in the light of the subject-matter of the

		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 criteria is set out in this Directive. Contracting entities should be encouraged to choose award criteria that allow them to obtain high-quality works, supplies and services that are optimally suited to their needs.	contract, as defined in the technical specifications . In the context of the best price-quality ratio, a non-exhaustive list of possible award criteria is set out in this Directive. Contracting entities should be encouraged to choose award criteria that allow them to obtain high-quality works, supplies and services that are optimally suited to their needs.
		The chosen award criteria should not confer an unrestricted freedom of choice on the contracting entity and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.	The chosen award criteria should not confer an unrestricted freedom of choice on the contracting entity and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.
		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 entity, be either the price or a cost-effectiveness approach such as life-cycle costing. However, the award criteria should not affect	To identify the most economically advantageous tender, the contract award decision should not be based on non-cost criteria only. Qualitative criteria should therefore be accompanied by a cost criterion that could, at the choice of the contracting entity, be either the price or a cost-effectiveness approach such as life-cycle costing. However, the award criteria should not affect the

		<p>the application of national provisions determining the remuneration of certain services or setting out fixed prices for certain supplies.</p>	<p>application of national provisions determining the remuneration of certain services or setting out fixed prices for certain supplies.</p>
			<p>(39da) Where national provisions determine the remuneration of certain services or set out fixed prices for certain supplies, it should be clarified that it remains possible to assess value for money on the basis of other factors than the sole price or remuneration. Depending on the service or product concerned, such factors could, for instance, include conditions of delivery and payment, aspects of after-sale service (e.g. extent of advisory and replacement services) or environmental or social aspects (e.g. whether books were stamped on recycled paper or paper from sustainable timber, the cost imputed to environmental externalities or whether the social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract has been furthered). Given the numerous possibilities of evaluating value for money on the</p>

			basis of substantive criteria, recourse to drawing of lots as the sole means of awarding the contract should be avoided.
		<p>(39e) Wherever the quality of the staff employed is relevant to the level of performance of the contract, contracting entities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this 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 entities 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 entity which verifies that the replacement staff affords an equivalent level of quality.</p>	<p>(39e) Wherever the quality of the staff employed is relevant to the level of performance of the contract, contracting entities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this 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 entities 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 entity which verifies that the replacement staff affords an equivalent level of quality.</p>
		(39f) Contract performance	

		<p>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 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.</p>	
		<p>The contract performance conditions should be indicated in the contract notice, the periodic indicative notice used as a means of calling for competition or the procurement documents. They may include an obligation for economic operators to foresee</p>	

		<p>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 parametres specified to that effect in the procurement documents, are potentially beneficial for the contracting entity which would be protected against additional costs triggered by the realisation of the hedged risks.</p>	
		<p>(39g) 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</p>	<p>(39g) 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. <u>In this context, it should be recalled that public procurement is crucial to driving innovation, which is of great importance for future growth in Europe.</u> 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</p>

		<p>promotion of clean and energy-efficient road transport vehicles⁵⁰) 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 programme for office equipment⁵¹). In addition, the definition of common methodologies for life cycle costing has significantly advanced.</p>	<p>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 vehicles⁵²) 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 programme for office equipment⁵³). In addition, the definition of common methodologies for life cycle costing has significantly advanced.</p>
		<p>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</p>	<p>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</p>

⁵⁰ OJ L 120, 15.5.2009, p. 5.

⁵¹ OJ L 39, 13.2.2008, p. 1.

⁵² OJ L 120, 15.5.2009, p. 5.

⁵³ OJ L 39, 13.2.2008, p. 1.

		public procurement in support of sustainable growth.	public procurement in support of sustainable growth.
		<p>(39h) Those sector-specific measures should be complemented by an adaptation of the public procurement Directives empowering contracting entities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting entities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach. .The notion of life-cycle costing includes all costs over the life-cycle of a works, supplies or services. This means internal costs such as 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 entities use for assessing costs imputed to environmental externalities should be established in advance in an objective and</p>	<p>(39h) Those sector-specific measures should be complemented by an adaptation of the public procurement Directives empowering contracting entities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that, except where it is assessed on the basis of price only, contracting entities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach. .The notion of life-cycle costing includes all costs over the life-cycle of a works, supplies or services.</p> <p>This means internal costs such as research to be carried out, development, production, transport, use, maintenance and end-of-life disposal costs, but can also include costs imputed to environmental externalities, such as pollution caused by extraction of the raw materials used in the product or caused by the product itself or its manufacturing, provided they can be monetised and monitored. The methods which contracting entities</p>

		<p>non-discriminatory manner and be accessible to all interested parties. Such methods can be established at national, regional or local level, but they should, to avoid distortions of competition through tailor-made methodologies, remain general in the sense that they should not be set up specifically for a particular public procurement procedure. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services .</p>	<p>use for assessing costs imputed to environmental externalities should be established in advance in an objective and non-discriminatory manner and be accessible to all interested parties. Such methods can be established at national, regional or local level, but they should, to avoid distortions of competition through tailor-made methodologies, remain general in the sense that they should not be set up specifically for a particular public procurement procedure. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services . Where such common methodologies are developed, their use should be made compulsory.</p> <p><i>Furthermore, the feasibility of establishing a common methodology on social life cycle costing should be examined, taking into account existing methodologies such as the Guidelines for Social Life Cycle Assessment of Products adopted within the framework of the United Nations Environment Programme.</i></p>
		(39i) Furthermore, in view of a	(39i) Furthermore, in view of a

		<p>better integration of social and environmental considerations in the procurement procedures, contracting entities should be allowed to use award criteria or contract performance conditions relating to the works, supplies or services to be provided under the public contract in any respect and at any stage of their life cycles from extraction of raw materials for the product to the stage of disposal of the product, including factors involved in the specific process of production, provision or 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 referring 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.</p>	<p>better integration of social and environmental considerations in the procurement procedures, contracting entities should be allowed to use award criteria or contract performance conditions relating to the works, supplies or services to be provided under the public contract in any respect and at any stage of their life cycles from extraction of raw materials for the product to the stage of disposal of the product, including factors involved in the specific process of production, provision or trading and its conditions of those works, supplies or services or a specific process during a later stage of their life cycle, even where such factors do not form part of their material substance. Criteria and conditions referring to such a production or provision process are for example that the manufacturing of the purchased goods did not involve toxic chemicals, or that the purchased services are provided using energy-efficient machines.</p>
		<p>In accordance with the case-law of the Court of Justice of the European Union, this includes also award criteria or contract</p>	<p>In accordance with the case-law of the Court of Justice of the European Union, this includes also award criteria or contract</p>

		<p>performance conditions relating to the supply or utilisation of fair trade products in the course of the performance of the contract to be awarded. Contract performance conditions pertaining to environmental considerations 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>performance conditions relating to the supply or utilisation of fair trade products in the course of the performance of the contract to be awarded. Contract performance conditions pertaining to environmental considerations 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 entities should hence not be allowed to require tenderers to have a certain corporate social or environmental responsibility policy in place.</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 entities should hence not be allowed to require tenderers to have a certain corporate social or environmental responsibility policy in place.</p>
		<p>(39j) 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</p>	<p>(39j) 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</p>

		<p>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 services⁵⁴, 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 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</p>	<p>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 services⁵⁵, 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 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.</p>
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⁵⁴ OJ L 18, 21.1.1997, p.1.

⁵⁵ OJ L 18, 21.1.1997, p.1.

		<p>should apply during the performance of a public contract, provided that such rules, and their application, comply with Union law.</p>	
		<p>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. 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 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 transferred from 47.</p>	<p>Contract performance conditions may also be intended to favour the promotion of equality of women and men at work, the increased participation of women in the labour market and the reconciliation of work and private life, the protection of the environment or animal welfare and, to comply in substance with fundamental International Labour Organization (ILO) Conventions, and to recruit more disadvantaged persons than are required under national legislation.</p>

		<p>(39k) 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 implementation of training measures for the unemployed or young persons in the course of the performance of the contract to be awarded. In technical specifications contracting entities can provide such social requirements which directly characterise the product or service in question, such as accessibility for persons with disabilities or design for all users.</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 implementation of training measures for the unemployed or young persons in the course of the performance of the contract to be awarded. In technical specifications contracting entities can provide such social requirements which directly characterise the product or service in question, such as accessibility for persons with disabilities or design for all users.</p>
		<p>(39l) Nothing in this Directive should prevent the imposition or</p>	

		<p>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.</p>	
<p>(40) 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. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether or not to apply the exclusion criteria listed in Directive [2004/18] to such contracting entities. The obligation to apply Article 55(1) and (2) of Directive [2004/18] should therefore be limited to contracting entities that are contracting authorities.</p>	<p>(40) Public contracts should not be awarded to economic operators that have participated in a criminal organisation, <i>in exploitation of human trafficking and child labour</i> 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. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether or not to apply the exclusion criteria listed in Directive [2004/18] to such contracting entities. The obligation to apply Article 55(1) and (2) of Directive [2004/18] should therefore be limited to contracting entities that are contracting authorities. Furthermore,</p>	<p>(40) 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 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</p>	<p>(40) 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 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</p>

<p>Furthermore, contracting entities 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.</p>	<p>contracting entities 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 or labour law provisions referred to in the general principles of this Directive. [Am. 28]</p>	<p>operator to whom one of the mandatory grounds for exclusion applies. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether or not to apply the exclusion criteria listed in Directive 2004/18 to such contracting entities. The obligation to apply Article 55(1) and (2) of Directive 2004/18 should therefore be limited to contracting entities that are contracting authorities.</p>	<p>operator to whom one of the mandatory grounds for exclusion applies. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether or not to apply the exclusion criteria listed in Directive 2004/18 to such contracting entities. The obligation to apply Article 55(1) and (2) of Directive ... replacing Directive 2004/18 should therefore be limited to contracting entities that are contracting authorities.</p>
		<p>(40a) Contracting entities should further be given the possibility to exclude economic operators which have environmental protection requirements 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.</p> <p>Bearing in mind that the contracting entity will be responsible for the consequences of its possible erroneous decision, contracting entities should also remain free to consider that there</p>	<p>(40a) Contracting entities should further be given the possibility to exclude economic operators which have environmental protection requirements 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.</p> <p>Bearing in mind that the contracting entity will be responsible for the consequences of its possible erroneous decision, contracting entities should also remain free to consider that there</p>

		<p>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.</p>	<p>has been grave professional misconduct, where, before a final and binding decision on the presence of mandatory exclusion grounds has been rendered, they can demonstrate by any appropriate means that the economic operator has violated its obligations, including obligations relating to the payment of taxes or social security contributions, unless otherwise provided by the applicable national law.</p>
		<p>They should also be able to exclude candidates or tenderers whose performance in earlier public contracts or contracts with other contracting entities has shown major deficiencies with regard to substantive requirements, for instance failure to deliver or perform, significant shortcomings of the product or service delivered, making it unusable for the intended purpose, or misbehaviour that casts serious doubts as to the reliability of the economic operator. National law should provide for a maximum duration for such exclusions.</p>	<p>They should also be able to exclude candidates or tenderers whose performance in earlier public contracts or contracts with other contracting entities has shown major deficiencies with regard to substantive requirements, for instance failure to deliver or perform, significant shortcomings of the product or service delivered, making it unusable for the intended purpose, or misbehaviour that casts serious doubts as to the reliability of the economic operator. National law should provide for a maximum duration for such exclusions.</p> <p>In applying facultative grounds for exclusion, particular attention</p>

			should be paid to the principle of proportionality. Minor irregularities should only in exceptional circumstances lead to the exclusion of an economic operator. However repeated cases of minor irregularities can give rise to doubts about the reliability of an economic operator which might justify its exclusion.
(41) Where contracting entities are obliged or choose to apply the just mentioned exclusion criteria, they should apply Directive [2004/18] concerning the possibility that economic operators adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour.	(41) Where contracting entities are obliged or choose to apply the just mentioned exclusion criteria mentioned above , they should apply Directive [2004/18] concerning the possibility that economic operators adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour. [Am. 29]	(41) Where contracting entities are obliged or choose to apply the just mentioned exclusion criteria, they should apply Directive 2004/18 concerning the possibility that economic operators adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour.	(41) Where contracting entities are obliged or choose to apply the just mentioned exclusion criteria, they should apply Directive ... replacing Directive 2004/18 concerning the possibility that economic operators adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour.
(42) Contracting entities may require that environmental management measures or schemes are to be applied during the performance of a contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25	(42) Contracting entities may require that environmental management measures or schemes are to be applied during the performance of a contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a	---	

<p>November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)⁵⁶, 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>Community eco-management and audit scheme (EMAS), 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>(43) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. Those criteria should guarantee that tenders are assessed in conditions of effective competition, also where contracting entities require high-quality works, supplies and services that are optimally suited to their</p>	<p>(43) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment. Those criteria should guarantee that tenders are assessed in conditions of effective competition, also where contracting entities require high-quality works, supplies and services that are optimally suited to their needs. As a result, contracting</p>	<p>---</p>	

⁵⁶ OJ L 342, 22.12.2009, p. 1.

<p>needs. As a result, contracting entities 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>entities 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 <i>it should refer to quality and sustainability</i> standards by using technical specifications or contract performance conditions. [Am. 30]</p>		
<p>(44) Where contracting entities 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 those 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 entity and they should ensure the possibility of effective competition and be</p>	<p>(44) Where Contracting entities choose to award <i>awarding</i> a contract to <i>on the basis of</i> the most economically advantageous tender <i>criterion</i>, 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 those criteria, <i>which may include economic, environmental and social characteristics</i> 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 entity and they should ensure the possibility of effective <i>and</i></p>	<p>---</p>	

<p>accompanied by requirements that allow the information provided by the tenderers to be effectively verified.</p>	<p><i>fair</i> competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. [Am. 31]</p>		
<p>(45) 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 vehicles⁵⁷) 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 programme for office equipment⁵⁸).</p>	<p>(45) It is of utmost importance to fully Efforts should be made to exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth, without encroaching upon the powers of the contracting entities. 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 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</p>	<p>---</p>	

⁵⁷ OJ L 120, 15.5.2009, p. 5.

⁵⁸ OJ L 39, 13.2.2008, p. 1.

<p>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). 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. [Am. 32]</p>		
<p>(46) Those sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting entities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting entities 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</p>	<p>(46) Those sector-specific measures must be complemented by an adaptation of the public procurement Directives empowering contracting entities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting entities 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 a works, supplies or services, both their internal</p>	<p>---</p>	

<p>includes all costs over the life-cycle of a 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 its use should be made compulsory.</p>	<p>costs (such as <i>research</i>, development, production, <i>transport</i>, 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 its use should be made compulsory. [Am. 33]</p>		
<p>(47) Furthermore, in technical specifications and in award criteria, contracting entities 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 contract. In order to better 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</p>	<p>(47) Furthermore, in technical specifications, and in award criteria <i>and in contract performance clauses</i>, contracting entities should be allowed to refer to a specific production process <i>including for example social and environmental aspects</i>, 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 contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to include, in the award criterion of the most economically advantageous tender <i>criteria and in contract performance clauses</i>, characteristics related to the working</p>	<p>---</p>	

<p>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 in the framework of the provision of services⁵⁹ 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.</p>	<p><i>employment and environmental conditions and require the of the persons directly participating in the process of production or provision in question of certificates 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 and in Union and national law as well as in collective agreements concluded in accordance with national law and practices which respect Union law.</i></p> <p>Those characteristics may only concern <i>among others</i> 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</p>		
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⁵⁹ OJ L 18, 21.1.1997, p.1.

	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. [Am. 34]		
	<i>(47a) Taking into account the recent case law of the Court of Justice of the European Union, contracting entities should be permitted to 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 price and price premium to producers.</i> [Am. 35]		See Recital 39i
(48) For service contracts and for contracts involving the design of works, contracting entities should also be allowed to use as an award criterion the organisation qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of the contract performance and, as a result, the economic value of the tender.	(48) For service contracts and for contracts involving the design of works, contracting entities should also be allowed to use as an award criterion the organisation qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of the contract performance and, as a result, the economic value of the tender.	---	Council: see Recital 39e
(49) Tenders that appear	(49) Tenders that appear abnormally	(49) Tenders that appear	(49) Tenders that appear

<p>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 entities should be 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 entity should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting entity has established that the abnormally low price results from non-compliance with mandatory Union legislation in the fields of social, labour or environmental law or international labour law provisions.</p>	<p>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 entities should be 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 entity should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting entity has established that the abnormally low price results from non-compliance with mandatory Union legislation in the fields of social, labour or environmental law or international labour law provisions <i>referred to in the general principles of this Directive</i>. [Am. 36]</p>	<p>abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. [...] Where the tenderer cannot provide a sufficient explanation, the contracting entity should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting entity has established that the abnormally low price [...] or costs proposed results from non-compliance with mandatory Union legislation [...] or national law compatible with it in the fields of social, labour or environmental law or international labour law provisions.</p>	<p>abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. [...] Where the tenderer cannot provide a sufficient explanation, the contracting entity should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting entity has established that the abnormally low price [...] or costs proposed results from non-compliance with mandatory Union legislation [...] or national law compatible with it in the fields of social, labour or environmental law or international labour law provisions.</p>
			<p>(39f49aaa) 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</p>

			<p>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 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.</p>
			<p>(49aa) It is important that observance by subcontractors of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex XIV, provided that such rules, and their application, comply with Union law, is ensured through appropriate actions within the scope of their responsibilities and remit by the competent national authorities, such as for instance labour inspections or</p>

			<p>environmental protection agencies.</p> <p>It is also necessary to ensure some transparency in the subcontracting chain, as this will give contracting entities information on who are present at building sites on which works are being performed for them or which undertakings are providing services in or at buildings, infrastructures or areas other premises, such as town halls, municipal schools, sports facilities, ports or motorways , for which the contracting entities are responsible or over which they have a direct oversight. It should be clarified that the obligation to deliver the required information will in any case be incumbent on the main contractor, either on the basis of specific clauses, that each contracting entity would have to include in all procurement procedures, or on the basis of obligations which Member States would impose on main contractors by means of generally applicable provisions.</p> <p>It should also be clarified that the conditions relating to the enforcement of observance of applicable obligations in the fields of</p>
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			<p>environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex XIV, provided that such rules, and their application, comply with Union law, should be applied whenever the national law of a Member State provides for a mechanism of joint liability between subcontractors and the main contractor. Furthermore, it should be stated explicitly that Member States may go further, for instance by extending the transparency obligations, by enabling direct payment to subcontractors or by enabling or requiring contracting authorities to verify that subcontractors are not in any of the situations in which exclusion of economic operators would be warranted. Where such measures are applied to subcontractors, coherence with the provisions applicable to main contractors should be ensured so that existence of compulsory exclusion grounds would be followed by a requirement that the main contractor substitute the subcontractor concerned. Where such verification</p>
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			<p>shows the presence of non-compulsory grounds for exclusion, it should be clarified that contracting authorities may require the substitution; it should, however, also be set out explicitly that contracting authorities may be obliged to require the substitution of the subcontractor concerned where exclusion of main contractors has been rendered obligatory in the same cases.</p> <p>It should finally be set out explicitly that Member States remain free to provide for more stringent liability rules under national law or to go further under national law on direct payments to subcontractors.</p>
		<p>(49a) Having regard to current discussions on horizontal provisions governing relations with third countries in the context of public procurement, it is appropriate to maintain for an interim period the status quo of the regime which is currently applicable to the utilities sector pursuant to Articles 58 and 59 of Directive 2004/17/EC. Consequently, these provisions should be kept unchanged, including the provision for the</p>	<p>(49a) Having regard to current discussions on horizontal provisions governing relations with third countries in the context of public procurement, it is appropriate to maintain for an interim period the status quo of the regime which is currently applicable to the utilities sector pursuant to Articles 58 and 59 of Directive 2004/17/EC. Consequently, these provisions should be kept unchanged, including the provision for the</p>

		adoption of implementing acts where Union undertakings have difficulties in accessing third country markets. Under these circumstances, these acts should continue to be taken by the Council.	adoption of implementing acts where Union undertakings have difficulties in accessing third country markets. Under these circumstances, these acts should continue to be taken by the Council.
(50) 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 notice used to make the call for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For example, mention may be made of the requirements applicable during the performance of the contract to recruit long-term job-seekers or to implement training measures for the unemployed or for young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have	(50) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are <i>directly</i> linked to the subject-matter of the contract <i>and to the principle of the procurement related to compliance with environmental, social and labour law provisions</i> and are indicated in the notice used to make the call for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational <i>or professional</i> training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For example, mention may be made of the requirements applicable during the performance of the contract to recruit long-term job-seekers or to implement training measures for the unemployed or for young persons, to comply in substance with fundamental International Labour Organisation	deleted	Deleted

<p>not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.</p>	<p>(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. [Am. 37]</p>		
<p>(51) 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 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 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 services⁶⁰ 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</p>	<p>(51) 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 contract, provided that such rules, and their application, comply with Union law. 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 XIV and in Union and national law as well as in 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 another Member State for the purpose of performing a contract, Directive 96/71/EC of the European Parliament and of the Council</p>	<p>deleted</p>	

⁶⁰ OJ L 18, 21.1.1997, p. 1.

<p>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.</p>	<p>of 16 December 1996 concerning the posting of workers in the framework of the provision of services⁶¹ 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 should be considered to be grave misconduct on the part of the economic operator concerned, liable to which may lead to the exclusion of that economic operator from the procedure for the award of a public contract. [Am. 38]</p>		
<p>(52) Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits⁶² should apply to the calculation of the time limits contained in this Directive.</p>	<p>(52) Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits should apply to the calculation of the time limits contained in this Directive.</p>	<p>(52) It should be recalled that Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits applies to the calculation of the time limits contained in this Directive.</p>	<p>(52) It should be recalled that Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits applies to the calculation of the time limits contained in this Directive.</p>
<p>(53) 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</p>	<p>(53) 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</p>	<p>(53) 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</p>	<p>(53) 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</p>

⁶¹ OJ L 18, 21.1.1997, p. 1.

⁶² OJ L 124, 8.6.1971, p. 1.

<p>procedure is required in case of material changes to the initial contract, in particular to the scope and content of the mutual rights and obligations of the parties, including the distribution of intellectual property rights. Such changes demonstrate the parties' intention to renegotiate essential terms or conditions of that contract. This is the case in particular if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure.</p>	<p>material changes to the initial contract, in particular to the scope and content of the mutual rights and obligations of the parties, including the distribution of intellectual property rights. Such changes demonstrate the parties' intention to renegotiate essential terms or conditions of that contract. This is the case in particular if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure.</p>	<p>procedure is required in case of material changes to the initial contract, in particular to the scope and content of the mutual rights and obligations of the parties, including the distribution of intellectual property rights. Such changes demonstrate the parties' intention to renegotiate essential terms or conditions of that contract. This is the case in particular if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure.</p>	<p>procedure is required in case of material changes to the initial contract, in particular to the scope and content of the mutual rights and obligations of the parties, including the distribution of intellectual property rights. Such changes demonstrate the parties' intention to renegotiate essential terms or conditions of that contract. This is the case in particular if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure.</p>
		<p>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.</p>	<p>Modifications of the contract resulting in a minor change of the contract value up to a certain level value should always be possible without the need to carry out a new procurement procedure. To this effect and in order to ensure legal certainty this directive should provide for “de minimis” thresholds, below which a new procurement procedure is not necessary. Modifications of the contract above those thresholds should be possible without the need to carry out a new procurement procedure to the extent they comply with conditions laid down in Article 82.</p>

			<p>(54a) Contracting entities may be faced with situations where additional works supplies or services become necessary; in such cases a modification of the initial contract without a new procurement procedure may be justified, in particular where the additional deliveries are intended either as a partial replacements or as the extension of existing services, supplies or installations where a change of supplier would oblige the contracting entity to acquire material, works or services having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance</p>
<p>(54) Contracting entities 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 those circumstances without a new procurement procedure. The notion of unforeseeable circumstances refers to circumstances that could not have been predicted despite reasonably diligent preparation of</p>	<p>(54) Contracting entities 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 those circumstances without a new procurement procedure. The notion of unforeseeable circumstances refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the</p>	<p>(54) Contracting entities can be faced with external circumstances that they could not foresee when they awarded the contract, in particular when the performance of the contract covers a longer period of time. In this case, a certain degree of flexibility is needed to adapt the contract to those circumstances without a new procurement procedure. The notion of unforeseeable circumstances</p>	<p>(54) Contracting entities can be faced with external circumstances that they could not foresee when they awarded the contract, in particular when the performance of the contract covers a longer period of time. In this case, a certain degree of flexibility is needed to adapt the contract to those circumstances without a new procurement procedure. The notion of unforeseeable circumstances</p>

<p>the initial award by the contracting entity, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value. However, this cannot apply in cases where a modification results in an alteration of the nature of the overall procurement, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement since, in such a situation, a hypothetical influence on the outcome may be assumed.</p>	<p>contracting entity, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value. However, this cannot apply in cases where a modification results in an alteration of the nature of the overall procurement, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement since, in such a situation, a hypothetical influence on the outcome may be assumed.</p>	<p>refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting entity, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value.</p> <p>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.</p>	<p>refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting entity, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value.</p> <p>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.</p>
<p>(55) 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</p>	<p>(55) 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,</p>	<p>(55) 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</p>	<p>(55) 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</p>

<p>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 contracts performed by that undertaking.</p>	<p>such as purely internal reorganisations, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all contracts performed by that undertaking.</p>	<p>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 contracts performed by that tenderer.</p>	<p>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 contracts performed by that tenderer.</p>
<p>(56) Contracting entities should, in the individual contracts themselves, have the possibility to provide for modifications 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.</p>	<p>(56) Contracting entities should, in the individual contracts themselves, have the possibility to provide for modifications 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.</p>	<p>(56) Contracting entities should, in the individual contracts themselves, have the possibility to provide for modifications 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.</p>	<p>(56) Contracting entities should, in the individual contracts themselves, have the possibility to provide for modifications by way of review or option clauses, but such clauses should not give them unlimited discretion. This directive should therefore set out to what extent modifications may be provided for in the initial contract. It should consequently be clarified that sufficiently clearly drafted review or option clauses may for instance provide for price indexations or ensure that, e. g., communications equipment to be delivered over a given period continues to be suitable, also in case of changing communications</p>

			protocols or other technological changes. It should also be possible under sufficiently clear clauses to provide for adaptations of the contract which are rendered necessary by technical difficulties which have appeared during operation or maintenance. It should finally be recalled that contracts could, for instance, include both ordinary maintenance as well as provide for extraordinary maintenance interventions that might become necessary in order to ensure continuation of a public service.
	<i>(56a) Contracting entities should respect time-limits for payment as provided for in Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions⁶³. [Am. 39]</i>		---
(57) The evaluation has shown that Member States do not consistently and systematically monitor the implementation and the functioning of public procurement rules. This has a negative impact on the correct implementation of provisions stemming from those	(57) The evaluation has shown that Member States do not consistently and systematically monitor the implementation and the functioning of <i>there is still considerable room for improvement in the application of the Union public procurement rules. This has a negative impact on the correct</i>	---	Council: moved to 61c

⁶³ OJ L 48, 23.2.2011, p. 1.

<p>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 functions that such bodies are empowered with vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning of procurement rules, legal certainty for businesses and contracting entities, and contribute to establish a level playing field. Such mechanisms could serve as tools for 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 those mechanisms to ensure consistent application, controls and monitoring of public procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union.</p>	<p>implementation of provisions stemming from those directives, which is a major source of cost and uncertainty. Several Member States have appointed a <i>With a view to ensuring a more efficient and consistent application of the rules, it is on the one hand essential to get a good overview on possible structural problems and general patterns in</i> national central body dealing with public procurement issues, but the functions that such bodies are empowered with vary considerably across Member States. Clearer, more consistent and authoritative monitoring and control mechanisms would increase knowledge of the functioning <i>policies, in order to address possible problems in a more targeted way. Such an overview should be gained through appropriate monitoring, the results of which should be regularly published, in order to allow for an informed debate on possible improvements of</i> procurement rules, legal certainty for businesses and <i>and practice. On the other hand, better guidance and assistance to</i> contracting entities, and <i>authorities and economic operators could also greatly</i> contribute to establish a level playing field. Such mechanisms could serve as tools for detection and early resolution of</p>		
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	<p>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 those mechanisms <i>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</i>, to ensure consistent correct application, controls and monitoring of public procurement policy, as well as systematic assessment of the outcomes of procurement policy across the Union <i>of the rules. For that purpose, Member States should ensure that competent authorities or structures are in charge of monitoring, implementation and control of public procurement.</i></p> <p>[Am. 40]</p>		
<p>(58) 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</p>	<p>(58) 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</p>	<p>deleted</p>	<p>deleted</p>

<p>public procurement law. It should be able to provide immediate feedback on the functioning of the policy, 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 legitimate public or private interests are not jeopardized.</p>	<p>immediate feedback on the functioning of the policy, 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 legitimate public or private interests are not jeopardized. [Am. 41]</p>		
<p>(59) Not all contracting entities 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 entities; on the other hand, business, not least SMEs, should benefit from administrative assistance, in</p>	<p>(59) Not all contracting entities, <i>and particularly local authorities</i>, may have the internal expertise to deal with economically or technically complex contracts. Against this background, appropriate professional support would be <i>constitutes</i> 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 entities; on the other hand, business, not least <i>and in particular</i> SMEs, should benefit from administrative assistance, in particular</p>	---	see Recital 61c, 2nd subparagraph

particular when participating in procurement procedures on a cross-border basis.	when participating in procurement procedures on a cross-border basis. [Am. 42]		
	<i>(59a) Citizens, the stakeholders concerned, whether organised or not, and other persons or bodies which do not have access to review procedures pursuant to Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts⁶⁴ nevertheless have a legitimate interest, as taxpayers, in sound procurement procedures. They should therefore be given the possibility to signal possible violations of this Directive to a competent authority or structure. So as to avoid duplication of 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. [Am. 43]</i>	---	see Recital 61d
(60) Monitoring, oversight and support structures or mechanisms	(60) Monitoring, oversight and support structures or mechanisms exist	---	

⁶⁴ OJ L 395, 30.12.1898, p. 33.

<p>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 entities and economic operators.</p>	<p>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 entities and economic operators. <i>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 high-value contracts to be able to provide access to those documents to interested parties in accordance with applicable rules on access to documentation. Furthermore, 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 those notices, managed by the Commission, should also be improved with a view to facilitating data entry while making it easier to extract reports and exchange data between systems. [Am. 44]</i></p>		
<p>(61) Effective cooperation is</p>	<p>(61) Effective cooperation is</p>	<p>deleted</p>	

<p>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>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. [Am. 45]</p>		
	<p><i>(61a) The way this Directive is transposed is of utmost importance to the efforts of simplification, as well as to ensure a uniform approach to the interpretation and application of Union rules on public procurement, thus contributing to the necessary legal certainty required by contracting authorities, in particular at sub-central level, and by SMEs. The Commission and the Member States should therefore ensure that this Directive is transposed taking into account the major impact of the public procurement national legislation on the process of accessing Union funds. Therefore it is of utmost importance</i></p>		

	<p><i>for the Member States to avoid as far as possible any fragmentation in interpretation and application, while also contributing to the simplification at national level. [Am. 46]</i></p>		
		<p>(61a) Contracting entities 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 Union law.</p>	<p>(61a) Contracting entities 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 entities have the possibility, under the conditions determined by the applicable national law, to terminate a public contract during its term if so required by Union law.</p>
		<p>(61b) Design contests have traditionally mostly been used in the fields of town and country planning, architecture and engineering or data processing, It should, however, be recalled that these flexible instruments could be used also for other purposes and that it may be stipulated that the subsequent service contracts would be awarded to the winner or one of the winners of the design contest by a negotiated procedure</p>	<p>(61b) Design contests have traditionally mostly been used in the fields of town and country planning, architecture and engineering or data processing, It should, however, be recalled that these flexible instruments could be used also for other purposes and that it may be stipulated that the subsequent service contracts would be awarded to the winner or one of the winners of the design contest by a negotiated procedure</p>

		without publication.	without publication.
		<p>(61c) 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 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 ex-post control or on a systematic, ex-ante control of public procurement procedures covered by this Directive. It should be possible to bring potential problems to</p>	<p>(61c) 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 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. <u>Acquiring such a good overview could also allow insights on the application of public procurement rules in the context of the implementation of projects co-financed by the Union.</u> 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</p>

		<p>the attention of the proper instances; this should not necessarily require that those having performed the monitoring are given an independent standing before courts and tribunals.</p> <p>Better guidance and assistance to contracting entities and economic operators could also greatly contribute to enhancing the efficiency of public procurement, through better knowledge, increased legal certainty and professionalisation of procurement practices; such guidance should be made available to contracting entities and economic operators wherever it appears necessary to improve correct application of the rules. The guidance to be provided could cover all matters relevant to public procurement, such as acquisition planning, organisation of procedures, choice of techniques and instruments and good practices in the conduct of the procedures.</p> <p>With regard to legal questions, guidance should not necessarily amount to a complete legal</p>	<p>sample-based ex-post control or on a systematic, ex-ante control of public procurement procedures covered by this Directive. It should be possible to bring potential problems to the attention of the proper instances; this should not necessarily require that those having performed the monitoring are given an independent standing before courts and tribunals.</p> <p>Better guidance, <u>information and support</u> to contracting entities and economic operators could also greatly contribute to enhancing the efficiency of public procurement, through better knowledge, increased legal certainty and professionalisation of procurement practices; such guidance should be made available to contracting entities and economic operators wherever it appears necessary to improve correct application of the rules. The guidance to be provided could cover all matters relevant to public procurement, such as acquisition planning, procedures, choice of techniques and instruments and good practices in the conduct of</p>
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		<p>analysis of the issues concerned; it could be limited to a general indication of the elements that should be taken into consideration for the subsequent detailed analysis of the questions, for instance by pointing to jurisprudence that could be relevant or to guidance notes or other sources having examined the specific question concerned.</p>	<p>the procedures.</p> <p>With regard to legal questions, guidance should not necessarily amount to a complete legal analysis of the issues concerned; it could be limited to a general indication of the elements that should be taken into consideration for the subsequent detailed analysis of the questions, for instance by pointing to jurisprudence that could be relevant or to guidance notes or other sources having examined the specific question concerned.</p>
		<p>(61d) Council Directive 92/13/EEC provides for certain review procedures to be available at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement of Union law in the field of public procurement or national rules transposing that law. 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</p>	<p>(61d) Council Directive 92/13/EEC provides for certain review procedures to be available at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement of Union law in the field of public procurement or national rules transposing that law. 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</p>

		Council Directive 92/13/EEC do nevertheless have a legitimate interest as taxpayers in sound procurement procedures.	Directive 92/13/EEC do nevertheless have a legitimate interest as taxpayers in sound procurement procedures.
		They should therefore be given a possibility, otherwise than through the review system pursuant to Directive 92/13/EEC and without it necessarily involving them being given standing before courts and tribunals, to indicate possible violations of this Directive to a competent authority or structure. So as not to duplicate existing authorities or structures, Member States should be able to provide for recourse to general monitoring authorities or structures, sectoral oversight bodies, municipal oversight authorities, competition authorities, the ombudsman or national auditing authorities.	They should therefore be given a possibility, otherwise than through the review system pursuant to Directive 92/13/EEC and without it necessarily involving them being given standing before courts and tribunals, to indicate possible violations of this Directive to a competent authority or structure. So as not to duplicate existing authorities or structures, Member States should be able to provide for recourse to general monitoring authorities or structures, sectoral oversight bodies, municipal oversight authorities, competition authorities, the ombudsman or national auditing authorities.
		(61e) 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	(61e) 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

		<p>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>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>(61f) 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>(61f) 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>(61g) 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</p>	<p>(61g) 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</p>

		<p>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, 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.</p>	<p>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, be complemented by the designation of one single point of reference 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 national contact points, members of the Advisory Committee on Public Procurement, Members of the Procurement Network or national coordinating instances.</p>
		<p>(61h) 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</p>	<p>(61h) 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</p>

		<p>be able to provide access to these documents to interested parties in accordance with applicable rules on access to documents. Furthermore, the essential elements and decisions of individual procurement procedures should be documented by contracting entities in a procurement report. To avoid administrative burden wherever possible, it should be permitted that the procurement report refer to information already contained in the relevant contract award notice.</p>	<p>be able to provide access to these documents to interested parties in accordance with applicable rules on access to documents. Furthermore, the essential elements and decisions of individual procurement procedures should be documented by contracting entities in a procurement report. To avoid administrative burden wherever possible, it should be permitted that the procurement report refer to information already contained in the relevant contract award notice.</p>
		<p>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>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>(61i) 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</p>	<p>(61i) 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</p>

		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.	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.
		(61j) Effective administrative cooperation is necessary for the exchange of information needed for conducting award procedures in cross-border situations, in particular with regard to the verification of the grounds for exclusion and the selection criteria and the application of quality and environmental standards. The Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') ⁶⁵ could provide a useful electronic means to facilitate and enhance administrative cooperation managing the exchange of	(61j) Effective administrative cooperation is necessary for the exchange of information needed for conducting award procedures in cross-border situations, in particular with regard to the verification of the grounds for exclusion and the selection criteria and the application of quality and environmental standards. The Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') ⁶⁶ could provide a useful electronic means to facilitate and enhance administrative cooperation managing the exchange of

⁶⁵ OJ L 316 of 14.11.2012, p. 1.

⁶⁶ OJ L 316 of 14.11.2012, p. 1.

		<p>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>information on the basis of simple and unified procedures overcoming language barriers. A pilot project should consequently be launched as soon as possible to test the suitability of an expansion of IMI to cover the exchange of information under this Directive.</p>
<p>(62) 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; 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</p>	<p>(62) 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; 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</p>	<p>(62) 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; 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</p>	<p>(62) 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; 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</p>

<p>administrative needs; it is also necessary to empower the Commission to make mandatory certain technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; the Commission should also be empowered to adapt the mandatory content of the information to be included in notices 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, referred to in article 77(3); the list of International Social and Environmental Conventions referred to in Articles 70 And 79 and the list of Union legislation referred to in article 27(3) whose implementation creates a presumption of free access to a given market as well as Annex II, referred to in Article 4(4), setting out a list of legislative acts to be taken into account when assessing the</p>	<p>to make mandatory certain technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments and administrative needs; the Commission should also be empowered to adapt the mandatory content of the information to be included in notices 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, referred to in article 77(3); the list of International Social and Environmental Conventions referred to in Articles 70 And 79 and the list of Union legislation referred to in article 27(3) whose implementation creates a presumption of free access to a given market as well as Annex II, referred to in Article 4(4), setting out a list of legislative acts to be taken into account when assessing the existence of special or exclusive rights should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy this need, the Commission should be empowered to keep the lists up-to date.</p>	<p>developments [...] ; it is also necessary to empower the Commission to make mandatory certain technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments [...] ; the Commission should also be empowered to adapt [...] the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs, referred to in article 77(3); the list of International Social and Environmental Conventions referred to in Articles 70 And 79 and the list of Union legislation referred to in article 27(3) whose implementation creates a presumption of free access to a given market as well as Annex II, referred to in Article 4(4), setting out a list of legislative acts to be taken into account when assessing the existence of special or exclusive rights should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy this need, the Commission should be empowered to keep the lists up-to</p>	<p>is also necessary to empower the Commission to make mandatory certain technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments; the Commission should also be empowered to adapt the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs, referred to in article 77(3); the list of International Social and Environmental Conventions referred to in Articles 70 And 79 and the list of Union legislation referred to in article 27(3) whose implementation creates a presumption of free access to a given market as well as Annex II, referred to in Article 4(4), setting out a list of legislative acts to be taken into account when assessing the existence of special or exclusive rights, should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy this need, the Commission should be empowered to keep the lists up-to date.</p>
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<p>existence of special or exclusive rights should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy this need, the Commission should be empowered to keep the lists up-to date.</p>		<p>date.</p>	
<p>(63) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.</p>	<p>(63) It is of particular importance that the Commission carry <i>carries</i> 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. <i>The Commission should provide full information and documentation on its meetings with national experts within the framework of the preparation and implementation of delegated acts. In this respect, the Commission should ensure that the European Parliament is duly involved, drawing on best practices from previous experience in other policy areas in order to create the best possible conditions for future scrutiny of delegated acts by the European Parliament. [Am. 47]</i></p>	<p>(63) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.</p>	<p>(63) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.</p>
		<p>(63a) In the application of the Directive the Commission should consult the Commission Expert</p>	<p>(63a) In the application of the Directive the Commission should consult appropriate groups of</p>

		Group on E-Tendering.	experts in the field of e-procurement ensuring a balanced composition of the main stakeholder groups.
<p>(64) In order to ensure uniform conditions for the implementation of this Directive, as for the procedure for sending and publishing data referred to in Annex IX and the procedures for drawing up and transmitting notices, the standard forms for the publication of notices as well as of process and messaging standards and the common template to be used by the oversight bodies 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 powers⁶⁷. The advisory procedure should be used</p>	<p>(64) In order to ensure uniform conditions for the implementation of this Directive, as for the procedure for sending and publishing data referred to in Annex IX and the procedures for drawing up and transmitting notices, the standard forms for the publication of notices as well as of process and messaging standards and the common template to be used by the oversight bodies 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 powers. The advisory procedure should be used for the adoption of those implementing acts, which do not have</p>	<p>(64) In order to ensure uniform conditions for the implementation of this Directive, as for the procedure for sending and publishing data referred to in Annex IX and the procedures for drawing up and transmitting notices, the standard forms for the publication of notices [...], implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council 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 powers⁶⁹. The advisory procedure should be used for the adoption of those implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations</p>	<p>(64) In order to ensure uniform conditions for the implementation of this Directive, as for the procedure for sending and publishing data referred to in Annex IX and the procedures for drawing up and transmitting notices, the standard forms for the publication of notices, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council 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 powers⁷¹. The advisory procedure should be used for the adoption of those implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations</p>

⁶⁷ OJ L 55, 28.2.2011, p. 13.

⁶⁹ OJ L 55, 28.2.2011, p. 13.

⁷¹ OJ L 55, 28.2.2011, p. 13.

<p>for the adoption of those 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, those acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive. Furthermore, decisions to establish whether a given activity is directly exposed to competition on markets to which access is free should be adopted under conditions ensuring uniform conditions for implementing that provision. Implementing powers should therefore be conferred on the Commission also in respect of the detailed provisions for the implementation of the procedure, provided for under Article 28, for establishing whether Article 27 is applicable as well as the Decisions themselves. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. The advisory</p>	<p>any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, those acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive. Furthermore, decisions to establish whether a given activity is directly exposed to competition on markets to which access is free should be adopted under conditions ensuring uniform conditions for implementing that provision. Implementing powers should therefore be conferred on the Commission also in respect of the detailed provisions for the implementation of the procedure, provided for under Article 28, for establishing whether Article 27 is applicable as well as the Decisions themselves. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. The advisory</p>	<p>stemming from this Directive. On the contrary, those acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive.</p> <p>Furthermore, decisions to establish whether a given activity is directly exposed to competition on markets to which access is free should be adopted under conditions ensuring uniform conditions for implementing that provision. Implementing powers should therefore be conferred on the Commission also in respect of the detailed provisions for the implementation of the procedure, provided for under Article 28, for establishing whether Article 27 is applicable as well as the implementing acts themselves. Those powers should be exercised in accordance with Regulation (EU) 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</p>	<p>stemming from this Directive. On the contrary, those acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive.</p> <p>Furthermore, decisions to establish whether a given activity is directly exposed to competition on markets to which access is free should be adopted under conditions ensuring uniform conditions for implementing that provision. Implementing powers should therefore be conferred on the Commission also in respect of the detailed provisions for the implementation of the procedure, provided for under Article 28, for establishing whether Article 27 is applicable as well as the implementing acts themselves. Those powers should be exercised in accordance with Regulation (EU) 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</p>
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<p>down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁶⁸. The advisory procedure should be used for the adoption of those implementing acts.</p>	<p>procedure should be used for the adoption of those implementing acts. [Am. 48]</p>	<p>Member States of the Commission's exercise of implementing powers⁷⁰.</p> <p>The advisory procedure should be used for the adoption of those implementing acts.</p>	<p>exercise of implementing powers⁷².</p> <p>The advisory procedure should be used for the adoption of those implementing acts.</p>
		<p>(64a) 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>(64a) 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</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 <u>should be</u> examined, bearing in mind</p>

⁶⁸ OJ L 55, 28.2.2011, p. 13.

⁷⁰ OJ L 55, 28.2.2011, p. 13.

⁷² OJ L 55, 28.2.2011, p. 13.

		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.	the impact of inflation in view of a long period without changes of the thresholds in the Agreement; 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.
(65) 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.	(65) 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.	(65) 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.	(65) 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.
(66) Directive 2004/17/EC should therefore be repealed.			
(67) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date],	(67) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], Member States	(67) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date],	(67) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date],

<p>Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,</p>	<p>have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,</p>	<p>Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,</p>	<p>Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,</p>
<p>HAVE ADOPTED THIS DIRECTIVE:</p>	<p>HAVE ADOPTED THIS DIRECTIVE:</p>	<p>HAVE ADOPTED THIS DIRECTIVE:</p>	<p>HAVE ADOPTED THIS DIRECTIVE:</p>

TITLE I SCOPE, DEFINITIONS AND GENERAL PRINCIPLES	TITLE I SCOPE, DEFINITIONS AND GENERAL PRINCIPLES	TITLE I: SCOPE, DEFINITIONS AND GENERAL PRINCIPLES	TITLE I: SCOPE, DEFINITIONS AND GENERAL PRINCIPLES
CHAPTER I Subject-matter and definitions	CHAPTER I Subject-matter and definitions	CHAPTER I Subject-matter and definitions	CHAPTER I 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>	<i>Article 1</i> <i>Subject matter and scope</i>
1. This Directive establishes rules on the procedures for procurement by contracting entities as defined in Article 4 with respect to contracts as well as design contests, whose value is estimated to be not less than the thresholds defined in Article 12.	1. This Directive establishes rules on the procedures for procurement by contracting entities as defined in Article 4 with respect to contracts as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 12.	1. This Directive establishes rules on the procedures for procurement by contracting entities as defined in Article 4 with respect to contracts as well as design contests, whose value is estimated to be not less than the thresholds defined in Article 12.	1. This Directive establishes rules on the procedures for procurement by contracting entities as defined in Article 4 with respect to contracts as well as design contests, whose value is estimated to be not less than the thresholds defined in Article 12.
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 entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 5 to 11.	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 entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 5 to 11. [Am. 49]	2. Procurement within the meaning of this Directive is the purchase or other forms of acquisition by means of a supply, works and service contract as defined in Article 2(7) of works, supplies or services by one or more contracting entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 5 to 11.	2. Procurement within the meaning of this Directive is the acquisition by means of a supply, works and service contract as defined in Article 2(7) of works, supplies or services by one or more contracting entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 5 to 11.
An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive,	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	[...] deleted	deleted

if the contracts are part of one single project.	one single project. [Am. 50]		
		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.	3. The application of this Directive is subject to Article 346 of the Treaty on the Functioning of the European Union.
	2a. <i>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 Article 14 TFEU and Protocol (No 26) on Services of General Interest.</i> [Am. 51]	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.	4. This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to. Equally, this Directive does not affect the decision of public authorities whether, how and to what extent they want to perform public functions themselves pursuant to Protocol (No 26) on Services of General Interest and Article 14 TFEU.
		5. The scope of this Directive shall not include non-economic services of general interest.	5. This Directive does not affect the way in which the Member States organise their social security systems.
			6. The scope of this Directive shall not include non-economic services of general interest.
Article 2	Article 2	Article 2	Article 2

<i>Definitions</i>	<i>Definitions</i>	<i>Definitions</i>	Definitions
For the purposes of this Directive, the following definitions shall apply: (1) "contracting authorities" means 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;	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;	For the purposes of this Directive, the following definitions shall apply: (1) "contracting authorities" means 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. "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 Council⁷³ 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;	For the purposes of this Directive, the following definitions shall apply: (1) "contracting authorities" means 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. "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 Council⁷⁴ 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;
(2) "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 ⁷⁵ ;	(2) "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;	---	
(3) "local authorities" include all authorities of the administrative	(3) "local authorities" include all authorities of the administrative units	---	

⁷³ OJ L 154, 21.6.2003, p. 1

⁷⁴ OJ L 154, 21.6.2003, p. 1

⁷⁵ OJ L 154, 21.6.2003, p. 1

units falling under NUTS 3 and smaller administrative units, as referred to by Regulation (EC) No. 1059/2003;	falling under NUTS 3 and smaller administrative units, as referred to by Regulation (EC) No. 1059/2003;		
(4) a "body governed by public law" means any body that has all of the following characteristics:	(4) a "body governed by public law" means any body that has all of the following characteristics:	(4) a "body governed by public law" means any body that has all of the following characteristics:	(4) a "body governed by public law" means any body that has all of the following characteristics:
(a) It is established for or has 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;	(a) It is they are established for or has 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; [Am. 52]	(a) It is established for [...]the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; [...]	(a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
(b) it has legal personality;	(b) they have legal personality;	(b) it has legal personality; and	(b) they have legal personality; and
(c) it is 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 has 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;	(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.	(c) it is 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 has 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;	(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.
(5) a "public undertaking" means any undertaking over which the	(5) a "public undertaking" means any undertaking over which the contracting	(5) a "public undertaking" means any undertaking over which	(5) a "public undertaking" means any undertaking over which the

contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it;	authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it;	the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it;	contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it;
(6) "special or exclusive rights" mean rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Articles 5 to 11 to one or more entities, and which substantially affects the ability of other entities to carry out such activity;	(6) "special or exclusive rights" mean rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Articles 5 to 11 to one or more entities, and which substantially affects the ability of other entities to carry out such activity;	(6) transferred to Art. 4(2)	(6) transferred to Art. 4(2)
(7) "supply, works and service contracts" means contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in Article 4(3), and one or more economic operators 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) "supply, works and service contracts" means contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in Article 4(3), and one or more economic operators 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) "supply, works and service contracts" means contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in Article 4(1), and one or more economic operators 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) "supply, works and service contracts" means contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in Article 4(1), and one or more economic operators and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Directive;
(8) "works contracts" means contracts having as their object one of the following:	(8) "works contracts" means contracts having as their object one of the following:	(8) "works contracts" means contracts having as their object one of the following:	(8) "works contracts" means contracts having as their object one of the following:
(a) the execution, or both the design and execution, of works related to	(a) the execution, or both the design and execution, of works related to one	(a) the execution, or both the design and execution, of works	(a) the execution, or both the design and execution, of works

one of the activities within the meaning of Annex I;	of the activities within the meaning of Annex I;	related to one of the activities within the meaning of Annex I;	related to one of the activities within the meaning of Annex I;
(b) the execution, or both the design and execution, of a work;	(b) the execution, or both the design and execution, of a work;	(b) the execution, or both the design and execution, of a work;	(b) the execution, or both the design and execution, of a work;
(c) the realisation by whatever means of a work corresponding to the requirements specified by the contracting entity exercising a decisive influence on the type or design of the work;	(c) the realisation by whatever means of a work corresponding to the requirements specified by the contracting entity exercising a decisive influence on the type or design of the work; [Am. 53]	(c) the realisation by whatever means of a work corresponding to the requirements specified by the contracting entity exercising a decisive influence on the type or design of the work;	(c) the realisation by whatever means of a work corresponding to the requirements specified by the contracting entity exercising a decisive influence on the type or design of the work;
(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;	(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) "supply contracts" means contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A supply contract may include, as an incidental matter, siting and installation operations;	(10) "supply contracts" means contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A supply contract may include, as an incidental matter, siting and installation operations;	(10) "supply contracts" means contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A supply contract may include, as an incidental matter, siting and installation operations;	(10) "supply contracts" means contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A supply contract may include, as an incidental matter, siting and installation operations;
(11) "service contracts" means contracts having as their object the provision of services other than those referred to in paragraph 8;	(11) "service contracts" means contracts having as their object the provision of services other than those referred to in paragraph 8;	(11) "service contracts" means contracts having as their object the provision of services other than the execution of works referred to in point 8;	(11) "service contracts" means 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 a contracting entity, or a group of such persons and/or entities which offers the execution of works and/or a	(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	(12) "economic operator" means any natural or legal person, or a contracting entity, or a group of such persons and/or entities which offers the execution of works and/or a	(12) "economic operator" means any natural or legal person, or a contracting entity, or a group of such persons and/or entities, including temporary associations of

work, the supply of products or the provision of services on the market;	the provision of services on the market;	work, the supply of products or the provision of services on the market;	undertakings , 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;	(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 or negotiated procedure 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 or negotiated procedure, 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 or negotiated procedure, in a competitive dialogue or in an innovation partnership;
(15) 'procurement documents' means all documents produced or referred to by the contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice or the notices on the existence of a qualification system where they are used a means of calling for competition, the technical specifications, 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 all documents any document produced or referred to by the contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice or the notices on the existence of a qualification system where they are used a means of calling for competition, the technical specifications, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents; [Am. 54]	(15) 'procurement document means any document produced or referred to by the contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the periodic indicative notice or the notices on the existence of a qualification system where they are used as a means of calling for competition, the technical specifications, the descriptive document , proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;	(15) 'procurement document means any document produced or referred to by the contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the periodic indicative notice or the notices on the existence of a qualification system where they are used as a means of calling for competition, the technical specifications, the descriptive document , proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;

(16) "centralised purchasing activities" means activities conducted on a permanent basis, in one of the following forms:	(16) 'centralised purchasing activities' means activities conducted on a permanent basis, in one of the following forms:	(16) "centralised purchasing activities" means activities conducted on a permanent basis, in one of the following forms:	(16) "centralised purchasing activities" means activities conducted on a permanent basis, in one of the following forms:
(a) the acquisition of supplies and/or services intended for contracting entities,	(a) the acquisition of supplies and/or services intended for contracting entities,	(a) the purchase or other forms of acquisition of supplies and/or services intended for contracting entities,	(a) the acquisition of supplies and/or services intended for contracting entities,
(b) the award of contracts or the conclusion of framework agreements for works, supplies or services intended for contracting entities;	(b) the award of contracts or the conclusion of framework agreements for works, supplies or services intended for contracting entities;	(b) the award of contracts or the conclusion of framework agreements for works, supplies or services intended for contracting entities;	(b) the award of contracts or the conclusion of framework agreements for works, supplies or services intended for contracting entities;
(17) "ancillary purchasing activities" means activities consisting in the provision of support to purchasing activities, in particular in the following forms:	(17) "ancillary purchasing activities" means activities consisting in the provision of support to purchasing activities, in particular in the following forms:	(17) "ancillary purchasing activities" means activities consisting in the provision of support to purchasing activities, in particular in the following forms:	(17) "ancillary purchasing activities" means activities consisting in the provision of support to purchasing activities, in particular in the following forms:
(a) technical infrastructure enabling contracting entities to award public contracts or to conclude framework agreements for works, supplies or services;	(a) technical infrastructure enabling contracting entities to award public contracts or to conclude framework agreements for works, supplies or services;	(a) technical infrastructure enabling contracting entities to award public contracts or to conclude framework agreements for works, supplies or services;	(a) technical infrastructure enabling contracting entities to award public contracts or to conclude framework agreements for works, supplies or services;
(b) advice on the conduct or design of procurement procedures;	(b) advice on the conduct or design of public procurement procedures;	(b) advice on the conduct or design of procurement procedures;	(b) advice on the conduct or design of procurement procedures;
(c) preparation and management of procurement procedures on behalf and for the account of the contracting entity concerned;	(c) preparation and management of procurement procedures on behalf and for the account of the contracting entity concerned;	(c) preparation and management of procurement procedures on behalf and for the account of the contracting entity concerned;	(c) preparation and management of procurement procedures on behalf and for the account of the contracting entity concerned;
(18) "central purchasing body" means a contracting authority within the meaning of point 1 of Article 2 or a contracting authority within the	(18) "central purchasing body" means a contracting authority within the meaning of point 1 of Article 2 or a contracting authority within the	(18) "central purchasing body" means a contracting entity within the meaning of Article 4 (1) or a contracting authority within the	(18) "central purchasing body" means a contracting entity within the meaning of Article 4 (1) or a contracting authority within the

meaning of point 1 of Article 2 of Directive [2004/18/EC] providing centralised purchasing activities and, possibly, ancillary purchasing activities;	meaning of point 1 of Article 2 of Directive [2004/18/EC] providing centralised purchasing activities and, possibly, ancillary purchasing activities;	meaning of point 1 of Article 2 of Directive 2004/18/EC providing centralised purchasing activities and, possibly, ancillary purchasing activities. Procurement carried out by a central purchasing body in order to perform centralised purchasing activities shall be deemed to be procurement for the pursuit of an activity as described in Articles 5 to 11. Article 15 shall not apply to procurement carried out by a central purchasing body in order to perform centralised purchasing activities;	meaning of point 1 of Article 2 of Directive 2004/18/EC providing centralised purchasing activities and, possibly, ancillary purchasing activities. Procurement carried out by a central purchasing body in order to perform centralised purchasing activities shall be deemed to be procurement for the pursuit of an activity as described in Articles 5 to 11. Article 15 shall not apply to procurement carried out by a central purchasing body in order to perform centralised 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;	(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;	(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	(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	(21) "electronic means" means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and	(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;	radio, by optical means or by other electromagnetic means;	received by wire, by radio, by optical means or by other electromagnetic means;	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 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, including research, development, production, transport, use and maintenance, from raw material acquisition or generation of resources to disposal, clearance and finalisation; [Am. 55]	(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;	(22) 'life cycle' means all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of 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 service or utilisation;
(23) "Design contests" means those procedures which enable the contracting entity to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.	(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 entity to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.	(23) "Design contests" means those procedures which enable the contracting entity to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.
	(23a) ' <i>innovation</i> ' means the implementation of a new or significantly improved good, service or process, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations that helps solve societal challenges or supports the Europe 2020 strategy for smart,		(23a) ' <i>innovation</i> ' means the implementation of a new or significantly improved good, service or process, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations <u>inter alia with the purpose to help solving societal</u>

	<i>sustainable and inclusive growth.</i> [Am. 56]		<i>challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth.</i>
		(24) ‘Government Procurement Agreement’ means the World Trade Organisation Agreement on Government Procurement; it may also be referred to to as the ‘Agreement	
			(25) ‘label’ means any document, certificate or attestation confirming that a given work, goods, service, process or procedure meet certain requirements; ‘label requirement(s)’ means the requirements to be met by a given work, goods, service, process or procedure in order to obtain the label concerned.
<i>Article 3</i> <i>Mixed procurement and procurement covering several activities</i>	<i>Article 3</i> <i>Mixed procurement and procurement covering several activities</i>	<i>Article 3</i> <i>Mixed procuremet [...] covering the same activity</i>	<i>Article 3</i> <i>Mixed procuremet covering the same activity</i>
			1. Paragraph 1a shall apply to mixed contracts which have as their subject different types of procurement all of which are covered by his Directive. Paragraphs 1b to 5 shall apply to mixed contracts which have as their

			<u>subject procurement covered by this Directive and procurement covered by other legal regimes.</u>
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.	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.	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.	1a. Contracts which have as their subject two or more types of procurement (works, services or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.
In the case of mixed contracts consisting 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.	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.	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.	In the case of mixed contracts consisting partly of services within the meaning of Chapter I of Title III and partly of other services or of mixed contracts consisting partly of services and partly of supplies, the main subject shall be determined according to which of the estimated values of the respective services or supplies is the highest.
			1b. Where the different parts of a given contract are objectively separable, paragraph 2 shall apply; where the different parts of a given contract are objectively not separable, paragraph 5 shall apply. Where part of a given contract is covered by Directive 2009/81/EC or Article 346 of the Treaty on the

			Functioning of the European Union, Article 20b shall apply.
		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 entities 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.	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 entities may choose to award separate contracts for the separate parts or to award a single contract. Where contracting entities choose to award separate contracts for separate parts, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.
		Contracting entities 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 3, 4 or 4a, 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.	Where contracting entities choose to award a single contract, this Directive shall, unless otherwise provided in Article 20b, apply to the ensuing mixed contract, irrespective of the value of the parts that would otherwise fall under a different legal regime and irrespective of which legal regime these parts would otherwise have been subject to.
In the case of mixed contracts containing elements of supply, works and service contracts and of	In the case of mixed contracts containing elements of supply, works and service contracts and of	Thus, in the case of mixed contracts containing elements of supply, works and service contracts and of	Thus, in the case of mixed contracts containing elements of supply, works and service contracts and of

concessions, the part of the contract which constitutes a contract covered by this Directive shall be awarded in accordance with the provisions of this Directive.	concessions, the part of the contract which constitutes a contract covered by this Directive shall be awarded in accordance with the provisions of this Directive.	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 contract covered by this Directive, calculated in accordance with the provisions Article 13, is equal to or greater than the relevant threshold set out in Article 12.	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 contract covered by this Directive, calculated in accordance with the provisions Article 13, is equal to or greater than the relevant threshold set out in Article 12.
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.	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.		
2. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended. However, the choice between awarding a single contract and awarding a number of separate contracts shall not be made with the objective of excluding it from the scope of this Directive or, where applicable, [2004/18/EC].	2. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended. However, the choice between awarding a single contract and awarding a number of separate contracts shall not be made with the objective of excluding it from the scope of this Directive or, where applicable, [2004/18/EC].		
3. If one of the activities for which the contract is intended is subject to this Directive and the other to the	3. If one of the activities for which the contract is intended is subject to this Directive and the other to the	3. In the case of contracts which have as their subject procurement covered by this Directive as well	

<p>abovementioned [2004/18] and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with the abovementioned Directive [2004/18].</p>	<p>abovementioned [2004/18] and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with the abovementioned Directive [2004/18].</p>	<p>as procurement covered by Directive 2009/81/EC, the contract shall, paragraph 2 notwithstanding, be awarded in accordance with the 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>4. If one of the activities for which the contract is intended is subject to this Directive and the other is not subject to either this Directive or to Directive [2004/18] or Directive 2009/81/EC of the European Parliament and of the Council⁷⁶, and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with this Directive.</p>	<p>4. If one of the activities for which the contract is intended is subject to this Directive and the other is not subject to either this Directive or to Directive [2004/18] or Directive 2009/81/EC of the European Parliament and of the Council⁷⁷, and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with this Directive.</p>	<p>4. 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</p>	

⁷⁶ OJ L 217, 20.8.2009, p. 76.

⁷⁷ OJ L 217, 20.8.2009, p. 76.

		not be subject to this Directive, paragraph 2 notwithstanding, provided that the award of a single contract is justified for objective reasons.	
		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.	
		4a. 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.	
		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.	
		5. Subject to the preceding paragraphs of this Article, where the different parts of a given contract [...] are objectively not	5. Where the different parts of a given contract are objectively not separable, the applicable legal regime shall be determined on the

		separable, the application of this Directive shall be determined on the basis of the main subject of that contract.	basis of the main subject of that contract.
		<i>Article 3a Procurement covering several activities</i>	<i>Article 3a Procurement covering several activities</i>
		1. In the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for the purposes of each separate activity. 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 activity concerned.	1. In the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for the purposes of each separate activity or to award a single contract. Where contracting entities choose to award separate contracts, the decision of which rules apply to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.
		Where contracting entities decide not to award separate contracts, paragraphs 2 and 3 shall apply, Article 3 notwithstanding. However, where one of the activities concerned is subject to Directive 2009/81/EC of the European Parliament and of the Council⁷⁸, paragraphs 4 and 5 shall apply.	Where contracting entities choose to award a single contract, paragraphs 2 and 3 shall apply, Article 3 notwithstanding. However, where one of the activities concerned is covered by Directive 2009/81/EC or Article 346 TFEU, Article 20c shall apply..
		The choice between awarding a	The choice between awarding a

⁷⁸ OJ L 217, 20.8.2009, p. 76.

		single contract and awarding a number of separate contracts shall not be made with the objective of excluding it from the scope of this Directive or, where applicable, 2004/18/EC or Directive on Concessions.	single contract and awarding a number of separate contracts shall not be made with the objective of excluding it from the scope of this Directive or, where applicable, 2004/18/EC or Directive on Concessions.
		2. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended. [...]	2. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.
		3. In the case of contracts for which it is objectively impossible to determine for which activity the contract is principally intended, the applicable rules shall be determined in accordance with points a to d:	3. In the case of contracts for which it is objectively impossible to determine for which activity the contract is principally intended, the applicable rules shall be determined in accordance with points a to c:
		(a) the contract shall be awarded in accordance with the abovementioned Directive 2004/18, if one of the activities for which the contract is intended is subject to this Directive and the other to the abovementioned 2004/18;	(a) the contract shall be awarded in accordance with Directive 2004/18, if one of the activities for which the contract is intended is subject to this Directive and the other to the abovementioned 2004/18;
		(b) the contract shall be awarded in accordance with this Directive, if one of the activities for which the contract is intended is subject to this Directive and the other to the Directive on Concessions;	(b) the contract shall be awarded in accordance with this Directive, if one of the activities for which the contract is intended is subject to this Directive and the other to the Directive on Concessions;

		<p>(d) the contract shall be awarded in accordance with this Directive, if one of the activities for which the contract is intended is subject to this Directive and the other is not subject to either this Directive, Directive 2004/18 or Directive on Concessions. However, the contract shall not be subject to this Directive, where the activity which is not subject to this Directive, is covered by Article 346 of the Treaty on the Functioning of the European Union provided that the award of a single contract is justified for objective reasons and the decision to award a single contract is not taken for the purpose of excluding contracts from the application of this Directive.</p>	<p>(c) the contract shall be awarded in accordance with this Directive, if one of the activities for which the contract is intended is subject to this Directive and the other is not subject to either this Directive, Directive 2004/18 or Directive on Concessions.</p>
		<p>4. In the case of contracts intended to cover an activity which is subject to this Directive and another which is subject to Directive 2009/81/EC, the contract shall be awarded in accordance with the 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</p>	

		exclusions for which Directive 2009/81/EC provides.	
		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>5. In the case of contracts intended to cover an activity which is subject to this Directive and another which is subject to Directive 2009/81/EC, which in addition include 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>	
CHAPTER II Personal scope: definition of the activities and entities covered	CHAPTER II Personal scope: definition of the activities and entities covered	CHAPTER II Personal scope: definition of the activities and entities covered	CHAPTER II Personal scope: definition of the activities and entities covered
Section 1	Section 1	Section 1 Entities	Section 1 Entities

Entities	Entities		
<i>Article 4</i> <i>Contracting entities</i>	<i>Article 4</i> <i>Contracting entities</i>	<i>Article 4</i> <i>Contracting entities</i>	<i>Article 4</i> <i>Contracting entities</i>
1. A dominant influence within the meaning of point 5 of Article 2 on the part of the contracting authorities shall be presumed in any of the following cases in which those authorities, directly or indirectly:	1. A dominant influence within the meaning of point 5 of Article 2 on the part of the contracting authorities shall be presumed in any of the following cases in which those authorities, directly or indirectly:	1. This Directive shall apply to contracting entities:	1. This Directive shall apply to contracting entities:
(a) hold the majority of the undertaking's subscribed capital;	(a) hold the majority of the undertaking's subscribed capital;	(a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 5 to 11;	(a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 5 to 11;
(b) control the majority of the votes attaching to shares issued by the undertaking,	(b) control the majority of the votes attaching to shares issued by the undertaking,	(b) which, when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 5 to 11, or any combination thereof and operate on the basis of special or exclusive rights within the meaning of paragraph 3 granted by a competent authority of a Member State.	(b) which, when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 5 to 11, or any combination thereof and operate on the basis of special or exclusive rights within the meaning of paragraph 3 granted by a competent authority of a Member State.
(c) can appoint more than half of the undertaking's administrative, management or supervisory body.	(c) can appoint more than half of the undertaking's administrative, management or supervisory body.	deleted	
2. Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria	2. Rights which have been granted by means of a <i>tender</i> procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective <i>and non-</i>	2. A dominant influence within the meaning of point 5 of Article 2 on the part of the contracting authorities shall be presumed in any of the following cases in which	2. A dominant influence within the meaning of point 5 of Article 2 on the part of the contracting authorities shall be presumed in any of the following cases in which those

shall not constitute "special or exclusive rights" within the meaning of point 6 of Article 2.	<i>discriminatory award</i> criteria shall not constitute "special or exclusive rights" within the meaning of point 6 of Article 2. [Am. 57]	those authorities, directly or indirectly:	authorities, directly or indirectly:
This includes:	This includes:	deleted	
(a) procurement procedures with a prior call for competition in conformity with Directive [2004/18/EC], [Directive ... (concessions)] or this Directive;	(a) procurement procedures with a prior call for competition in conformity with Directive [2004/18/EC], [Directive ... (concessions)] or this Directive;	(a) hold the majority of the undertaking's subscribed capital;	(a) hold the majority of the undertaking's subscribed capital;
(b) procedures pursuant to other legislative acts of the Union listed in Annex II, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.	(b) procedures pursuant to other legislative acts of the Union listed in Annex II, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.	(b) control the majority of the votes attaching to shares issued by the undertaking,	(b) control the majority of the votes attaching to shares issued by the undertaking;
		(c) can appoint more than half of the undertaking's administrative, management or supervisory body.	(c) can appoint more than half of the undertaking's administrative, management or supervisory body.
3. This Directive shall apply to contracting entities:	3. This Directive shall apply to contracting entities:	3. For the purposes of this Article, "special or exclusive rights" mean rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Articles 5 to 11 to one or more entities, and which substantially affects the ability of other entities to carry out such activity.	3. For the purposes of this Article, "special or exclusive rights" mean rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Articles 5 to 11 to one or more entities, and which substantially affects the ability of other entities to carry out such activity.
		Rights which have been granted by means of a procedure in which	Rights which have been granted by means of a procedure in which

		adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute "special or exclusive rights" within the meaning of the first subparagraph.	adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute "special or exclusive rights" within the meaning of the first subparagraph.
		Such procedures include:	Such procedures include:
(a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 5 to 11;	(a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 5 to 11 <i>except in cases where the activity is pursued on the basis of rights which have been granted in accordance with paragraph 2 of this Article; [Am. 58]</i>	(a) procurement procedures with a prior call for competition in conformity with Directive 2004/18/EC, Directive 2009/81/EC, Directive ... (concessions)] or this Directive;	(a) procurement procedures with a prior call for competition in conformity with Directive 2004/18/EC, Directive 2009/81/EC, Directive ... (concessions)] or this Directive;
(b) which, when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 5 to 11, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.	(b) which, when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 5 to 11, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.	(b) procedures pursuant to other legislative acts of the Union listed in Annex II, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.	(b) procedures pursuant to other legislative acts of the Union listed in Annex II, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 concerning the amendmentmodification of the list of Union legislation set out in Annex II, when on the basis of the adoption of new legislation, repeal or	4. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 concerning the amendment modification of the list of Union legislation set out in Annex II, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments	4. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 concerning the modification of the list of Union legislation set out in Annex II, when on the basis of the adoption of new legislation, repeal or modification of such legislation,	4. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 concerning the modification of the list of Union legislation set out in Annex II, when on the basis of the adoption of new legislation, repeal or modification of such legislation,

modification of such legislation, such amendments prove necessary.	prove necessary.	such amendments prove necessary.	such amendments prove necessary.
			Article 4a Common provisions
			For the purposes of Articles 5, 6 and 7, “supply” shall include generation (production), wholesale and retail sale. However, production of gas in the form of extraction falls within the scope of Article 11.
Section 2	Section 2	SECTION 2	Section 2
Activities	Activities	ACTIVITIES	Activities
Article 5	Gas, <i>heating</i> and heat <i>cooling</i> [Am. 59]	Article 5	Article 5
<i>Gas and heat</i>		<i>Gas and heat</i>	<i>Gas and heat</i>
1. As far as gas and heat are concerned, this Directive shall apply to the following activities:	1. As far as gas, <i>heating</i> and heat <i>cooling</i> are concerned, this Directive shall apply to the following activities: [Technical alignment linked to Am. 59]	1. As far as gas and heat are concerned, this Directive shall apply to the following activities:	1. As far as gas and heat are concerned, this Directive shall apply to the following activities:
(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;	(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas, <i>heating</i> and heat <i>cooling</i> [Technical alignment linked to Am. 59];	(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;	(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;
(b) the supply of gas or heat to such networks.	(b) the supply of gas, <i>heating</i> and heat <i>cooling</i> to such networks. [Technical alignment linked to	(b) the supply of gas or heat to such networks.	(b) the supply of gas or heat to such networks.

	Am. 59]		
		For the purposes of this Directive, supply of gas or heat includes generation (production) and wholesale of gas or heat; however, production of gas in the form of .extraction falls within the scope of Article 11.	
2. The supply of gas or heat to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:	2. The supply of gas, <i>heating</i> and heat <i>cooling</i> to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met: [Technical alignment linked to Am. 59]	2. The supply of gas or heat to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:	2. The supply of gas or heat to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:
(a) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraph 1 or in Articles 6 to 8;	(a) the production of , <i>heating</i> and heat <i>cooling</i> by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraph 1 or in Articles 6 to 8; [Technical alignment linked to Am. 59]	(a) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraph 1 or in Articles 6 to 8;	(a) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraph 1 or in Articles 6 to 8;
(b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover on the basis of the average for the preceding three years, including the current year.	(b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover on the basis of the average for the preceding three years, including the current year. [Technical alignment linked to Am. 59]	(b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover on the basis of the average for the preceding three years, including the current year.	(b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover on the basis of the average for the preceding three years, including the current year.

<i>Article 6</i> <i>Electricity</i>	<i>Article 6</i> <i>Electricity</i>	<i>Article 6</i> <i>Electricity</i>	<i>Article 6</i> <i>Electricity</i>
1. As far as electricity is concerned, this Directive shall apply to the following activities:	1. As far as electricity is concerned, this Directive shall apply to the following activities:	1. As far as electricity is concerned, this Directive shall apply to the following activities:	1. As far as electricity is concerned, this Directive shall apply to the following activities:
(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;	(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;	(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;	(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;
(b) the supply of electricity to such networks.	(b) the supply of electricity to such networks.	(b) the supply of electricity to such networks.	(b) the supply of electricity to such networks.
For the purposes of this Directive, supply of electricity includes generation (production) and wholesale of electricity.	For the purposes of this Directive, supply of electricity includes generation (production) and wholesale of electricity.	For the purposes of this Directive, supply of electricity includes generation (production) and wholesale of electricity.	
2. The supply of electricity to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:	2. The supply of electricity to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:	2. The supply of electricity to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:	2. The supply of electricity to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:
(a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraph 1 or in Articles 5 and 7 to 8;	(a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraph 1 or in Articles 5 and 7 to 8;	(a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraph 1 or in Articles 5 and 7 to 8;	(a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraph 1 or in Articles 5 and 7 to 8;
(b) supply to the public network			

depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of energy, on the basis of the average for the preceding three years, including the current year.	depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of energy, on the basis of the average for the preceding three years, including the current year.	depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of energy, on the basis of the average for the preceding three years, including the current year.	depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of energy, on the basis of the average for the preceding three years, including the current year.
<i>Article 7 Water</i>	<i>Article 7 Water</i>	<i>Article 7 Water</i>	<i>Article 7 Water</i>
1. This Directive shall apply to the following activities:	1. This Directive shall apply to the following activities:	1. This Directive shall apply to the following activities:	1. This Directive shall apply to the following activities:
(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water;	(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water;	(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water;	(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water;
(b) the supply of drinking water to such networks.	(b) the supply of drinking water to such networks.	(b) the supply of drinking water to such networks.	(b) the supply of drinking water to such networks.
		For the purposes of this Directive, supply of drinking water includes production and wholesale of drinking water.	
2. This Directive shall also apply to contracts or design contests awarded or organised by entities which pursue an activity referred to in paragraph 1 and which are connected with one of the following:	2. This Directive shall also apply to contracts or design contests awarded or organised by entities which pursue an activity referred to in paragraph 1 and which are connected with one of the following:	2. This Directive shall also apply to contracts or design contests awarded or organised by entities which pursue an activity referred to in paragraph 1 and which are connected with one of the following:	2. This Directive shall also apply to contracts or design contests awarded or organised by entities which pursue an activity referred to in paragraph 1 and which are connected with one of the following:
(a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available	(a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects	(a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made	(a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made

by such projects or irrigation or drainage installations,	or irrigation or drainage installations,	available by such projects or irrigation or drainage installations,	available by such projects or irrigation or drainage installations,
(b) the disposal or treatment of sewage.			
3. The supply of drinking water to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:	3. The supply of drinking water to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:	3. The supply of drinking water to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:	3. The supply of drinking water to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where all of the following conditions are met:
(a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 5 to 8;	(a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 5 to 8;	(a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 5 to 8;	(a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 5 to 8;
(b) the supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, on the basis of the average for the preceding three years, including the current year.	(b) the supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, on the basis of the average for the preceding three years, including the current year.	(b) the supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, on the basis of the average for the preceding three years, including the current year.	(b) the supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, on the basis of the average for the preceding three years, including the current year.
<i>Article 8</i> <i>Transport services</i>	<i>Article 8</i> <i>Transport services</i>	<i>Article 8</i> <i>Transport services</i>	<i>Article 8</i> <i>Transport services</i>
This Directive shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated	This Directive shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway,	1. This Directive shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated	1. This Directive shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated

<p>systems, tramway, trolley bus, bus or cable.</p> <p>As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.</p>	<p>trolley bus, bus or cable.</p> <p>As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.</p>	<p>systems, tramway, trolley bus, bus or cable.</p> <p>As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.</p>	<p>systems, tramway, trolley bus, bus or cable.</p> <p>As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.</p>
		<p>2. This Directive shall not apply to entities providing bus transport services to the public which were excluded from the scope of Directive 93/38/EEC pursuant to Article 2(4) thereof. An exhaustive list of such entities and the geographical areas concerned is set out in Annex IIA. Member States shall notify the Commission of changes to the list where the names of the entities concerned change or they cease their activity.</p>	
		<p>The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to update Annex IIA following such notifications.</p>	
<p><i>Article 9</i></p>	<p><i>Article 9</i></p>	<p><i>Article 9</i> <i>Ports and airports</i></p>	<p><i>Article 9</i> <i>Ports and airports</i></p>

<i>Ports and airports</i>	<i>Ports and airports</i>		
This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.	This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.	This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.	This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.
<i>Article 10</i> <i>Postal services</i>	<i>Article 10</i> <i>Postal services</i>	<i>Article 10</i> <i>Postal services</i>	<i>Article 10</i> <i>Postal services</i>
1. This Directive shall apply to activities relating to the provision of:	1. This Directive shall apply to activities relating to the provision of:	1. This Directive shall apply to activities relating to the provision of:	1. This Directive shall apply to activities relating to the provision of:
(a) postal services;	(a) postal services;	(a) postal services;	(a) postal services;
(b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (b) of paragraph 2 and provided that the conditions set out in Article 27(1) are not satisfied in respect of the services falling within point (b) of paragraph 2.	(b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (b) of paragraph 2 and provided that the conditions set out in Article 27(1) are not satisfied in respect of the services falling within point (b) of paragraph 2.	(b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (b) of paragraph 2 and provided that the conditions set out in Article 27(1) are not satisfied in respect of the services falling within point (b) of paragraph 2.	(b) other services than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of point (b) of paragraph 2 and provided that the conditions set out in Article 27(1) are not satisfied in respect of the services falling within point (b) of paragraph 2.
2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:	2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:	2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:	2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:
(a) "postal item": means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals	(a) "postal item": means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages	(a) "postal item": means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals	(a) "postal item": means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals

and postal packages containing merchandise with or without commercial value, irrespective of weight;	containing merchandise with or without commercial value, irrespective of weight;	and postal packages containing merchandise with or without commercial value, irrespective of weight;	and postal packages containing merchandise with or without commercial value, irrespective of weight;
(b) "postal services": means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;	(b) "postal services": means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;	(b) "postal services": means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;	(b) "postal services": means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;
(c) "other services than postal services": means services provided in the following areas:	(c) "other services than postal services": means services provided in the following areas:	(c) "other services than postal services": means services provided in the following areas:	(c) "other services than postal services": means services provided in the following areas:
(i) mail service management services (services both preceding and subsequent to despatch, including "mailroom management services");	(i) mail service management services (services both preceding and subsequent to despatch, including "mailroom management services");	(i) mail service management services (services both preceding and subsequent to despatch, including "mailroom management services");	(i) mail service management services (services both preceding and subsequent to despatch, including "mailroom management services");
(ii) added-value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);	(ii) added-value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);	Deleted	Deleted
(iii) services concerning postal items not included in point (a), such as direct mail bearing no address;	(iii) services concerning postal items not included in point (a), such as direct mail bearing no address;	(iii) services concerning postal items not included in point (a), such as direct mail bearing no address;	(iii) services concerning postal items not included in point (a), such as direct mail bearing no address;
(iv) financial services, as defined in the CPV under the reference	(iv) financial services, as defined in the CPV under the reference numbers	deleted	Deleted

numbers from 66100000-1 to 66720000-3 and in Article 19(c) and including in particular postal money orders and postal giro transfers;	from 66100000-1 to 66720000-3 and in Article 19(c) and including in particular postal money orders and postal giro transfers;		
(v) philatelic services;	(v) philatelic services;	Deleted	Deleted
(vi) logistics services (services combining physical delivery and/or warehousing with other non-postal functions).	(vi) logistics services (services combining physical delivery and/or warehousing with other non-postal functions).	Deleted	deleted
<i>Article 11</i>	<i>Article 11</i>	<i>Article 11</i>	Article 11
<i>Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels</i>	Extraction and exploration of oil and gas and exploration for, or extraction of, coal or other solid fuels [Am. 60]	<i>Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels</i>	Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels
This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of:	This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of extracting and exploring:	This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of:	This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of:
(a) extracting oil or gas;	(a) extracting oil or gas;	(a) extracting oil or gas;	(a) extracting oil or gas;
(b) exploring for or extracting coal or other solid fuels.	(b) exploring for or extracting coal or other solid fuels. [Technical alignment to Am. 60]	(b) exploring for or extracting coal or other solid fuels.	(b) exploring for or extracting coal or other solid fuels.
	<i>Article 11a</i>		
	Exemption from the application of this Directive with a view to protecting a commercial strategy		
	1. Whenever a procurement procedure is likely to reveal a commercial strategy which it would be detrimental to bring to the attention of competitors, the contracting entity may refer the matter to the competent		

	<i>authorities and structures referred to in Article 92 in order to obtain an exemption from the application of this Directive.</i>		
	<i>2. To this end, the contracting entity making the application shall present a duly motivated request to the competent authorities and structures referred to in Article 92.</i>		
	<i>3. If the competent authorities or structures authorise the exemption in accordance with paragraph 1, this Directive shall not apply to the procurement procedure in question. [Am. 61]</i>		
Chapter III: Material scope			
SECTION 1 THRESHOLDS	SECTION 1 THRESHOLDS	SECTION 1 THRESHOLDS	SECTION 1 THRESHOLDS
Article 12 Thresholds	Article 12 Thresholds	Article 12 Thresholds	Article 12 Thresholds
Save where they are ruled out by the exclusions in Articles 15 to 20 or pursuant to Article 27, concerning the pursuit of the activity in question, this Directive shall apply to procurements with a value exclusive of value-added tax (VAT) estimated to be no less than the following thresholds:	Save where they are ruled out by the exclusions in Articles 15 to 20 or pursuant to Article 27, concerning the pursuit of the activity in question, this Directive shall apply to procurements with a value exclusive of value-added tax (VAT) estimated to be no less than the following thresholds:	Save where they are ruled out by the exclusions in Articles 15 to 20 or pursuant to Article 27, concerning the pursuit of the activity in question, this Directive shall apply to procurements with a value exclusive of value-added tax (VAT) estimated to be no less than the following thresholds:	Save where they are ruled out by the exclusions in Articles 15 to 20 or pursuant to Article 27, concerning the pursuit of the activity in question, this Directive shall apply to procurements with a value exclusive of value-added tax (VAT) estimated to be no less than the following thresholds:
(a) EUR 400 000 for supply and service contracts as well as for design contests;	(a) EUR 400 000 for supply and service contracts as well as for design contests;	(a) EUR 400 000 for supply and service contracts as well as for design contests;	(a) EUR 400 000 for supply and service contracts as well as for design contests;
(b) EUR 5 000 000 for works	(b) EUR 5 000 000 for works contracts;	(b) EUR 5 000 000 for works	(b) EUR 5 000 000 for works

contracts;		contracts;	contracts;
(c) EUR 1 000 000 for contracts for social and other specific services listed in Annex XVII.	(c) EUR 1 000 000 for contracts for social and other specific services listed in Annex XVII.	(c) EUR 1 000 000 for contracts for social and other specific services listed in Annex XVII.	(c) EUR 1 000 000 for contracts for social and other specific services listed in Annex XVII.
<i>Article 13</i> <i>Methods for calculating the estimated value of procurement</i>	<i>Article 13</i> <i>Methods for calculating the estimated value of procurement</i>	<i>Article 13</i> <i>Methods for calculating the estimated value of procurement</i>	<i>Article 13</i> <i>Methods for calculating the estimated value of procurement</i>
1. The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, as estimated by the contracting entity, including any form of option and any renewals of the contract.	1. The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, as estimated by the contracting entity, including any form of option and any renewals of the contract.	1. The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, as estimated by the contracting entity, including any form of option and any renewals of the contracts as explicitly set out in the procurement documents.	1. The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, as estimated by the contracting entity, including any form of option and any renewals of the contracts as explicitly set out in the procurement documents.
Where the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.	Where the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.	Where the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.	Where the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.
		1a. Where a contracting entity 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. Whether a unit is independently responsible for its procurement or	1a. Where a contracting entity is comprised of separate operational units, account shall be taken of the total estimated value for all the individual operational units.

		certain categories thereof shall be determined according to a global analysis taking into account whether:	
			Notwithstanding subparagraph 1, where a separate operational unit is independently responsible for its procurement or certain categories thereof, the values may be estimated at the level of the unit in question.
		- 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 entity;	
		- 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 for the procurements concerned;	
		- 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 entity as a whole, the procurement of which is merely organised in a decentralised way; and	
		- the contracting entity, 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 preventing it from falling within the scope of this Directive, unless justified by objective reasons.	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 preventing it from falling within the scope of this Directive, unless justified by objective reasons.	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.	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.
		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 entity commences the contract procurement procedure, in particular by defining the essential characteristics of the intended procurement.	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 entity commences the contract procurement procedure, in particular by defining the essential characteristics of the intended procurement.	3. This estimate shall be valid at the moment at which the call for competition is sent or, in cases where such call for competition is not foreseen, at the moment at which the contracting entity commences the contract procurement procedure, for instance by contacting economic operators in relation to the procurement.	3. This estimate shall be valid at the moment at which the call for competition is sent or, in cases where such call for competition is not foreseen, at the moment at which the contracting entity commences the contract procurement procedure, for instance 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 agreement or system.	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 agreement or system.	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 agreement or system.	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 agreement or 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.	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.	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 all the 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.	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 all the 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. For the purposes of Article 12, contracting entities shall include in the estimated value of a works contract both the cost of the works	6. For the purposes of Article 12, contracting entities shall include in the estimated value of a works contract both the cost of the works and the total	6. For the purposes of Article 12, contracting entities shall include in the estimated value of a works contract both the cost of the works	6. For the purposes of Article 12, contracting entities shall include in the estimated value of a works contract both the cost of the works

and the total estimated value of any supplies or services that are made available to the contractor by the contracting entities provided that they are necessary for the execution of the works.	estimated value of any supplies or services that are made available to the contractor by the contracting entities provided that they are necessary for the execution of the works.	and the total estimated value of any supplies or services that are made available to the contractor by the contracting entities provided that they are necessary for the execution of the works.	and the total estimated value of any supplies or services that are made available to the contractor by the contracting entities provided that they are necessary for the execution of the works.
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.	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.	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.	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.
Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 12, this Directive shall apply to the awarding of each lot.	Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 12, this Directive shall apply to the awarding of each lot.	Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 12, this Directive shall apply to the awarding of each lot.	Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 12, this Directive shall apply to the awarding of each lot.
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 12.	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 12.	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 12.	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 12.
Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 12, this Directive shall apply to the awarding of each lot.	Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 12, this Directive shall apply to the awarding of each lot.	Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 12, this Directive shall apply to the awarding of each lot.	Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 12, this Directive shall apply to the awarding of each lot.
9. Contracting entities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that	9. Contracting entities may award contracts for individual lots without applying the procedures provided for under this Directive, provided that the	9. Paragraphs 7 and 8 notwithstanding, contracting entities may award contracts for individual lots without applying the	9. Paragraphs 7 and 8 notwithstanding, contracting entities may award contracts for individual lots without applying the

<p>the estimated value net of VAT of the lot concerned is less than EUR 80 000 for supplies or services or EUR 1 million for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed purchase of services has been divided.</p>	<p>estimated value net of VAT of the lot concerned is less than EUR 80 000 for supplies or services or EUR 1 million for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed purchase of services has been divided.</p>	<p>procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR 80 000 for supplies or services or EUR 1 million for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed provision of services has been divided.</p>	<p>procedures provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR 80 000 for supplies or services or EUR 1 million for works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20 % of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies or the proposed provision of services has been divided.</p>
<p>10. In the case of supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:</p>	<p>10. In the case of supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:</p>	<p>10. In the case of supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:</p>	<p>10. In the case of supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:</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, if 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>(a) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, if 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>(a) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, if 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>(a) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, if 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</p>	<p>(b) or the total estimated value of the successive contracts awarded during the 12 months following the first delivery,</p>	<p>(b) or the total estimated value of the successive contracts awarded during the 12 months following the</p>	<p>(b) or the total estimated value of the successive contracts awarded during the 12 months following the</p>

delivery, or during the financial year where that is longer than 12 months.	or during the financial year where that is longer than 12 months.	first delivery, or during the financial year where that is longer than 12 months.	first delivery, or during the financial year where that is longer than 12 months.
11. With regard to supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:	11. With regard to supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:	11. With regard to supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:	11. With regard to supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:
(a) in the case of fixed-term contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, where the term of the contract is greater than 12 months, the total value including the estimated residual value;	(a) in the case of fixed-term contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, where the term of the contract is greater than 12 months, the total value including the estimated residual value;	(a) in the case of fixed-term contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, where the term of the contract is greater than 12 months, the total value including the estimated residual value;	(a) in the case of fixed-term contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, where the term of the contract is greater than 12 months, the total value including the estimated residual value;
(b) in the case of contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.	(b) in the case of contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.	(b) in the case of contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.	(b) in the case of contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.
12. With regard to service contracts, the basis for calculating the estimated contract value shall, where appropriate, be the following:	12. With regard to service contracts, the basis for calculating the estimated contract value shall, where appropriate, be the following:	12. With regard to service contracts, the basis for calculating the estimated contract value shall, where appropriate, be the following:	12. With regard to service contracts, the basis for calculating the estimated contract value shall, where appropriate, be the following:
(a) insurance services: the premium payable, and other forms of remuneration;	(a) insurance services: the premium payable, and other forms of remuneration;	(a) insurance services: the premium payable, and other forms of remuneration;	(a) insurance services: the premium payable, and other forms of remuneration;
(b) banking and other financial services: the fees, commissions, interest and other forms of remuneration;	(b) banking and other financial services: the fees, commissions, interest and other forms of remuneration;	(b) banking and other financial services: the fees, commissions, interest and other forms of remuneration;	(b) banking and other financial services: the fees, commissions, interest and other forms of remuneration;
(c) design contracts: fees,	(c) design contracts: fees, commission	(c) design contracts: fees,	(c) design contracts: fees,

commission payable and other forms of remuneration.	payable and other forms of remuneration.	commission payable and other forms of remuneration.	commission payable and other forms of remuneration.
13. With regard to service contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be the following:	13. With regard to service contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be the following:	13. With regard to service contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be the following:	13. With regard to service contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be the following:
(a) in the case of fixed-term contracts, where that term is less than or equal to 48 months: the total value for their full term;	(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;	(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;	(a) in the case of fixed-term contracts, where that term is less than or equal to 48 months: the total value for their full term;
(b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.	(b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.	(b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.	(b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.
<i>Article 14</i> <i>Revision of the thresholds</i>	<i>Article 14</i> <i>Revision of the thresholds</i>	<i>Article 14</i> <i>Revision of the thresholds</i>	<i>Article 14</i> <i>Revision of the thresholds</i>
1. Every two years from 30 June 2014, the Commission shall verify that the thresholds set out in points (a) and (b) of Article 12 correspond to the thresholds established in the Government Procurement Agreement, and shall, where necessary, revise them.	1. Every two years from 30 June 2014, the Commission shall verify that the thresholds set out in points (a) and (b) of Article 12 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 contracts , revise them. [Am. 62]	1. Every two years from 30 June 2013, the Commission shall verify that the thresholds set out in points (a) and (b) of Article 12 correspond to the thresholds established in the Government Procurement Agreement, and shall, where necessary, revise them.	1. Every two years from 30 June 2013, the Commission shall verify that the thresholds set out in points (a) and (b) of Article 12 correspond to the thresholds established in the Government Procurement Agreement, and shall, where necessary, revise them.
In accordance with the calculation method set out in the Government Procurement Agreement, the Commission shall calculate the value of those thresholds on the	In accordance with the calculation method set out in the Government Procurement Agreement, the Commission shall calculate the value of those thresholds on the basis of the	In accordance with the calculation method set out in the Government Procurement Agreement, the Commission shall calculate the value of those thresholds on the	In accordance with the calculation method set out in the Government Procurement Agreement, the Commission shall calculate the value of those thresholds on the basis of

<p>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 SDR, are observed.</p>	<p>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 SDR, are observed.</p>	<p>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 SDR, are observed.</p>	<p>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 SDR, are observed.</p>
<p>2. Every two years from 1 January 2014, the Commission shall determine the values, in the national currencies of Member States not participating in Monetary Union, of the thresholds referred to in points (a) and (b) of Article 12, 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 (c) of Article 12.</p> <p>In accordance with the calculation method set out in the Government Procurement Agreement, the</p>	<p>2. Every two years from 1 January 2014, the Commission shall determine the values, in the national currencies of Member States not participating in Monetary Union, of the thresholds referred to in points (a) and (b) of Article 12, 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 (c) of Article 12.</p> <p>In accordance with the calculation method set out in the Government Procurement Agreement, the determination of such values shall be</p>	<p>2. Every two years from 1 January 2014, the Commission shall determine the values, in the national currencies of Member States not participating in Monetary Union, of the thresholds referred to in points (a) and (b) of Article 12, 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 (c) of Article 12.</p> <p>In accordance with the calculation method set out in the Government Procurement Agreement, the</p>	<p>2. Every two years from 1 January 2014, the Commission shall determine the values, in the national currencies of Member States not participating in Monetary Union, of the thresholds referred to in points (a) and (b) of Article 12, 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 (c) of Article 12.</p> <p>In accordance with the calculation method set out in the Government Procurement Agreement, the</p>

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.	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.	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.	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.
3. The revised thresholds referred to in paragraph 1 and their values in national currencies shall be published by the Commission in the Official Journal of the European Union at the beginning of the month of November following their revision.	3. The revised thresholds referred to in paragraph 1 and their values in national currencies shall be published by the Commission in the Official Journal of the European Union at the beginning of the month of November following their revision.	3. The revised thresholds referred to in paragraph 1[...], their values in national currencies the first subparagraph of paragraph 2, and the value determined in accordance with the second subparagraph of paragraph 2, shall be published by the Commission in the Official Journal of the European Union at the beginning of the month of November following their revision.	3. The revised thresholds referred to in paragraph 1, their values in national currencies the first subparagraph of paragraph 2, and the value determined in accordance with the second subparagraph of paragraph 2, shall be published by the Commission in the Official Journal of the European Union at the beginning of the month of November following their revision.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 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) and (b) of Article 12 and for the determination of the thresholds in the national currencies of the Member States not	4. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 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) and (b) of Article 12 and for the determination of the thresholds in the national currencies of the Member States not participating in monetary	4. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 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) and (b) of Article 12 and for the determination of the thresholds in the national currencies of the Member States not	4. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 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) and (b) of Article 12 and for the determination of the thresholds in the national currencies of the Member States not

<p>participating in monetary union, as referred to in paragraph 2 of this Article.</p> <p>It shall also be empowered to adopt delegated acts in accordance with Article 98 to revise the thresholds referred to in points (a) and (b) of Article 12 when necessary.</p>	<p>union, as referred to in paragraph 2 of this Article.</p> <p>It shall also be empowered to adopt delegated acts in accordance with Article 98 to revise the thresholds referred to in points (a) and (b) of Article 12 when necessary.</p>	<p>participating in monetary union, as referred to in paragraph 2 of this Article.</p> <p>It shall also be empowered to adopt delegated acts in accordance with Article 98 to revise the thresholds referred to in points (a) and (b) of Article 12 when necessary.</p>	<p>participating in monetary union, as referred to in paragraph 2 of this Article.</p> <p>It shall also be empowered to adopt delegated acts in accordance with Article 98 to revise the thresholds referred to in points (a) and (b) of Article 12 when necessary.</p>
<p>5. Where it is necessary to revise the thresholds referred to in points (a) and (b) of Article 12 and time constraints prevent the use of the procedure set in article 98 and therefore imperative grounds of urgency so require, the procedure provided for in Article 99 shall apply to delegated acts adopted pursuant to the second subparagraph of paragraph 4 of this Article.</p>	<p>5. Where it is necessary to revise the thresholds referred to in points (a) and (b) of Article 12 and time constraints prevent the use of the procedure set in article 98 and therefore imperative grounds of urgency so require, the procedure provided for in Article 99 shall apply to delegated acts adopted pursuant to the second subparagraph of paragraph 4 of this Article.</p>	<p>5. Where it is necessary to revise the thresholds referred to in points (a) and (b) of Article 12 and time constraints prevent the use of the procedure set in article 98 and therefore imperative grounds of urgency so require, the procedure provided for in Article 99 shall apply to delegated acts adopted pursuant to the second subparagraph of paragraph 4 of this Article.</p>	<p>5. Where it is necessary to revise the thresholds referred to in points (a) and (b) of Article 12 and time constraints prevent the use of the procedure set in article 98 and therefore imperative grounds of urgency so require, the procedure provided for in Article 99 shall apply to delegated acts adopted pursuant to the second subparagraph of paragraph 4 of this Article.</p>
<p>Section 2 Excluded Contracts and design contests</p>	<p>Section 2 Excluded Contracts and design contests</p>	<p>Section 2 Excluded Contracts and design contests</p>	<p>Section 2 Excluded Contracts and design contests; Special provisions for procurement involving defence and security aspects</p>
<p>Subsection 1 Exclusions applicable to all contracting entities and special exclusions for the water and energy sectors</p>	<p>Subsection 1 Exclusions applicable to all contracting entities and special exclusions for the water and energy sectors</p>	<p>Subsection 1 Exclusions applicable to all contracting entities and special exclusions for the water and energy sectors</p>	<p>Subsection 1 Exclusions applicable to all contracting entities and special exclusions for the water and energy sectors</p>
<p>Article 15 <i>Contracts awarded for purposes of resale or lease to third parties</i></p>	<p>Article 15 <i>Contracts awarded for purposes of resale or lease to third parties</i></p>	<p>Article 15 <i>Contracts awarded for purposes of resale or lease to third parties</i></p>	<p>Article 15 <i>Contracts awarded for purposes of resale or lease to third parties</i></p>

<p>1. This Directive shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.</p>	<p>1. This Directive shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.</p>	<p>1. This Directive shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.</p>	<p>1. This Directive shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.</p>
<p>2. The contracting entities shall notify the Commission or the national oversight body at their request of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal of the European Union, for information purposes, lists of the categories of products and activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information.</p>	<p>2. The contracting entities shall notify the Commission or the national oversight body at their request of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal of the European Union, for information purposes, lists of the categories of products and activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information. [Am. 63]</p>	<p>2. The contracting entities shall notify the Commission [...] at its request of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal of the European Union, for information purposes, lists of the categories of products and activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information.</p>	<p>2. The contracting entities shall notify the Commission <u>if so requested</u> of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal of the European Union, for information purposes, lists of the categories of products and activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information.</p>
<p style="text-align: center;"><i>Article 16</i></p> <p style="text-align: center;"><i>Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country</i></p>	<p style="text-align: center;"><i>Article 16</i></p> <p style="text-align: center;"><i>Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country</i></p>	<p style="text-align: center;"><i>Article 16</i></p> <p style="text-align: center;"><i>Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country</i></p>	<p style="text-align: center;"><i>Article 16</i></p> <p style="text-align: center;"><i>Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country</i></p>

<p>1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 5 to 11 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union nor shall it apply to design contests organised for such purposes.</p>	<p>1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 5 to 11 and are connected with utility activities, or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union nor shall it apply to design contests organised for such purposes. [Am. 64]</p>	<p>1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 5 to 11 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union nor shall it apply to design contests organised for such purposes.</p>	<p>1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 5 to 11 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union nor shall it apply to design contests organised for such purposes.</p>
<p>2. The contracting entities shall notify the Commission or the national oversight body at their request of any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal of the European Union for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.</p>	<p>2. The contracting entities shall notify the Commission or the national oversight body at their request if so requested of any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal of the European Union for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information. [Am. 65]</p>	<p>2. The contracting entities shall notify the Commission [...] at its request of any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal of the European Union for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.</p>	<p>2. The contracting entities shall notify the Commission if so requested of any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal of the European Union for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.</p>
<p style="text-align: center;"><i>Article 17</i></p> <p style="text-align: center;"><i>Defence and security</i></p>	<p style="text-align: center;"><i>Article 17</i></p> <p style="text-align: center;"><i>Defence and security</i></p>	<p style="text-align: center;"><i>Article 17</i></p> <p style="text-align: center;"><i>Defence and security</i></p>	
<p>1. In respect of contracts awarded and design contests organised in the</p>	<p>1. In respect of contracts awarded and design contests organised in the fields</p>	<p>1. In respect of contracts awarded and design contests</p>	

fields of defence and security, this Directive shall not apply to:	of defence and security, this Directive shall not apply to:	organised in the fields of defence and security, this Directive shall not apply to:	
(a) contracts to which Directive 2009/81/EC applies;	(a) contracts to <i>for</i> which Directive 2009/81/EC applies <i>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 contracts for which the procurement and performance of the contract is 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 as for instance those referred to in paragraph 2;</i>	(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 to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 thereof. <i>awarded in the framework of a cooperative programme referred to in point (c) of Article 13 of Directive 2009/81/EC;</i>	(b) contracts to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 thereof.	
	(ba) <i>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</i>		

	<i>sensitive services;</i>		
	<i>(bb) 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.</i>		
2. This Directive shall not apply to contracts and design contests other than those mentioned in the first paragraph to the extent that the protection of the essential security interests of a Member State cannot be guaranteed in an procurement procedure as provided for in Article 39(1).	2. This Directive shall not apply to contracts and design contests other than those mentioned in the first paragraph to the extent that the protection of the essential security interests of a Member State cannot be guaranteed in an procurement procedure as provided for in Article 39(1) <i>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 nature of information which the contracting authority makes available in a contract award procedure as provided for in this Directive. [Am. 66]</i>	2. This Directive shall not apply to 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 entities make available throughout the procurement procedure in a procurement procedure as provided for in this Directive ;	
		(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	
		(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).	
<i>Article 18</i> <i>Contracts awarded and design contests organised pursuant to international rules</i>	<i>Article 18</i> <i>Contracts awarded and design contests organised pursuant to international rules</i>	<i>Article 18</i> <i>Contracts awarded and design contests organised pursuant to international rules</i>	<i>Article 18</i> <i>Contracts awarded and design contests organised pursuant to international rules</i>
This Directive shall not apply to contracts or design contests which	This Directive shall not apply to contracts or design contests which the	1. This Directive shall not apply to contracts or design contests	1. This Directive shall not apply to contracts or design contests which

the contracting entity is obliged to award or organise in accordance with procurement procedures different from those of this Directive established by any of the following:	contracting entity is obliged to award or organise in accordance with procurement procedures different from those of this Directive established by any of the following:	which the contracting entity is obliged to award or organise in accordance with procurement procedures different from those of this Directive established by any of the following:	the contracting entity is obliged to award or organise in accordance with procurement procedures different from those of this Directive established by any of the following:
(a) an international agreement concluded in accordance 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.;	(a) an international agreement concluded in accordance 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.;	(a) an international agreement or arrangement concluded in accordance 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 ;	(a) a legal instrument creating international law obligations, such as an international agreement concluded in accordance 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 ;
(b) an international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;	(b) an international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;	(b) an international agreement or arrangement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;	
(c) a particular procedure of an international organisation;	(c) a particular procedure of an international organisation;	(c) an international organisation.	(c) an international organisation.
(d) procurement rules provided by an international organisation or international financing institution for contracts or design contests fully financed by this organisation or institution; in the case of contracts or design contests co-financed to a considerable extent by an international organisation or	(d) procurement rules provided by an international organisation or international financing institution for contracts or design contests fully financed by this organisation or institution; in the case of contracts or design contests co-financed to a considerable extent by an international organisation or international financing	deleted	

international financing institution the parties shall agree on applicable procurement procedures, which shall be in conformity with the Treaty.	institution the parties shall agree on applicable procurement procedures, which shall be in conformity with the Treaty.		
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 100.	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 100.	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 100.	All legal instruments 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 100.
		<p>2. This Directive shall not apply to public contracts and design contests which the contracting entity awards in accordance with procurement rules provided by an international organisation or international financing institution, where the contracts or design contests concerned are fully financed by this organisation or institution; in the case of contracts or design contests co-financed the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures .</p>	<p>2. This Directive shall not apply to _contracts and design contests which the contracting entity awards in accordance with procurement rules provided by an international organisation or international financing institution, where the contracts or design contests concerned are fully financed by this organisation or institution; in the case of contracts or design contests co-financed the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures .</p>
			<p>3. Paragraphs 1 and 2 notwithstanding, Article 20d shall apply to contracts and design contests involving defence and security aspects which are awarded or organised pursuant to</p>

			international rules.
<i>Article 19</i> <i>Specific exclusions for service contracts</i>	<i>Article 19</i> <i>Specific exclusions for service contracts</i>	<i>Article 19</i> <i>Specific exclusions for service contracts</i>	Article 19 Specific exclusions for service contracts
This Directive shall not apply to service contracts for:	This Directive shall not apply to service contracts for:	This Directive shall not apply to service contracts for:	This Directive shall not apply to service contracts for:
(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; 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; [...]	(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; [...]
(b) arbitration and conciliation services;	(b) arbitration and conciliation services and any of the following legal services:	(b) arbitration and conciliation services;	(b) arbitration and conciliation services;
		(ba) any of the following legal services:	(ba) any of the following legal services:
	(i) legal representation of a client in judicial or administrative proceedings before courts, tribunals or public authorities by a lawyer within the meaning of Article 1 of Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services⁷⁹;	(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;	(i) legal representation of a client by a lawyer within the meaning of Article 1 of Directive 77/249/EEC in: - an arbitration or conciliation held in a Member State, a third country or before an international arbitration or conciliation

⁷⁹ OJ L 78, 26.3.1977, p. 17.

			instance; or - in judicial proceedings before the courts, tribunals or public authorities of a Member State, a third country or international courts, tribunals or institutions;
		(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;	Deleted
		(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;	(ii) legal advice given in preparation of any of the proceedings referred to in points (i) or where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;
		(ii) document certification services which must be provided by notaries;	(iii) document certification and authentication services which must be provided by notaries;
	(ii) legal services provided by trustees, appointed guardians or other legal services the providers of which	(iii) legal services provided by trustees, appointed guardians or other legal services the providers	(iv) legal services provided by trustees, appointed guardians or other legal services the providers

	<i>are designated by a court or tribunal in the Member State concerned;</i>	of which are designated by a court or tribunal in the Member State concerned;	of which are designated by a court or tribunal in the Member State concerned;
	<i>(iii) legal services which in the Member State concerned are connected with the exercise of official authority;</i>	(iv) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority;	(v) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority;
	<i>(iv) certification and authentication of documents by notaries; [Am. 67]</i>		
(c) 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 ⁸⁰ and operations conducted with the European Financial Stability Facility;	(c) 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 ⁸¹ , or transactions by contracting authorities to raise money or capital, central bank services and operations conducted with the European Financial Stability Facility; [Am. 68]	(c) 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 ⁸² and operations conducted with the European Financial Stability Facility;	(c) 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 ⁸³ and operations conducted with the European Financial Stability Facility;
		(c a) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;	(ca) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
(d) employment contracts;	(d) employment contracts;	(d) employment contracts;	(d) employment contracts;
(e) public passenger transport services by rail or metro;	(e) public passenger transport services by rail or metro.	(e) public passenger transport services by rail or metro;	(e) public passenger transport services by rail or metro;

⁸⁰ OJ L 145, 30.04.2004, p. 1.

⁸¹ OJ L 145, 30.4.2004, p. 1.

⁸² OJ L 145, 30.04.2004, p. 1.

⁸³ OJ L 145, 30.04.2004, p. 1.

	<i>(ea) civil defence, civil protection services and hazard prevention; [Am. 69]</i>		<i>(ga) civil defence, civil protection, and danger prevention that are provided by non-profit organisations or associations, and which fall under the following CPV codes: 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8; 98113100-9; 85143000-3 except patient transport ambulance services;</i>
(f) contracts for broadcasting time that are awarded to broadcasters.	(f) contracts for broadcasting time that are awarded to broadcasters <i>or distribution and transmission of media services; for the purposes of this Directive, 'media services' means all forms of transmission and distribution using any form of electronic network; [Am. 70]</i>	(f) contracts for broadcasting time or programme provision that are awarded to audiovisual or radio media service providers.	(f) contracts for broadcasting time or programme provision that are awarded to audiovisual or radio media service providers.
	<i>(fa) provision of international assistance, including development aid. [Am. 71]</i>		---
The broadcasting referred to in point (f) of the first paragraph shall include any transmission and distribution using any form of electronic network.	The broadcasting referred to in point (f) of the first paragraph shall include any transmission and distribution using any form of electronic network. [Am. 72]		
		For the purposes of this Article, "media service providers" shall have the same meaning as pursuant to Article 1(1)(d) of Directive 2010/13/EU of the European Parliament and of the	For the purposes of this Article, "media service providers" shall have the same meaning as pursuant to Article 1(1)(d) of Directive 2010/13/EU of the European Parliament and of the

		<p>Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)⁸⁴. "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>Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)⁸⁵. "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 19a</i> <i>Service contracts awarded on the basis of an exclusive right</i></p>	<p><i>Article 19a</i> <i>Service contracts awarded on the basis of an exclusive right</i></p>
		<p>This Directive shall not apply to service contracts awarded to an entity which is itself a contracting authority within the meaning of Article 2(1) 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</p>	<p>This Directive shall not apply to service contracts awarded to an entity which is itself a contracting authority within the meaning of Article 2(1) 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</p>

⁸⁴ OJ L 95, 15.4.2010, p. 1.

⁸⁵ OJ L 95, 15.4.2010, p. 1.

		with the Treaty.	the Treaty.
<i>Article 20</i> <i>Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy</i>	<i>Article 20</i> <i>Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy</i>	<i>Article 20</i> <i>Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy</i>	<i>Article 20</i> <i>Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy</i>
This Directive shall not apply:			
(a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities relating to drinking water referred to in Article 7(1).	(a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities relating to drinking water referred to in Article 7(1).	(a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities relating to drinking water referred to in Article 7(1).	(a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities relating to drinking water referred to in Article 7(1).
(b) to contracts awarded by contracting entities themselves being active in the energy sector by being engaged in an activity referred to in Article 5(1), Article 6(1) or Article 11 for the supply:	(b) to contracts awarded by contracting entities themselves being active in the energy sector by being engaged in an activity referred to in Article 5(1), Article 6(1) or Article 11 for the supply:	(b) to contracts awarded by contracting entities themselves being active in the energy sector by being engaged in an activity referred to in Article 5(1), Article 6(1) or Article 11 for the supply:	(b) to contracts awarded by contracting entities themselves being active in the energy sector by being engaged in an activity referred to in Article 5(1), Article 6(1) or Article 11 for the supply:
(i) of energy;	(i) of energy;	(i) of energy;	(i) of energy;
(ii) of fuels for the production of energy.	(ii) of fuels for the production of energy.	(ii) of fuels for the production of energy.	(ii) of fuels for the production of energy.
			Subsection 1a Procurement involving defence and security aspects

<i>Article 17 Defence and security</i>	<i>Article 17 Defence and security</i>	<i>Article 17 Defence and security</i>	Article 20a Defence and security
1. In respect of contracts awarded and design contests organised in the fields of defence and security, this Directive shall not apply to:	1. In respect of contracts awarded and design contests organised in the fields of defence and security, this Directive shall not apply to:	1. In respect of contracts awarded and design contests organised in the fields of defence and security, this Directive shall not apply to:	1. In respect of contracts awarded and design contests organised in the fields of defence and security, this Directive shall not apply to:
(a) contracts to which Directive 2009/81/EC applies;	(a) contracts to for which Directive 2009/81/EC applies <i>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 contracts for which the procurement and performance of the contract is 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 as for instance those referred to in paragraph 2;</i>	(a) contracts falling within the scope of Directive 2009/81/EC;	(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 to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 thereof. <i>awarded in the framework of a cooperative programme referred to in point (c) of Article 13 of Directive 2009/81/EC;</i>	(b) contracts to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 thereof.	(b) contracts to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 thereof.
	<i>(ba) contracts awarded by a government to another government relating to works and services directly</i>		

	<i>linked to military equipment or sensitive equipment, or works and services specifically for military purposes, or sensitive works and sensitive services;</i>		
	<i>(bb) 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.</i>		
2. This Directive shall not apply to contracts and design contests other than those mentioned in the first paragraph to the extent that the protection of the essential security interests of a Member State cannot be guaranteed in an procurement procedure as provided for in Article 39(1).	2. This Directive shall not apply to contracts and design contests other than those mentioned in the first paragraph to the extent that the protection of the essential security interests of a Member State cannot be guaranteed in an procurement procedure as provided for in Article 39(1) <i>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 nature of information which the contracting authority makes available in a contract award procedure as provided for in this Directive. [Am. 66]</i>	2. This Directive shall not apply to contracts and design contests not otherwise exempted under paragraph 1 to the extent that:	2. This Directive shall not apply to contracts and design contests not otherwise exempted under paragraph 1 , to the extent that: <u><i>the protection of the essential security interests of a Member State cannot be guaranteed by less intrusive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the contracting entity makes available in a contract award procedure as provided for in this Directive. [Am. 66]</i></u>
		(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 entities make available throughout the procurement procedure in a procurement procedure as provided for in this Directive;	
		(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	Furthermore, and in conformity with Article 346(1)(a) TFEU, this Directive shall not apply to contracts and design contests not otherwise exempted under paragraph 1 to the extent that the application of this Directive would oblige a Member State to supply information the disclosure of which it considers contrary to the essential interests of its security.
		(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	2a Where 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, this Directive shall not apply provided that where the Member State has determined that the essential interests concerned cannot be

		measures, for instance such as referred to in point (a).	guaranteed by less intrusive measures, for instance such as referred to in the first subparagraph of paragraph 2.
			Article 20b <i>Mixed procurement covering the same activity and involving defence and security aspects</i>
			<i>1. In the case of mixed contracts covering the same activity which have as their subject procurement covered by this Directive and procurement or other elements covered by Directive 2009/81/EC or Article 346 TFEU, this Article shall apply.</i>
			<i>2. Where the different parts of a given contract are objectively separable, contracting entities may choose to award separate contracts for the separate parts or to award a single contract.</i>
			<i>Where contracting entities choose to award separate contracts for separate parts, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.</i>
			<i>Where contracting entities choose to award a single contract, the following criteria shall apply to determine the applicable legal</i>

			<i>regime:</i>
			(a) <i>where part of a given contract is covered by Article 346 TFEU, the contract may be awarded without applying this Directive, provided that the award of a single contract is justified for objective reasons;</i>
			(b) <i>where part of a given contract is covered by Directive 2009/81/EC, the contract may be awarded in accordance with the 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.</i> 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.
			<u>3. Point a of paragraph 2 shall apply to mixed contracts to which both point a and point b could otherwise apply.</u>
			<u>5. Where the different parts of a given contract are objectively not separable, the contract may be awarded without applying this Directive where it includes</u>

			elements to which Article 346 TFEU applies; otherwise it may be awarded in accordance with the provisions of Directive 2009/81/EC.
			<i>Article 20c</i> <i>Procurement covering several activities and involving defence and security aspects</i>
			1. In the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for the purposes of each separate activity or to award a single contract. Where contracting entities choose to award separate contracts for separate parts, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.
			Where contracting entities choose to award a single contract, paragraph 2 shall apply.
			The choice between awarding a single contract and awarding a number of separate contracts shall not be made with the objective of excluding it from the scope of this Directive or Directive 2009/81/EC.
			2. In the case of contracts intended to cover an activity which is

			<p>subject to this Directive and another which is:</p> <p>(a) subject to Directive 2009/81/EC, or</p> <p>(b) covered by Article 346 TFEU.</p> <p>the contract may be awarded in accordance with the provisions of Directive 2009/81/EC in the cases set out under point (a) and may be awarded without applying this Directive in the cases set out under point (b). This sub-paragraph is without prejudice to the thresholds and exclusions for which Directive 2009/81/EC provides.</p> <p>Contracts as set out under point (a), which in addition include procurement or other elements which are covered by Article 346 TFEU may be awarded without applying this Directive.</p> <p>However, it is a condition for the application of the first and second subparagraph that the award of a single contract is justified for objective reasons and the decision to award a single contract is not taken for the purpose of excluding contracts from the application of</p>
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			this Directive.
			<u>Article 20d</u> <u>Contracts and design contests involving defence and security aspects which are awarded or organised pursuant to international rules</u>
			1. This Directive shall not apply to contracts or design contests <u>involving defence and security aspects</u> which the contracting entity is obliged to award or organise in accordance with procurement procedures different from those of this Directive established by any of the following:
			(a) an international agreement or <u>arrangement</u> concluded in accordance with the Treaty between a Member State and one or more third countries <u>or subdivisions thereof</u> and covering works, supplies or services intended for the joint implementation or exploitation of a project by <u>their signatories</u> ;
			(b) an international agreement <u>or arrangement</u> relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
			(c) an international organisation.

			2. This Directive shall not apply to contracts and design contests involving defence and security aspects which the contracting entity awards in accordance with procurement rules provided by an international organisation or international financing institution, where the contracts or design contests concerned are fully financed by this organisation or institution; in the case of contracts or design contests co-financed the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures .
Subsection 2 Special relations (Controlled entities, cooperation, affiliated undertakings and joint ventures)	Subsection 2 Special relations (Controlled entities, cooperation, affiliated undertakings and joint ventures)	Subsection 2 Special relations ([...] cooperation, affiliated undertakings and joint ventures)	Subsection 2 Special relations (cooperation, affiliated undertakings and joint ventures)
<i>Article 21</i> <i>Relations between public authorities</i>	<i>Article 21</i> Relations Cooperation between public authorities [Am. 73]	<i>Article 21</i> Contracts between contracting authorities	<i>Article 21</i> Contracts between contracting authorities
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:	1. A contract awarded by a contracting authority to another legal person 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	(a) the contracting authority	(a) the contracting authority	(a) the contracting authority

exercises over the legal person concerned a control which is similar to that which it exercises over its own departments.	exercises over the legal person concerned a control which is similar to that which it exercises over its own departments, <i>that is to say it exerts a decisive influence over both strategic objectives and significant decisions of the controlled legal person;</i> [Am. 74]	exercises over the legal entity concerned a control which is similar to that which it exercises over its own departments;	exercises over the legal person 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 90 % 80 % of the activities <i>average total turnover</i> of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority; [Am. 75]	(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;	(b) more than 80% of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons 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, <i>with the exception of non-controlling or 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.</i> [Am. 76]	(c) there is no private capital participation in the controlled legal person.	(c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by applicable national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.
A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions	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. [Am. 77]	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	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.		controlled legal entity . The control may also be exercised by another entity, which is itself controlled in the same way by the contracting authority.	of the controlled legal person . The control may also be exercised by another person, 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 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 longer relevant, it will be sufficient to show that the turnover is credible, particularly by means of business projections.	---
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,	2. Paragraph 1 also applies where a controlled entity, or entities , which is/are (a) contracting authority/ authorities award(s) a contract to its controlling entity, or entities , or to another legal person	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,	2. Paragraph 1 also applies where a controlled person which is a contracting authority awards a contract to its controlling contracting authority , or to another legal person controlled by the same

<p>provided that there is no private participation in the legal person being awarded the public contract.</p>	<p>controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract, <i>with the exception of non-controlling or 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.</i> [Am. 78]</p>	<p>provided that there is no private capital participation in the legal entity being awarded the public contract.</p>	<p>contracting authority, provided that there is no direct private capital participation in the legal person being awarded the public contract with the exception of non-controlling and non-blocking forms of private capital participation required by law, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.</p>
<p>3. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a contract without applying this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:</p>	<p>3. A contracting authority, which does not exercise over a legal person control within the meaning of <i>point (a) of paragraph 1 of this Article</i>, may nevertheless award a contract without applying this <i>outside the scope of</i> Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled: [Am. 79]</p>	<p>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 contract without applying this Directive to that legal , where the following cumulative conditions are fulfilled:</p>	<p>3. A contracting authority, which does not exercise over a legal person governed by private or public law control within the meaning of paragraph 1, may nevertheless award a contract without applying this Directive to that legal person, where the following cumulative conditions are fulfilled:</p>
<p>(a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments.</p>	<p>(a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments.</p>	<p>(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.</p>	<p>(a) the contracting authority exercises jointly with other contracting authorities over that legal person a control which is similar to that which they exercise over their own departments.</p>
<p>(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;</p>	<p>(b) at least 90 % 80 % of the activities 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; [Am. 80]</p>	<p>(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</p>	<p>(b) more than 80% of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or by other legal persons controlled by</p>

		the same contracting authorities;	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, <i>with the exception of non-controlling or 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.</i> [Am. 81]	(c) there is no private capital participation in the controlled legal entity .	(c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by applicable national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.
For the purposes of point (a) 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:	For the purposes of point (a) of the first subparagraph , contracting authorities shall be deemed to exercise joint control over a legal person 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 all <i>the</i> participating contracting authorities, <i>while one representative may represent one or many participating contracting authorities;</i> [Am. 82]	(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;	(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities. Individual representatives may represent several or all of the participating contracting authorities;
(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 ;	(b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person ;
(c) controlled legal person does not pursue any interests which are	(c) the controlled legal person does not pursue any interests which are	(c) the controlled legal entity does not pursue any interests which	(c) the controlled legal entity person does not pursue any interests

distinct from that of the public authorities affiliated to it;	distinct from <i>in conflict with</i> that of the public authorities affiliated to it; [Am. 83]	are distinct from those of the controlling contracting authorities ;	which are contrary to those of the controlling contracting authorities;
(d) controlled legal person does not draw any gains other than the reimbursement of actual costs from the public contracts with the 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. [Am. 84]	(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.	---

<p>4. An agreement concluded between two or more contracting authorities shall not be deemed to be a “works, supply or service contract” within the meaning of point 7 of Article 2 of this Directive, where the following cumulative conditions are met:</p>	<p>4. An agreement concluded between two or more contracting authorities shall not be deemed to be a “works, supply or service contract” within the meaning of point 7 of Article 2 fall outside the scope of this Directive, where the following cumulative conditions are met:</p>	<p>4. A contract concluded between two or more contracting authorities shall not be deemed to be a “works, supply or service contract” within the meaning of point 7 of Article 2 of this Directive, where the following cumulative conditions are met:</p>	<p>4. A contract concluded between two or more contracting authorities shall fall outside the scope of this Directive, where the following cumulative conditions are met:</p>
<p>(a) agreement establishes a genuine co-operation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;</p>	<p>(a) the agreement establishes a genuine co-operation 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;</p>	<p>(a) the contract is concluded in a framework of genuine co-operation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;</p>	<p>(a) the contract establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;</p>
<p>(b) agreement is governed only by considerations relating to the public interest;</p>	<p>(b) the agreement is governed only by considerations relating to the public interest;</p>	<p>(b) the implementation of that cooperation is governed solely by considerations relating to the public interest;</p>	<p>(b) the implementation of that cooperation is governed solely by considerations relating to the public interest;</p>
<p>(c) 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;</p>	<p>(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;</p>	<p>(c) the participating contracting authorities perform on the market less than 20% in terms of turnover of the activities concerned by the cooperation;</p>	<p>(c) the participating contracting authorities perform on the open market less than 20% of the activities concerned by the cooperation;</p>
<p>(d) agreement does not involve financial transfers between the participating contracting authorities, other than those corresponding to the</p>	<p>(d) the agreement does not involve financial transfers between the participating contracting authorities, other than those corresponding to the</p>	<p>(d) the contract does not involve financial transfers between the participating contracting authorities, other than those</p>	<p>---</p>

reimbursement of actual costs of the works, services or supplies;	reimbursement of actual costs of the works, services or supplies;	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.	(ec) there is no private participation in any of the contracting authorities involved <i>with the exception of non-controlling or 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.</i> [Am. 85]	(e) there is no private capital participation in any of the contracting authorities involved.	
	<i>4a. This Directive shall not apply to agreements, decisions or other legal instruments, concluded between several contracting authorities or groupings of contracting authorities, 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.</i>		
	<i>There shall be no private participation in any of the contracting authorities or entities involved.</i> [Am. 86]		
		For the determination of the percentage of activities referred to in point (c) of the first subparagraph the average total	

		<p>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>	
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.	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.	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.	
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.	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. [Am. 87]	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.	
			6. For the determination of the percentage of activities referred to in 21 (1)(b), 21 (3)(b) and 21(4)(c)

			<p>above, the average total turnover, or an appropriate alternative activity based measure such as costs incurred by the relevant legal person with respect to services, supplies and works for the three years preceding the contract award shall be taken into consideration.</p> <p>When, because of the date the relevant legal person was created or commenced activities or because of a reorganisation of its activities, the turnover, or alternative activity based measure such as costs, are either not available for the preceding three years or no longer relevant, it will be sufficient to show that the measurement of activity is credible, particularly by means of business projections.</p>
<p><i>Article 22</i> <i>Contracts awarded to an affiliated undertaking</i></p>	<p><i>Article 22</i> <i>Affiliated undertakings</i></p>	<p><i>Article 22</i> <i>Contracts awarded to an affiliated undertaking</i></p>	<p><i>Article 22</i> <i>Contracts awarded to an affiliated undertaking</i></p>
<p>1. For the purposes of this Article, "affiliated undertaking" means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance</p>	<p>1. For the purposes of this Article, 'affiliated undertaking' means:</p>	<p>1. For the purposes of this Article, "affiliated undertaking" means any undertaking the annual accounts of which are consolidated with those of the contracting entity</p>	<p>1. For the purposes of this Article, "affiliated undertaking" means any undertaking the annual accounts of which are consolidated with those of the contracting entity</p>

with the requirements of the Seventh Council Directive 83/349/EEC ⁸⁶ .		in accordance with the requirements of the Seventh Council Directive 83/349/EEC ⁸⁷ .	in accordance with the requirements of the Seventh Council Directive 83/349/EEC⁸⁸.
	(a) any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC ⁸⁹ ; <i>or</i>		
	(b) <i>any undertaking finding itself to be in any of the following situations:</i>		
2. In the case of entities not subject to that Directive, "affiliated undertaking" shall mean any undertaking that:	2. In the case of entities not subject to that Directive, "affiliated undertaking" shall mean any undertaking that:	2. In the case of entities not subject to that Directive, "affiliated undertaking" shall mean any undertaking that:	2. In the case of entities, which are not subject to Directive 83/349/EEC pursuant to its provisions, "affiliated undertaking" shall mean any undertaking that:
(a) may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of point (5) of Article 2 and Article 4(1) of this Directive;	(a) may be (i) <i>it is</i> , directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of point (5) of Article 2 and Article 4(1) of this Directive;	(a) may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of point (5) of Article 2 and Article 4(2) of this Directive;	(a) may be, directly or indirectly, subject to a dominant influence by the contracting entity; or
(b) may exercise a dominant	(b) may exercise (ii) <i>it exercises</i> a	(b) may exercise a dominant	(b) may exercise a dominant

⁸⁶ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

⁸⁷ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

⁸⁸ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

⁸⁹ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

influence over the contracting entity;	dominant influence over the contracting entity; <i>or</i>	influence over the contracting entity;	influence over the contracting entity; or
(c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.	(e)— <i>(iii)</i> in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.	(c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.	c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.
	<i>For the purposes of this Directive, the notion of ‘dominant influence’ is defined in point 5 of Article 2 and Article 4(1). [Am. 88]</i>		<i>For the purposes of this Directive, the notion of ‘dominant influence’ is defined in point 5 of Article 2 and Article 4(2). [Am. 88]</i>
3. Article 21 notwithstanding and provided that the conditions in paragraph 4 are met, this Directive shall not apply to contracts awarded:	3. Article 21 notwithstanding and provided that the conditions <i>set out in paragraphs 1 and 4 of this Article</i> are met, this Directive shall not apply to contracts awarded:	3. Article 21 notwithstanding and provided that the conditions in paragraph 4 are met, this Directive shall not apply to contracts awarded:	3. Article 21 notwithstanding and provided that the conditions in paragraph 4 are met, this Directive shall not apply to contracts awarded:
(a) by a contracting entity to an affiliated undertaking, or	(a) by a contracting entity to an affiliated undertaking, and	(a) by a contracting entity to an affiliated undertaking, or	(a) by a contracting entity to an affiliated undertaking, or
(b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 11, to an undertaking which is affiliated with one of those contracting entities.	(b) by a joint venture, formed exclusively by a number of two or more contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 11, to an undertaking which is affiliated with one of those contracting entities. [Am. 89]	(b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 11, to an undertaking which is affiliated with one of those contracting entities.	(b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 11, to an undertaking which is affiliated with one of those contracting entities.
4. Paragraph 3 shall apply:	4. Paragraph 3 shall apply:	4. Paragraph 3 shall apply:	4. Paragraph 3 shall apply:
(a) to service contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to services in general for the preceding three years derives from the provision of services to	(a) to service contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to , taking into account all services in general for provided by that undertaking, over the preceding three	(a) to service contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to services in general for the preceding three years derives from the provision of	(a) to service contracts provided that at least 80 % of the average total turnover of the affiliated undertaking, taking into account all services—provided by that undertaking, over the preceding

<p>undertakings with which it is affiliated;</p>	<p>years derives from the provision of services to undertakings the contracting entity with which it is affiliated, or to the contracting entity which is itself subject to the dominant influence of another undertaking with which the contractual partner is affiliated; [Am. 90]</p>	<p>services to undertakings with which it is affiliated;</p>	<p>three years derives from the provision of services to the contracting entity or other undertakings with which it is affiliated;</p>
<p>(b) to supply contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to supplies in general for the preceding three years derives from the provision of supplies to undertakings with which it is affiliated;</p>	<p>(b) to supply contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to taking into account all supplies in general for provided by that undertaking, over the preceding three years derives from the provision of those supplies to undertakings the contracting entity with which it is affiliated, or to the contracting entity which is itself subject to the dominant influence of another undertaking with which the contractual partner is affiliated; [Am. 91]</p>	<p>(b) to supply contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to supplies in general for the preceding three years derives from the provision of supplies to undertakings with which it is affiliated;</p>	<p>(b) to supply contracts provided that at least 80 % of the average total turnover of the affiliated undertaking taking into account all supplies provided by that undertaking, over the preceding three years derives from the provision of supplies to the contracting entity or other undertakings with which it is affiliated;</p>
<p>(c) to works contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to works in general for the preceding three years derives from the provision of works to undertakings with which it is affiliated.</p>	<p>(c) to works contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to, taking into account all works in general provided by that undertaking, over for the preceding three years derives from the provision of works to undertakings the contracting entity with which it is affiliated, or to the contracting entity which is itself subject to the dominant</p>	<p>(c) to works contracts provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to works in general for the preceding three years derives from the provision of works to undertakings with which it is affiliated.</p>	<p>(c) to works contracts provided that at least 80 % of the average total turnover of the affiliated undertaking, taking into account all works provided by that undertaking, over the preceding three years derives from the provision of works to the contracting entity or other undertakings with which it is affiliated.</p>

	<i>influence of another undertaking with which the contractual partner is affiliated.. [Am. 92]</i>		
5. When, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in points (a), (b) or (c) of paragraph 4 is credible, particularly by means of business projections.	5. When, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the proportion of the average total turnover referred to in points (a), (b) or (c) of paragraph 4 is credible, particularly by means of business projections.	5. When, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in points (a), (b) or (c) of paragraph 4 is credible, particularly by means of business projections.	5. When, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in points (a), (b) or (c) of paragraph 4 is credible, particularly by means of business projections.
Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.	Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings. [Am. 93]	Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.	Where more than one undertaking affiliated with the contracting entity with which they form an economic group provides the same or similar services, supplies or works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.
<i>Article 23</i> <i>Contracts awarded to a joint venture or to a contracting entity forming part of a joint venture</i>	<i>Article 23</i> <i>Contracts awarded to a joint venture or to a contracting entity forming part of a joint venture</i>	<i>Article 23</i> <i>Contracts awarded to a joint venture or to a contracting entity forming part of a joint venture</i>	<i>Article 23</i> <i>Contracts awarded to a joint venture or to a contracting entity forming part of a joint venture</i>
Article 21 notwithstanding and provided that the joint venture has been set up in order to carry out the activity concerned over a period of	Article 21 notwithstanding and provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three	Article 21 notwithstanding and provided that the joint venture has been set up in order to carry out the activity concerned over a period of	Article 21 notwithstanding and provided that the joint venture has been set up in order to carry out the activity concerned over a period of at

at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, this Directive shall not apply to contracts awarded by any of the following:	years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, this Directive shall not apply to contracts awarded by any of the following:	at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, this Directive shall not apply to contracts awarded by any of the following:	least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, this Directive shall not apply to contracts awarded by any of the following:
(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 11, to one of those contracting entities, or	(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 11, to one of those contracting entities, or	(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 11, to one of those contracting entities, or	(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 11, to one of those contracting entities, or
(b) by a contracting entity to such a joint venture of which it forms part.	(b) by a contracting entity to such a joint venture of which it forms part.	(b) by a contracting entity to such a joint venture of which it forms part.	(b) by a contracting entity to such a joint venture of which it forms part.
<i>Article 24</i> <i>Notification of information</i>	<i>Article 24</i> <i>Notification of information</i>	<i>Article 24</i> <i>Notification of information</i>	<i>Article 24</i> <i>Notification of information</i>
Contracting entities shall notify to the Commission or the national oversight body, at their request, the following information regarding the application of Article 22, paragraphs 2, 3 and Article 23:	Contracting entities shall notify to the Commission or the national oversight body, at their request, the following information regarding the application of Article 22, paragraphs 2, 3 and Article 23: [Am. 94]	Contracting entities shall notify to the Commission [...], at its request, the following information regarding the application of Article 22, paragraphs 2, 3 and Article 23:	Contracting entities shall notify to the Commission, if so requested, the following information regarding the application of Article 22, paragraphs 2, 3 and Article 23:
(a) the names of the undertakings or joint ventures concerned,	(a) the names of the undertakings or joint ventures concerned,	(a) the names of the undertakings or joint ventures concerned,	(a) the names of the undertakings or joint ventures concerned,
(b) the nature and value of the contracts involved,	(b) the nature and value of the contracts involved,	(b) the nature and value of the contracts involved,	(b) the nature and value of the contracts involved,
(c) proof deemed necessary by the Commission or the national oversight body that the relationship between the undertaking or joint	(c) proof deemed necessary by the Commission or the national oversight body that the relationship between the undertaking or joint venture to which	(c) proof deemed necessary by the Commission [...] that the relationship between the undertaking or joint venture to which the	(c) proof deemed necessary by the Commission that the relationship between the undertaking or joint venture to which the contracts are

venture to which the contracts are awarded and the contracting entity complies with the requirements of Articles 22 or 23.	the contracts are awarded and the contracting entity complies with the requirements of Articles 22 or 23.	contracts are awarded and the contracting entity complies with the requirements of Articles 22 or 23.	awarded and the contracting entity complies with the requirements of Articles 22 or 23.
Subsection 3 Specific situations	Subsection 3 Specific situations	Subsection 3 Specific situations	Subsection 3 Specific situations
<i>Article 25</i> <i>Research and development services</i>	<i>Article 25</i> <i>Research and development services</i>	<i>Article 25</i> <i>Research and development services</i>	<i>Article 25</i> <i>Research and development services</i>
1. This Directive shall apply to 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 following conditions are both fulfilled:	1. This Directive shall apply to 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 following conditions are both fulfilled:	1. This Directive shall apply to service contracts for research and development services with CPV reference numbers 73000000-2 to 73436000-7, (except 73200000-4, 73210000-7, 73220000-0, 73400000-6, 73410000-9, 73421000-9, 73422000-6, 73423000-3, 73424000-0, 73425000-7, 73426000-4, 73431000-2 Test and evaluation of security equipment 73432000-9, 73433000-6, 73434000-3, 73435000-0 or 73436000-7), provided that the following conditions are both fulfilled:	1. This Directive shall apply to service contracts for research and development services with CPV reference numbers 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 provided that the following conditions are both fulfilled:
(a) the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs,	(a) the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs,	(a) the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs,	(a) the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs,
(b) the service provided is wholly remunerated by the contracting entity.	(b) the service provided is wholly remunerated by the contracting entity.	(b) the service provided is wholly remunerated by the contracting entity.	(b) the service provided is wholly remunerated by the contracting entity.
This Directive shall not apply to	This Directive shall not apply to service	deleted	Deleted

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.	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.		
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 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.	2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 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.	2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 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.	2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 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.
<i>Article 26</i> <i>Contracts subject to special arrangements</i>			
1. Without prejudice to Article 27 the Republic of Austria and the Federal Republic of Germany shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decisions 2002/205/EC and 2004/73/EC:	1. Without prejudice to Article 27 the Republic of Austria and the Federal Republic of Germany shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decisions 2002/205/EC and 2004/73/EC:	1. Without prejudice to Article 27 the Republic of Austria and the Federal Republic of Germany shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decisions 2002/205/EC and 2004/73/EC:	1. Without prejudice to Article 27 the Republic of Austria and the Federal Republic of Germany shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decisions 2002/205/EC and 2004/73/EC:
(a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service	(a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts,	(a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service	(a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service

contracts, in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions;	in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions;	contracts, in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions;	contracts, in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions;
(b) communicates to the Commission, under the conditions defined in Commission Decision 93/327/EEC ⁹⁰ , information relating to the contracts they award.	(b) communicates to the Commission, under the conditions defined in Commission Decision 93/327/EEC, information relating to the contracts they award.	(b) communicates to the Commission, under the conditions defined in Commission Decision 93/327/EEC, information relating to the contracts they award.	(b) communicates to the Commission, under the conditions defined in Commission Decision 93/327/EEC, information relating to the contracts they award.
2. Without prejudice to Article 27, the United Kingdom shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decision 97/367/EEC applies points (a) and (b) of paragraph 1 in respect of contracts awarded for the pursuit of said activity in Northern Ireland.	2. Without prejudice to Article 27, the United Kingdom shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decision 97/367/EEC applies points (a) and (b) of paragraph 1 in respect of contracts awarded for the pursuit of said activity in Northern Ireland.	2. Without prejudice to Article 27, the United Kingdom shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decision 97/367/EEC applies points (a) and (b) of paragraph 1 in respect of contracts awarded for the pursuit of said activity in Northern Ireland.	2. Without prejudice to Article 27, the United Kingdom shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decision 97/367/EEC applies points (a) and (b) of paragraph 1 in respect of contracts awarded for the pursuit of said activity in Northern Ireland.
3. Paragraphs 1 and 2 shall not apply to contracts awarded for the purpose of exploring for oil or gas.	3. Paragraphs 1 and 2 shall not apply to contracts awarded for the purpose of exploring for oil or gas.	3. Paragraphs 1 and 2 shall not apply to contracts awarded for the purpose of exploring for oil or gas.	3. Paragraphs 1 and 2 shall not apply to contracts awarded for the purpose of exploring for oil or gas.
Subsection 4 Activities directly exposed to competition and procedural provisions relating thereto	Subsection 4 Activities directly exposed to competition and procedural provisions relating thereto	Subsection 4 Activities directly exposed to competition and procedural provisions relating thereto	Subsection 4 Activities directly exposed to competition and procedural provisions relating thereto
<i>Article 27</i> <i>Activities directly exposed to</i>			

⁹⁰ European Commission Decision of 13 May 1993 defining the conditions under which contracting entities exploiting geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels must communicate to the European Commission information relating to the contracts they award, OJ L 129, 27.5.1993, p. 25.

<i>competition</i>	<i>competition</i>	<i>competition</i>	<i>competition</i>
<p>1. Contracts intended to enable an activity mentioned in Articles 5 to 11 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 28 can demonstrate that, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive. Such competition assessment, which will be made in the light of the information available to the Commission and for the purposes of this Directive, is without prejudice to the application of competition law.</p>	<p>1. Contracts intended to enable an activity mentioned in Articles 5 to 11 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 28 can demonstrate that, in the Member State in which it is performed, <i>or in the related specific sectors or segments</i> the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive. Such competition assessment, which will be made in the light of the information available to the Commission and for the purposes of this Directive, is without prejudice to the application of competition law. [Am. 95]</p>	<p>1. Contracts intended to enable an activity mentioned in Articles 5 to 11 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 28 can demonstrate that, in the Member State in which it is performed, the activity is directly exposed to competition, on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive. Such competition assessment, which will be made in the light of the information available to the Commission and for the purposes of this Directive, is without prejudice to the application of competition law. Such assessment shall be made having regard to the market for the activities in question and the geographical reference market within the meaning of paragraph 2.</p>	<p>1. Contracts intended to enable an activity mentioned in Articles 5 to 11 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 28 can demonstrate that, in the Member State in which it is performed, the activity is directly exposed to competition, on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive. <u>The activity concerned may form a part of a larger sector or be exercised only in certain parts of the Member State concerned. The competition assessment referred to in the first sentence,</u> which will be made in the light of the information available to the Commission and for the purposes of this Directive, is without prejudice to the application of competition law. Such assessment shall be made having regard to the market for the activities in question and the geographical reference market within the meaning of paragraph 2.</p>

<p>2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the provisions on competition of the Treaty; those may include the characteristics of the goods or services concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or provider of the services in question.</p>	<p>2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition <i>requires that the relevant product market and the relevant geographic market be defined. The relevant product market</i> shall be decided on the basis of criteria that are in conformity with the provisions on competition of the Treaty; those may include the characteristics of the goods or services concerned, the existence of alternative goods or services <i>considered to be substitutable on the supply side or demand side</i>, the prices and the actual or potential presence of more than one supplier of the goods or provider of the services in question. <i>The relevant geographic market, on the basis of which exposure to competition is assessed, shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. That assessment shall take account in particular of the nature and characteristics of the products or</i></p>	<p>2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the provisions on competition of the Treaty; those may include the characteristics of the goods or services concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or provider of the services in question.</p>	<p>2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the provisions on competition of the Treaty; those may include the characteristics of the goods or services concerned, the existence of alternative goods or services <i>considered to be substitutable on the supply side or demand side</i>, the prices and the actual or potential presence of more than one supplier of the goods or provider of the services in question.</p>
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	<i>services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas and of substantial price differences. [Am. 96]</i>		
The geographical reference market, on the basis of which exposure to competition is assessed, shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. This assessment shall take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas or of substantial price differences.	The geographical reference market, on the basis of which exposure to competition is assessed, shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. This assessment shall take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas or of substantial price differences.	The geographical reference market, on the basis of which exposure to competition is assessed, shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. This assessment shall take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas or of substantial price differences.	The geographical reference market, on the basis of which exposure to competition is assessed, shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. This assessment shall take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas or of substantial price differences.
3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the Member	3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the Member State has	3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the	3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the

State has implemented and applied the Union legislation listed in Annex III.	implemented and applied the Union legislation listed in Annex III <i>or, if the Member State has extended to the market concerned the application of principles established by the Union legislation listed in that Annex.</i> [Am. 97]	Member State has implemented and applied the Union legislation listed in Annex III.	Member State has implemented and applied the Union legislation listed in Annex III.
If free access to a given market cannot be presumed on the basis of the first subparagraph, it must be demonstrated that access to the market in question is free de facto and de jure.	If free access to a given market cannot be presumed on the basis of the first subparagraph, it must be demonstrated that access to the market in question is free de facto and de jure.	If free access to a given market cannot be presumed on the basis of the first subparagraph, it must be demonstrated that access to the market in question is free de facto and de jure.	If free access to a given market cannot be presumed on the basis of the first subparagraph, it must be demonstrated that access to the market in question is free de facto and de jure.
	3a. The protection of the intellectual property of the tenderers shall be ensured. [Am. 98]		-
<i>Article 28</i> <i>Procedure for establishing whether Article 27 is applicable</i>	<i>Article 28</i> <i>Procedure for establishing whether Article 27 is applicable</i>	<i>Article 28</i> <i>Procedure for establishing whether Article 27 is applicable</i>	<i>Article 28</i> <i>Procedure for establishing whether Article 27 is applicable</i>
1. Where a Member State or, where the legislation of the Member State concerned provides for it, a contracting entity considers that, on the basis of the criteria set out in Article 27(2) and (3), a given activity is directly exposed to competition on markets to which access is not restricted, it may submit a request to establish that this Directive does not apply to the award of contracts or the organisation of design contests for the pursuit of that activity.	1. Where a Member State or, where the legislation of the Member State concerned provides for it, a contracting entity considers that, on the basis of the criteria set out in Article 27(2) and (3), a given activity is completely or partially, even with regard to single sectors or segments thereof , directly exposed to competition on markets to which access is not restricted, it may submit a request to establish that this Directive does not apply to the award of contracts or the organisation of design design contests	1. Where a Member State or, where the legislation of the Member State concerned provides for it, a contracting entity considers that, on the basis of the criteria set out in Article 27(2) and (3), a given activity is directly exposed to competition on markets to which access is not restricted, it may submit a request to the Commission to establish that this Directive does not apply to the award of contracts or the organisation of design contests for the pursuit of that	1. Where a Member State or, where the legislation of the Member State concerned provides for it, a contracting entity considers that, on the basis of the criteria set out in Article 27(2) and (3), a given activity is directly exposed to competition on markets to which access is not restricted, it may submit a request to the Commission to establish that this Directive does not apply to the award of contracts or the organisation of design contests for the pursuit of that activity, where

	<p>for the pursuit of that activity <i>or of a single sector or segment thereof</i>. [Am. 99]</p>	<p>activity, where appropriate together with the position adopted by an independent national authority that is competent in relation to the activity concerned.</p>	<p>appropriate together with the position adopted by an independent national authority that is competent in relation to the activity concerned. Such requests may concern activities which are part of a larger sector or which are exercised only in certain parts of the Member State concerned.</p>
		<p>In the request, the Member State or contracting entity concerned shall inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in Article 27(1).</p>	<p>In the request, the Member State or contracting entity concerned shall inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in Article 27(1).</p>
		<p>1a. In the case of requests coming from a contracting entity, the Commission shall immediately inform the Member State concerned.</p>	<p>1a. Unless a request coming from a contracting entity is accompanied by a reasoned and substantiated position, adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the conditions for the possible applicability of Article 27(1) to the activity concerned in accordance with its paragraphs 2 and 3, the Commission shall immediately inform the Member State concerned. The latter shall in such cases inform the Commission</p>

			of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in Article 27(1).
Requests shall be accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned. This position shall thoroughly analyse the conditions for the possible applicability of Article 27(1) to the activity concerned in accordance with its paragraphs 2 and 3.	Requests shall be accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned, <i>or the individual sector or segment thereof</i> . This position shall thoroughly analyse the conditions for the possible applicability of Article 27(1) to the activity concerned in accordance with its paragraphs 2 and 3. [Am. 100]	Except where the request is accompanied by a reasoned and substantiated position, adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the conditions for the possible applicability of Article 27(1) to the activity concerned in accordance with its paragraphs 2 and 3, the Member State [...] concerned shall inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in Article 27(1).	
The Member State or contracting entity concerned shall inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in Article 27(1).	The Member State or contracting entity concerned shall inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in Article 27(1).	[...] (moved under above paragraph)	
2. Upon request submitted in	2. Upon request submitted in	2. Upon request submitted in	2. Upon request submitted in

<p>accordance with paragraph 1 of this Article, the Commission may, by way of an implementing decision adopted within the periods set out in paragraph 4 of this Article, establish whether an activity referred to in Articles 5 to 11 is directly exposed to competition on the basis of the criteria set out in Article 27. Those implementing decisions shall be adopted in accordance with the advisory procedure referred to in Article 100(2) .</p>	<p>accordance with paragraph 1 of this Article, the Commission may, by way of an implementing decision adopted within the periods set out in paragraph 4 of this Article, establish whether an activity, <i>or of a single sector or segment thereof</i>, referred to in Articles 5 to 11 is directly exposed to competition on the basis of the criteria set out in Article 27. Those implementing decisions shall be adopted in accordance with the advisory procedure referred to in Article 100(2). [Am. 101]</p>	<p>accordance with paragraph 1 of this Article, the Commission may, by way of an implementing acts adopted within the periods set out in paragraph 3 of this Article, establish whether an activity referred to in Articles 5 to 11 is directly exposed to competition on the basis of the criteria set out in Article 27. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100(2) .</p>	<p>accordance with paragraph 1 of this Article, the Commission may, by way of implementing acts adopted within the periods set out in Annex IIIA, establish whether an activity referred to in Articles 5 to 11 is directly exposed to competition on the basis of the criteria set out in Article 27. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100(2) .</p>
<p>Contracts intended to enable the activity concerned to be carried out and design contests that are organised for the pursuit of such an activity shall cease to be subject to this Directive in any of the following cases:</p>	<p>Contracts intended to enable the activity concerned, <i>or of a single sector or segment thereof</i>, to be carried out and design contests that are organised for the pursuit of such an activity, <i>or of a single sector or segment thereof</i>, shall cease to be subject to this Directive in any of the following cases: [Am. 102]</p>	<p>Contracts intended to enable the activity concerned to be carried out and design contests that are organised for the pursuit of such an activity shall cease to be subject to this Directive in any of the following cases:</p>	<p>Contracts intended to enable the activity concerned to be carried out and design contests that are organised for the pursuit of such an activity shall cease to be subject to this Directive in any of the following cases:</p>
<p>(a) The Commission has adopted the implementing decision referred to in the first subparagraph of this paragraph establishing the applicability of Article 27(1) within the period provided for in paragraph 3 of this Article;</p>	<p>(a) The Commission has adopted the implementing decision referred to in the first subparagraph of this paragraph establishing the applicability of Article 27(1) within the period provided for in paragraph 3 of this Article;</p>	<p>(a) The Commission has adopted the implementing act referred to in the first subparagraph of this paragraph establishing the applicability of Article 27(1) within the period provided for in paragraph 3 of this Article;</p>	<p>(a) The Commission has adopted the implementing act establishing the applicability of Article 27(1) within the period provided for in Annex IIIA;</p>
<p>(b) has not adopted the implementing decision referred to in the first</p>	<p>(b) has not adopted the implementing decision referred to in the first</p>	<p>(b) has not adopted the implementing act referred to in the</p>	<p>(b) has not adopted the implementing act within the period</p>

subparagraph of this paragraph within the period provided for in paragraph 3 of this Article.	subparagraph of this paragraph within the period provided for in paragraph 3 of this Article.	first subparagraph of this paragraph within the period provided for in paragraph 3 of this Article.	provided for in Annex IIIA
3. The implementing decisions referred to in paragraph 2 shall be adopted within the following periods:	3. The implementing decisions referred to in paragraph 2 shall be adopted within the following periods:	3. The implementing acts referred to in paragraph 2 shall be adopted within the following periods:	
(a) 90 working days where free access to a given market is presumed on the basis of the first subparagraph of Article 27(3);	(a) 90 working days where free access to a given market is presumed on the basis of the first subparagraph of Article 27(3);	(a) 90 working days where free access to a given market is presumed on the basis of the first subparagraph of Article 27(3);	
(b) 130 working days in cases other than those referred to in point (a).	(b) 130 working days in cases other than those referred to in point (a).	(b) 130 working days in cases other than those referred to in point (a).	
		The periods set out in points a and b of this paragraph shall be prolonged by 15 working days where the request is not accompanied by a reasoned and substantiated position, adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the conditions for the possible applicability of Article 27(1) to the activity concerned in accordance with its paragraphs 2 and 3.	
Those deadlines shall commence on the first working day following the date on which the Commission receives the request referred to in paragraph 1 or, where the	Those deadlines shall commence on the first working day following the date on which the Commission receives the request referred to in paragraph 1 or, where the information to be supplied	Those deadlines shall commence on the first working day following the date on which the Commission receives the request referred to in paragraph 1 or, where the	

<p>information to be supplied with the request is incomplete, on the working day following the receipt of the complete information.</p> <p>The periods set out in the first subparagraph may be extended by the Commission with the agreement of the Member State or contracting entity which has presented the request.</p>	<p>with the request is incomplete, on the working day following the receipt of the complete information.</p> <p>The periods set out in the first subparagraph may be extended by the Commission with the agreement of the Member State or contracting entity which has presented the request.</p>	<p>information to be supplied with the request is incomplete, on the working day following the receipt of the complete information.</p> <p>The periods set out in the first subparagraph may be extended by the Commission with the agreement of the Member State or contracting entity which has presented the request.</p>	
<p>The Commission may require the Member State or the contracting entity concerned or the independent national authority referred to under paragraph 1 of this Article or any other competent national authority, including the oversight body referred to in Article 93, to provide all necessary information or to supplement or clarify information given within an appropriate time limit. In the event of late or incomplete answers, the periods set out in the first subparagraph shall be suspended for the period between the expiry of the time limit set in the request for information, and the receipt of the complete and correct information.</p>	<p>The Commission may require the Member State or the contracting entity concerned or the independent national authority referred to under paragraph 1 of this Article or any other competent national authority, including the oversight body referred to in Article 93, to provide all necessary information or to supplement or clarify information given within an appropriate time limit. In the event of late or incomplete answers, the periods set out in the first subparagraph shall be suspended for the period between the expiry of the time limit set in the request for information, and the receipt of the complete and correct information.</p>	<p>The Commission may require the Member State or the contracting entity concerned or the independent national authority referred to under paragraph 1 of this Article or any other competent national authority [...] to provide all necessary information or to supplement or clarify information given within an appropriate time limit. In the event of late or incomplete answers, the periods set out in the first subparagraph shall be suspended for the period between the expiry of the time limit set in the request for information, and the receipt of the complete and correct information.</p>	
		<p>3a. After the submission of a request, the Member State or the contracting entity concerned may,</p>	<p>3a. After the submission of a request, the Member State or the contracting entity concerned may,</p>

		with the Commission's agreement, substantially modify its request, in particular as regards the activities or the geographical areas concerned. If so, a new period for the adoption of the implementing act shall apply, which shall be calculated in accordance with the first and second subparagraph of paragraph 3, unless a shorter period is agreed on by the Commission and the Member State or contracting entity which has presented the request.	with the Commission's agreement, substantially modify its request, in particular as regards the activities or the geographical areas concerned. If so, a new period for the adoption of the implementing act shall apply, which shall be calculated in accordance with <u>paragraph 1 of Annex III A</u> , unless a shorter period is agreed on by the Commission and the Member State or contracting entity which has presented the request.
4. Where an activity in a given Member State is already the subject of a procedure under paragraphs 1, 2 and 3, further requests concerning the same activity in the same Member State before the expiry of the period opened in respect of the first request shall not be considered as new procedures and shall be treated in the context of the first request.	4. Where an activity, <i>or an individual sector or segment thereof</i> , in a given Member State is already the subject of a procedure under paragraphs 1, 2 and 3, further requests concerning the same activity, <i>or individual sector or segment thereof</i> , in the same Member State before the expiry of the period opened in respect of the first request shall not be considered	4. Where an activity in a given Member State is already the subject of a procedure under paragraphs 1, 2 and 3, further requests concerning the same activity in the same Member State before the expiry of the period opened in respect of the first request shall not be considered as new procedures and shall be treated in the context of the first request.	4. Where an activity in a given Member State is already the subject of a procedure under paragraphs 1, 2 and <u>3a</u> , further requests concerning the same activity in the same Member State before the expiry of the period opened in respect of the first request shall not be considered as new procedures and shall be treated in the context of the first request.
5. The Commission shall adopt an implementing act establishing detailed rules for the application of paragraphs 1 to 4. That implementing act shall include at least:	5. The Commission shall adopt an implementing act establishing detailed rules for the application of paragraphs 1 to 4. That implementing act shall include at least:	5. The Commission shall adopt an implementing act establishing detailed rules for the application of paragraphs 1 to 4. That implementing act shall include at least rules and provisions relating to:	5. The Commission shall adopt an implementing act establishing detailed rules for the application of paragraphs 1 to 4. That implementing act shall include at least rules and provisions relating to:
(a) Those the publication in the	(a) Those the publication in the Official	(a) The publication in the	(a) The publication in the

Official Journal of the European Union, for information, of the date on which the period set out in the first subparagraph of paragraph 3 begins and ends, including prolongations or suspensions of those periods, if any, as provided for in paragraph 3 of this Article;	Journal of the European Union, for information, of the date on which the period set out in the first subparagraph of paragraph 3 begins and ends, including prolongations or suspensions of those periods, if any, as provided for in paragraph 3 of this Article;	Official Journal of the European Union, for information, of the date on which the period set out in the first subparagraph of paragraph 3 begins and ends, including prolongations or suspensions of those periods, if any, as provided for in paragraph 3 of this Article;	Official Journal of the European Union, for information, of the date on which the period set out in paragraph 1 of Annex III A begins and ends, including prolongations or suspensions of those periods, if any, as provided for in that Annex ;
(b) publication of the possible applicability of Article 27(1) in accordance with point b of the second subparagraph of paragraph 2 of this Article;	(b) publication of the possible applicability of Article 27(1) in accordance with point b of the second subparagraph of paragraph 2 of this Article;	(b) publication of the possible applicability of Article 27(1) in accordance with point b of the second subparagraph of paragraph 2 of this Article;	(b) publication of the possible applicability of Article 27(1) in accordance with point b of the second subparagraph of paragraph 2 of this Article;
(c) implementing provisions concerning the form, content and other details of requests pursuant to paragraph 1 of this Article;	(c) implementing provisions concerning the form, content and other details of requests pursuant to paragraph 1 of this Article;	(c) implementing provisions concerning the form, content and other details of requests pursuant to paragraph 1 of this Article.;	(c) implementing provisions concerning the form, content and other details of requests pursuant to paragraph 1 of this Article.
(d) rules concerning the periods set out in paragraph 3 of this Article.	(d) rules concerning the periods set out in paragraph 3 of this Article.	deleted	Deleted
Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100(2).	Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100(2).	Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100(2).	Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100(2).
CHAPTER IV General principles	CHAPTER IV General principles	CHAPTER IV General principles	CHAPTER IV General principles
Article 29 <i>Principles of procurement</i>	Article 29 Principles of procurement	Article 29 <i>Principles of procurement</i>	Article 29 <i>Principles of procurement</i>
Contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate way.	I. Contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate way.	Contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner .	Contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner .

<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>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>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>	<p><i>The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement was made with the intention of unduly favouring or disadvantaging certain economic operators.</i></p>
	<p><i>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 XIV and in Union and national law as well as in collective agreements concluded in accordance with national law and practices which respect Union law. [Am. 104]</i></p>		<p><i>Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex XIV.</i></p>
<p><i>Article 30 Economic operators</i></p>	<p>Article 30 Economic operators</p>	<p><i>Article 30 Economic operators</i></p>	<p><i>Article 30 Economic operators</i></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</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</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</p>	<p><i>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</i></p>

<p>contract is awarded, they would be required to be either natural or legal persons.</p>	<p>would be required to be either natural or legal persons.</p>	<p>contract is awarded, they would be required to be either natural or legal persons.</p>	<p>contract is awarded, they would be required to be either natural or legal persons.</p>
<p>However, in the case of service and works contracts as well as supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff responsible for the performance of the contract in question.</p>	<p>However, in the case of service and works contracts as well as supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names number and relevant professional qualifications qualification levels of the staff responsible for the performance of the contract in question. [Am. 105]</p>	<p>However, in the case of service and works contracts as well as supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff responsible for the performance of the contract in question.</p>	<p>However, in the case of service and works contracts as well as supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff responsible for the performance of the contract in question.</p>
<p>2. Groups of economic operators may submit tenders or put themselves forward as candidates. Contracting entities shall not establish specific conditions for 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 entities to assume a specific legal form.</p>	<p>2. Groups of economic operators may submit tenders or put themselves forward as candidates. Contracting entities shall not establish specific conditions for 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 entities to assume a specific legal form.</p>	<p>2. Groups of economic operators may participate in procurement procedures. Specific conditions relating to economic and financial standing or to criteria relating to technical and professional ability, which contracting entities establish for the participation of such groups 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 entities.</p>	<p>2. Groups of economic operators, including temporary associations, may participate in procurement procedures and may not be required by the contracting entities to have a specific legal form in order to submit a tender or a request to participate.</p> <p>Where necessary, contracting entities may clarify in the procurement documents how groups of economic operators shall meet the <u>criteria and requirements for qualification and qualitative selection set out in Articles 71 to 75</u> provided this is justified by objective reasons and proportionate. Member States</p>

			may establish standard terms for so doing instead of the individual contracting entities.
	<i>Contracting entities 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. [Am. 106]</i>		---
Contracting entities 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.	Contracting entities 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.	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.	Conditions for the performance of a contract by such groups, which are different from those imposed on individual participants, shall also be justified by objective reasons and proportionate.
		In order to submit a tender or a request to participate, groups of economic operators shall not be required by the contracting entities 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	Groups of economic operators 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.

		change is necessary for the satisfactory performance of the contract.	
<i>Article 31 Reserved contracts</i>	<i>Article 31 Reserved contracts</i>	<i>Article 31 Reserved contracts</i>	<i>Article 31 Reserved contracts</i>
Member States may reserve the right to participate in procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled 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.	Member States may reserve the right to participate in procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled 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.	1. Member States may reserve the right to participate in procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled 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.	1. Member States may reserve the right to participate in procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled 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 period of three years beginning from the date on which the organisation first begins to supply any services.	--
		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.	--
The call for competition shall make reference to this Article.	The call for competition shall make reference to this Article.	3. The call for competition shall make reference to this Article.	3. The call for competition shall make reference to this Article.
<i>Article 32 Confidentiality</i>	<i>Article 32 Confidentiality</i>	<i>Article 32 Confidentiality</i>	<i>Article 32 Confidentiality</i>
			1. Unless otherwise provided in this Directive or in the national law to

			<p>which the contracting entity is subject, in particular legislation concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 64 and 69 of this directive the contracting entity shall not disclose information forwarded to it by economic operators which they have designated as confidential, including but not limited to, technical or trade secrets and the confidential aspects of tenders.</p>
<p>1. Contracting entities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting entities make available throughout the procurement procedure, including information made available in connection with the operation of a qualification system, whether or not this has been the subject of a notice on the existence of a qualification system used as a means of calling for competition.</p>	<p>1. Contracting entities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting entities make available throughout the procurement procedure, including information made available in connection with the operation of a qualification system, whether or not this has been the subject of a notice on the existence of a qualification system used as a means of calling for competition.</p>	<p>1. Contracting entities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting entities make available throughout the procurement procedure, including information made available in connection with the operation of a qualification system, whether or not this has been the subject of a notice on the existence of a qualification system used as a means of calling for competition.</p>	<p>2. Contracting entities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting entities make available throughout the procurement procedure, including information made available in connection with the operation of a qualification system, whether or not this has been the subject of a notice on the existence of a qualification system used as a means of calling for competition.</p>
<p>2. Unless otherwise provided in this Directive or in the national law concerning access to information,</p>	<p>2. Unless otherwise provided in this Directive or in the national law concerning access to information, and</p>	<p>2. Unless otherwise provided in this Directive or in the national law to which the contracting entity is</p>	

<p>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 64 and 69 of this directive the contracting entity shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.</p>	<p>without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 64 and 69 of this directive the contracting entity shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.</p>	<p>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 64 and 69 of this directive the contracting entity shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.</p>	
	<p>2a. This Article shall not prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes. [Am. 107]</p>		
<p><i>Article 33</i> <i>Rules applicable to communication</i></p>	<p><i>Article 33</i> <i>Rules applicable to communication</i></p>	<p><i>Article 33</i> <i>Rules applicable to communication</i></p>	<p>Article 33 Rules applicable to communication</p>
<p>1. Except where use of electronic means is mandatory pursuant to Articles 46, 47, 48, 49(4), 65(2) or 67 of this Directive contracting entities may choose between the following means of communication for all communication and information exchange:</p>	<p>1. Except where use of electronic means is mandatory pursuant to Articles 46, 47, 48, 49(4), 65(2) or 67 of this Directive contracting entities may choose between the following means of communication for all communication and information exchange:</p>	<p>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 non-discriminatory, generally</p>	<p>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 non-discriminatory, generally</p>

		available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the procurement procedure.	available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the procurement procedure.
		Notwithstanding the first subparagraph, contracting entities 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:	Notwithstanding the first subparagraph, contracting entities are not obliged to require electronic means of communication in the submission process in the following situations:
(a) electronic means in accordance with paragraphs 3, 4 and 5;	(a) electronic means in accordance with paragraphs 3, 4 and 5;	(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;	(a) due to the specialised nature of the procurement, the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications;

(b) post or fax;	(b) post or fax;	(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;	(b) the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting entity;
(c) telephone in the cases and circumstances referred to in paragraph 6;	(c) — telephone in the cases and circumstances referred to in paragraph 6; [Am. 108]	(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;	(c) the use of electronic communication would require specialised office equipment that is not generally available to contracting entities;
(d) a combination of those means.	(d) a combination of those means.	(d) the procurement documents require the submission of physical or scale models which cannot be submitted using electronic means. Incorporates provisions from Art. 34, 2 nd and 3 rd subparagraphs.	(d) the procurement documents require the submission of physical or scale models which cannot be transmitted using electronic means. In respect of communications for which electronic means of communication are not used pursuant to subparagraph 2, communication shall be done by post or by a combination of post and electronic means.
Member States may make mandatory the use of electronic means of communication in other situations than those provided for in	Member States may make mandatory the use of electronic means of communication in other situations than those provided for in Articles 46, 47,	Notwithstanding the first subparagraph, contracting entities are not obliged to require electronic means of	Notwithstanding the first subparagraph, contracting entities are not obliged to require electronic means of

Articles 46, 47, 48, 49(4), 65(2) or 67 of this Directive.	48, 49(4), 65(2) or 67 of this Directive.	<p>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 entities impose pursuant to Article 32(1) in order to protect the confidential nature of information which the contracting entities make available throughout the procurement procedure.</p>	<p>communication in the submission process to the extent that the use of means of communication other than electronic means is necessary either because of a breach of security of these means of communications or for the protection of the particularly sensitive nature of information requiring such a high level of protection that it cannot be properly ensured by using electronic tools and devices that are either generally available to economic operators or can be made available to them by alternative means of access within the meaning of paragraph 4.</p>
		<p>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>	
		<p>It is the responsibility of the contracting entities using means of communication other than electronic means for the e-submission to indicate in the individual report referred to in Article 94 the reasons why the use of electronic means, due to the</p>	<p>It is the responsibility of the contracting entities requiring, in accordance with the second subparagraph, means of communication other than electronic means in the submission process to indicate in the individual report referred to in</p>

		<p>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 communication concerned can be handled only through specialised office equipment. Where applicable, contracting entities 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>Article 94 the reasons for it. Where applicable, contracting entities shall indicate in the individual report the reasons why use of means of communication other than electronic has been considered necessary in application of the third subparagraph.</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</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</p>

		and by appropriate means, such as written or audio records or summaries of the main elements of the communication.	and by appropriate means, such as written or audio records or summaries of the main elements of the communication.
2. The means of communication chosen shall be generally available and not restrict economic operators' access to the procurement procedure.	2. The means of communication chosen shall be generally available and not restrict economic operators' access to the procurement procedure.	[...] deleted	deleted
In all communication, exchange and storage of information, contracting entities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. They shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.	In all communication, exchange and storage of information, contracting entities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. They shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.	2. In all communication, exchange and storage of information, contracting entities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. They shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.	2. In all communication, exchange and storage of information, contracting entities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. They shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.
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 technical details and characteristics of the devices for the electronic receipts to be deemed in compliance with the first subparagraph of this paragraph are	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 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.	deleted	3. Member States may require the use of specific electronic tools, such as of building information electronic modelling tools or similar. They shall offer alternative means of access as provided for in paragraph 4 until such time as these tools become generally available within the meaning of the second sentence of the first subparagraph of paragraph 1.

<p>set out in Annex IV.</p> <p>The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the technical details and characteristics set out in Annex IV due to technical developments or administrative reasons.</p>	<p>The Commission shall be empowered to adopt delegated acts in accordance with Article 98 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 98 to establish the mandatory use of certain technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.</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 98 to establish the mandatory <i>may recommend the</i> use of certain <i>specific</i> technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication. [Am. 109]</p>		
<p>4. Contracting entities may, where necessary, require the use of tools which are not generally available, provided that they offer alternative means of access.</p>	<p>4. Contracting entities may, where necessary, require the use of tools which are not generally available, provided that they offer alternative means of access.</p>	<p>3. Contracting entities may, where necessary, require the use of tools which are not generally available, provided that the contracting entities offer alternative means of access.</p>	<p>4. Contracting entities may, where necessary, require the use of tools which are not generally available, provided that the contracting entities offer alternative means of access.</p>
<p>Contracting entities shall be deemed to offer suitable alternative means of access in any of the following situations:</p>	<p>Contracting entities shall be deemed to offer suitable alternative means of access in any of the following situations:</p>	<p>Contracting entities shall be deemed to offer suitable alternative means of access in any of the following situations, where they:</p>	<p>Contracting entities 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</p>	<p>(a) they offer unrestricted and full direct</p>	<p>(a) [...] offer unrestricted and full</p>	<p>(a) offer unrestricted and full direct</p>

direct access by electronic means to those tools from the date of publication of the notice in accordance with Annex IX or from the date on which the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which those tools are accessible;	access by electronic means to those tools from the date of publication of the notice in accordance with Annex IX or from the date on which the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which those tools are accessible;	direct access by electronic means to those tools and devices from the date of publication of the notice in accordance with Annex IX or from the date on which the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which these tools and devices are accessible;	access by electronic means to those tools and devices from the date of publication of the notice in accordance with Annex IX or from the date on which the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which these tools and devices are accessible;
(b) they ensure that tenderers established in other Member States than the contracting entity's may access the procurement procedure through the use of provisional tokens made available online at no extra cost;	(b) they ensure that tenderers established in other Member States than the contracting entity's may access the procurement procedure through the use of provisional tokens made available online at no extra cost;	(b) [...] ensure that tenderers having no access to the tools and devices concerned, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the tenderer concerned, may access the procurement procedure through the use of provisional tokens made available online at no extra cost; or	(b) ensure that tenderers having no access to the tools and devices concerned, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the tenderer concerned, may access the procurement procedure through the use of provisional tokens made available online at no extra cost; or
(c) they support an alternative channel for electronic submission of tenders.	(c) they support an alternative channel for electronic submission of tenders.	(c) [...] support an alternative channel for electronic submission of tenders.	(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:	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:	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:	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	(a) information on specifications for the electronic submission of tenders and requests to participate, including	(a) information on specifications for the electronic submission of tenders and requests to participate,	(a) information on specifications for the electronic submission of tenders and requests to participate,

encryption and time-stamping, shall be available to interested parties;	encryption and time-stamping, shall be available to interested parties;	including encryption and time-stamping, shall be available to interested parties;	including encryption and time-stamping, shall be available to interested parties;
(b) the devices, methods for authentication and electronic signatures shall comply with the requirements of Annex IV;	(b) the devices, methods for authentication and electronic signatures shall comply with the requirements of Annex IV;	I. deleted	
(c) contracting entities shall specify the level of security required for the electronic means of communication to be used in the various stages of the specific procurement procedure; the level shall be proportionate to the risks attached;	(c) contracting entities shall specify the level of security required for the electronic means of communication to be used in the various stages of the specific procurement procedure; the level shall be proportionate to the risks attached;	(c) Member States, or contracting entities acting within an overall framework established by the Member State concerned, shall specify the level of security required for the electronic means of communication to be used in the various stages of the specific procurement procedure; the level shall be proportionate to the risks attached;	(c) Member States, or contracting entities acting within an overall framework established by the Member State concerned, shall specify the level of security required for the electronic means of communication to be used in the various stages of the specific procurement procedure; the level shall be proportionate to the risks attached;
(d) where advanced Electronic Signatures as defined by Directive 1999/93/EC ⁹¹ are required, contracting entities shall, as long as the signature is valid, accept signatures supported by a qualified electronic certificate referred to in the Trusted List as provided for in the Commission Decision 2009/767/EC ⁹² , created with or without a secure signature creation	(d) where advanced Electronic Signatures as defined by Directive 1999/93/EC are required, contracting entities shall, as long as the signature is valid, accept signatures supported by a qualified electronic certificate referred to in the Trusted List as provided for in the Commission Decision 2009/767/EC, created with or without a secure signature creation device, subject to compliance with the	(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 are required, contracting entities shall [...] accept signatures supported by a qualified	(d) where Member States, or contracting entities 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 are required, contracting entities shall accept signatures supported by a qualified electronic

⁹¹ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ L 13, 19.1.2000, p. 12.

⁹² OJ L 274, 20.10.2009, p. 36.

<p>device, subject to compliance with the following conditions:</p>	<p>following conditions:</p>	<p>electronic certificate referred to in the Trusted List as provided for in the Commission Decision 2009/767/EC, created with or without a secure signature creation device, subject to compliance with the following conditions:</p>	<p>certificate referred to in the Trusted List as provided for in the Commission Decision 2009/767/EC, 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/EU⁹³ and shall put in place necessary measures to be able to process those formats technically;</p>	<p>(i) they must establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU and shall put in place necessary measures to be able to process those formats technically;</p>	<p>(i) they must establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU and shall put in place necessary measures to be able to process those formats technically;</p>	<p>(i) they must establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU and shall put in place necessary measures to be able to process those formats technically; in case where a different format of electronic signature is used, the electronic signature or the electronic document carrier shall include information on existing validation possibilities, which shall be under the responsibility of the Member State. The validation possibilities shall allow the contracting entity to validate online, free of charge and in a way that is understandable for non-native speakers the received electronic signature as an advanced electronic signature supported by a qualified certificate. Member States shall notify information on the provider of validation services to the</p>

⁹³ OJ L 53, 26.2.2011, p. 66.

			Commission, which shall make the information received from the Member States available to the public on line;
(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.	(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.	(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.	(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.
		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 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	In respect of documents used in the context of a procurement procedure that are signed by a competent authority of a Member State authority or by another issuing entity, the competent issuing authority or entity 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 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

		online, free of charge and in a way that is understandable for non-native speakers.	signature online, free of charge and in a way that is understandable for non-native speakers.
		Contracting entities 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.	deleted
6. The following rules shall apply to the transmission of requests to participate:	6. The following rules shall apply to the transmission of requests to participate:	deleted	Deleted
(a) requests to participate in procedures for the award of 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;	(a) requests to participate in procedures for the award of 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; [Am. 110]	deleted	Deleted
(b) contracting entities 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	(b) contracting entities 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	deleted	Deleted

proof.	proof.		
For the purposes of point (b) the contracting entity shall indicate in the notice used as a means of calling for competition 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.	For the purposes of point (b) the contracting entity shall indicate in the notice used as a means of calling for competition 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.	deleted	Deleted
7. Contracting entities 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.	7. Contracting entities 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.	deleted	Deleted
		7a. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the technical details and characteristics set out in Annex IV due to technical developments.	7a. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the technical details and characteristics set out in Annex IV due to technical developments.
		To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission shall be empowered to adopt delegated acts in accordance with Article 98 to establish the mandatory use of such specific technical standards, in particular with regard to the use of e-submission, electronic	The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the list set out in points a to d of the second subparagraph of paragraph 1 where technological developments render continued exceptions from the use of electronic means of communication inappropriate or, exceptionally, where new exclusions must be

		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 carefully consider the costs that this may entail, in particular in terms of adaptations to existing e-procurement solutions, including infrastructure, processes or software.	provided for because of technological developments. To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission shall be empowered to adopt delegated acts in accordance with Article 98 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 carefully consider the costs that this may entail, in particular in terms of adaptations to existing e-procurement solutions, including infrastructure, processes or software.
<i>Article 34</i> <i>General obligation to use electronic means of communication</i>	Article 34 General obligation to use electronic means of communication	<i>deleted</i>	
Member States shall ensure that, at the latest 2 years after the date provided for in Article 101(1), all	Member States shall ensure that, at the latest 2 years after the date provided for in Article 101(1), all procurement	deleted	deleted

<p>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>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><i>For works contracts above the threshold set out in Article 12, Member States may require the use by both contracting entities and tenderers of building information electronic modelling tools following the general timescales for the implementation of electronic procurement set out in the first subparagraph. [Am. 111]</i></p>		<p>See Article 33(3)</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 entities using other means of communication for submission of tenders to demonstrate in the procurement 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>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 entities using other means of communication for submission of tenders to demonstrate in the procurement 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>deleted</p>	<p>Deleted</p>

Contracting entities shall be deemed to have legitimate reasons not to request electronic means of communication in the submission process where the following apply	Contracting entities shall be deemed to have legitimate reasons not to request electronic means of communication in the submission process where the following apply:	deleted	Deleted
(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;	(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;	deleted	Deleted
(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 entity;	(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 entity;	deleted	Deleted
(c) the applications supporting file formats that are suitable for the description of the technical specifications use file formats that cannot be handled by any other open or downloadable applications.	(c) the applications supporting file formats that are suitable for the description of the technical specifications use file formats that cannot be handled by any other open or downloadable applications.	deleted	Deleted
<i>Article 35 Nomenclatures</i>	<i>Article 35 Nomenclatures</i>	<i>Article 35 Nomenclatures</i>	Article 35 Nomenclatures
1. Any references to nomenclatures in the context of public procurement shall be made using the "Common Procurement Vocabulary (CPV)" as	1. Any references to nomenclatures in the context of public procurement shall be made using the "Common Procurement Vocabulary (CPV)" as	1. Any references to nomenclatures in the context of public procurement shall be made using the "Common Procurement Vocabulary (CPV)" as	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 ⁹⁴ .	adopted by Regulation (EC) No 2195/2002.	adopted by Regulation (EC) No 2195/2002	adopted by Regulation (EC) No 2195/2002
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to adapt the reference numbers used in Annex II and XVI, whenever changes in the CPV nomenclature have to be reflected in this Directive and they do not imply a modification of the scope of this Directive.	2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to adapt the reference numbers used in Annex II and XVI, whenever changes in the CPV nomenclature have to be reflected in this Directive and they do not imply a modification of the scope of this Directive.	2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to adapt the reference numbers used in Annex II and XVI, whenever changes in the CPV nomenclature have to be reflected in this Directive and they do not imply a modification of the scope of this Directive.	2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to adapt the reference numbers used in Annex II and XVI, whenever changes in the CPV nomenclature have to be reflected in this Directive and they do not imply a modification of the scope of this Directive.
<i>Article 36</i> <i>Conflicts of interests</i>	Article 36 Conflicts of interests	<i>Article 36</i> <i>Conflicts of interests</i>	<i>Article 36</i> <i>Conflicts of interests</i>
1. Member States shall, in respect of contracting authorities within the meaning of point 1 of Article 2, 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.	1. Member States shall, in respect of contracting authorities within the meaning of point 1 of Article 2, provide for rules put in place mechanisms 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 economic operators . [Am. 112]	1. Member States shall, in respect of contracting authorities within the meaning of point 1 of Article 2, 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 .	1. Member States shall, in respect of contracting authorities within the meaning of point 1 of Article 2, 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 .

⁹⁴ OJ L 340, 16.12.2002, p. 1.

<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 performance of their duties.</p>	<p>The notion <i>concept</i> of conflict <i>conflicts</i> of interests shall at least cover any situation where the categories of persons referred to in paragraph 2 <i>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</i> have, directly or indirectly, a private <i>financial, economic or other personal or common</i> interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties <i>compromise their impartiality and independence in the context of the procurement procedure.</i> [Am. 113]</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 and independence in the context of the procurement procedure.</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 and independence in the context of the procurement procedure.</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>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. [Am. 114]</p>	<p>[...] deleted</p>	<p>deleted</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>2. The rules referred to in paragraph 1 shall apply to conflicts of interests involving at least the following categories of persons:</p>	<p>deleted</p>	<p>deleted</p>
<p>(a) staff members of the contracting</p>	<p>(a) staff members of the contracting</p>	<p>deleted</p>	<p>deleted</p>

authority, procurement service providers or staff members of other service providers who are involved in the conduct of the procurement procedure;	authority, procurement service providers or staff members of other service providers who are involved in the conduct of the procurement procedure;		
(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.	(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.	deleted	deleted
3. Member States shall ensure in particular:	3. Member States shall ensure in particular:	deleted	deleted
(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,	(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,	deleted	deleted
(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	(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	deleted	deleted

<p>Article 94 whether any candidate or tenderer has submitted a declaration.</p>	<p>Article 94 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 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 93 and take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. If the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.</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 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 93 and take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. If the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.</p>	<p>deleted</p>	<p>deleted</p>

4. All measures taken pursuant to this Article shall be documented in the individual report referred to in Article 94.	4. All measures taken pursuant to this Article shall be documented in the individual report referred to in Article 94. [Am. 115]	deleted	deleted
<i>Article 37 Illicit conduct</i>	<i>Article 37 Illicit conduct</i>	deleted	Deleted
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:	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:	deleted	deleted
(a) unduly influence the decision-making process of the contracting entity or obtain confidential information that may confer upon them undue advantages in the procurement procedure;	(a) unduly influence the decision-making process of the contracting entity or obtain confidential information that may confer upon them undue advantages in the procurement procedure;	deleted	Deleted
(b) enter into agreements with other candidates and tenderers aimed at distorting competition, or	(b) enter into agreements with other candidates and tenderers aimed at distorting competition, or	deleted	Deleted
(c) deliberately provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.	(c) deliberately provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.	deleted	Deleted
TITLE II RULES APPLICABLE TO CONTRACTS	TITLE II RULES APPLICABLE TO CONTRACTS	TITLE II RULES APPLICABLE TO CONTRACTS	TITLE II RULES APPLICABLE TO CONTRACTS
CHAPTER I	CHAPTER I	CHAPTER I	CHAPTER I
Procedures	Procedures	Procedures	Procedures
<i>Article 38 Conditions relating to the Government Procurement</i>	<i>Article 38 Conditions relating to the Government Procurement Agreement and other</i>	<i>Article 38 Conditions relating to the Government Procurement</i>	<i>Article 38 Conditions relating to the Government Procurement</i>

<i>Agreement and other international agreements</i>	<i>international agreements</i>	<i>Agreement and other international agreements</i>	<i>Agreement and other international agreements</i>
<p>1. As far as covered by Annexes III, 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 entities within the meaning of Article 4(3)(a) shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the Union. By applying this Directive to economic operators of the signatories to those agreements contracting entities shall comply with those agreements.</p>	<p>1. As far as covered by Annexes III, 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 — <i>including the commitments entered into within the framework of bilateral trade agreements</i>, as listed in Annex V to this Directive, contracting entities within the meaning of Article 4(3)(a) shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the Union. By applying this Directive to economic operators of the signatories to those agreements contracting entities shall comply with those agreements. [Am. 116]</p>	<p>[...] As far as covered by Annexes III, 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 entities within the meaning of Article 4(1)(a) shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the Union. [...]</p>	<p>As far as covered by Annexes III, 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 entities within the meaning of Article 4(1)(a) shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the Union.</p>
<p>2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 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>2. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 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>deleted</p>	<p>Deleted</p>

<i>Article 39 Choice of procedures</i>	<i>Article 39 Choice of procedures</i>	<i>Article 39 Choice of procedures</i>	<i>Article 39 Choice of procedures</i>
1. When awarding supply, works or service contracts, contracting entities shall apply the procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 42, a call for competition has been published in accordance with this Directive.	1. When awarding supply, works or service contracts, contracting entities shall apply the procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 42, a call for competition has been published in accordance with this Directive.	1. When awarding supply, works or service contracts, contracting entities shall apply the procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 42, a call for competition has been published in accordance with this Directive.	1. When awarding supply, works or service contracts, contracting entities shall apply the procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 42, a call for competition has been published in accordance with this Directive.
Member States shall provide that contracting entities may apply open or restricted procedures or negotiated procedures with prior call for competition as regulated in this Directive.	Member States shall provide that contracting entities may apply open or restricted procedures or negotiated procedures with prior call for competition and innovation partnerships as regulated in this Directive. [Am. 117]	Member States shall provide that contracting entities may apply open or restricted procedures or negotiated procedures with prior call for competition as regulated in this Directive.	Member States shall provide that contracting entities may apply open or restricted procedures or negotiated procedures with prior call for competition as regulated in this Directive. Member States shall also provide that contracting entities may apply competitive dialogues and innovation partnerships as regulated in this Directive.
		Member States may provide that contracting entities may apply innovation partnerships or competitive dialogues as regulated in this Directive. Member States may decide not to transpose into their national law innovation partnerships or competitive dialogues or to restrict their use to certain types of procurement.	Deleted
2. The call for competition may be made by one of the following	2. The call for competition may be made by one of the following means:	2. The call for competition may be made by one of the following	2. The call for competition may be made by one of the following

means:		means:	means:
(a) a periodic indicative notice pursuant to Article 61 where the contract is awarded by restricted or negotiated procedure;	(a) a periodic indicative notice pursuant to Article 61 where the contract is awarded by restricted or negotiated procedure;	(a) a periodic indicative notice pursuant to Article 61 where the contract is awarded by restricted or negotiated procedure;	(a) a periodic indicative notice pursuant to Article 61 where the contract is awarded by restricted or negotiated procedure;
(b) a notice on the existence of a qualification system pursuant to Article 62 where the contract is awarded by restricted or negotiated procedure or by an innovation partnership,	(b) a notice on the existence of a qualification system pursuant to Article 62 where the contract is awarded by restricted or negotiated procedure or by an innovation partnership,	(b) a notice on the existence of a qualification system pursuant to Article 62 where the contract is awarded by restricted or negotiated procedure or by a competitive dialogue or an innovation partnership,	(b) a notice on the existence of a qualification system pursuant to Article 62 where the contract is awarded by restricted or negotiated procedure or by a competitive dialogue or an innovation partnership,
(c) by means of a contract notice pursuant to Article 63.	(c) by means of a contract notice pursuant to Article 63.	(c) by means of a contract notice pursuant to Article 63.	(c) by means of a contract notice pursuant to Article 63.
In the case referred to in point (a), economic operators having expressed their interest following the publication of the periodic indicative notice shall subsequently be invited to confirm their interest in writing by means of an ‘invitation to confirm interest’ in conformity with Article 68.	In the case referred to in point (a), economic operators having expressed their interest following the publication of the periodic indicative notice shall subsequently be invited to confirm their interest in writing by means of an ‘invitation to confirm interest’ in conformity with Article 68.	In the case referred to in point (a), economic operators having expressed their interest following the publication of the periodic indicative notice shall subsequently be invited to confirm their interest in writing by means of an ‘invitation to confirm interest’ in conformity with Article 68.	In the case referred to in point (a), economic operators having expressed their interest following the publication of the periodic indicative notice shall subsequently be invited to confirm their interest in writing by means of an ‘invitation to confirm interest’ in conformity with Article 68.

3. Member States may provide that contracting entities may apply a negotiated procedure without prior call for competition only in the specific cases and circumstances referred to expressly in Article 42.	3. Member States may provide that contracting entities may apply a negotiated procedure without prior call for competition only in the specific cases and circumstances referred to expressly in Article 42.	3. In the specific cases and circumstances referred to expressly in Article 44 , Member States may provide that contracting entities may apply a negotiated procedure without prior call for competition . Member States shall not allow the use of this procedure in any other cases than those referred to in Article 44.	3. In the specific cases and circumstances referred to expressly in Article 44 , Member States may provide that contracting entities may apply a negotiated procedure without prior call for competition. Member States shall not allow the use of this procedure in any other cases than those referred to in Article 44.
<i>Article 40</i> <i>Open procedure</i>	<i>Article 40</i> <i>Open procedure</i>	<i>Article 40</i> <i>Open procedure</i>	<i>Article 40</i> <i>Open procedure</i>
1. In open procedures any interested economic operator may submit a tender in response to a call for competition.	1. In open procedures any interested economic operator may submit a tender in response to a call for competition.	1. In open procedures any interested economic operator may submit a tender in response to a call for competition	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 minimum time limit for the receipt of tenders shall be 40 days from the date on which the contract notice was sent.	The minimum time limit for the receipt of tenders shall be 35 days from the date on which the contract notice was sent.	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 requested information for qualitative selection.	The tender shall be accompanied by the requested information for qualitative selection.	The tender shall be accompanied by the [...] information for qualitative selection that is requested by the contracting entity.	The tender shall be accompanied by the [...] information for qualitative selection that is requested by the contracting entity.
2. Where contracting entities have published a periodic indicative notice which 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	2. Where contracting entities have published a periodic indicative 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	2. Where contracting entities have published a periodic indicative notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to	2. Where contracting entities have published a periodic indicative notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to

20 days, provided that both of the following conditions are fulfilled:	of the following conditions are fulfilled:	15 days, provided that all of the following conditions are fulfilled:	15 days, provided that all of the following conditions are fulfilled:
(a) the periodic indicative notice has included, in addition to the information required by Section I of Part A of Annex VI, all the information required by Section II of Part A of Annex VI, insofar as the latter information is available at the time the periodic indicative notice is published;	(a) the periodic indicative notice has included, in addition to the information required by Section I of Part A of Annex VI, all the information required by Section II of Part A of Annex VI, insofar as the latter information is available at the time the periodic indicative notice is published;	(a) the periodic indicative notice [...] included, in addition to the information required by Section I of Part A of Annex VI, all the information required by Section II of Part A of Annex VI, insofar as the latter information was available at the time the periodic indicative notice was published;	(a) the periodic indicative notice included, in addition to the information required by Section I of Part A of Annex VI, all the information required by Section II of Part A of Annex VI, insofar as the latter information was available at the time the periodic indicative notice was published;
(b) it was sent for publication between 45 days and 12 months before the date on which the contract notice was sent.	(b) it was sent for publication between 45 days and 12 months before the date on which the contract notice was sent.	(b) the periodic indicative notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.	(b) the periodic indicative notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.
3. Where a state of urgency duly substantiated by the contracting entities renders impracticable the time limit laid down in the 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.	3. Where a state of urgency duly substantiated by the contracting entities renders impracticable the time limit laid down in the second subparagraph of paragraph 1, they may fix a time limit which shall be not less than 20 days 25 days from the date on which the contract notice was sent.	3. Where a state of urgency duly substantiated by the contracting entities renders impracticable the time limit laid down in the second subparagraph of paragraph 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.	3. Where a state of urgency duly substantiated by the contracting entities renders impracticable the time limit laid down in the second subparagraph of paragraph 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.
	<i>A state of urgency shall only result in a shorter time limit being set if it has not been brought about by the contracting entities themselves.</i> [Am. 118]		
4. The contracting entity may reduce by five days the time limit for receipt of tenders set out in the	4. The contracting entity may reduce by five days the time limit for receipt of tenders set out in the second	4. The contracting entity may reduce by five days the time limit for receipt of tenders set out in the	4. The contracting entity may reduce by five days the time limit for receipt of tenders set out in the

second subparagraph of paragraph 1 where it accepts that tenders may be submitted by electronic means in accordance with Article 33(3), (4) and (5).	subparagraph of paragraph 1 where it accepts that tenders may be submitted by electronic means in accordance with Article 33(3), (4) and (5).	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 33(3) and Article 33, (4) and (5).	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 33(3) and Article 33, (4) and (5).
<i>Article 41</i> <i>Restricted procedure</i>	<i>Article 41</i> <i>Restricted procedure</i>	<i>Article 41</i> <i>Restricted procedure</i>	<i>Article 41</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.	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.	1. In restricted procedures, any economic operator may submit a request to participate in response to a call for competition by providing the [...] information for qualitative selection that is requested by the contracting entity.	1. In restricted procedures, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting entity.
The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or the invitation to confirm interest is sent and may in no case be less than 15 days.	The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or the invitation to confirm interest is sent and may in no case be less than 15 days.	The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or the invitation to confirm interest is sent and may in no case be less than 15 days.	The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or the invitation to confirm interest is sent and may in no case be less than 15 days.
2. Only those economic operators invited by the contracting entity following their assessment of the requested information may submit a tender. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).	2. Only those economic operators invited by the contracting entity following their assessment of the requested information may submit a tender. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).	2. Only those economic operators invited by the contracting entity following its assessment of the [...] information provided may submit a tender. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).	2. Only those economic operators invited by the contracting entity following its assessment of the information provided may submit a tender. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).
The time limit for the receipt of	The time limit for the receipt of tenders	The time limit for the receipt of	The time limit for the receipt of

tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;	may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;	tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all selected candidates have the same time to prepare and submit their tenders;	tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all selected candidates have the same time to prepare and submit their tenders;
Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall in no case be less than 10 days from the date on which the invitation to tender is sent.	Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall in no case be less than 10 days from the date on which the invitation to tender is sent.	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.	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.
<i>Article 42</i> <i>Negotiated procedure with prior call for competition</i>	<i>Article 42</i> <i>Negotiated procedure with prior call for competition</i>	<i>Article 42</i> <i>Negotiated procedure with prior call for competition</i>	<i>Article 42</i> <i>Negotiated procedure with prior call for competition</i>
1. In negotiated procedures with prior call for competition, any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection.	1. In negotiated procedures with prior call for competition, any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection.	1. In negotiated procedures with prior call for competition, any economic operator may submit a request to participate in response to a call for competition by providing [...] the information for qualitative selection that is requested by the contracting entity.	1. In negotiated procedures with prior call for competition, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting entity.
The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to	The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent and may in no	The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to	The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent

confirm interest is sent and may in no case be less than 15 days.	case be less than 15 days.	confirm interest is sent and may in no case be less than 15 days.	and may in no case be less than 15 days.
2. Only those economic operators invited by the contracting entity following their assessment of the requested information may participate in the negotiations. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).	2. Only those economic operators invited by the contracting entity following their assessment of the requested information may participate in the negotiations. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).	2. Only those economic operators invited by the contracting entity following their assessment of the [...] information provided may participate in the negotiations. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).	2. Only those economic operators invited by the contracting entity following their assessment of the information provided may participate in the negotiations. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).
The time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;	The time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;	The time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;	The time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all 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 entity shall fix a time limit which shall in no case be less than 10 days from the date on which the invitation to tender is sent.	Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall in no case be less than 10 days from the date on which the invitation to tender is sent.	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 is sent.	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 is sent.
	<i>Contracting entities may not confine negotiations to the prices quoted in tenders. [Am. 119]</i>		
		<i>Article 42a Competitive dialogue</i>	<i>Article 42a Competitive dialogue</i>
		1. In competitive dialogues, any economic operator may	1. In competitive dialogues, any economic operator may

		<p>submit a request to participate in response to a call for competition in accordance with points (b) and (c) of Article 39(2) by providing the information for qualitative selection that is requested by the contracting entity.</p> <p>The minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent and may in no case be less than 15 days.</p>	<p>submit a request to participate in response to a call for competition in accordance with points (b) and (c) of Article 39(2) by providing the information for qualitative selection that is requested by the contracting entity.</p> <p>The minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent and may in no case be less than 15 days.</p>
		<p>Only those economic operators invited by the contracting entity following the assessment of the information provided may participate in the dialogue. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2). The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76(1)(a).</p>	<p>Only those economic operators invited by the contracting entity following the assessment of the information provided may participate in the dialogue. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2). The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76(1)(a).</p>

		<p>2. Contracting entities shall set out and define their needs and requirements in the call for competition and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award criteria.</p>	<p>2. Contracting entities shall set out and define their needs and requirements in the call for competition and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award criteria and set out an indicative timeframe.</p>
		<p>3. Contracting entities shall open, with the participants selected in accordance with the relevant provisions of Articles 70 to 75, 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>3. Contracting entities shall open, with the participants selected in accordance with the relevant provisions of Articles 70 to 75, 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 entities shall ensure equality of treatment among all participants. To that end, they shall not provide information in a discriminatory manner which may give some participants an advantage over others.</p>	<p>During the dialogue, contracting entities shall ensure equality of treatment among all participants. To that end, they shall not provide information in a discriminatory manner which may give some participants an advantage over others.</p>
		<p>In accordance with Article 32, contracting entities shall not reveal to the other participants solutions proposed or other confidential information</p>	<p>In accordance with Article 32, contracting entities shall not reveal to the other participants solutions proposed or other confidential information communicated by a</p>

		<p>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.</p>	<p>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.</p>
		<p>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 call for competition or in the descriptive document. In the call for competition or the descriptive document, the contracting entity shall indicate whether it will use this option.</p>	<p>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 call for competition or in the descriptive document. In the call for competition or the descriptive document, the contracting entity shall indicate whether it will use this option.</p>
		<p>5. The contracting entity shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.</p>	<p>5. The contracting entity shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.</p>
		<p>6. Having declared that the dialogue is concluded and having so informed the remaining participants, contracting entities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue.</p>	<p>6. Having declared that the dialogue is concluded and having so informed the remaining participants, contracting entities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue.</p>

		Those tenders shall contain all the elements required and necessary for the performance of the project.	Those tenders shall contain all the elements required and necessary for the performance of the project.
		These tenders may be clarified, specified and fine-tuned at the request of the contracting entity. However, such clarification, specification, fine-tuning or additional information may not involve changes to the essential aspects of the tender or of the procurement, including the needs and requirements set out in the call for competition or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.	<i>Those</i> tenders may be clarified, specified and fine-tuned at the request of the contracting entity. However, such clarification, specification, fine-tuning or additional information may not involve changes to the essential aspects of the tender or of the procurement, including the needs and requirements set out in the call for competition or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.
		<p>7. Contracting entities shall assess the tenders received on the basis of the award criteria laid down in the call for competition or in the descriptive document.</p> <p>Where necessary, in order to finalise financial commitments or other terms of the contract, the contracting entity may negotiate the final terms of the contract with the tenderer identified as having submitted the most</p>	<p>7. Contracting entities shall assess the tenders received on the basis of the award criteria laid down in the call for competition or in the descriptive document.</p> <p><i>At the request of</i> the contracting entity, negotiations with the tenderer identified as having submitted [the most economically advantageous tender in accordance with Article 76(1)(a)] may be carried out to confirm</p>

		economically advantageous tender in accordance with Article 76(1)(a) provided such negotiations do not have the effect of materially modifying essential aspects of the tender or of the procurement, including the needs and requirements set out in the call for competition or in the descriptive document and does not risk distorting competition or causing discrimination.	financial commitments or other terms contained in the tender by finalising the terms of the contract provided such negotiations do not have the effect of materially modifying essential aspects of the tender or of the procurement, including the needs and requirements set out in the call for competition or in the descriptive document and does not risk distorting competition or causing discrimination.
		8. The contracting entities may specify prizes or payments to the participants in the dialogue.	8. The contracting entities may specify prizes or payments to the participants in the dialogue.
<i>Article 43 Innovation partnership</i>	Article 43 Innovation Partnership	<i>Article 43 Innovation partnership</i>	<i>Article 43 Innovation partnership</i>
1. Member States may provide that contracting entities may apply innovation partnerships as regulated in this Directive. Member States may decide not to transpose into their national law innovation partnerships or to restrict the use of it to certain types of procurement.	1. Member States may shall provide that contracting entities may apply innovation partnerships as regulated in this Directive. Member States may decide not to transpose into their national law innovation partnerships or to restrict the use of it to certain types of procurement.	[...]	
In innovation partnerships, any economic operator may submit a request to participate in response to a call for competition in accordance with points (b) and (c) of Article 39(2) with a view to establishing a	In innovation partnerships, any economic operator may submit a request to participate in response to a call for competition in accordance with points (b) and (c) of Article 39(2) with a view to establishing a structured	[...] In innovation partnerships, any economic operator may submit a request to participate in response to a call for competition in accordance with points (b) and (c) of Article 39(2) by providing the	In innovation partnerships, any economic operator may submit a request to participate in response to a call for competition in accordance with points (b) and (c) of Article 39(2) by providing the information

<p>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>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. <i>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 76(1)(a). [Am. 120]</i></p>	<p>information for qualitative selection that is requested by the contracting entity.</p>	<p>for qualitative selection that is requested by the contracting entity.</p>
		<p>In the procurement documents, the contracting entity shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. 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>In the procurement documents, the contracting entity shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. It shall indicate which elements of this description define the minimum requirements to be met by all tenders. The indications shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.</p>
		<p>The contracting entity may decide to set up the innovation partnership with one partner or with several partners conducting</p>	<p>The contracting entity may decide to set up the innovation partnership with one partner or with several partners conducting</p>

		separate research and development activities.	separate research and development activities.
		The minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice is sent and may in no case be less than 15 days.. Only those economic operators invited by the contracting entity following the assessment of the information provided may participate in the procedure. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).The contracts shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76(1)(a).	The minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice is sent and may in no case be less than 15 days. Only those economic operators invited by the contracting entity following the assessment of the information provided may participate in the procedure. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).The contracts shall be awarded on the sole basis of the award criterion of [the most economically advantageous tender in accordance with Article 76(1)(a)].
		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.	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.
2. The partnership shall be structured in successive stages	2. The partnership shall be structured in successive stages	The innovation partnership shall be structured in successive stages	The innovation partnership shall be structured in successive stages

<p>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 entity can decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that it has acquired the relevant intellectual property rights.</p>	<p>following the sequence of steps in the research and innovation process, possibly up to which may include the manufacturing of the supply or the provision of the services. It or the completion of the works. The partnership shall provide for set intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting entity can decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that it has acquired the relevant intellectual property rights the contracting entity has indicated in the procurement documents under which conditions it may make use of this discretion to terminate the partnership. [Am. 121]</p>	<p>following the sequence of steps in the research and innovation 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 entity can decide after each stage to terminate innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts, provided that the contracting entity has indicated in the procurement documents that and the conditions under which it may make use of these possibilities.</p>	<p>following the sequence of steps in the research and innovation 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.</p> <p>Based on those targets, the contracting entity 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 entity has indicated in the procurement documents these possibilities and the conditions for their use.</p> <p>deleted</p>
<p>3. The contract shall be awarded in accordance with the rules for a negotiated procedure with prior call for competition set out in Article 42.</p>	<p>3. The contract shall be awarded in accordance with the rules for a negotiated procedure with prior call for competition set out in Article 42. In the procurement documents, contracting entities shall describe the minimum requirements to be met and the award criteria. That description shall be</p>	<p>3. The second and third subparagraphs of Article 42(3) and Article 76(6) shall apply.</p>	

	<i>sufficiently precise so as to enable economic operators to identify the nature and scope of the procurement and to decide whether to request to participate in the procedure.</i>		
	<i>The minimum time limit for receipt of requests to participate shall be 35 days from the date on which the contract notice, or, where a notice on the existence of a qualification system is used as a means of calling for competition, from the date on which the invitation to confirm interest 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.</i>		deleted
	<i>3a. Contracting entities shall negotiate with tenderers the initial and all subsequent tenders submitted, to improve the content to and ensure that those tenders better fulfil the award criteria specified in the procurement documents.</i>		3. Unless otherwise provided for in this Article, contracting entities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve the content thereof. The minimum requirements and the award criteria shall not be subject to negotiations.
	<i>3b. During the negotiations, contracting entities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory</i>		3a. During the negotiations, contracting entities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory

	<p><i>manner which may give some tenderers an advantage over others. They shall inform all tenderers, whose tenders have not been eliminated pursuant to paragraph 3(e), in writing of any changes to procurement documents other than those setting out the minimum requirements. They shall provide such tenderers with sufficient time to allow them to modify and re-submit amended tenders following those changes.</i></p>		<p><i>manner which may give some tenderers an advantage over others. They shall inform all tenderers, whose tenders have not been eliminated pursuant to paragraph 3(b), in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements. Following these changes, contracting entities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.</i></p>
	<p><i>3c. In accordance with Article 18, contracting entities shall not reveal to the other participants confidential information communicated by a candidate participating in the negotiations without that candidate's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.</i></p>		<p><i>In accordance with Article 32, contracting entities shall not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.</i></p>
<p>In selecting candidates, contracting entities shall pay particular attention to criteria concerning the tenderers' capacity and experience in the field</p>	<p><i>3d. The minimum requirements and the award criteria shall not be subject to negotiations.</i></p> <p><i>Once the deadline for submitting tenders has expired, and prior to their</i></p>		<p><i>3b Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm</i></p>

<p>of research and development or of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).</p> <p>Only those economic operators invited by the contracting entity following its assessment of the requested information may submit research and innovation projects, aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76 (1)(a).</p>	<p><i>examination, contracting entities may specify a relative weighting attached to the elements composing an award criterion defined in advance to determine the MEAT, in accordance with Article 76(4), provided that:</i></p> <p>(a) <i>the contract award criteria set out in the contract documents or the contract notice are unaltered;</i></p> <p>(b) <i>this does not include new elements which would have affected the preparation of the tenders; and</i></p> <p>(c) <i>this does not give rise to discrimination against any of the tenderers.</i></p> <p>3e. Innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated, by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting entity shall clearly indicate whether it will use that</p>		<p>interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting entity shall clearly indicate whether it will use that option.</p> <p>3c In selecting candidates, contracting entities shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions.</p> <p>Only those economic operators invited by the contracting entity following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions.</p> <p>In the procurement documents, the contracting entity shall define the arrangements applicable to intellectual property rights. In the case of an innovation partnership with several partners, the contracting entity shall not, in accordance with Article 32, reveal to the other</p>
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	<p><i>option.</i></p> <p>3f. In selecting candidates, contracting entities shall pay particular attention to criteria concerning the tenderers' <i>candidates'</i> capacity and experience in the field of research and development or of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).</p>		<p>partners solutions proposed or other confidential information communicated by a 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>
		<p>In selecting candidates, contracting entities shall in particular apply to criteria concerning the candidates' capacity and experience in the field of research and development or of developing and implementing innovative solutions.</p>	
	<p>Only those economic operators invited by the contracting entity following its assessment of the requested information may submit research and innovation projects, aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76 (1)(a). [Am. 122]</p>	<p>Only those economic operators invited by the contracting entity following its assessment of the [...]information provided may submit research and innovation projects, aimed at meeting the needs identified by the contracting entity [...].</p>	
		<p>In the procurement documents, the contracting entity shall indicate the regime applicable to intellectual property rights. In the</p>	

		<p>case of an innovation partnership with several partners, the contracting entity shall not reveal to the other partners solutions proposed or other confidential information communicated by a 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>	
<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>4. The <i>contracting entities shall ensure that the</i> 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 <i>estimated</i> value and duration of a contract for the purchase of the resulting supply, service <i>of supplies, services</i> or works shall <i>not be disproportionate in relation to the investment required for their development</i> remain within appropriate limits, taking into account the need to recover the costs, including those</p>	<p>4. The contracting entity shall ensure that the structure of the partnership and, in particular the duration and value of the different phases [...] reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of the supplies, services or works purchased shall not be disproportionate in relation to the investment for their development .</p>	<p>4. The contracting entity shall ensure that the structure of the partnership and, in particular the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of the supplies, services or works purchased shall not be disproportionate in relation to the investment for their development.</p>

	incurred in developing an innovative solution, and to achieve an adequate profit.		
Contracting entities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition.	Contracting entities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition. [Am. 123]		
<i>Article 44</i> <i>Use of the negotiated procedure without prior call for competition</i>	<i>Article 44</i> <i>Use of the negotiated procedure without prior call for competition</i>	<i>Article 44</i> <i>Use of a negotiated procedure without prior call for competition</i>	<i>Article 44</i> <i>Use of a negotiated procedure without prior call for competition</i>
Contracting entities may use a negotiated procedure without prior call for competition in the following cases:	Contracting entities may use a negotiated procedure without prior call for competition in the following cases:	Contracting entities may use a negotiated procedure without prior call for competition in the following cases:	Contracting entities may use a negotiated procedure without prior call for competition in the following cases:
(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of the contract are not substantially altered;	(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of the contract are not substantially altered;	(a) where no tenders or no suitable tenders or no requests to participate or no suitable requests for participation have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of the contract are not substantially altered;	(a) where no tenders or no suitable tenders or no requests to participate or no suitable requests for participation have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of the contract are not substantially altered;
		A tender shall be considered not to be suitable where it is irrelevant to the contract, being incapable, without substantial changes, of meeting the contracting entity's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the	A tender shall be considered not to be suitable where it is irrelevant to the contract, being <u>manifestly</u> incapable, without substantial changes, of meeting the contracting entity's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable

		economic operator concerned shall or may be excluded pursuant to Articles 72(1) or 74(1), does not meet the selection criteria set out by the contracting entity pursuant to Articles 72 or 74;	where the economic operator concerned <u>is to be</u> or may be excluded pursuant to Articles 72(1) or 74(1), <u>or</u> does not meet the selection criteria set out by the contracting entity pursuant to Articles 72 or 74;
(b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;	(b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;	(b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;	(b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;
(c) where the aim of the procurement is the creation or obtention of a work of art;	(c) where the aim of the procurement is the creation or obtention of a work of art <i>or an artistic performance; [Am. 124]</i>	---	
(d) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:	(d) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:	(d) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:	(d) 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;	(i) the absence of competition for technical reasons;	(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;	(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
		(ia) competition is absent for technical reasons;	(ia) competition is absent for technical reasons;
(ii) the protection of patents, copyrights or other intellectual	(ii) the protection of patents, copyrights or other intellectual property rights;		

property rights; (iii) the protection of other exclusive rights.	(iii) the protection of other exclusive rights, including ownership of a property site . [Am. 125]	(iii) the protection of exclusive rights, including intellectual property rights;	(iii) the protection of exclusive rights, including intellectual property rights;
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;	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; [Am. 126]	The exceptions set out in points (ia) 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;	The exceptions set out in points (ia) 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;
(e) insofar as is strictly necessary where, for reasons of extreme urgency brought about by force majeure, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting entity;	(e) insofar as is strictly necessary where, for reasons of extreme urgency brought about by force majeure events unforeseeable by the contracting entity , the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting entity; [Am. 127]	(e) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable for the contracting entity , the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting entity;	(e) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable for the contracting entity , the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting entity;
(f) in the case of supply contracts 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 entity to acquire material	(f) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical	(f) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of [...] supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to	(f) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to

having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;	characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;	acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;	acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
(g) for new works or services consisting in the repetition of similar works or services assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works or services conform to a basic project for which a first contract was awarded according to a procedure in accordance with Article 39(1).	(g) for new works or services consisting in the repetition of similar works or services assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works or services conform to a basic project for which a first contract was awarded according to a procedure in accordance with Article 39(1).	(g) for new works or services consisting in the repetition of similar works or services assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works or services conform to a basic project for which a first contract was awarded according to a procedure in accordance with Article 39(1).	(g) for new works or services consisting in the repetition of similar works or services assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works or services conform to a basic project for which a first contract was awarded according to a procedure in accordance with Article 39(1).
		The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded. As soon as the first project is put up for tender, notice shall be given that this procedure might be adopted and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting entities when they apply Articles 12 and 13.	The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting entities when they apply Articles 12 and 13.
(h) for supplies quoted and purchased on a commodity market or other similar markets such as electricity exchanges;	(h) for supplies quoted and purchased on a commodity market or other similar markets such as electricity exchanges;	(h) for supplies quoted and purchased on a commodity market [...];	(h) for supplies quoted and purchased on a commodity market;

(i) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;	(i) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;	(i) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;	(i) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;
(j) for purchases of supplies under particularly advantageous conditions from either a supplier definitively winding up its business activities or the liquidators in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations;	(j) for purchases of supplies under particularly advantageous conditions from either a supplier definitively winding up its business activities or the liquidators in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations;	(j) for purchases of supplies or services under particularly advantageous conditions from either a supplier definitively winding up its business activities or the liquidators in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations;	(j) for purchases of supplies or services under particularly advantageous conditions from either a supplier which is definitively winding up its business activities or the liquidators in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations;
(k) where the service contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the applicable rules, be awarded to the winner or to one of the winners of that contest; in the latter case, all the winners shall be invited to participate in the negotiations.	(k) where the service contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the applicable rules, be awarded to the winner or to one of the winners of that contest; in the latter case, all the winners shall be invited to participate in the negotiations.	(k) where the service contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the [...] rules foreseen in the design contest , be awarded to the winner or to one of the winners of that contest; in the latter case, all the winners shall be invited to participate in the negotiations.	(k) where the service contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the rules foreseen in the design contest , to the winner or to one of the winners of that contest; in the latter case, all the winners shall be invited to participate in the negotiations.
For the purposes of point (a), a tender shall be considered not to be suitable where:	For the purposes of point (a), a tender shall be considered not to be suitable where:	---	
(a) it is irregular or unacceptable, and	(a) it is irregular or unacceptable, and or [Am. 128]	---	
(b) it is completely irrelevant to the contract, being incapable of meeting	(b) it is completely irrelevant to the contract, being incapable of meeting the	---	

the contracting entity's needs as specified in the procurement documents.	contracting entity's needs as specified in the procurement documents.		
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;	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;	---	
In particular, tenders shall be considered to be unacceptable in any of the following cases:	In particular, tenders shall be considered to be unacceptable in any of the following cases:		
(a) they have been received late;	(a) they have been received late;	---	
(b) they have been submitted by tenderers that do not have the requisite qualifications;	(b) they have been submitted by tenderers that do not have the requisite qualifications;	---	
(c) their price either exceeds the contracting entity's budget as determined prior to the launching of the procurement procedure; the prior determination of the budget must be documented in writing;	(c) their price either exceeds the contracting entity's budget as determined prior to the launching of the procurement procedure; the prior determination of the budget must be documented in writing;	---	
(d) they have been found to be abnormally low in accordance with Article 79.	(d) they have been found to be abnormally low in accordance with Article 79.	---	
For the purposes of point (g) of paragraph 1 of this Article, the basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded. As soon as the first project is put up for tender, notice	For the purposes of point (g) of paragraph 1 of this Article, the basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded. As soon as the first project is put up for tender, notice shall	---	

shall be given that this procedure might be adopted and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting entities when they apply Articles 12 and 13.	be given that this procedure might be adopted and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting entities when they apply Articles 12 and 13.		
CHAPTER II Techniques and instruments for electronic and aggregated procurement	CHAPTER II Techniques and instruments for electronic and aggregated procurement	CHAPTER II Techniques and instruments for electronic and aggregated procurement	CHAPTER II Techniques and instruments for electronic and aggregated procurement
<i>Article 45</i> <i>Framework agreements</i>	Article 45 Framework agreements	<i>Article 45</i> <i>Framework agreements</i>	<i>Article 45</i> <i>Framework agreements</i>
1. Contracting entities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.	1. Contracting entities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.	1. Contracting entities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.	1. Contracting entities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.
A framework agreement means an agreement between one or more contracting entities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.	A framework agreement means an agreement between one or more contracting entities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.	A framework agreement means an agreement between one or more contracting entities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.	A framework agreement means an agreement between one or more contracting entities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.
The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.	The term of a framework agreement shall not exceed four five years, save in exceptional cases duly justified, in particular by the subject of the framework agreement: save in the following cases	The term of a framework agreement shall not exceed eight years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.	The term of a framework agreement shall not exceed eight years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

	<i>(a) the subject of the framework agreement concerns works or services that will take longer than five years to carry out; or</i>		
	<i>(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.</i>		
	<i>The term of a framework agreement shall be based on the lifecycle of the work, service or supply. [Am. 129]</i>		
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.	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.	2. Contracts based on a framework agreement shall be awarded on the basis of objective rules and criteria, which may include reopening the competition among those economic operators [...] party to the framework agreement as concluded. These rules and criteria shall be set out in the procurement documents for the framework agreement.	2. Contracts based on a framework agreement shall be awarded on the basis of objective rules and criteria, which may include reopening the competition among those economic operators party to the framework agreement as concluded. These rules and criteria shall be set out in the procurement documents for the framework agreement.
Those procedures may be applied only between those contracting entities clearly identified for this purpose in the call for competition, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a	Those procedures may be applied only between those contracting entities clearly identified for this purpose in the call for competition, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for	[...]	The objective rules and criteria referred to in the first subparagraph shall ensure equal treatment of the economic operators who are parties to the agreement. Where a reopening the competition is included,

means of calling for competition, in the invitation to tender and those economic operators originally party to the framework agreement.	competition, in the invitation to tender and those economic operators originally party to the framework agreement.		contracting entities shall set a time limit which is sufficiently long to allow tenders for each specific contract to be submitted and contracting entities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.
Contracts based on a framework 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.	Contracts based on a framework 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.	[...]	deleted
Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.	Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.	Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.	Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.
	<i>After conclusion of the framework agreement, the number of participating contracting authorities may only be increased where the following conditions are met:</i>		deleted
	<i>(a) the framework agreement has been concluded by a central purchasing body;</i>		deleted
	<i>(b) the possibility of such an increase is expressly provided for in the contract notice;</i>		Deleted
	<i>(c) the scope for the increase</i>		Deleted

	<i>can be determined on the basis of clear criteria; and</i>		
	<i>(d) all parties to the framework agreement agree to the increase. [Am. 130]</i>		Deleted
3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement. For the award of those contracts, contracting entities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.	3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement. For the award of those contracts, contracting entities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.	deleted	Deleted
4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways:	4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways:	deleted	Deleted
(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	(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;	deleted	Deleted

indicated in the procurement documents;			
(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.	deleted	Deleted
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:	deleted	Deleted
(a) for every contract to be awarded, contracting entities shall consult in writing the economic operators capable of performing the contract;	(a) for every contract to be awarded, contracting entities shall consult in writing the economic operators capable of performing the contract;	deleted	Deleted
(b) contracting entities 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 entities 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;	deleted	Deleted
(c) tenders shall be submitted in	(c) tenders shall be submitted in	deleted	Deleted

writing, and their content shall not be opened until the stipulated time limit for reply has expired;	writing, and their content shall not be opened until the stipulated time limit for reply has expired;		
(d) contracting entities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.	(d) contracting entities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.	deleted	Deleted
<i>Article 46</i> <i>Dynamic purchasing systems</i>	Article 46 Dynamic Purchasing System	<i>Article 46</i> <i>Dynamic purchasing systems</i>	Article 46 Dynamic purchasing systems
1. For commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting entities, they may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.	1. For commonly used goods and services purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting entities, they may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria. [Am. 131]	1. For commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting entities, they may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process and shall be open throughout the 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	1. For commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting entities, they may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process and shall be open throughout the 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.	specific contracts or to a specific geographic area in which subsequent specific contracts will be performed.
		Article 41 notwithstanding, the following time limits shall apply:	
		(a) A minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent and may in no case be less than 15 days. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent.	
		(b) The minimum time limit for receipt of tenders shall be at least 10 days from the date on which the invitation to tender is sent. The second and third subparagraphs of Article 41(2) shall apply.	
2. In order to award contracts under a dynamic purchasing system, contracting entities shall follow the rules of the restricted procedure. All	2. In order to award contracts under a dynamic purchasing system, contracting entities shall follow the rules of the restricted procedure. All the	2. In order to procure under a dynamic purchasing system, contracting entities shall follow the rules of the restricted procedure. All	2. In order to procure under a dynamic purchasing system, contracting entities shall follow the rules of the restricted procedure. All

<p>the candidates who satisfy 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 72 (2).</p>	<p>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.</p>	<p>the candidates who satisfy 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 72 (2).</p>	<p>the candidates who satisfy 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 72 (2).</p>
		<p>Where contracting entities have divided the system into categories of products or services in accordance with paragraph 1 of this Article, they shall specify the applicable selection criteria for each category.</p>	<p>Where contracting entities have divided the system into categories of products or services in accordance with paragraph 1 of this Article, they shall specify the applicable selection criteria for each category.</p>
			<p>Article 41 notwithstanding, the following time limits shall apply:</p>
			<p>(a) A minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent and may in no case be less than 15 days. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent.</p>
			<p>(b) The minimum time limit for receipt of tenders shall be at</p>

			least 10 days from the date on which the invitation to tender is sent. The second and third subparagraphs of Article 41(2) shall apply.
All communications in the context of a dynamic purchasing system shall only be made with electronic means in accordance with Article 33(2) to (6).	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).	(2a) All communications in the context of a dynamic purchasing system shall only be made with electronic means in accordance with Article 33(1), (3), (4) and (5).	(2a) All communications in the context of a dynamic purchasing system shall only be made with electronic means in accordance with Article 33(1), (2), (3) and (5).
3. For the purposes of awarding contracts under a dynamic purchasing system, contracting entities shall:	3. For the purposes of awarding contracts under a dynamic purchasing system, contracting entities shall:	3. For the purposes of awarding contracts under a dynamic purchasing system, contracting entities shall:	3. For the purposes of awarding contracts under a dynamic purchasing system, contracting entities shall:
(a) publish a call for competition making it clear that a dynamic purchasing system is involved;	(a) publish a call for competition making it clear that a dynamic purchasing system is involved <i>and describe how the procedure operates;</i> [Am. 132]	(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;
(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;	(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; <u>including how the dynamic purchasing system operates, the electronic equipment used and the technical connection arrangements and specifications</u>
		(ba) indicate any division into	(ba) indicate any division into

		categories of products or services and the characteristics defining them;	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 accordance with Article 67.	(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 accordance with Article 67.	(c) offer unrestricted and full direct access, as long as the system is valid, to the procurement documents in accordance with Article 67.
4. Contracting entities 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 entities shall finalise their assessment of such requests according to the selection criteria within 10 working days following their receipt.	4. Contracting entities 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 entities shall finalise their assessment of such requests according to the selection criteria within 10 working days following their	4. Contracting entities shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraph 2. Contracting entities shall finalise their assessment of such requests 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.	4. Contracting entities shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraph 2. Contracting entities shall finalise their assessment of such requests 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.
		Notwithstanding the first subparagraph, as long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, contracting entities may extend the evaluation period	Notwithstanding the first subparagraph, as long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, contracting entities may extend the evaluation period

		provided that no invitation to tender is issued during the extended evaluation period. In the procurement documents they shall indicate the length of the extended period that they intend to apply.	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.
Contracting entities 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.	The contracting entity 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.	Contracting entities shall inform the economic operator concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.	Contracting entities shall inform the economic operator concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.
5. Contracting entities shall invite all qualified participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 68.	5. Contracting entities shall invite all qualified participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 52..	5. Contracting entities shall invite all admitted participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 68. Where the dynamic purchasing system has been divided into categories of works, products or services, contracting entities shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender.	5. Contracting entities shall invite all admitted participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 68. Where the dynamic purchasing system has been divided into categories of works, products or services, contracting entities shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender.
They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system, in the invitation to confirm interest,	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	They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system, in the invitation to confirm interest,	They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system, in the invitation to confirm interest,

<p>or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.</p>	<p>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>or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.</p>	<p>or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.</p>
		<p>5a. Contracting entities who, pursuant to Article 74 apply exclusion grounds and selection criteria provided for under Directive 2004/18, 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) of Directive 2004/18, within five working days from the date on which that request is transmitted. Paragraphs (2) to (4) of said Article 57 shall apply throughout the entire period of validity of the dynamic purchasing system.</p>	<p>5a. Contracting entities who, pursuant to Article 74 apply exclusion grounds and selection criteria provided for under Directive 2004/18, 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) of Directive 2004/18, within five working days from the date on which that request is transmitted. Paragraphs (2) to (4) of said Article 57 shall apply throughout the entire period of validity of the dynamic purchasing system.</p>
<p>6. Contracting entities 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:</p>	<p>6. Contracting entities 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:</p>	<p>6. Contracting entities shall indicate the period of validity of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in period of validity, using the following standard forms:</p>	<p>6. Contracting entities shall indicate the period of validity of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in period of validity, using the following standard forms:</p>
<p>(a) where the duration is changed</p>	<p>(a) where the duration is changed</p>	<p>(a) where the period of validity</p>	<p>(a) where the period of validity</p>

without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;	without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;	is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;	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 64.	(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 64.	(b) where the system is terminated, a contract award notice referred to in Article 64.
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. [Am. 133]	7. No charges may be billed to the economic operator interested in or party to the dynamic purchasing system.	7. No charges may be billed to the economic operator interested in or party to the dynamic purchasing system.
<i>Article 47</i> <i>Electronic auctions</i>	Article 47 Electronic auctions	<i>Article 47</i> <i>Electronic auctions</i>	<i>Article 47</i> <i>Electronic auctions</i>
1. Contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.	1. For commonly used goods and services , contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented. [Am. 134]	1. Contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.	1. Contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.
For this purpose, contracting entities shall 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.	For this purpose, contracting entities 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.	For this purpose, contracting entities shall structure the electronic auction as a repetitive electronic process, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.	For this purpose, contracting entities shall structure the electronic auction as a repetitive electronic process, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.
		As certain service contracts and certain works contracts having as their subject-matter intellectual performances, such as the design of works, cannot be ranked using	As certain service contracts and certain 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.	automatic evaluation methods, such contracts shall not be the object of electronic auctions.
2. In open, restricted or negotiated procedures with a prior call for competition, the contracting entities may decide that the award of a contract shall be preceded by an electronic auction when the tender specifications can be established with precision.	2. In open, restricted or negotiated procedures with a prior call for competition, the contracting entities may decide that the award of a contract shall be preceded by an electronic auction when the tender specifications can be established with precision.	2. In open, restricted or negotiated procedures with a prior call for competition, the contracting entities may decide that the award of a contract shall be preceded by an electronic auction when the procurement documents, in particular the technical specifications , can be established with precision.	2. In open, restricted or negotiated procedures with a prior call for competition, the contracting entities may decide that the award of a contract shall be preceded by an electronic auction when the procurement documents, in particular the technical specifications , can be established with precision.
In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in point (b) of Article 45(4) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 46.	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 point (b) of Article 45(4) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 46.	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 45(2) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 46.	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 45(2) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 46.
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. one of the the following criteria:	3. The electronic auction shall be based on one of the following elements of the tenders:	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 lowest cost,	(a) — solely on prices where the contract is awarded to the lowest cost,	(a) solely on prices where the contract is awarded on the basis of price only under the award criterion of the lowest cost,	(a) solely on prices where the contract is awarded on the basis of price only.
(b) on prices and/or on the new	(b) — on prices and/or on the new	(b) on prices and/or on the new	(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.	values of the features of the tenders indicated in the specifications, where the contract is awarded to the most economically advantageous tender. [Am. 135]	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.	values of the features of the tenders indicated in the procurement documents , where the contract is awarded on the basis of the best price/quality ratio or to the tender with the lowest cost using a cost-effectiveness approach.
4. Contracting entities which decide to hold an electronic auction shall state that fact in the contract notice, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender. The specifications shall include at least the information set out in Annex VII.	Contracting entities which decide to hold an electronic auction shall state that fact in the contract notice, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender. The specifications shall include at least the information set out in Annex VII.	4. Contracting entities which decide to hold an electronic auction shall state that fact in the contract notice, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender. The procurement documents shall include at least the information set out in Annex VII.	4. Contracting entities which decide to hold an electronic auction shall state that fact in the contract notice, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender. The procurement documents shall include at least the information set out in Annex VII.
5. Before proceeding with the electronic auction, contracting entities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.	5. Before proceeding with the electronic auction, contracting entities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them. [Am. 136]	5. Before proceeding with the electronic auction, contracting entities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.	5. Before proceeding with the electronic auction, contracting entities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.
A tender shall be considered admissible where it has been submitted by a qualified tenderer and is in conformity with the technical specifications.	A tender shall be considered admissible where it has been submitted by a qualified tenderer and is in conformity with the technical specifications.	A tender shall be considered admissible where it has been submitted by a tenderer, who has not been excluded pursuant to Article 72(1) or 74(1) and who meets the selection criteria laid down pursuant to Articles 72 and 74, and whose tender is in	A tender shall be considered admissible where it has been submitted by a tenderer, who has not been excluded pursuant to Article 72(1) or 74(1) and who meets the selection criteria laid down pursuant to Articles 72 and 74, and whose tender is in

		conformity with the technical specifications without being unsuitable.	conformity with the technical specifications without being irregular or unacceptable within the meaning of point (b) of Article 24(1c) of [Directive 2004/18/EC] or unsuitable within the meaning of point a of Article 44 of this Directive.
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.	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.	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.	All tenderers that have submitted admissible tenders shall be invited simultaneously by electronic means to participate in the electronic auction using, as of the specified date and time, the connections in accordance with the instructions set out in the invitation. The electronic auction may take place in a number of successive phases. The electronic auction shall not start sooner than two working days after the date on which invitations are sent out.
6. Where the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tender carried out in accordance with the weighting provided for in the first subparagraph of Article 76(5).	6. Where the contract is to be awarded on the basis of the most economically advantageous tender, The invitation shall be accompanied by the outcome of a full evaluation of the relevant tender carried out in accordance with the weighting provided for in the first subparagraph of Article 76(5). [Am. 137]	6. Where the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tender carried out in accordance with the weighting provided for in the first subparagraph of Article 76(5).	6. The invitation shall be accompanied by the outcome of a full evaluation of the relevant tender carried out in accordance with the weighting provided for in the first subparagraph of Article 76(5).
The invitation shall also state the mathematical formula to be used in the electronic auction to determine	The invitation shall also state the mathematical formula to be used in the electronic auction to determine	The invitation shall also state the mathematical formula to be used in the electronic auction to determine	The invitation shall also state the mathematical formula to be used in the electronic auction to determine

<p>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>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>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>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>Where variants are authorised, a separate formula shall be provided for each variant.</p>	<p>Where variants are authorised, a separate formula shall be provided for each variant.</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 entities shall instantaneously communicate to all tenderers sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.</p>	<p>7. Throughout each phase of an electronic auction the contracting entities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment 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.</p>	<p>7. Throughout each phase of an electronic auction the contracting entities shall instantaneously communicate to all tenderers sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.</p>	<p>7. Throughout each phase of an electronic auction the contracting entities shall instantaneously communicate to all tenderers sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.</p>

8. Contracting entities shall close an electronic auction in one or more of the following manners:	8. Contracting entities shall close an electronic auction in one or more of the following manners:	8. Contracting entities shall close an electronic auction in one or more of the following manners:	8. Contracting entities 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;	(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	(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.	(c) when the previously indicated number of phases in the auction has been completed.
Where the contracting entities 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 entities 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 entities 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.	Where the contracting entities 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 the contracting entities shall award the contract in accordance with Article 76 on the basis of the results of the electronic auction.	9. After closing an electronic auction the contracting entities shall award the contract in accordance with Article 76 on the basis of the results of the electronic auction.	9. After closing an electronic auction the contracting entities shall award the contract in accordance with Article 76 on the basis of the results of the electronic auction.	9. After closing an electronic auction the contracting entities shall award the contract in accordance with Article 76 on the basis of the results of the electronic auction.
<i>Article 48</i> <i>Electronic catalogues</i>	<i>Article 48</i> <i>Electronic catalogues</i>	<i>Article 48</i> <i>Electronic catalogues</i>	<i>Article 48</i> <i>Electronic catalogues</i>
1. Where contracting entities require the use of electronic means	1. Where contracting entities require the use of electronic means of	1. Where [...] use of electronic means of communication is	1. Where use of electronic means of communication is required,

of communication pursuant to Article 33 , they may require tenders to be presented in the format of an electronic catalogue.	communication pursuant to Article 33 , they may require tenders to be presented in the format of an electronic catalogue.	required, contracting entities may require tenders to be presented in the format of an electronic catalogue or to include an electronic catalogue.	contracting entities may require tenders to be presented in the format of an electronic catalogue or to include an electronic catalogue.
Member States may render the use of electronic catalogues mandatory in connection with certain types of procurement.	Member States may render the use of electronic catalogues mandatory in connection with certain types of procurement.	Member States may render the use of electronic catalogues mandatory in connection with certain types of procurement.	Member States may render the use of electronic catalogues mandatory in connection with certain types of procurement.
Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.	Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.	Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.	Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.
2. Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a specific procurement procedure in accordance with the technical specifications and format established by the contracting entity. Furthermore, electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting entity in accordance with Article 33.	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 entity. Furthermore, electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting entity in accordance with Article 33.	2. Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a given procurement procedure in accordance with the technical specifications and format established by the contracting entity. Furthermore, electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting entity in accordance with Article 33.	2. Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a given procurement procedure in accordance with the technical specifications and format established by the contracting entity. Furthermore, electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting entity in accordance with Article 33.
3. Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting entities shall:	3. Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting entities shall:	3. Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting entities shall:	3. Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting entities shall:
(a) state so in the contract notice, in the invitation to confirm interest, or,	(a) state so in the contract notice, in the invitation to confirm interest, or, where	(a) state so in the contract notice, in the invitation to confirm	(a) state so in the contract notice, in the invitation to confirm interest,

where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate;	the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate;	interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate;	or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate;
(b) indicate in the specifications all the necessary information pursuant to Article 33(5) concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.	(b) indicate in the specifications all the necessary information pursuant to Article 33(5) concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.	(b) indicate in the procurement documents all the necessary information pursuant to Article 33(5) concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.	(b) indicate in the procurement documents all the necessary information pursuant to Article 33(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 entities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such case, contracting entities shall use one of the following alternative methods:	4. Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting entities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such case, contracting entities shall use one of the following alternative methods:	4. Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting entities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such case, contracting entities shall use one of the following alternative methods:	4. Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting entities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such case, contracting entities 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;	(a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the specific contract in question;	(a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the specific contract in question;	(a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the specific contract in question;
(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	(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	(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	(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

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.	in question (hereinafter "punch out"), provided that the use of this method has been announced in the procurement documents for the framework agreement.	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.	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>5. Where contracting entities 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 entities shall allow for an adequate period between the notification and the actual collection of information.</p>	<p>5. Where contracting entities 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 entities shall allow for an adequate period between the notification and the actual collection of information.</p>	<p>5. Where contracting entities 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 entities shall allow for an adequate period between the notification and the actual collection of information.</p>	<p>5. Where contracting entities 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 entities shall allow for an adequate period between the notification and the actual collection of information.</p>
Before awarding the contract, contracting entities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm the correctness of the tender thus constituted.	Before awarding the contract, contracting entities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm the correctness of the tender thus constituted.	Before awarding the contract, contracting entities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.	Before awarding the contract, contracting entities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.
		6. Contracting entities may award contracts based on a dynamic purchasing system by	6. Contracting entities may award contracts based on a dynamic purchasing system by

		requiring that offers for specific contract shall be presented in the format of an electronic catalogue.	requiring that offers for specific contract shall be presented in the format of an electronic catalogue.
6. Contracting entities 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 entity. This catalogue shall be completed subsequently by the candidates, when they are informed of the contracting entity'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.	6. Contracting entities 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 entity. This catalogue shall be completed subsequently by the candidates, when they are informed of the contracting entity'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.	Contracting entities may also award contracts based on a dynamic purchasing system in accordance with point (b) of paragraph 4 and paragraph 5 provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting entity. This catalogue shall be completed subsequently by the candidates, when they are informed of the contracting entity's intention to constitute tenders by means of the procedure in point (b) of paragraph 4.	Contracting entities may also award contracts based on a dynamic purchasing system in accordance with point (b) of paragraph 4 and paragraph 5 provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting entity. This catalogue shall be completed subsequently by the candidates, when they are informed of the contracting entity's intention to constitute tenders by means of the procedure in point (b) of paragraph 4.
<i>Article 49</i> <i>Centralised purchasing activities and central purchasing bodies</i>	<i>Article 49</i> <i>Centralised purchasing activities and central purchasing bodies</i>	<i>Article 49</i> <i>Centralised purchasing activities and central purchasing bodies</i>	<i>Article 49</i> <i>Centralised purchasing activities and central purchasing bodies</i>
1. Contracting entities may purchase works, supplies and/or services from or through a central purchasing body.	1. Contracting entities may purchase works, supplies and/or services from or through a central purchasing body.	1. Member States may provide that contracting entities may acquire works, supplies and/or services from a central purchasing body offering the centralised purchasing activity referred to in point a of Article 2(16).	1. Member States may provide that contracting entities may acquire works, supplies and/or services from a central purchasing body offering the centralised purchasing activity referred to in point a of Article 2(16).
		Member States may also provide that contracting entities may	Member States may also provide that contracting entities may

		<p>acquire works, supplies and services by using contracts awarded by a central purchasing body, by using dynamic purchasing systems operated by a central purchasing body or by using a framework agreement concluded by a central purchasing body offering the centralised purchasing activity referred to in point b of Article 2(16). Where a dynamic purchasing system which is operated by a central purchasing body may be used by other contracting entities, this shall be mentioned in the call for competition setting up the system.</p>	<p>acquire works, supplies and services by using contracts awarded by a central purchasing body, by using dynamic purchasing systems operated by a central purchasing body or by using a framework agreement concluded by a central purchasing body offering the centralised purchasing activity referred to in point b of Article 2(16). Where a dynamic purchasing system which is operated by a central purchasing body may be used by other contracting entities, this shall be mentioned in the call for competition setting up 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>	<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>
<p>2. Member States shall provide for the possibility for contracting entities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.</p>	<p>2. Member States shall provide for the possibility for contracting entities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.</p>	<p>deleted</p>	<p>---</p>
<p>3. A contracting entity fulfills its obligations pursuant to this Directive when it procures by having recourse</p>	<p>3. A contracting entity fulfills its obligations pursuant to this Directive when it procures by having recourse to</p>	<p>3. A contracting entity fulfills its obligations pursuant to this Directive when it purchases</p>	<p>3. A contracting entity fulfills its obligations pursuant to this Directive when it purchases supplies or</p>

<p>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 stages from the publication of the call for competition to the end of the execution of the ensuing contract or contracts.</p>	<p>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 stages from the publication of the call for competition to the end of the execution of the ensuing contract or contracts. [Am. 138]</p>	<p>supplies or services from a central purchasing body offering the centralised purchasing activity referred to in point a of Article 2(16).</p>	<p>services from a central purchasing body offering the centralised purchasing activity referred to in point a of Article 2(16).</p>
		<p>Furthermore, a contracting entity 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 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>Furthermore, a contracting entity 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 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, where certain stages of the procurement procedure or the performance of the ensuing contracts are carried out by the contracting entity concerned, the contracting entity continues to be responsible for fulfilling the obligations pursuant to</p>	<p>However, where certain stages of the procurement procedure or the performance of the ensuing contracts are carried out by the contracting entity concerned, the contracting entity continues to be responsible for fulfilling the obligations pursuant to this</p>	<p>However, [...] the contracting entity concerned shall be responsible for fulfilling the obligations pursuant to this Directive in respect of the parts it conducts itself, such as:</p>	<p>However, the contracting entity concerned shall be responsible for fulfilling the obligations pursuant to this Directive in respect of the parts it conducts itself, such as:</p>

this Directive in respect of the stages it conducts.	Directive in respect of the stages it conducts.		
		(a) awarding a contract under a dynamic purchasing system, which is operated by a central purchasing body; or	(a) awarding a contract under a dynamic purchasing system, which is operated by a central purchasing body; or
		(b) conducting a reopening of competition under a framework agreement that has been concluded by a central purchasing body.	(b) conducting a reopening of competition under a framework agreement that has been concluded by a central purchasing body.
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 33.	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 33.	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 33.	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 33.
5. Contracting entities 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 entities 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 entities may, without applying the procedures provided for in this Directive, award a service contract for the provision of centralised purchasing activities to a central purchasing body. Such service contracts may also include the provision of ancillary purchasing activities.	5. Contracting entities may, without applying the procedures provided for in this Directive, award a service contract for the provision of centralised purchasing activities to a central purchasing body. Such service contracts may also include the provision of ancillary purchasing activities.
6. Central purchasing bodies shall also 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	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	deleted	---

activities.	activities.		
<i>Article 50 Ancillary purchasing activities</i>	<i>Article 50 Ancillary purchasing activities</i>	<i>deleted</i>	<i>deleted</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	Deleted
<i>Article 51 Occasional joint procurement</i>	<i>Article 51 Occasional joint procurement</i>	<i>Article 51 Occasional joint procurement</i>	<i>Article 51 Occasional joint procurement</i>
1. One or more contracting entities may agree to perform certain specific procurements jointly.	1. One Two or more contracting entities may agree to perform certain specific procurements jointly. [Am. 139]	1. Member States may provide that two or more contracting entities may agree to perform certain specific procurements jointly.	1. Two or more contracting entities may agree to perform certain specific procurements jointly.
2. Where one contracting entity 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 contracting entity shall have sole responsibility for fulfilling the obligations pursuant to this Directive.	2. Where one contracting entity alone conducts the <i>conduct of a procurement procedure</i> 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 <i>procedure in its entirety is carried out jointly by the contracting entity</i> entities concerned, they shall have sole responsibility be jointly responsible for fulfilling the obligations pursuant to this Directive. Contracting entities shall be deemed to conduct an award procedure jointly where one contracting entity manages the procedure on both its own behalf and on that of the other contracting entities concerned. [Am. 140]	2. Where the conduct of a procurement procedure in its entirety is carried out jointly in the name and on behalf of all the contracting entities concerned, they shall be jointly responsible for fulfilling their obligations pursuant to this Directive. This applies also in cases where one contracting entity alone manages the procurement procedure, acting on its own behalf and on the behalf of the other contracting entities concerned.	2. Where the conduct of a procurement procedure in its entirety is carried out jointly in the name and on behalf of all the contracting entities concerned, they shall be jointly responsible for fulfilling their obligations pursuant to this Directive. This applies also in cases where one contracting entity alone manages the procurement procedure, acting on its own behalf and on the behalf of the other contracting entities concerned.
However, where the conduct of the	However, where the conduct of the	Where the conduct of a procurement	Where the conduct of a procurement

procurement procedures and the performance of the ensuing contracts is carried out by more than one of the participating contracting entities, each shall continue to be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.	procurement procedures and the performance of the ensuing contracts is carried out by more than one of the participating contracting entities, each shall continue to be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.	procedure is not in its entirety carried out in the name and on behalf of the contracting entities concerned, they shall be jointly responsible only for those parts carried out jointly. Each contracting entity shall have sole responsibility for fulfilling its obligations pursuant to this Directive in respect of the parts it conducts in its own name and on its own behalf.	procedure is not in its entirety carried out in the name and on behalf of the contracting entities concerned, they shall be jointly responsible only for those parts carried out jointly. Each contracting entity shall have sole responsibility for fulfilling its obligations pursuant to this Directive in respect of the parts it conducts in its own name and on its own behalf.
<i>Article 52</i> <i>Joint procurement between contracting entities from different Member States</i>	<i>Article 52</i> <i>Joint procurement between contracting entities from different Member States</i>	<i>Article 52</i> <i>Procurement implicating contracting entities from different Member States</i>	<i>Article 52</i> <i>Procurement implicating contracting entities from different Member States</i>
1. Without prejudice to Title I, Chapter III, Section 2, Subsection 2: Special relations, contracting entities from different Member States may jointly award contracts by using one of the means described in this Article.	1. Without prejudice to Title I, Chapter III, Section 2, Subsection 2: Special relations, contracting entities from different Member States may jointly award contracts by using one of the means described in this Article.	1. Without prejudice to Title I, Chapter III, Section 2, Subsection 2: Special relations, contracting entities from different Member States may act jointly in the award of contracts by using one of the means provided in this Article.	1. Without prejudice to Title I, Chapter III, Section 2, Subsection 2: Special relations, contracting entities from different Member States may act jointly in the award of contracts by using one of the means provided in this Article.
		Contracting entities shall not use the means provided in this Article for the purpose of avoiding the application of mandatory public law provisions in conformity with Union law to which they are subject in the Member State where they are located.	Contracting entities shall not use the means provided in this Article for the purpose of avoiding the application of mandatory public law provisions in conformity with Union law to which they are subject in the Member State where they are located.
2. Several contracting entities may purchase works, supplies and/or	2. Several contracting entities may purchase works, supplies and/or	2. A Member State shall not prohibit its contracting authorities	2. A Member State shall not prohibit its contracting entities

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.	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.	from using centralised purchasing activities offered by central purchasing bodies established in another Member State.	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 entity, Member States may, however, choose to specify that their contracting entities may only use the centralised purchasing activities as defined in either point a or in point b of Article 2(16).	In respect of centralised purchasing activities offered by a central purchasing body established in another Member State than the contracting entity, Member States may, however, choose to specify that their contracting entities may only use the centralised purchasing activities as defined in either point a or in point b of Article 2(16).
		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.	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.
		The national provisions of the Member State where the central purchasing body is located shall also apply to the following:	The national provisions of the Member State where the central purchasing body is located shall also apply to the following:

		(a) the award of a contract under a dynamic purchasing system;	(a) the award of a contract under a dynamic purchasing system;
		(b) the conduct of a reopening of competition under a framework agreement.	(b) the conduct of a reopening of competition under a framework agreement.
3. Several contracting entities from different Member States may jointly award a contract. In that case, the participating contracting entities shall conclude an agreement that determines	3. Several contracting entities from different Member States may jointly award a contract. In that case, the participating contracting entities shall conclude an agreement that determines	3. Several contracting entities from different Member States may jointly award a contract, conclude a framework agreement or operate a dynamic purchasing system. They may also award contracts based on the framework agreement or on the dynamic purchasing system. Unless the necessary provisions have been regulated by an international agreement concluded between the Member States concerned, the participating contracting entities shall conclude an agreement that determines:	3. Several contracting entities from different Member States may jointly award a contract, conclude a framework agreement or operate a dynamic purchasing system. They may also award contracts based on the framework agreement or on the dynamic purchasing system. Unless the necessary provisions have been regulated by an international agreement concluded between the Member States concerned, the participating contracting entities 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;	(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.	(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	When determining the applicable	A participating contracting entity	A participating contracting entity

<p>national law in accordance with point (a), contracting entities may choose the national provisions of any Member State in which at least one of the participating entities is located.</p>	<p>national law in accordance with point (a), contracting entities may shall choose the national provisions of any Member State in which at least one of the participating entities is located. [Am. 141]</p>	<p>fulfils its obligations pursuant to this Directive when it purchases works, supplies or services from a contracting entity which is responsible for the procurement procedure. When determining the responsibilities and the applicable national law in accordance with point (a), contracting entities 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 entities is located. The allocation of responsibilities and the ensuing applicable national law shall be mentioned in the procurement documents for jointly awarded contracts.</p>	<p>fulfils its obligations pursuant to this Directive when it purchases works, supplies or services from a contracting entity which is responsible for the procurement procedure. When determining the responsibilities and the applicable national law in accordance with point (a), contracting entities may choose to allocate responsibilities to one or more of the participating contracting entities and the ensuing applicable national provisions of any Member State in which at least one of the participating entities is located. The allocation of responsibilities and the ensuing applicable national law shall be mentioned in the procurement documents for jointly awarded contracts.</p>
<p>4. Where several contracting entities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) No^o 1082/2006 of the European Parliament and of the Council⁹⁵ or other entities established under Union law, the participating</p>	<p>4. Where several contracting entities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) No^o 1082/2006 of the European Parliament and of the Council or other entities established under Union law, the participating contracting entities shall, by a decision of the competent body of</p>	<p>4. Where several contracting entities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) No^o 1082/2006 of the European Parliament and of the Council or other entities established under Union law, the participating</p>	<p>4. Where several contracting entities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) No^o 1082/2006 of the European Parliament and of the Council or other entities established under Union law, the participating contracting entities shall, by a</p>

⁹⁵ OJ L 210 of 31.7.2006, p. 19

contracting entities 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:	the joint legal entity, agree on the applicable national procurement rules of one of the following Member States:	contracting entities 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:	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;	(a) the national provisions of the Member State where the joint legal entity has its registered office;
(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.	(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.	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.
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:	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:	5. deleted	---
(a) where the procedure is conducted or managed by one participating contracting entity on behalf of the others, the national provisions of the Member State of that contracting entity shall apply;	(a) where the procedure is conducted or managed by one participating contracting entity on behalf of the others, the national provisions of the Member State of that contracting entity shall apply;	deleted	---
(b) where the procedure is not	(b) where the procedure is not	deleted	---

conducted or managed by one participating contracting entity on behalf of the others, and	conducted or managed by one participating contracting entity on behalf of the others, and		
(i) concerns a works contract, contracting entities shall apply the national provisions of the Member State where most of the works are located;	(i) concerns a works contract, contracting entities shall apply the national provisions of the Member State where most of the works are located;	deleted	---
(ii) concerns a service or supply contract, contracting entities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;	(ii) concerns a service or supply contract, contracting entities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;	deleted	---
(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting entities shall apply the national provisions of the Member State of the contracting entity which bears the biggest share of the costs.	(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting entities shall apply the national provisions of the Member State of the contracting entity which bears the biggest share of the costs. [Am. 142]	deleted	---
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 entities from different Member States shall be determined following the following rules:	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 entities from different Member States shall be determined following the following rules:	deleted	---
(a) where the procedure is conducted or managed by the competent organ	(a) where the procedure is conducted or managed by the competent organ of the	deleted	---

of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply;	joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply;		
(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;	(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;	deleted	■
(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting entities shall apply the national provisions of the Member State where the legal entity has its registered office.	(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting entities shall apply the national provisions of the Member State where the legal entity has its registered office.	deleted	■
7. One or more contracting entities may award individual contracts under a framework agreement concluded by or jointly with a contracting entity located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting entity or entities to award the individual contracts.	7. One or more contracting entities may award individual contracts under a framework agreement concluded by or jointly with a contracting entity located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting entity or entities to award the individual contracts.	deleted	■
8. Decisions on the award of 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 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 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 92/13/EEC ⁹⁶ located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting entities 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 92/13/EEC located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting entities established on their territory participating in the relevant cross-border public procurement procedure.	deleted	---
CHAPTER III Conduct of the procedure	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	Section 1 Preparation
<i>Article 53</i> <i>Preliminary market consultations</i>	<i>Article 53</i> <i>Preliminary market consultations</i>	<i>Article 53</i> <i>Preliminary market consultations</i>	<i>Article 53</i> <i>Preliminary market consultations</i>
1. Before launching a procurement procedure, contracting entities 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.	1. Before launching a procurement procedure, contracting entities may conduct market consultations in order to assess the structure, capability and capacity of the market and to inform economic operators of their procurement	Before launching a procurement procedure, contracting entities may conduct market consultations with a view to the preparation of the procurement and to inform economic operators of their procurement plans and requirements.	Before launching a procurement procedure, contracting entities may conduct market consultations with a view to the preparation of the procurement and to inform economic operators of their procurement plans and requirements.
For this purpose, contracting entities may seek or accept advice from	For this purpose, contracting entities may seek or accept advice from	For this purpose, contracting entities may for example seek or accept	For this purpose, contracting entities may for example seek or accept

⁹⁶ OJ L 76, 23.03.1992, p. 14.

<p>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>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. [Am. 143]</p>	<p>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>	<p>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>
		<p><i>Article 53a</i> <i>Prior involvement of candidates or tenderers</i></p>	<p><i>Article 53a</i> <i>Prior involvement of candidates or tenderers</i></p>
<p>2. Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting entity or has otherwise been involved in the preparation of the procurement procedure, the contracting entity shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.</p>	<p>2. Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting entity or has otherwise been involved in the preparation of the procurement procedure, the contracting entity shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.</p>	<p>Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting entity, whether in the context of Article 53 or not, or has otherwise been involved in the preparation of the procurement procedure, the contracting entity shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.</p>	<p>Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting entity, whether in the context of Article 53 or not, or has otherwise been involved in the preparation of the procurement procedure, the contracting entity shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.</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</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</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</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</p>

fixing of adequate time limits for the receipt of tenders.	receipt of tenders.	fixing of adequate time limits for the receipt of tenders.	time limits for the receipt of tenders.
	<i>Contracting entities shall:</i>		---
	<i>(i) clarify in their invitation to participate in a market consultation what information will be considered relevant and thus may be shared with all potential bidders; and</i>		---
	<i>(ii) set out in detail the rights of and procedures available to market consultation participants that allow them to protect confidential information. [Am. 144]</i>		---
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.	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.	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.	The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.
Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition. The measures taken shall be documented in the individual report required by to Article 94.	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 to <i>under</i> Article 94.	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 to Article 94.	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 to Article 94.
<i>Article 54</i> <i>Technical specifications</i>	<i>Article 54</i> <i>Technical specifications</i>	<i>Article 54</i> <i>Technical specifications</i>	<i>Article 54</i> <i>Technical specifications</i>
1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement	1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement	1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement	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.	documents. They shall define the characteristics required of a works, service or supply <i>provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives. [Am. 145]</i>	documents. They shall define the characteristics required of a works, service or supply.	documents. They shall define the characteristics required of a works, service or supply.
These characteristics may also refer to 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.	These characteristics may also refer to 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.	These characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance.	These characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance, <i>provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.</i>
The technical specifications shall also specify whether the transfer of intellectual property rights will be required.	The technical specifications shall also specify whether the transfer of intellectual property rights will be required.		The technical specifications may also specify whether the transfer of intellectual property rights will be required.
For all procurement, the subject of which is intended for use by persons, whether general public or staff of the contracting entity, 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.	For all procurement, the subject of which is intended for use by persons, whether general public or staff of the contracting entity, 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.	For all procurement, [...] which is intended for use by natural persons, whether general public or staff of the contracting entity, 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.	For all procurement which is intended for use by natural persons, whether general public or staff of the contracting entity, 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.
	<i>For all procurements, technical</i>		

	<i>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). [Am. 146]</i>		
Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.	Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria <i>for persons with disabilities or design for all users</i> are concerned, be defined by reference thereto. [Am. 147]	Where mandatory accessibility standards are adopted by a 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.	Where mandatory accessibility standards are adopted by a 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.
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.	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:	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	(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently	(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are	(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are

sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;	precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;	sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;	sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;
(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European technical 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";	(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"; [Am. 148]	(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";	(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European Technical Assessments , common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or when any of those do not exist national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words "or equivalent";
(c) in terms of performance or functional requirements referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;	(c) in terms of performance or functional requirements referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;	(c) in terms of performance or functional requirements referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;	(c) in terms of performance or functional requirements referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;
(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by	(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by	(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by	(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.	reference to the performance or functional requirements referred to in point (a) for other characteristics.	reference to the performance or functional requirements referred to in point (a) for other characteristics.	reference to the performance or functional requirements referred to in point (a) for other characteristics.
4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process, 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 to 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 to a particular process which characterises the products or services provided by a specific economic operator , or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words "or equivalent".	4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process which characterises the products or services provided by a specific economic operator , or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words "or equivalent".
5. Where a contracting entity uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the ground 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,	5. Where a contracting entity uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the ground 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	5. Where a contracting entity uses the option of referring to the technical specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the ground that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender, by any	5. Where a contracting entity uses the option of referring to the technical specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the ground that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender, by any

including the means of proof referred to in Article 56, that the solutions which it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.	in Article 56, that the solutions which it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.	appropriate means, including the means of proof referred to in Article 56, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.	appropriate means, including the means of proof referred to in Article 56, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.
6. Where a contracting entity uses the option provided for in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for supplies, services or works which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard, or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.	6. Where a contracting entity uses the option provided for in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for supplies, services or works which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard, or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.	6. Where a contracting entity uses the option provided for in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for supplies, services or works which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard, or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.	6. Where a contracting entity uses the option provided for in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for supplies, services or works which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard, or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.
In its tender, the tenderer shall prove by any appropriate means including those referred to in Article 56, that the supplies, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.	In its tender, the tenderer shall prove by any appropriate means including those referred to in Article 56, that the supplies, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.	In its tender, the tenderer shall prove by any appropriate means including those referred to in Article 56, that the supplies, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.	In its tender, the tenderer shall prove by any appropriate means including those referred to in Article 56, that the supplies, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.
<i>Article 55</i>	<i>Article 55</i>	<i>Article 55</i>	<i>Article 55</i>

<i>Labels</i>	<i>Certificates and labels [Am. 149]</i>	<i>Labels</i>	<i>Labels</i>
<p>1. Where contracting entities 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 54 paragraph 3, they may require that those works, supplies or services bear a specific label, provided that all of the following conditions are fulfilled:</p>	<p>1. Where contracting entities 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 54 paragraph 3, or criteria in the technical specifications, the award criteria or the contract performance clauses, they may require a specific label or certificate as means of proof that these these works, supplies or services bear a specific label, correspond to such requirements or criteria provided that all of the following conditions are fulfilled: [Am. 150]</p>	<p>1. Where contracting entities intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance clauses, require and refer to a specific label as means of proof that the works, supplies or services correspond to such requirements or criteria, provided that all of the following conditions are fulfilled:</p>	<p>1. Where contracting entities intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, supplies or services correspond to the required characteristics, provided that all of the following conditions are fulfilled:</p>
<p>(a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define the characteristics of the works, supplies or services that are the subject-matter of the contract;</p>	<p>(a) the requirements for to be met in order to obtain the label only concern characteristics which are linked to the subject-matter of the contract and or the certificate are appropriate to define the characteristics of the works, supplies or services that are the subject-matter of the contract; [Am. 151]</p>	<p>(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 the characteristics of the works, supplies or services that are the subject-matter of the contract;</p>	<p>(a) the label requirements-only concern criteria which are linked to the subject-matter of the contract and are appropriate to define the characteristics of the works, supplies or services that are the subject-matter of the contract;</p>
<p>(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;</p>	<p>(b) the requirements for to be met in order to obtain the label are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria; [Am. 152]</p>	<p>(b) the requirements to be met in order to obtain the label are on objectively verifiable and non-discriminatory criteria;</p>	<p>(b) the label requirements are based on objectively verifiable and non-discriminatory criteria;</p>
<p>(c) the labels are established in an open and transparent procedure in</p>	<p>(c) the labels or certificates are established in an open and transparent</p>	<p>(c) the labels are established in an open and transparent procedure in</p>	<p>(c) the labels are established in an open and transparent procedure in</p>

which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations may participate,	procedure in which all <i>relevant</i> stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations may participate, and non-governmental organisations, have a substantial role; [Am. 153]	which all relevant stakeholders, including government bodies, consumers, manufacturers, distributors and non-governmental organisations may participate;	which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations may participate;
(d) the labels are accessible to all interested parties;	(d) the labels <i>or certificates</i> are accessible to all interested parties; [Am. 154]	(d) the labels are accessible to all interested parties;	(d) the labels are accessible to all interested parties;
(e) the criteria of the label are set by a third party which is independent from the economic operator applying for the label.	(e) the criteria of requirements to be met in order to obtain the label <i>or certificate</i> are set by a third party which is independent from the economic operator applying for the label <i>or certificate. The third party may be a specific national or government body or organisation. [Am. 155]</i>	(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.	(e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.
Contracting entities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting entities. For products that do not bear the label, contracting entities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.	Contracting entities requiring a specific label <i>or certificate</i> shall accept all equivalent labels that fulfil the requirements of the <i>specific</i> label <i>or certificate</i> indicated by the contracting entities. For products that do not bear the label, Contracting entities shall also accept other appropriate means of proof for 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,	Contracting entities requiring a specific label shall accept all equivalent labels that use the requirements of the specific label indicated by the contracting entities. Contracting entities 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	Contracting entities requiring a specific label shall accept all labels confirm that the works, supplies or services meet equivalent label requirements. Where an economic operator has demonstrably no possibility of obtaining the specific label indicated by the contracting entity or an equivalent label within the relevant time limits for reasons that are not attributable to that economic operator, the contracting entity shall accept other appropriate means of proof, which may include a technical dossier of

	<i>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. [Am. 156]</i>	economic operator concerned.	the manufacturer, <i>provided that the economic operator concerned proves that the works, supplies and services to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting entity.</i>
2. Where a label fulfils the conditions of provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting entities may use those of the detailed specifications of that label, or, if necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.	2. Where a label <i>or certificate</i> fulfils the conditions of provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting entities may use those of the detailed specifications of that label <i>or certificate</i> , or, if necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter. [Am. 157]	2. Where a label fulfils the conditions of provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting entities shall not require the label as such but may define the technical specification by reference to those of the detailed specifications of that label, or, if necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.	2. Where a label fulfils the conditions of provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting entities shall not require the label as such but may define the technical specification by reference to those of the detailed specifications of that label, or, if necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.
<i>Article 56</i> <i>Test reports, certification and other means of proof.</i>	<i>Article 56</i> Test reports, certification and other means of proof.	<i>Article 56</i> <i>Test reports, certification and other means of proof</i>	<i>Article 56</i> <i>Test reports, certification and other means of proof</i>
1. Contracting entities 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 entities require	1. Contracting entities 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, <i>the awards criteria or the contract performance</i>	1. Contracting entities may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the	1. Contracting entities may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the

<p>the submission of 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 entities.</p>	<p><i>clauses</i>. [Am. 158]</p>	<p>award criteria or the contract performance clauses.</p>	<p>award criteria or the contract performance conditions.</p>
	<p>Where contracting entities require the submission of certificates drawn up by recognised bodies attesting a specific conformity with a particular technical specification assessment body, certificates from equivalent other recognised bodies shall also be accepted by the contracting entities. [Am. 159]</p>	<p>Where contracting entities require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by the contracting entities.</p>	<p>Where contracting entities require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by the contracting entities.</p>
		<p>For the purpose of this paragraph, a conformity assessment body shall be a body that performs conformity assessment activities including calibration, testing, certification and inspection accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council.</p>	<p>For the purpose of this paragraph, a conformity assessment body shall be a body that performs conformity assessment activities including calibration, testing, certification and inspection accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council.</p>
<p>2. Contracting entities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to such certificates or test reports</p>	<p>2. Contracting entities shall accept other appropriate and equivalent means of proof than those referred to in paragraph 1, such as which may include a technical dossier of the manufacturer where the economic operator concerned has no access to</p>	<p>2. Contracting entities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to such certificates or</p>	<p>2. Contracting entities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to such certificates or test</p>

<p>referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.</p>	<p>such certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits, <i>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 required test reports or certificates.</i> [Am. 160]</p>	<p>test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned.</p>	<p>reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned <u>provided that the economic operator concerned thereby proves that the works, supplies or services meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.</u></p>
<p>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 Council⁹⁷.</p>	<p>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.</p>	<p>---</p>	<p>---</p>
<p>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 54(6), Article 55 and paragraphs 1, 2 and 3 of this Article to prove compliance with technical requirements. The competent authorities of the Member State of</p>	<p>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 54(6), Article 55 and paragraphs 1, 2 and 3 of this Article to prove compliance with technical requirements. The competent authorities of the Member State of establishment <i>of the economic operator</i></p>	<p>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 54(6), Article 55 and paragraphs 1 and 2 [...] of this Article [...]. The competent authorities of the Member State of establishment of the economic</p>	<p>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 54(6), Article 55 and paragraphs 1 and 2 of this Article. The competent authorities of the Member State of establishment of the economic operator shall</p>

⁹⁷ OJ L 218, 13.8.2008, p. 30.

establishment shall provide this information in accordance with Article 96.	shall provide this information in accordance with Article 96. [Am. 161]	operator shall provide this information in accordance with Article 96.	provide this information in accordance with Article 96.
<i>Article 57</i> <i>Communication of technical specifications</i>			
1. On request from economic operators interested in obtaining a contract, contracting entities shall make available the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts for which the call for competition is a periodic indicative notice. Those specifications shall be made available by electronic means through unrestricted and full direct access free of charge.	1. On request from economic operators interested in obtaining a contract, contracting entities shall make available the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts for which the call for competition is a periodic indicative notice. Those specifications shall be made available by electronic means through unrestricted and full direct access free of charge.	1. On request from economic operators interested in obtaining a contract, contracting entities shall make available the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts for which the call for competition is a periodic indicative notice. Those specifications shall be made available by electronic means through unrestricted and full direct access free of charge.	1. On request from economic operators interested in obtaining a contract, contracting entities shall make available the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts for which the call for competition is a periodic indicative notice. Those specifications shall be made available by electronic means through unrestricted and full direct access free of charge.
		However, the technical specifications shall be transmitted by other means than electronically where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in the second subparagraph of Article 33(1) or where unrestricted and full direct access free of charge by electronic means to certain	However, the technical specifications shall be transmitted by other means than electronically where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in the second subparagraph of Article 33(1) or where unrestricted and full direct access free of charge by electronic means to certain

		procurement documents cannot be offered because contracting entities intend to apply Article 32(1).	procurement documents cannot be offered because contracting entities intend to apply Article 32(1).
2. Where the technical specifications are based on documents available by electronic means through unrestricted and full direct access free of charge to interested economic operators, the inclusion of a reference to those documents shall be sufficient.	2. Where the technical specifications are based on documents available by electronic means through unrestricted and full direct access free of charge to interested economic operators, the inclusion of a reference to those documents shall be sufficient. [Am. 162]	2. Where the technical specifications are based on documents available by electronic means through unrestricted and full direct access free of charge to interested economic operators, the inclusion of a reference to those documents shall be sufficient.	2. Where the technical specifications are based on documents available by electronic means through unrestricted and full direct access free of charge to interested economic operators, the inclusion of a reference to those documents shall be sufficient.
<i>Article 58 Variants</i>	<i>Article 58 Variants</i>	<i>Article 58 Variants</i>	<i>Article 58 Variants</i>
1. Contracting entities may take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.	1. Contracting entities may shall take account of variants which are submitted by a tenderer along with a basic proposal and meet the minimum requirements specified by the contracting entities as long as they are linked to the subject matter of the contract. [Am. 163]	1. Contracting entities may take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.	1. Contracting entities may authorise or require tenderers to submit variants which meet the minimum requirements specified by the contracting entities.
Contracting entities shall indicate in the specifications whether or not they authorise variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation. Where variants are authorised, they shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to	Contracting entities shall indicate in the specifications whether or not they authorise variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation. Where variants are authorised, 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	Contracting entities shall indicate in the procurement documents whether or not they authorise or require variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation, in particular whether variants may be submitted only where a tender, which is not a variant, has also been submitted. Where	Contracting entities shall indicate in the procurement documents whether or not they authorise or require variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation, in particular whether variants may be submitted only where a tender, which is not a variant, has also been submitted. Where

conforming tenders which are not variants.	variants. <i>In duly justified cases, contracting entities may decide not to authorise variants, provided that they indicate the reasons for their decision in the contract notice or, where a periodic indicative notice is used as a means of calling for competition, in the invitation to confirm interest.</i> [Am. 164]	variants are authorised or required , they shall also ensure that the chosen award criteria can be applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.	variants are authorised or required , they shall also ensure that the chosen award criteria can be applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.
2. In procedures for awarding supply or service contracts, contracting entities that have authorised variants shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.	2. In procedures for awarding supply or service contracts, contracting entities that have authorised variants shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract. [Am. 165]	2. In procedures for awarding supply or service contracts, contracting entities that have authorised variants shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.	2. In procedures for awarding supply or service contracts, contracting entities that have authorised or required variants shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.
<i>Article 59</i> <i>Division of contracts into lots</i>	<i>Article 59</i> <i>Division of contracts into lots</i>	<i>Article 59</i> <i>Division of contracts into lots</i>	<i>Article 59</i> <i>Division of contracts into lots</i>
1. Contracts may be subdivided into homogenous or heterogeneous lots. Article 13(7) applies.	1. <i>To facilitate greater access to public procurement by small and medium-sized enterprises</i> , contracts may be subdivided into homogenous or heterogeneous lots. Article 13(7) applies. [Am. 166]	1. [...] Contracting entities may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots. Article 13(7) applies.	1. Contracting entities may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots. Article 13(7) applies.
Contracting entities shall indicate, in the contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the	Contracting entities shall indicate, in the contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to	Contracting entities shall indicate, in the contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the	Contracting entities shall indicate, in the contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation

<p>invitation to tender or to negotiate, whether tenders are limited to one or more lots only</p>	<p>negotiate, whether tenders are limited to one or more lots only.</p>	<p>invitation to tender or to negotiate, whether tenders may be submitted for one, for several or for all of the lots.</p>	<p>to tender or to negotiate, whether tenders may be submitted for one, for several or for all of the lots.</p>
<p>2. Contracting entities 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 entities 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 entities 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 entities 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 entities may, even where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer provided that the maximum number of lots per tenderer is stated in the contract notice or in the invitation to confirm interest, to tender or to negotiate. Contracting entities shall [...] indicate in the procurement documents the objective and non-discriminatory criteria or rules they intend to apply for determining which lots will be awarded where the application of the [...] award criteria would result in [...] one tenderer being awarded more lots than the maximum number.</p>	<p>2. Contracting entities may, even where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer provided that the maximum number of lots per tenderer is stated in the contract notice or in the invitation to confirm interest, to tender or to negotiate. Contracting entities shall indicate in the procurement documents the objective and non-discriminatory criteria or rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.</p>
<p>3. Where more than one lot may be awarded to the same tenderer, contracting entities may provide that they will either award a contract per lot or one or more contracts, covering several or all lots.</p>	<p>3. Where more than one lot may be awarded to the same tenderer, contracting entities may provide that they will either award a contract per lot or one or more contracts, covering several or all lots.</p>	<p>3. Member States may provide that, where more than one lot may be awarded to the same tenderer, contracting entities may award a contract combining several or all lots where they have specified in the contract notice or in the invitation to confirm interest, to tender or to negotiate that they reserve the possibility to</p>	<p>3. Member States may provide that, where more than one lot may be awarded to the same tenderer, contracting entities may award a contract combining several or all lots where they have specified in the contract notice or in the invitation to confirm interest, to tender or to negotiate that they reserve the possibility to</p>

		do so and indicated the lots or groups of lots that may be combined.	do so and indicate <u>how</u> the lots or groups of lots that may be combined.
Contracting entities 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.	Contracting entities 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.	For this purpose contracting entities shall first determine which tenders best fulfil the award criteria set out pursuant to Article 76 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 76 with regard to these lots, the contracting entity may award a contract combining the lots in question to that tenderer. Contracting entities 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.	
Contracting entities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 76 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	Contracting entities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 76 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		Deleted

individual lots covered by this contract, provided that the award criteria set out pursuant to Article 76 are better fulfilled with regard to all the lots covered by that contract. Contracting entities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.	by this contract, provided that the award criteria set out pursuant to Article 76 are better fulfilled with regard to all the lots covered by that contract. Contracting entities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory. [Am. 167]		
4. Contracting entities may require that all contractors coordinate under the direction of the economic operator to which a lot involving the coordination of the entire project or its relevant parts has been awarded.	4. Contracting entities may require that all contractors coordinate under the direction of the economic operator to which a lot involving the coordination of the entire project or its relevant parts has been awarded.	4. Member States may render it obligatory to award contracts in the form of separate lots under conditions to be specified in accordance with their national law and having regard for Union law. The second subparagraph of paragraph 1 and, where appropriate, paragraph 3 of this Article shall apply.	4. Member States may render it obligatory to award contracts in the form of separate lots under conditions to be specified in accordance with their national law and having regard for Union law. The second subparagraph of paragraph 1 and, where appropriate, paragraph 3 of this Article shall apply.
<i>Article 60</i> <i>Setting time limits</i>	<i>Article 60</i> <i>Setting time limits</i>	<i>Article 60</i> <i>Setting time limits</i>	<i>Article 60</i> <i>Setting time limits</i>
1. When fixing the time limits for requests to participate and the receipt of tenders, contracting entities shall take particular account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set out in Articles 39 to 44.	1. When fixing the time limits for requests to participate and the receipt of tenders, contracting entities shall take particular account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set out in Articles 39 to 44.	1. When fixing the time limits for requests to participate and the receipt of tenders, contracting entities shall take particular account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set out in Articles 40 to 43.	1. When fixing the time limits for requests to participate and the receipt of tenders, contracting entities shall take particular account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set out in Articles 40 to 43.
2. Where tenders can be made only	2. Where tenders can be made only	2. Where tenders can be made only	2. Where tenders can be made only

<p>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.</p>	<p>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.</p>	<p>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 40 to 43, shall be fixed, so that all economic operators concerned may be aware of all the information needed to produce tenders.</p>	<p>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 40 to 43, shall be fixed, so that all economic operators concerned may be aware of all the information needed to produce tenders.</p>
		<p>3. Where, for whatever reason, additional information, although requested in good time, is not supplied within the time limits set out in Article 67(2) or where significant changes are made to the procurement documents, the contracting entity 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. The length of the extension shall be proportionate to the importance of the information or change.</p>	<p>3. Contracting entities shall extend the time limits for the receipt of tenders so that all economic operators concerned may be aware of all the information needed to produce tenders in the following cases:</p> <p>(a) where, for whatever reason, additional information, although requested in good time, is not supplied at the latest six days before the time limit fixed for the receipt of tenders. In the event of an accelerated open procedure as referred to in Article 40(3), that period shall be four days;</p> <p>(b) where significant changes are made to the procurement documents.</p>

			<p>The length of the extension shall be proportionate to the importance of the information or change.</p> <p>Where the additional information has either not been requested in good time or its importance in view of preparing responsive tenders is insignificant, deadlines need not be prolonged.</p>
Section 2 Publication and transparency	Section 2 Publication and transparency	Section 2 Publication and transparency	Section 2 Publication and transparency
<i>Article 61</i> <i>Periodic indicative notices</i>	<i>Article 61</i> <i>Periodic indicative notices</i>	<i>Article 61</i> <i>Periodic indicative notices</i>	<i>Article 61</i> <i>Periodic indicative notices</i>
1. Contracting entities may make known their intentions of planned procurement through the publication of a periodic indicative notice as soon as possible after the beginning of the budgetary year. Those notices shall contain the information set out in part A, section I of Annex VI. They shall be published either by the Commission or by the contracting entities on their buyer profiles in accordance with point 2(b) of Annex IX. Where the notice is published by the contracting entities on their buyer profile, they shall send a notice of the publication of the periodic indicative notice on a buyer profile in accordance with point 3 of	1. Contracting entities may make known their intentions of planned procurement through the publication of a periodic indicative notice as soon as possible after the beginning of the budgetary year. Those notices shall contain the information set out in part A, section I of Annex VI. They shall be published either by the Commission or by the contracting entities on their buyer profiles in accordance with point 2(b) of Annex IX. Where the notice is published by the contracting entities on their buyer profile, they shall send a notice of the publication of the periodic indicative notice on a buyer profile in accordance with point 3 of Annex IX.	1. Contracting entities may make known their intentions of planned procurement through the publication of a periodic indicative notice [...]. Those notices shall contain the information set out in part A, section I of Annex VI. They shall be published either by the Commission or by the contracting entities on their buyer profiles in accordance with point 2(b) of Annex IX. Where the notice is published by the contracting entities on their buyer profile, they shall send a notice of the publication of the periodic indicative notice on a buyer profile in accordance with point 3 of Annex IX. Those notices shall contain the	1. Contracting entities may make known their intentions of planned procurement through the publication of a periodic indicative notice [...]. Those notices shall contain the information set out in part A, section I of Annex VI. They shall be published either by the Commission or by the contracting entities on their buyer profiles in accordance with point 2(b) of Annex IX. Where the notice is published by the contracting entities on their buyer profile, they shall send a notice of the publication of the periodic indicative notice on a buyer profile in accordance with point 3 of Annex IX. Those notices shall contain the information set

Annex IX.		information set out in Annex VI Part B.	out in Annex VI Part B.
2. When a call for competition is made by means of a periodic indicative notice in respect of restricted procedures and negotiated procedures with prior call for competition, the notice shall meet all the following requirements:	2. When a call for competition is made by means of a periodic indicative notice in respect of restricted procedures and negotiated procedures with prior call for competition, the notice shall meet all the following requirements:	2. When a call for competition is made by means of a periodic indicative notice in respect of restricted procedures and negotiated procedures with prior call for competition, the notice shall meet all the following requirements:	2. When a call for competition is made by means of a periodic indicative notice in respect of restricted procedures and negotiated procedures with prior call for competition, the notice shall meet all the following requirements:
(a) it refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;	(a) it refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;	(a) it refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;	(a) it refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;
(b) it indicates that the contract will be awarded by restricted or negotiated procedure without further publication of a call for competition and invite interested economic operators to express their interest in writing;	(b) it indicates that the contract will be awarded by restricted or negotiated procedure without further publication of a call for competition and invite interested economic operators to express their interest in writing;	(b) it indicates that the contract will be awarded by restricted or negotiated procedure without further publication of a call for competition and invite interested economic operators to express their interest in writing;	(b) it indicates that the contract will be awarded by restricted or negotiated procedure without further publication of a call for competition and invites interested economic operators to express their interest in writing;
(c) it contains, in addition to the information set out in part A, section I of Annex VI, the information set out in part A, section II of Annex VI;	(c) it contains, in addition to the information set out in part A, section I of Annex VI, the information set out in part A, section II of Annex VI;	(c) it contains, in addition to the information set out in part A, section I of Annex VI, the information set out in part A, section II of Annex VI;	(c) it contains, in addition to the information set out in part A, section I of Annex VI, the information set out in part A, section II of Annex VI;
(d) it has been published not more than 12 months prior to the date on which the invitation to confirm interest is sent.	(d) it has been published not more than 12 months prior to the date on which the invitation to confirm interest is sent.	(d) it has been for publication between 35 days and 12 months prior to the date on which the invitation to confirm interest is sent.	(d) it has been sent for publication between 35 days and 12 months prior to the date on which the invitation to confirm interest is sent.
		Such notices shall not be published on a buyer profile.; however, the additional	Such notices shall not be published on a buyer profile.; however, the additional publication at national

		publication at national level pursuant to Article 66, if any, may be made on a buyer profile.	level pursuant to Article 66, if any, may be made on a buyer profile.
		The period covered by the periodic indicative notice shall at the most be a 12-month period from the date the notice is transmitted for publication. However, in the case of contracts for social and other specific services, the periodic indicative notice referred to in point b of Article 85(1) may cover a period which is longer than 12 months.	The period covered by the periodic indicative notice shall at the most be a 12-month period from the date the notice is transmitted for publication. However, in the case of contracts for social and other specific services, the periodic indicative notice referred to in point b of Article 85(1) may cover a period which is longer than 12 months.
<i>Article 62 Notices on the existence of a qualification system</i>	<i>Article 62 Notices on the existence of a qualification system</i>	<i>Article 62 Notices on the existence of a qualification system</i>	<i>Article 62 Notices on the existence of a qualification system</i>
Where contracting entities choose to set up a qualification system in accordance with Article 71, the system shall be the subject of a notice as referred to in Annex X, indicating the purpose of the qualification system and how to have access to the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.	Where contracting entities choose to set up a qualification system in accordance with Article 71, the system shall be the subject of a notice as referred to in Annex X, indicating the purpose of the qualification system and how to have access to the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.	1. Where contracting entities choose to set up a qualification system in accordance with Article 71, the system shall be the subject of a notice as referred to in Annex X, indicating the purpose of the qualification system and how to have access to the rules concerning its operation. [...]	1. Where contracting entities choose to set up a qualification system in accordance with Article 71, the system shall be the subject of a notice as referred to in Annex X, indicating the purpose of the qualification system and how to have access to the rules concerning its operation.
		2. Contracting entities shall indicate the period of validity of	2. Contracting entities shall indicate the period of validity of

		the qualification system in the notice on the existence of the system. They shall notify the Commission of any change in period of validity, using the following standard forms:	the qualification system in the notice on the existence of the system. They shall notify the Commission of any change in period of validity, using the following standard forms:
		(a) where the period of validity is changed without terminating the system, the form for notices on the existence of qualification systems;	(a) where the period of validity is changed without terminating the system, the form for notices on the existence of qualification systems;
		(b) where the system is terminated, a contract award notice referred to in Article 64.	(b) where the system is terminated, a contract award notice referred to in Article 64.
<i>Article 63</i> <i>Contract notices</i>	<i>Article 63</i> <i>Contract notices</i>	<i>Article 63</i> <i>Contract notices</i>	<i>Article 63</i> <i>Contract notices</i>
Contract notices may be used as a means of calling for competition in respect of all procedures. They shall contain the information set out in the relevant part of Annex XI and shall be published in accordance with Article 65.	Contract notices may be used as a means of calling for competition in respect of all procedures. They shall contain the information set out in the relevant part of Annex XI and shall be published in accordance with Article 65.	Contract notices may be used as a means of calling for competition in respect of all procedures. They shall contain the information set out in the relevant part of Annex XI and shall be published in accordance with Article 65.	Contract notices may be used as a means of calling for competition in respect of all procedures. They shall contain the information set out in the relevant part of Annex XI and shall be published in accordance with Article 65.
<i>Article 64</i> <i>Contract award notices</i>	<i>Article 64</i> <i>Contract award notices</i>	<i>Article 64</i> <i>Contract award notices</i>	<i>Article 64</i> <i>Contract award notices</i>
1. Within two months of the award of a contract or the conclusion of a framework agreement, contracting entities shall send a contract award notice on the results of the procurement procedure.	1. Within two months of Not later than 14 days after the award of a contract or the conclusion of a framework agreement, contracting entities shall send a contract award notice on the results of the procurement procedure. [Am. 168]	1. Within two months of the [...] conclusion of a contract or of a framework agreement following the decision to award or conclude it , contracting entities shall send a contract award notice on the results of the procurement procedure.	1. Not later than 30 days after the conclusion of a contract or of a framework agreement following the decision to award or conclude it , contracting entities shall send a contract award notice on the results of the procurement procedure.

Such notice shall contain the information set out in Annex XII and shall be published in accordance with Article 65.	Such notice shall contain the information set out in Annex XII and shall be published in accordance with Article 65.	Such notice shall contain the information set out in Annex XII and shall be published in accordance with Article 65.	Such notice shall contain the information set out in Annex XII and shall be published in accordance with Article 65.
	<i>In case of an incomplete or incoherent contract award notice, the Commission will contact the contracting entity with the aim to receive completion or clarification of the contract award notice. [Am. 169]</i>		
2. Where the call for competition for the contract concerned has been made in the form of a periodic indicative notice and the contracting entity does not intend to award further contracts during the 12 month period covered by the periodic indicative notice, the contract award notice shall contain a specific indication to that effect.	2. Where the call for competition for the contract concerned has been made in the form of a periodic indicative notice and the contracting entity does not intend to award further contracts during the 12 month period covered by the periodic indicative notice, the contract award notice shall contain a specific indication to that effect.	2. Where the call for competition for the contract concerned has been made in the form of a periodic indicative notice and the contracting entity has decided that it will not award further contracts during the period covered by the periodic indicative notice, the contract award notice shall contain a specific indication to that effect.	2. Where the call for competition for the contract concerned has been made in the form of a periodic indicative notice and the contracting entity has decided that it will not award further contracts during the period covered by the periodic indicative notice, the contract award notice shall contain a specific indication to that effect.
In the case of framework agreements concluded in accordance with Article 45, contracting entities shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement.	In the case of framework agreements concluded in accordance with Article 45, contracting entities shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement.	In the case of framework agreements concluded in accordance with Article 45, contracting entities shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement. Member States may provide that contracting entities shall group notices of the results of the procurement procedure for contracts based on the framework agreement on a quarterly basis. In	In the case of framework agreements concluded in accordance with Article 45, contracting entities shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement. Member States may provide that contracting entities shall group notices of the results of the procurement procedure for contracts based on the framework agreement on a quarterly basis. In

		that case, contracting entities shall send the grouped notices within two months of the end of each quarter.	that case, contracting entities shall send the grouped notices within 30 days of the end of each quarter.
Contracting entities shall send a contract award notice within two months after the award of each contract based on a dynamic purchasing system. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within two months of the end of each quarter.	Contracting entities shall send a contract award notice within two months after the award of each contract based on a dynamic purchasing system. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within two months of the end of each quarter.	Contracting entities shall send a contract award notice within two months after the award of each contract based on a dynamic purchasing system. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within two months of the end of each quarter.	Contracting entities shall send a contract award notice within 30 days after the award of each contract based on a dynamic purchasing system. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.
3. The information provided in accordance with Annex XII and intended for publication shall be published in accordance with Annex IX. Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between	3. The information provided in accordance with Annex XII and intended for publication shall be published in accordance with Annex IX. Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.	3. The information provided in accordance with Annex XII and intended for publication shall be published in accordance with Annex IX. Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between	3. The information provided in accordance with Annex XII and intended for publication shall be published in accordance with Annex IX. Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between

economic operators. In the case of contracts for research-and-development services ("R&D services"), the information concerning the nature and quantity of the services may be respectively limited to:	In the case of contracts for research-and-development services ("R&D services"), the information concerning the nature and quantity of the services may be respectively limited to:	economic operators. In the case of contracts for research-and-development services ("R&D services"), the information concerning the nature and quantity of the services may be respectively limited to:	economic operators. In the case of contracts for research-and-development services ("R&D services"), the information concerning the nature and quantity of the services may be respectively limited to:
(a) the indication "R&D services" where the contract has been awarded by a negotiated procedure without a call for competition in accordance with Article 44(b);	(a) the indication "R&D services" where the contract has been awarded by a negotiated procedure without a call for competition in accordance with Article 44(b);	(a) the indication "R&D services" where the contract has been awarded by a negotiated procedure without a call for competition in accordance with Article 44(b);	(a) the indication "R&D services" where the contract has been awarded by a negotiated procedure without a call for competition in accordance with Article 44(b);
(b) at least as detailed information as was indicated in the notice that was used as a means of calling for competition.	(b) at least as detailed information as was indicated in the notice that was used as a means of calling for competition.	(b) at least as detailed information as was indicated in the notice that was used as a means of calling for competition.	(b) at least as detailed information as was indicated in the notice that was used as a means of calling for competition.
4. Information provided in accordance with Annex XII and marked as not being intended for publication shall be published only in simplified form and in accordance with Annex IX for statistical purposes.	4. Information provided in accordance with Annex XII and marked as not being intended for publication shall be published only in simplified form and in accordance with Annex IX for statistical purposes.	4. Information provided in accordance with Annex XII and marked as not being intended for publication shall be published only in simplified form and in accordance with Annex IX for statistical purposes.	4. Information provided in accordance with Annex XII and marked as not being intended for publication shall be published only in simplified form and in accordance with Annex IX for statistical purposes.
<i>Article 65</i> <i>Form and manner of publication of notices</i>	<i>Article 65</i> <i>Form and manner of publication of notices</i>	<i>Article 65</i> <i>Form and manner of publication of notices</i>	<i>Article 65</i> <i>Form and manner of publication of notices</i>
1. Notices referred to in Articles 61 to 64 shall include the information set out in Annexes XI, X, VI A, VI B and XII and in the format of standard forms, including standard	1. Notices referred to in Articles 61 to 64 shall include the information set out in Annexes XI, X, VI A, VI B and XII and in the format of standard forms, including standard forms for	1. Notices referred to in Articles 61 to 64 shall include the information set out in Annexes XI, X, VI A, VI B and XII and in the format of standard forms, including	1. Notices referred to in Articles 61 to 64 shall include the information set out in Annexes XI, X, VI A, VI B and XII and in the format of standard forms, including

forms for corrigenda. The Commission shall establish those standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.	corrigenda. The Commission shall establish those standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.	standard forms for corrigenda. The Commission shall establish those standard forms by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.	standard forms for corrigenda. The Commission shall establish those standard forms by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.
2. Notices referred to in Articles 61 to 64 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.	2. Notices referred to in Articles 61 to 64 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.	2. Notices referred to in Articles 61 to 64 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.	2. Notices referred to in Articles 61 to 64 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. Calls for competition within the meaning of Article 39(2) shall be published in full in an official language of the Union as chosen by the contracting entity. 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.	3. Calls for competition within the meaning of Article 39(2) shall be published in full in an official language of the Union as chosen by the contracting entity. 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.	3. Notices referred to in Articles 61 to 64 shall be published in full in the official language(s) of the Union as chosen by the contracting entity. That language version or those language versions shall constitute the sole authentic text(s). A summary of the important elements of each notice shall be published in the other official languages.	3. Notices referred to in Articles 61 to 64 shall be published in full in the official language(s) of the Union as chosen by the contracting entity. That language version or those language versions shall constitute the sole authentic text(s). A summary of the important elements of each notice shall be published in the other official languages.
4. The Commission shall ensure that the full text and the summary of periodic indicative notices referred to in Article 61(2), calls for	4. The Commission shall ensure that the full text and the summary of periodic indicative notices referred to in Article 61(2), calls for competition	4. The Commission shall ensure that the full text and the summary of periodic indicative notices referred to in Article 61(2),	4. The Commission shall ensure that the full text and the summary of periodic indicative notices referred to in Article 61(2), calls for

<p>competition setting up a dynamic purchasing system as referred to in Article 46(3)(a) and notices on the existence of a qualification system used as a means of calling for competition in accordance with Article 39(2)(b) continue to be published:</p>	<p>setting up a dynamic purchasing system as referred to in Article 46(3)(a) and notices on the existence of a qualification system used as a means of calling for competition in accordance with Article 39(2)(b) continue to be published:</p>	<p>calls for competition setting up a dynamic purchasing system as referred to in Article 46(3)(a) and notices on the existence of a qualification system used as a means of calling for competition in accordance with Article 39(2)(b) continue to be published:</p>	<p>competition setting up a dynamic purchasing system as referred to in Article 46(3)(a) and notices on the existence of a qualification system used as a means of calling for competition in accordance with Article 39(2)(b) continue to be published:</p>
<p>(a) in the case of periodic indicative notices for 12 months or until receipt of a contract award notice as provided for in Article 64 (2) indicating that no further contracts will be awarded during the 12 month period covered by the call for competition;</p>	<p>(a) in the case of periodic indicative notices for 12 months or until receipt of a contract award notice as provided for in Article 64 (2) indicating that no further contracts will be awarded during the 12 month period covered by the call for competition;</p>	<p>(a) in the case of periodic indicative notices for 12 months or until receipt of a contract award notice as provided for in Article 64 (2) indicating that no further contracts will be awarded during the 12 month period covered by the call for competition. However, in the case of contracts for social and other specific services, the periodic indicative notice referred to in point b of Article 85(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 64 indicating that no further contracts will be awarded during the period covered by the call for competition;</p>	<p>(a) in the case of periodic indicative notices for 12 months or until receipt of a contract award notice as provided for in Article 64 (2) indicating that no further contracts will be awarded during the 12 month period covered by the call for competition. However, in the case of contracts for social and other specific services, the periodic indicative notice referred to in point b of Article 85(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 64 indicating that no further contracts will be awarded during the period covered by the call for competition;</p>
<p>(b) in the case of calls for competition setting up a dynamic purchasing system for the period of validity of the dynamic purchasing</p>	<p>(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>	<p>(b) in the case of calls for competition setting up a dynamic purchasing system for the period of validity of the dynamic purchasing</p>	<p>(b) in the case of calls for competition setting up a dynamic purchasing system for the period of validity of the dynamic purchasing</p>

system;		system;	system;
(c) in the case of notices on the existence of a qualification system for its period of validity.	(c) in the case of notices on the existence of a qualification system for its period of validity.	(c) in the case of notices on the existence of a qualification system for its period of validity.	(c) in the case of notices on the existence of a qualification system for its period of validity.
5. Contracting entities shall be able to supply proof of the dates on which notices are dispatched. The Commission shall give the contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication.	5. Contracting entities shall be able to supply proof of the dates on which notices are dispatched. The Commission shall give the contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication.	5. Contracting entities must be able to supply proof of the dates on which notices are dispatched. The Commission shall give the contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication.	5. Contracting entities shall be able to supply proof of the dates on which notices are dispatched. The Commission shall give the contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication.
6. Contracting entities may publish notices for works, supply or service contracts that are not subject to the publication requirements laid down in this Directive provided that those notices are sent to the Commission by electronic means in accordance with the format and procedures for transmission indicated in Annex IX.	6. Contracting entities may publish notices for works, supply or service contracts that are not subject to the publication requirements laid down in this Directive provided that those notices are sent to the Commission by electronic means in accordance with the format and procedures for transmission indicated in Annex IX.	6. Contracting entities may publish notices for works, supply or service contracts that are not subject to the publication requirements laid down in this Directive provided that those notices are sent to the Commission by electronic means in accordance with the format and procedures for transmission indicated in Annex IX.	6. Contracting entities may publish notices for works, supply or service contracts that are not subject to the publication requirements laid down in this Directive provided that those notices are sent to the Commission by electronic means in accordance with the format and procedures for transmission indicated in Annex IX.
<i>Article 66</i> <i>Publication at national level</i>	<i>Article 66</i> <i>Publication at national level</i>	<i>Article 66</i> <i>Publication at national level</i>	<i>Article 66</i> <i>Publication at national level</i>
1. Notices referred to in Articles 61 to 64 and the information contained therein shall not be published at national level before the publication pursuant to Article 65.	1. Notices referred to in Articles 61 to 64 and the information contained therein shall not be published at national level before the publication pursuant to Article 65.	1. Notices referred to in Articles 61 to 64 and the information contained therein shall not be published at national level before the date on which they are sent to the Commission.	1. Notices referred to in Articles 61 to 64 and the information contained therein shall not be published at national level before the publication pursuant to Article 65. However, publication may in any case take

			place at the national level where contracting entities have not been notified of the publication within 48 hours after confirmation of the receipt of the notice according to Article 65.
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.	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.	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.	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. Periodic indicative 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.	3. Periodic indicative 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.	3. Periodic indicative 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.	3. Periodic indicative 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 67</i> <i>Electronic availability of procurement documents</i>	<i>Article 67</i> <i>Electronic availability of procurement documents</i>	<i>Article 67</i> <i>Electronic availability of procurement documents</i>	<i>Article 67</i> <i>Electronic availability of procurement documents</i>
1. Contracting entities 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 65 or the date on which the invitation to confirm interest is sent. Where the means of calling for competition is a	1. Contracting entities 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 65 or the date on which the invitation to confirm interest is sent. Where the means of calling for competition is a notice on	1. Contracting entities shall by electronic means offer unrestricted and full direct access free of charge the procurement documents from the date of publication of the notice in accordance with Article 65 or the date on which the invitation to confirm interest is sent.	1. Contracting entities shall by electronic means offer unrestricted and full direct access free of charge the procurement documents from the date of publication of the notice in accordance with Article 65 or the date on which the invitation to confirm interest is sent.

<p>notice on the existence of a qualification system, such access shall be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent. The text of the notice or of those invitations shall specify the internet address at which this documentation is accessible.</p>	<p>the existence of a qualification system, such access shall be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent. The text of the notice or of those invitations shall specify the internet address at which this documentation is accessible.</p>	<p>Where the means of calling for competition is a notice on the existence of a qualification system, such access shall be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent. The text of the notice or of those invitations shall specify the internet address at which this documentation is accessible.</p>	<p>Where the means of calling for competition is a notice on the existence of a qualification system, such access shall be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent. The text of the notice or of those invitations shall specify the internet address at which this documentation is accessible.</p>
		<p>Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in the second subparagraph of Article 33(1), contracting entities may indicate in the notice or the invitation to confirm interest that the procurement documents concerned will be transmitted by other means than 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 Article 40(3) and where the time limit is set by mutual agreement pursuant to the 2nd subparagraph of Article 41(2) or the 2nd subparagraph of Article</p>	<p>Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in the second subparagraph of Article 33(2), contracting entities may indicate in the notice or the invitation to confirm interest that the procurement documents concerned will be transmitted by other means than 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 Article 40(3) and where the time limit is set by mutual agreement pursuant to the 2nd subparagraph of Article 41(2) or the 2nd subparagraph of Article 42(2).</p>

		42(2).	
		Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because contracting entities intend to apply Article 32(1), they shall indicate in the notice or the invitation to confirm interest or or, where the means of calling for competition is a notice on the existence of a qualification system, in the procurement documents which measures aimed at protecting the confidential nature of the information they require and how access can be obtained to the documents concerned. In such case, the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency referred to in Article 40(3) and where the time limit is set by mutual agreement pursuant to the 2 nd subparagraph of Article 41(2) or the 2 nd subparagraph of Article 42(2).	Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because contracting entities intend to apply Article 32(1), shall indicate in the notice or the invitation to confirm interest or or, where the means of calling for competition is a notice on the existence of a qualification system, in the procurement documents which measures aimed at protecting the confidential nature of the information they require and how access can be obtained to the documents concerned. In such case, the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency referred to in Article 40(3) and where the time limit is set by mutual agreement pursuant to the 2 nd subparagraph of Article 41(2) or the 2 nd subparagraph of Article 42(2).
2. Provided that it has been requested in good time, the contracting entities or competent departments shall supply additional information relating to the	2. Provided that it has been requested in good time, the contracting entities or competent departments shall supply additional information relating to the specifications and any supporting	2. Provided that it has been requested in good time, the contracting entities [...] shall supply additional information relating to the specifications and any supporting	2. Provided that it has been requested in good time, the contracting entities shall supply to all tenderers taking part in the procurement procedure additional

specifications and any supporting documents not later than six days before the time limit fixed for the receipt of tenders. In the event of an accelerated open procedure as referred to in Article 40(3), that period shall be four days.	documents not later than six days before the time limit fixed for the receipt of tenders. In the event of an accelerated open procedure as referred to in Article 40(3), that period shall be four days.	documents not later than six days before the time limit fixed for the receipt of tenders. In the event of an accelerated open procedure as referred to in Article 40(3), that period shall be four days.	information relating to the specifications and any supporting documents not later than six days before the time limit fixed for the receipt of tenders. In the event of an accelerated open procedure as referred to in Article 40(3), that period shall be four days.
<i>Article 68</i> <i>Invitations to submit a tender or to negotiate; invitations to confirm interest</i>	<i>Article 68</i> <i>Invitations to submit a tender or to negotiate; invitations to confirm interest</i>	<i>Article 68</i> <i>Invitations to submit a tender or to negotiate; invitations to confirm interest</i>	<i>Article 68</i> <i>Invitations to submit a tender or to negotiate; invitations to confirm interest</i>
1. In restricted procedures, innovation partnerships and negotiated procedures with prior call for competition, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate.	1. In restricted procedures, innovation partnerships and negotiated procedures with prior call for competition, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate.	1. In restricted procedures, competitive dialogues innovation partnerships and negotiated procedures with prior call for competition, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders, to take part in the dialogue or to negotiate. Where a periodic indicative notice is used as a call for competition pursuant to point (a) of Article 39(2), contracting entities shall simultaneously and in writing invite the economic operators which have expressed their interest to confirm their continuing interest.	1. In restricted procedures, competitive dialogues , innovation partnerships and negotiated procedures with prior call for competition, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders, to take part in the dialogue or to negotiate. Where a periodic indicative notice is used as a call for competition pursuant to point (a) of Article 39(2), contracting entities shall simultaneously and in writing invite the economic operators which have expressed their interest to confirm their continuing interest.
2. The invitations referred to in paragraph 1 shall include a reference to the electronic address on which	2. The invitations referred to in paragraph 1 shall include a reference to the electronic address on which the	2. The invitations referred to in paragraph 1 shall include a reference to the electronic address on which	2. The invitations referred to in paragraph 1 shall include a reference to the electronic address on which

<p>the specifications and any other supporting document have been made directly available by electronic means. In addition, they shall include the information set out in Annex XIII.</p>	<p>specifications and any other supporting document have been made directly available by electronic means. In addition, they shall include the information set out in Annex XIII.</p>	<p>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 67(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 XIII.</p>	<p>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 67(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 XIII.</p>
<p><i>Article 69</i> <i>Informing applicants for qualification, candidates and tenderers</i></p>	<p><i>Article 69</i> <i>Informing applicants for qualification, candidates and tenderers</i></p>	<p><i>Article 69</i> <i>Informing applicants for qualification, candidates and tenderers</i></p>	<p><i>Article 69</i> <i>Informing applicants for qualification, candidates and tenderers</i></p>
<p>1. Contracting entities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of the contract, or admission to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing</p>	<p>1. Contracting entities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of the contract, or admission to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing system.</p>	<p>1. Contracting entities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of the contract, or admission to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing</p>	<p>1. Contracting entities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of the contract, or admission to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing</p>

system.		system.	system.
2. On request from the party concerned, contracting entities shall, as soon as possible, and in any case within 15 days from receipt of a written request, inform:	2. On request from the party concerned, contracting entities shall, as soon as possible, and in any case within 15 days from receipt of a written request, inform:	2. On request from the party concerned, contracting entities shall, as soon as possible, and in any case within 15 days from receipt of a written request, inform:	2. On request from the party concerned, contracting entities shall, as soon 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;	(a) any unsuccessful candidate of the reasons for the rejection of its request to participate;	(a) any unsuccessful candidate of the reasons for the rejection of its request to participate;	(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 54(5) and (6), the reasons for their decision of non-equivalence or their decision that the works, supplies or services do not meet the performance or functional requirements;	(b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in Article 54(5) and (6), the reasons for their decision of non-equivalence or their decision that the works, supplies or services do not meet the performance or functional requirements;	(b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in Article 54(5) and (6), the reasons for their decision of non-equivalence or their decision that the works, supplies or services do not meet the performance or functional requirements;	(b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in Article 54(5) and (6), the reasons for their decision of non-equivalence or their decision that the works, supplies or services do not meet the performance or functional requirements;
(c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer or the parties to the framework agreement;	(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;	(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;	(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.	(d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.	(d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.	(d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.
3. Contracting entities may decide that certain information on the contract award or the conclusion of the framework agreement or the	3. Contracting entities may decide that certain information on the contract award or the conclusion of the framework agreement or the admission	3. Contracting entities may decide that certain information on the contract award or the conclusion of the framework agreement or the	3. Contracting entities may decide that certain information on the contract award or the conclusion of the framework agreement or the

<p>admission to a dynamic purchasing system, referred to in paragraph 1, is to be withheld where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.</p>	<p>to a dynamic purchasing system, referred to in paragraph 1, is to be withheld where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.</p>	<p>admission to a dynamic purchasing system, referred to in paragraphs 1 and 2, is to be withheld where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.</p>	<p>admission to a dynamic purchasing system, referred to in paragraphs 1 and 2, is to be withheld where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.</p>
<p>4. Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a period of six months.</p> <p>If the decision will take longer than four months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.</p>	<p>4. Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a period of six months.</p> <p>If the decision will take longer than four months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.</p>	<p>4. Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a period of six months.</p> <p>If the decision will take longer than four months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.</p>	<p>4. Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a period of six months.</p> <p>If the decision will take longer than four months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.</p>
<p>5. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal as soon as possible and under no</p>	<p>5. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal as soon as possible and under no</p>	<p>5. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal as soon as</p>	<p>5. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal as soon as</p>

circumstances more than 15 days later than the date of the decision. The reasons shall be based on the criteria for qualification referred to in Article 71(2).	circumstances more than 15 days later than the date of the decision. The reasons shall be based on the criteria for qualification referred to in Article 71(2).	possible and under no circumstances more than 15 days later than the date of the decision. The reasons shall be based on the criteria for qualification referred to in Article 71(2).	possible and under no circumstances more than 15 days later than the date of the decision. The reasons shall be based on the criteria for qualification referred to in Article 71(2).
6. Contracting entities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in Article 71(2). Any intention to bring qualification to an end shall be notified in writing to the economic operator beforehand, at least 15 days before the date on which qualification is due to end, together with the reason or reasons justifying the proposed action.	6. Contracting entities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in Article 71(2). Any intention to bring qualification to an end shall be notified in writing to the economic operator beforehand, at least 15 days before the date on which qualification is due to end, together with the reason or reasons justifying the proposed action.	6. Contracting entities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in Article 71(2). Any intention to bring qualification to an end shall be notified in writing to the economic operator beforehand, at least 15 days before the date on which qualification is due to end, together with the reason or reasons justifying the proposed action.	6. Contracting entities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in Article 71(2). Any intention to bring qualification to an end shall be notified in writing to the economic operator beforehand, at least 15 days before the date on which qualification is due to end, together with the reason or reasons justifying the proposed action.
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	Section 3 Choice of participants and award of contracts
Article 70 <i>General principles</i>	Article 70 <i>General principles</i>	Article 70 <i>General principles</i>	Article 70 <i>General principles</i>
1. For the purpose of selecting participants in their procurement procedures, the following cumulative rules apply:	1. For the purpose of selecting participants in their procurement procedures, the following cumulative rules apply:	1. For the purpose of selecting participants in their procurement procedures, the following cumulative rules apply:	1. For the purpose of selecting participants in their procurement procedures, the following cumulative rules apply:
(a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with Article 72(1) or Article 74(2) shall exclude economic	(a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with Article 72(1) or Article 74(2) shall exclude economic operators identified	(a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with Article 72(1) or Article 74(1) shall exclude	(a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with Article 72(1) or Article 74(1) shall exclude economic

operators identified in accordance with such rules and fulfilling such criteria;	in accordance with such rules and fulfilling such criteria;	economic operators identified in accordance with such rules and fulfilling such criteria;	operators identified in accordance with such rules and fulfilling such criteria;
(b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to Articles 72 and 74;	(b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to Articles 72 and 74;	(b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to Articles 72 and 74;	(b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to Articles 72 and 74;
(c) in restricted procedures, in negotiated procedures with a call for competition and in innovation partnerships, they shall where appropriate reduce in accordance with Article 72(2) the number of candidates selected pursuant to points (a) and (b) of this paragraph.	(c) in restricted procedures, in negotiated procedures with a call for competition and in innovation partnerships, they shall where appropriate reduce in accordance with Article 72(2) the number of candidates selected pursuant to points (a) and (b) of this paragraph.	(c) in restricted procedures, in negotiated procedures with a call for competition, in competitive dialogues and in innovation partnerships, they shall where appropriate reduce in accordance with Article 72(2) the number of candidates selected pursuant to points (a) and (b) of this paragraph.	(c) in restricted procedures, in negotiated procedures with a call for competition, in competitive dialogues and in innovation partnerships, they shall where appropriate reduce in accordance with Article 72(2) the number of candidates selected pursuant to points (a) and (b) of this paragraph.
2. When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in procurement procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:	2. When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in procurement procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:	2. When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in procurement procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:	2. When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in procurement procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:
(a) qualify economic operators in accordance with Article 71;	(a) qualify economic operators in accordance with Article 71;	(a) qualify economic operators in accordance with Article 71;	(a) qualify economic operators in accordance with Article 71;
(b) apply to such qualified economic operators those provisions of paragraph 1 that are relevant to restricted or negotiated procedures or to innovation partnerships.	(b) apply to such qualified economic operators those provisions of paragraph 1 that are relevant to restricted or negotiated procedures or to innovation partnerships.	(b) apply to such qualified economic operators those provisions of paragraph 1 that are relevant to restricted or negotiated procedures, to competitive dialogues or to	(b) apply to such qualified economic operators those provisions of paragraph 1 that are relevant to restricted or negotiated procedures, to competitive dialogues or to

		innovation partnerships.	innovation partnerships.
3. When selecting participants for a restricted or negotiated procedure or an innovation partnership, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:	3. When selecting participants for a restricted or negotiated procedure or an innovation partnership, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:	3. When selecting participants for a restricted or negotiated procedure, a competitive dialogue or an innovation partnership, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:	3. When selecting participants for a restricted or negotiated procedure, a competitive dialogue or an innovation partnership, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:
(a) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others;	(a) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others;	(a) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others;	(a) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others;
(b) require tests or evidence which would duplicate objective evidence already available.	(b) require tests or evidence which would duplicate objective evidence already available.	(b) require tests or evidence which would duplicate objective evidence already available.	(b) require tests or evidence which would duplicate objective evidence already available.
		3a. Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, contracting entities may, unless otherwise provided 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	3a. Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, contracting entities may, unless otherwise provided 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.	transparency.
4. Contracting entities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in Articles 76 and 79, taking into account Article 58.	4. Contracting entities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in Articles 76 and 79, taking into account Article 58.	4. Contracting entities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in Articles 76 and 79, taking into account Article 58.	4. Contracting entities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in Articles 76 and 79, taking into account Article 58.
5. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, 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 XIV.	5. Contracting entities may decide shall not to award a contract to the tenderer submitting the best tender where they have it has been established, based on clear and sufficient evidence , that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of environmental , social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV referred to in Article 29(2). [Am. 170]	5. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply with 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 XIV. 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.	5. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply with the applicable obligations referred to in Article 29(2).
6. In open procedures, contracting entities may decide to examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of Articles 70 to 79 are observed, including the	6. In open procedures, contracting entities may decide to examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of Articles 70 to 79 are observed, including the rule that the	6. In open procedures, contracting entities may decide to examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of Articles 70 to 79 are observed, including the	6. In open procedures, contracting entities may decide to examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of Articles 70 to 79 are observed, including the rule

rule that the contract shall not be awarded to a tenderer who should have been excluded pursuant to Article 74 or who does not meet the selection criteria set out by the contracting entity in accordance with Article 72(1) and Article 74.	contract shall not be awarded to a tenderer who should have been excluded pursuant to Article 74 or who does not meet the selection criteria set out by the contracting entity in accordance with Article 72(1) and Article 74.	rule that the contract shall not be awarded to a tenderer who should have been excluded pursuant to Article 74 or who does not meet the selection criteria set out by the contracting entity in accordance with Article 72(1) and Article 74.	that the contract shall not be awarded to a tenderer who should have been excluded pursuant to Article 74 or who does not meet the selection criteria set out by the contracting entity in accordance with Article 72(1) and Article 74.
		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.	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.
7. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the list in Annex XIV, where necessary due to the conclusion of new international agreements or modification of existing international agreements.	7. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the list in Annex XIV, where necessary due to the conclusion of new international agreements or modification of existing international agreements.	7. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the list in Annex XIV, where necessary, to add new international agreements that have been ratified by all Member States or where the existing international agreements referred to are no longer ratified by all Member States or they are otherwise changed, for instance in respect of their scope, content or denomination.	7. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the list in Annex XIV, where necessary, to add new international agreements that have been ratified by all Member States or where the existing international agreements referred to are no longer ratified by all Member States or they are otherwise changed, for instance in respect of their scope, content or denomination.
Subsection 1 Qualification and qualitative selection	Subsection 1 Qualification and qualitative selection	Subsection 1 Qualification and qualitative selection	Subsection 1 Qualification and qualitative selection
<i>Article 71</i> <i>Qualification systems</i>	<i>Article 71</i> <i>Qualification systems</i>	<i>Article 71</i> <i>Qualification systems</i>	<i>Article 71</i> <i>Qualification systems</i>
1. Contracting entities which so wish may establish and operate a system of qualification of economic	1. Contracting entities which so wish may establish and operate a system of qualification of economic operators.	1. Contracting entities which so wish may establish and operate a system of qualification of economic	1. Contracting entities which so wish may establish and operate a system of qualification of economic

operators.		operators.	operators.
Contracting entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.	Contracting entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.	Contracting entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.	Contracting entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.
2. The system under paragraph 1 may involve different qualification stages.	2. The system under paragraph 1 may involve different qualification stages.	2. The system under paragraph 1 may involve different qualification stages.	2. The system under paragraph 1 may involve different qualification stages.
Contracting entities shall establish objective rules and criteria for the exclusion and selection of economic operators requesting qualification and objective criteria and rules for the operation of the qualification system, covering matters such as inscription in the system, periodic updating of the qualifications, if any, and the duration of the system.	Contracting entities shall establish objective rules and criteria for the exclusion and selection of economic operators requesting qualification and objective criteria and rules for the operation of the qualification system, covering matters such as inscription in the system, periodic updating of the qualifications, if any, and the duration of the system.	Contracting entities shall establish objective rules and criteria for the exclusion and selection of economic operators requesting qualification and objective criteria and rules for the operation of the qualification system, covering matters such as inscription in the system, periodic updating of the qualifications, if any, and the duration of the system.	Contracting entities shall establish objective rules and criteria for the exclusion and selection of economic operators requesting qualification and objective criteria and rules for the operation of the qualification system, covering matters such as inscription in the system, periodic updating of the qualifications, if any, and the duration of the system.
Where those criteria and rules include technical specifications, Articles 54 to 56 shall apply. The criteria and rules may be updated as required.	Where those criteria and rules include technical specifications, Articles 54 to 56 shall apply. The criteria and rules may be updated as required.	Where those criteria and rules include technical specifications, Articles 54 to 56 shall apply. The criteria and rules may be updated as required.	Where those criteria and rules include technical specifications, Articles 54 to 56 shall apply. The criteria and rules may be updated as required.
3. The criteria and rules referred to in paragraph 2 shall be made available to economic operators on request. Those those updated criteria and rules shall be communicated to interested economic operators.	3. The criteria and rules referred to in paragraph 2 shall be made available to economic operators on request. Those those updated criteria and rules shall be communicated to interested economic operators.	3. The criteria and rules referred to in paragraph 2 shall be made available to economic operators on request. Those [...] updated criteria and rules shall be communicated to interested economic operators.	3. The criteria and rules referred to in paragraph 2 shall be made available to economic operators on request. Those updated criteria and rules shall be communicated to interested economic operators.
Where a contracting entity considers that the qualification system of	Where a contracting entity considers that the qualification system of certain	Where a contracting entity considers that the qualification system of	Where a contracting entity considers that the qualification system of

<p>certain other entities or bodies meets its requirements, it shall communicate to interested economic operators the names of such other entities or bodies.</p>	<p>other entities or bodies meets its requirements, it shall communicate to interested economic operators the names of such other entities or bodies.</p>	<p>certain other entities or bodies meets its requirements, it shall communicate to interested economic operators the names of such other entities or bodies.</p>	<p>certain other entities or bodies meets its requirements, it shall communicate to interested economic operators the names of such other entities or bodies.</p>
<p>4. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.</p>	<p>4. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.</p>	<p>4. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.</p>	<p>4. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.</p>
<p>5. When a call for competition is made by means of a notice on the existence of a qualification system, specific contracts for the works, supplies or services covered by the qualification system shall be awarded by restricted procedures or negotiated procedures, in which all tenderers and participants are selected among the candidates already qualified in accordance with such a system.</p>	<p>5. When a call for competition is made by means of a notice on the existence of a qualification system, specific contracts for the works, supplies or services covered by the qualification system shall be awarded by restricted procedures or negotiated procedures, in which all tenderers and participants are selected among the candidates already qualified in accordance with such a system.</p>	<p>5. When a call for competition is made by means of a notice on the existence of a qualification system, specific contracts for the works, supplies or services covered by the qualification system shall be awarded by restricted procedures or negotiated procedures, in which all tenderers and participants are selected among the candidates already qualified in accordance with such a system.</p>	<p>5. When a call for competition is made by means of a notice on the existence of a qualification system, specific contracts for the works, supplies or services covered by the qualification system shall be awarded by restricted procedures or negotiated procedures, in which all tenderers and participants are selected among the candidates already qualified in accordance with such a system.</p>
<p>6. Any charges that are billed in connection with requests for qualification or with updating or conserving an already obtained qualification pursuant to the system shall be proportionate to the generated costs.</p>	<p>6. Any charges that are billed in connection with requests for qualification or with updating or conserving an already obtained qualification pursuant to the system shall be proportionate to the generated costs.</p>	<p>6. Any charges that are billed in connection with requests for qualification or with updating or conserving an already obtained qualification pursuant to the system shall be proportionate to the generated costs.</p>	<p>6. Any charges that are billed in connection with requests for qualification or with updating or conserving an already obtained qualification pursuant to the system shall be proportionate to the generated costs.</p>
<p><i>Article 72</i> <i>Criteria for qualitative selection</i></p>			
<p>1. Contracting entities may establish objective rules and criteria</p>	<p>1. Contracting entities may establish objective rules and criteria for the</p>	<p>1. Contracting entities may establish objective rules and criteria</p>	<p>1. Contracting entities may establish objective rules and criteria</p>

for the exclusion and selection of tenderers or candidates; those rules and criteria shall be available to interested economic operators.	exclusion and selection of tenderers or candidates; those rules and criteria shall be available to interested economic operators.	for the exclusion and selection of tenderers or candidates; those rules and criteria shall be available to interested economic operators.	for the exclusion and selection of tenderers or candidates; those rules and criteria shall be available to interested economic operators.
2. Where contracting entities need to ensure an appropriate balance between the particular characteristics of the procurement procedure and the resources required to conduct it, they may, in restricted or negotiated procedures or in innovation partnerships, establish objective rules and criteria that reflect this need and enable the contracting entity to reduce the number of candidates that will be invited to tender or to negotiate. The number of candidates selected shall, however, take account of the need to ensure adequate competition.	2. Where contracting entities need to ensure an appropriate balance between the particular characteristics of the procurement procedure and the resources required to conduct it, they may, in restricted or negotiated procedures or in innovation partnerships, establish objective rules and criteria that reflect this need and enable the contracting entity to reduce the number of candidates that will be invited to tender or to negotiate. The number of candidates selected shall, however, take account of the need to ensure adequate competition.	2. Where contracting entities need to ensure an appropriate balance between the particular characteristics of the procurement procedure and the resources required to conduct it, they may, in restricted or negotiated procedures, in competitive dialogues or in innovation partnerships, establish objective rules and criteria that reflect this need and enable the contracting entity to reduce the number of candidates that will be invited to tender or to negotiate. The number of candidates selected shall, however, take account of the need to ensure adequate competition.	2. Where contracting entities need to ensure an appropriate balance between the particular characteristics of the procurement procedure and the resources required to conduct it, they may, in restricted or negotiated procedures, in competitive dialogues or in innovation partnerships, establish objective rules and criteria that reflect this need and enable the contracting entity to reduce the number of candidates that will be invited to tender or to negotiate. The number of candidates selected shall, however, take account of the need to ensure adequate competition.
<i>Article 73</i> <i>Reliance on the capacities of other entities</i>	<i>Article 73</i> <i>Reliance on the capacities of other entities</i>	<i>Article 73</i> <i>Reliance on the capacities of other entities</i>	<i>Article 73</i> <i>Reliance on the capacities of other entities</i>
1. Where the objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities,	1. Where the objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities, the economic operator may where necessary rely on	1. Where the objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities,	1. Where the objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities,

<p>the economic operator may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to that effect. In the case of economic and financial standing, contracting entities may require that the economic operator and those entities are jointly liable for the execution of the contract.</p>	<p>the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to that effect. In the case of economic and financial standing, contracting entities may require that the economic operator and those entities are jointly liable for the execution of the contract.</p>	<p>the economic operator may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. With regard to criteria relating to the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting entity that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing a commitment by those entities to that effect.</p>	<p>the economic operator may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. With regard to criteria relating to the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting entity that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing a commitment by those entities to that effect.</p>
		<p>Where, pursuant to Article 74, contracting entities have referred to exclusion or selection criteria provided for under Directive 2004/18/EC, contracting entities shall verify in accordance with Article 74(3) whether the other entities on whose capacity</p>	<p>Where, pursuant to Article 74, contracting entities have referred to exclusion or selection criteria provided for under Directive 2004/18/EC, contracting entities shall verify in accordance with Article 74(3) whether the other entities on whose capacity</p>

		<p>the economic operator intends to rely fulfil the relevant selection criteria or whether there are grounds for exclusion, to which the contracting entities have referred, pursuant to Article 55 of Directive 2004/18/EC. An entity which does not meet a relevant selection criterion, or in respect of which there are grounds for exclusion may be excluded.</p>	<p>the economic operator intends to rely fulfil the relevant selection criteria or whether there are grounds for exclusion, to which the contracting entities have referred, pursuant to Article 55 of Directive 2004/18/EC. The contracting entity shall require that the economic operator substitutes an entity in respect of which there are compulsory grounds for exclusion to which the contracting entity has referred. The contracting entity may require that the economic operator substitutes an entity in respect of which there are non-compulsory grounds for exclusion to which the contracting entity has referred.</p>
		<p>Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, contracting entities may require that the economic operator and those entities be jointly liable for the execution of the contract.</p>	<p>Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, contracting entities 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 30 may rely on the capacity of participants in the group or of other entities.</p>	<p>Under the same conditions, a group of economic operators as referred to in Article 30 may rely on the capacity of participants in the group or of other entities.</p>	<p>Under the same conditions, a group of economic operators as referred to in Article 30 may rely on the capacity of participants in the group or of other entities.</p>	<p>Under the same conditions, a group of economic operators as referred to in Article 30 may rely on the capacity of participants in the group or of other entities.</p>
<p>2. Where the objective rules and</p>	<p>2. Where the objective rules and</p>	<p>2. Where the objective rules</p>	<p>2. Where the objective rules and</p>

<p>criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures or in innovation partnerships include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities the economic operator may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that the necessary resources will be available to it, for example by delivering an undertaking by those entities to that effect. In the case of economic and financial standing, contracting entities may require that the economic operator and those entities are jointly liable for the execution of the contract.</p>	<p>criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures or in innovation partnerships include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities the economic operator may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that the necessary resources will be available to it, for example by delivering an undertaking by those entities to that effect. In the case of economic and financial standing, contracting entities may require that the economic operator and those entities are jointly liable for the execution of the contract.</p>	<p>and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures, in competitive dialogues or in innovation partnerships include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities the economic operator may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. With regard to criteria relating to the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting entity that the necessary resources will be available to it, for example by delivering a commitment by</p>	<p>criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures, in competitive dialogues or in innovation partnerships include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities the economic operator may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. With regard to criteria relating to the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting entity that the necessary resources will be available to it, for example by delivering a commitment by</p>
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		those entities to that effect.	those entities to that effect.
		<p>Where, pursuant to Article 74, contracting entities have referred to exclusion or selection criteria provided for under Directive 2004/18/EC, contracting entities shall verify in accordance with Article 74(3) whether the other entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria and the exclusion grounds.</p>	<p>Where, pursuant to Article 74, contracting entities have referred to exclusion or selection criteria provided for under Directive 2004/18/EC, contracting entities shall verify in accordance with Article 74(3) whether the other entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria or whether there are grounds for exclusion, to which the contracting entities have referred, pursuant to Article 55 of Directive 2004/18/EC. The contracting entity shall require that the economic operator substitutes an entity which does not meet a relevant selection criterion, or in respect of which there are compulsory grounds for exclusion to which the contracting entity has referred. The contracting entity may require that the economic operator substitutes an entity in respect of which there are non-compulsory grounds for exclusion to which the contracting entity has referred.</p>
		<p>Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial</p>	<p>Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing,</p>

		standing, contracting entities may require that the economic operator and those entities be jointly liable for the execution of the contract.	contracting entities may require that the economic operator and those entities be jointly liable for the execution of the contract.
Under the same conditions, a group of economic operators as referred to in Article 30 may rely on the capacities of participants in the group or of other entities.	Under the same conditions, a group of economic operators as referred to in Article 30 may rely on the capacities of participants in the group or of other entities.	Under the same conditions, a group of economic operators as referred to in Article 30 may rely on the capacities of participants in the group or of other entities.	Under the same conditions, a group of economic operators as referred to in Article 30 may rely on the capacities of participants in the group or of other entities.
3. In the case of works contracts, service contracts and siting and installation operations in the context of a supply contract, contracting entities may require that certain critical tasks be performed directly by the tenderer itself or, where a tender is submitted by a group of economic operators as referred to in Article 30, a participant in the group.	3. In the case of works contracts, service contracts and siting and installation operations in the context of a supply contract, contracting entities may require that certain critical tasks be performed directly by the tenderer itself or, where a tender is submitted by a group of economic operators as referred to in Article 30, a participant in the group.	3. 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 entities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in Article 30, a participant in that group.	3. In the case of works contracts, service contracts and siting and installation operations in the context of a supply contract, contracting entities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in Article 30, a participant in that group.
<i>Article 74</i> <i>Use of exclusion grounds and selection criteria provided for under [Directive 2004/18]</i>	<i>Article 74</i> <i>Use of exclusion grounds and selection criteria provided for under [Directive 2004/18]</i>	<i>Article 74</i> <i>Use of exclusion grounds and selection criteria provided for under Directive 2004/18</i>	<i>Article 74</i> <i>Use of exclusion grounds and selection criteria provided for under [Directive 2004/18]</i>
1. The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system and the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated	1. The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system and the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures or in innovation	1. The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system and the objective rules and criteria for the exclusion and selection of candidates and tenderers in open,	1. The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system and the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or

procedures or in innovation partnerships may include the exclusion grounds listed in Article 55 of Directive 2004/18 on the terms and conditions set out therein.	partnerships may include the exclusion grounds listed in Article 55 of Directive 2004/18 on the terms and conditions set out therein.	restricted or negotiated procedures, in competitive dialogues or in innovation partnerships may include the exclusion grounds listed in Article 55 of Directive 2004/18 on the terms and conditions set out therein.	negotiated procedures, in competitive dialogues or in innovation partnerships may include the exclusion grounds listed in Article 55 of Directive 2004/18 on the terms and conditions set out therein.
Where the contracting entity is a contracting authority, those criteria and rules shall include the exclusion grounds listed in Article 55(1) and (2) of Directive 2004/18 on the terms and conditions set out in that Article.	Where the contracting entity is a contracting authority, those criteria and rules shall include the exclusion grounds listed in Article 55(1) and (2) of Directive 2004/18 on the terms and conditions set out in that Article.	Where the contracting entity is a contracting authority, those criteria and rules shall include the exclusion grounds listed in Article 55(1) and (2) of Directive 2004/18 on the terms and conditions set out in that Article.	Where the contracting entity is a contracting authority, those criteria and rules shall include the exclusion grounds listed in Article 55(1) and (2) of Directive 2004/18 on the terms and conditions set out in that Article.
		If so required by Member States, those criteria and rules shall, in addition, include the exclusion grounds listed in Article 55(3) of Directive 2004/18/EC on the terms and conditions set out in that Article.	If so required by Member States, those criteria and rules shall, in addition, include the exclusion grounds listed in Article 55(3) of Directive 2004/18/EC on the terms and conditions set out in that Article.
2. The criteria and rules referred to in paragraph 1 may include the selection criteria set out in Article 56 of Directive 2004/18/EC on the terms and conditions set out therein, notably as regards the limits to requirements concerning yearly turnovers, as provided for under the second subparagraph of paragraph 3 of that Article.	2. The criteria and rules referred to in paragraph 1 may include the selection criteria set out in Article 56 of Directive 2004/18/EC on the terms and conditions set out therein, notably as regards the limits to requirements concerning yearly turnovers, the acceptance of self-declarations as well as of the European Procurement Passport , as provided for under the second subparagraph of paragraph 3 of that Article. [Am. 171]	2. The criteria and rules referred to in paragraph 1 may include the selection criteria set out in Article 56 of Directive 2004/18/EC on the terms and conditions set out therein, notably as regards the limits to requirements concerning yearly turnovers, as provided for under the third subparagraph of paragraph 3 of that Article.	2. The criteria and rules referred to in paragraph 1 may include the selection criteria set out in Article 56 of Directive 2004/18/EC on the terms and conditions set out therein, notably as regards the limits to requirements concerning yearly turnovers, as provided for under the third subparagraph of paragraph 3 of that Article.

<p>3. For the purpose of applying paragraphs 1 and 2 of this Article, Articles 57 to 60 of Directive 2004/18/EC shall apply.</p>	<p>3. For the purpose of applying paragraphs 1 and 2 of this Article, Articles 57 55 to 60 of Directive 2004/18/EC shall apply. [Am. 172]</p>	<p>3. For the purpose of applying paragraphs 1 and 2 of this Article, Articles 56a to 58 of Directive 2004/18/EC shall apply.</p>	<p>3. For the purpose of applying paragraphs 1 and 2 of this Article, Articles 57 to 58 of Directive 2004/18/EC shall apply.</p>
<p><i>Article 75</i> <i>Quality assurance standards and environmental management standards</i></p>	<p><i>Article 75</i> <i>Quality assurance standards and environmental management standards</i></p>	<p><i>Article 75</i> <i>Quality assurance standards and environmental management standards</i></p>	<p><i>Article 75</i> <i>Quality assurance standards and environmental management standards</i></p>
<p>1. Where they request 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 entities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.</p>	<p>1. Where they request 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 entities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.</p>	<p>1. Contracting entities shall, where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, [...] refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.</p>	<p>1. Contracting entities shall, where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures where the economic operator concerned has no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator provided that the economic operator proves that the proposed quality assurance measures comply with the</p>

			required quality assurance standards.
Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.	Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits. <i>In order not to discriminate against tenderers who invest time and money for certificates, the burden to provide equivalence with a specific label shall be placed on the tenderer claiming equivalence.</i> [Am. 173]	Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures where 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 entities 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 ⁹⁸ or	2. Where contracting entities 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 or other environmental management	2. Where contracting entities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, they shall refer to the 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 or	2. Where contracting entities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, they shall refer to the 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 or

⁹⁸ OJ L 342, 22.12.2009, p. 1.

other environmental management standards based on the relevant European or international standards by accredited bodies.	standards based on the relevant European or international standards by accredited bodies.	other environmental management standards based on the relevant European or international standards by accredited bodies.	other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States.
Contracting entities shall 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.	Contracting entities shall 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. <i>In order not to discriminate against tenderers who invest time and money for certificates, the burden to provide equivalence with a specific label shall be placed on the tenderer claiming equivalence.</i> [Am. 174]	Contracting entities 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 possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator.	Where an economic operator has demonstrably no access to such certificates, or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting entity shall also accept other evidence of environmental management measures, provided that the economic operator concerned proves that these measures are equivalent to those required under the applicable environmental management system.
3. Upon request, Member States shall make available to other Member States, in accordance with Article 97, 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.	3. Upon request, Member States shall make available to other Member States, in accordance with Article 97, 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.	3. Upon request, Member States shall make available to other Member States [...] any information relating to the documents produced as evidence of compliance with quality and environmental standards referred to in paragraphs 1 and 2 of this Article.	3. Upon request, Member States shall make available to other Member States any information relating to the documents produced as evidence of compliance with quality and environmental standards referred to in paragraphs 1 and 2 of this Article.
Subsection 2 Award of the contract	Subsection 2	Subsection 2 Award of the contract	Subsection 2 Award of the contract

<i>Article 76</i> <i>Contract award criteria</i>	Article 76 Contract award criteria	<i>Article 76</i> <i>Contract award criteria</i>	Article 76 Contract award criteria
1. Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which contracting entities shall base the award of contracts shall be one of the following:	1. Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria crit <i>erion</i> on which contracting entities shall base the award of contracts shall be one of the following the most economically advantageous tender.	1. Without prejudice to national laws, regulations or administrative provisions on the price of certain supplies or the remuneration of certain services, [...] contracting entities shall base the award of contracts on one of the following criteria:	1. Without prejudice to national laws, regulations or administrative provisions on the price of certain supplies or the remuneration of certain services, contracting entities shall base the award of contracts on the most economically advantageous tender.
(a) the most economically advantageous tender;	(a) the most economically advantageous tender;	(a) the most economically advantageous tender;	---
(b) the lowest cost.	(b) the lowest cost. [Am. 175]	(b) the lowest cost.	---
Costs may be assessed, at the choice of the contracting entity, 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 77.	Costs may be assessed, at the choice of the contracting entity, 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 77. [Am. 176]	Cost may be assessed, at the choice of the contracting entity, 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 77. 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.	---
2. The most economically advantageous tender referred to in point (a) of paragraph 1) from the point of view of the contracting entity shall be identified on the basis	2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting entity shall be identified on the basis of criteria linked	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	2. The most economically advantageous tender from the point of view of the contracting entity shall be identified on the basis of the price or cost, using a cost-

<p>of criteria linked to the subject-matter of the contract in question.</p>	<p>to the subject-matter of the contract in question. [Am. 177]</p>	<p>the value of the tender from the point of view of the contracting entity. [...]</p>	<p>effectiveness approach, such as life-cycle costing in accordance with Article 77, and may include the best price-quality ratio, which shall be assessed on the basis of criteria including qualitative, environmental and/or social aspects linked to the subject-matter of the contract in question. Such criteria may comprise, for instance:</p>
<p>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 contract in question, such as:</p>	<p>Those criteria shall may 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 contract in question, qualitative, environmental and social considerations, such as: [Am. 178]</p>	<p>Those criteria shall include in addition to the price or cost, [...] other criteria linked to the subject-matter of the contract in question, for instance quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social characteristics innovative aspects, conditions of commercialisation, after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion, commitments with regard to parts and security of supply. Where the quality of the staff employed can significantly impact the level of performance of the contract, the organisation, qualification and experience of the</p>	<ul style="list-style-type: none"> - quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative-characteristics, trading and its conditions; - organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff employed can significantly impact the level of performance of the contract, - after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion, commitments with regard to parts and security of supply.

		staff assigned to performing the contract in question may be taken into consideration. [...]	
		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.	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.
(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character;	(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, <i>social</i> environmental characteristics and innovative character characteristics, including cost effectiveness of short-distance procurement where relevant, and the costs over the life-cycle in accordance with Article 67; [Am. 179]	[...]	Member States may provide that contracting entities may not use price only or cost only as the sole award criterion or restrict their use to certain categories of contracting entities or certain types of contracts.
(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of 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 entity which must verify that replacements ensure equivalent organisation and quality;	(b) for service contracts and contracts involving the design of works, the organisation, wherever relevant for the performance of the contract, qualification and experience of 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 entity which must verify that replacements ensure equivalent organisation and quality; [Am. 180]	[...]	---

<p>(c) after-sales service and technical assistance, delivery date and delivery period or period of completion, commitments with regard to parts and security of supply;</p>	<p>(c) after-sales service and technical assistance, and delivery conditions such as delivery date and delivery period or period of completion, commitments with regard to parts and security of supply; [Am. 181]</p>	<p>[...]</p>	<p>---</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 those processes and characterise the specific process of production or provision of the requested works, supplies or services.</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 those processes and characterise the specific process of production or provision of the requested works, supplies or services.</p>	<p>3. Award criteria shall be considered to be linked to the subject-matter of the 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 [...]:</p>	<p>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:</p> <p>(a) in the specific process of production, provision or trading of those works, supplies or services, or</p> <p>(b) in a specific process for another stage of their life cycle,</p> <p>even where such factors do not form part of their material substance.</p>
		<p>- in the specific process of production, provision or commercialisation of those works, supplies or services, or</p>	
		<p>- in a specific process for another stage of their life cycle,</p>	

		even where such factors do not form part of their material substance.	
3. Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender referred to in point (a) of paragraph 1 and in paragraph 2.	3. Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender referred to in point (a) of paragraph 1 and in paragraph 2. [Am. 182]	[...]	
4. Award criteria shall not confer an unrestricted freedom of choice on the contracting entity. They shall ensure the possibility of effective competition and shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified. Contracting entities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.	4. Award criteria shall not confer an unrestricted freedom of choice on the contracting entity. They shall ensure the possibility of effective competition and shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified. Contracting entities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.	4. Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting entity. They shall ensure the possibility of effective competition and shall be accompanied by specifications which allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, contracting entities shall verify effectively the accuracy of the information and proof provided by the tenderer .	4. Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting entity. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, contracting entities shall verify effectively the accuracy of the information and proof provided by the tenderers.
5. In the case referred to in point (a) of paragraph 1, the contracting entity shall specify the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.	5. In the case referred to in point (a) of paragraph 1, The contracting entity shall specify the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender. [Am. 183]	5. In the case referred to in point (a) of paragraph 1, the contracting entity shall specify in the procurement documents the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender..	5. The contracting entity shall specify in the procurement documents the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender except where this is identified on the basis of price alone.

Those weightings may be expressed by providing for a range with an appropriate maximum spread.	Those weightings may be expressed by providing for a range with an appropriate maximum spread.	Those weightings may be expressed by providing for a range with an appropriate maximum spread	Those weightings may be expressed by providing for a range with an appropriate maximum spread
Where weighting is not possible for objective reasons, the contracting entity shall indicate the criteria in descending order of importance. The relative weighting or order of importance shall be specified, as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm interest, in the invitation to tender or to negotiate, or in the specifications.	Where weighting is not possible for objective reasons, the contracting entity shall indicate the criteria in descending order of importance. The relative weighting or order of importance shall be specified, as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm interest, in the invitation to tender or to negotiate, or in the specifications	Where weighting is not possible for objective reasons, the contracting entity shall indicate the criteria in descending order of importance. The relative weighting or order of importance shall be specified, as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm interest, in the invitation to tender or to negotiate, or in the specifications	Where weighting is not possible for objective reasons, the contracting entity shall indicate the criteria in descending order of importance. The relative weighting or order of importance shall be specified, as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm interest, in the invitation to tender or to negotiate, or in the specifications.
		6. When the legislation of the Member State concerned provides for it, contracting entities 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 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 call for competition;	
		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 77</i> <i>Life-cycle costing</i>	Article 77 Life-cycle costing	<i>Article 77</i> <i>Life-cycle costing</i>	<i>Article 77</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 parts 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: [Am. 184]	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 [...]	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 entity or other users, such as:	(a) costs, borne by the contracting entity or other users, such as:
		(i) costs relating to acquisition [...],	(i) costs relating to acquisition,
		(ii) costs of use, such as [...] consumption of energy and other resources,	(ii) costs of use, such as consumption of energy and other resources,
		(iii) maintenance costs,	(iii) maintenance costs,
		(iv) end of life costs, such as collection and recycling costs [...]	(iv) end of life costs, such as collection and recycling costs
(b) external environmental costs directly linked to the life cycle,	(b) external environmental costs, such as social or environmental costs,	(b) [...] cost imputed to environmental externalities linked	(b) cost imputed to environmental externalities linked to the product,

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.	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. [Am. 185]	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.	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 entities 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 entities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the methodology used for the calculation of data to be provided by the tenderers and the method which the contracting authority will use to determine the life-cycle costs. The methodology method used must fulfil all of the following conditions:	2. Where contracting entities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting entity will use to determine the life-cycle costs on the basis of these data..	2. Where contracting entities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting entity will use to determine the life-cycle costs on the basis of these data..
		The method used for the assessment of costs imputed to environmental externalities shall fulfil all of the following conditions:	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 on the basis of scientific information or in close consultation with stakeholders and is based on other objectively verifiable and non-discriminatory criteria;	(a) it [...] is based on objectively verifiable and non-discriminatory criteria;	(a) it is based on objectively verifiable and non-discriminatory criteria. In particular where it has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain economic operators;
(b) it has been established for repeated or continuous application;	(b) it has been established for repeated or continuous application;	(b) it has been established for repeated or continuous application;	
(c) it is accessible to all interested	(c) it is accessible to all interested	(c) it is accessible to all	(c) it is accessible to all

parties.	parties;	interested parties	interested parties
	<i>(ca) the data required can be provided with reasonable effort by normally diligent economic operators, including operators from third countries.</i>	(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.	(d) the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the Agreement or other international agreements by which the Union is bound.
Contracting entities 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 entity.	Contracting entities 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 entity. [Am. 186]	[...]	
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 76 (1).	3. Whenever a Any 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 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 76 (1). [Am. 187]	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.	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.

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 98 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.	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 98 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.	A list of such legislative acts , and where necessary the delegated acts supplementing them , is set out in Annex XV. The Commission, shall be empowered to adopt delegated acts in accordance with Article 98 concerning the update of that list, when an update of the list is necessary due to the adoption of new legislation making a common method mandatory or the repeal or modification of existing legislation.	A list of such legislative acts , and where necessary the delegated acts supplementing them , is set out in Annex XV. The Commission, shall be empowered to adopt delegated acts in accordance with Article 98 concerning the update of that list, when an update of the list is necessary due to the adoption of new legislation making a common method mandatory or the repeal or modification of existing legislation.
<i>Article 78</i> <i>Impediments to award</i>	<i>Article 78</i> <i>Impediments to award</i>	<i>deleted</i>	<i>Deleted</i>
Contracting entities shall not conclude the contract with a successful tenderer where one of the following conditions is fulfilled:	Contracting entities shall not conclude the contract with a successful tenderer where one of the following conditions is fulfilled:	deleted	Deleted
(a) the tenderer is not able to provide the certificates and documents required pursuant to Article 74(3);	(a) the tenderer is not able to provide the certificates and documents required pursuant to Article 74(3);	deleted	Deleted
(b) the declaration provided by the tenderer pursuant to Article 37 is false;	(b) the declaration provided by the tenderer pursuant to Article 37 is false;	deleted	Deleted
(c) the declaration provided by the tenderer pursuant to Article 36(3)(b) is false.	(c) the declaration provided by the tenderer pursuant to Article 36(3)(b) is false.	deleted	Deleted
<i>Article 79</i> <i>Abnormally low tenders</i>	<i>Article 79</i> <i>Abnormally low tenders</i>	<i>Article 79</i> <i>Abnormally low tenders</i>	<i>Article 79</i> <i>Abnormally low tenders</i>
1. The contracting entity shall request economic operators to	1. Contracting entities shall require economic operators to explain	1. Where tenders appear to be abnormally low in relation to	1. Contracting entities shall require economic operators to explain the

explain the price or costs charged, where all of the following conditions are fulfilled:	<i>the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.</i> [Am. 188] The contracting entity shall request economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:	the works, supplies or services, the contracting entity may require, or be obliged by a Member State to require economic operators to explain the price or costs proposed in the tender.	price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.
(a) the price or cost charged is more than 50 % lower than the average price or costs of the remaining tenders;	(a) — the price or cost charged is more than 50 % lower than the average price or costs of the remaining tenders;	deleted	Deleted
(b) the price or cost charged is more than 20 % lower than the price or costs of the second lowest tender;	(b) — the price or cost charged is more than 20 % lower than the price or costs of the second lowest tender;	deleted	Deleted
(c) at least five tenders have been submitted.	(c) — at least five tenders have been submitted.	deleted	Deleted
2. Where tenders appear to be abnormally low for other reasons, contracting entities may also request such explanations.	2. — Where tenders appear to be abnormally low for other reasons, contracting entities may also request such explanations. [Am. 189]	deleted	Deleted
3. The explanations referred to in paragraphs 1 and 2 may in particular relate to:	3. The explanations referred to in paragraphs paragraph 1 and 2 may in particular relate to: [Am. 190]	3. The explanations referred to in paragraph 1 [...] may in particular relate to:	3.2. The explanations referred to in paragraph 1 may in particular relate to:
(a) the economics of the manufacturing process, of the services provided and of the construction method;	(a) the economics of the construction method, the manufacturing process or the services provided;	(a) the economics of the manufacturing process, of the services provided and of the construction method;	(a) the economics of the manufacturing process, of the services provided and of the construction method;
(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the goods or	(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply	(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the goods or	(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the goods or

services or for the execution of the work;	of the goods or services;	services or for the execution of the work;	services or for the execution of the work;
(c) the originality of the supplies, services or work proposed by the tenderer;	(c) the originality of the work, supplies or services proposed by the tenderer;	(c) the originality of the supplies, services or work proposed by the tenderer;	(c) the originality of the supplies, services or work proposed by the tenderer;
(d) compliance, 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 XIV or, where not applicable, with other provisions ensuring an equivalent level of protection;	(d) compliance, 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 XIV or, where not applicable, with other provisions ensuring an equivalent level of protection with social, environmental and labour law provisions referred to in Article 29(2); [Am. 191]	(d) compliance, [...] 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 XIV or, where not applicable, with other provisions ensuring an equivalent level of protection;	(d) compliance with obligations referred to in Article 29(2);
	(da) compliance with subcontracting requirements set out in Article 81. [Am. 192]		(da) compliance with obligations referred to in Article 81
(e) the possibility of the tenderer obtaining State aid.	(e) the possibility of the tenderer obtaining State aid.	(e) the possibility of the tenderer obtaining State aid.	(e) the possibility of the tenderer obtaining State aid.
4. The contracting entity shall verify the information provided by consulting the tenderer.	3. The contracting authority shall verify the information provided by consulting the tenderer.	4. The contracting entity shall assess the information provided by consulting the tenderer.	4. The contracting entity shall assess 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.	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.	It may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed , taking into account the elements referred to in paragraph 2.	It may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed , taking into account the elements referred to in paragraph 2.
Contracting entities shall reject the tender, where they have established	Contracting entities shall reject the tender, where they have established that	Contracting entities shall reject the tender, where they have established	Contracting entities shall reject the tender, where they have established

<p>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 XIV.</p>	<p>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 XIV <i>social, environmental and labour law provisions referred to in Article 29(2) or with data protection law. [Am. 193]</i></p>	<p>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 XIV.</p>	<p>that the tender is abnormally low because it does not comply with applicable obligations referred to in Article 29(2).</p>
	<p><i>5. When submitting a tender, tenderers shall provide a declaration on their honour attesting that to their best knowledge and good faith they have not received for the purposes of their tender State aid which would be incompatible with Article 107 TFEU, or which would be incompatible with that Article if the State granting that aid were a Union Member State, and furnish any substantiating documents requested by the contracting entity.</i></p>		<p>- Alignment to ensure coherence with Classic Directive for which no similar amendment was adopted.</p>
<p>5. Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting entity, that the aid in question was compatible with the internal market within the</p>	<p>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</p>	<p>5. Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting entity, that the aid in question was compatible with the internal market</p>	<p>5. Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting entity, that the aid in question was compatible with the internal market within the</p>

meaning of Article 107 of the Treaty. Where the contracting entity rejects a tender in those circumstances, it shall inform the Commission thereof.	Article 107 of the Treaty. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.	within the meaning of Article 107 of the Treaty. Where the contracting entity rejects a tender in those circumstances, it shall inform the Commission thereof.	meaning of Article 107 of the Treaty. Where the contracting entity rejects a tender in those circumstances, it shall inform the Commission thereof.
	<i>If it is established that the selected tenderer has received unlawful State aid, the call for tender procedure shall be cancelled. [Am. 194]</i>		- Alignment to ensure coherence with Classic Directive for which no similar amendment was adopted.
6. Upon request, Member States shall make available to other Member States, in accordance with Article 97, 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 97, any information relating to the evidence and documents produced in relation to details listed in paragraph 3.	6. 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.	6. 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.
		Tenders comprising products originating in third countries and relations with those countries	Section 4 Tenders comprising products originating in third countries and relations with those countries
	<i>Article 79a</i> <i>Tenders comprising products originating in third countries</i>	<i>Article 79a</i> <i>Tenders comprising products originating in third countries</i>	<i>Article 79a</i> <i>Tenders comprising products originating in third countries</i>
	<i>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</i>	<i>1. This Article shall apply to tenders covering products originating in third countries with which the Community has not concluded, whether multilaterally or bilaterally, an agreement</i>	<i>1. This Article shall apply to tenders covering products originating in third countries with which the Community has not concluded, whether multilaterally or bilaterally, an agreement</i>

	<i>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</i>	ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Community or its Member States in respect of third countries.	ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Community or its Member States in respect of third countries.
	<i>2. Contracting entities may ask tenderers to provide information on the origin of the products in their tender and their value. Declarations on the tenderer's honour shall be accepted as a preliminary means of proof. A contracting entity may, at any time in the procedure, ask for part or all of the documentation required.</i>		
	<i>Any tender submitted for the award of a supply contract may be rejected where the value of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁹⁹, exceeds 50 % of the total value of the products constituting the tender.</i>	<i>2. Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹⁰⁰, exceeds 50 % of the total value of the products constituting the tender.</i>	<i>2. Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹⁰¹, exceeds 50 % of the total value of the products constituting the tender.</i>

⁹⁹ OJ L 302, 19.10.1992, p. 1.

¹⁰⁰ OJ L 302, 19.10.1992, p. 1.

¹⁰¹ OJ L 302, 19.10.1992, p. 1.

	<i>For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.</i>	For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.	For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.
	<i>3. Subject to the second subparagraph of this paragraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 76, 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 %.</i>	3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 76, 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 %.	3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 76, 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 %.
	<i>A tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.</i>	However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.	However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.
	<i>4. For the purposes of this Article, those third countries to which the benefit of the provisions of this</i>	4. For the purposes of this Article, those third countries to which the benefit of the provisions	4. For the purposes of this Article, those third countries to which the benefit of the provisions

	<i>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.</i>	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.	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.
	<i>5. The Commission shall submit an annual report to the European Parliament and to 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 practice of all the agreements which have been concluded.</i>	5. The Commission shall submit an annual report to 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 Community undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.	5. The Commission shall submit an annual report to 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 Community undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.
	<i>The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may, in the light of such developments, amend the provisions of this Article.</i> [Am. 195]	The provisions of this Article may be amended in the light of such developments.	The provisions of this Article may be amended in the light of such developments.
	<i>Article 79b Relations with third countries as regards works, supplies and service</i>	<i>Article 79b Relations with third countries as regards works, supplies and service</i>	<i>Article 79b Relations with third countries as regards works, supplies and service</i>

	<i>contracts</i>	<i>contracts</i>	<i>contracts</i>
	1. <i>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.</i>	1. Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of service contracts in third countries.	1. Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of service contracts in third countries.
	2. <i>The Commission shall report to the European Parliament and to 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.</i>	2. The Commission shall report to the Council 3 years after the date provided for in Article 101(1), 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.	2. The Commission shall report to the Council 3 years after the date provided for in Article 101(1), 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.
	3. <i>The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:</i>	3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:	3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:
	(a) <i>does not grant undertakings established in the Union effective access comparable to that granted by the Union to undertakings established in that third country;</i>	(a) does not grant Community undertakings effective access comparable to that granted by the Community to undertakings from that country; or	(a) does not grant Community undertakings effective access comparable to that granted by the Community to undertakings from that country; or
	(b) <i>does not grant undertakings</i>	(b) does not grant Community	(b) does not grant Community

	<i>established in the Union national treatment or the same competitive opportunities as are available to undertakings established in that third country; or</i>	undertakings national treatment or the same competitive opportunities as are available to national undertakings; or	undertakings national treatment or the same competitive opportunities as are available to national undertakings; or
	<i>(c) grants undertakings established in other third countries more favourable treatment than undertakings established in the Union.</i>	(c) grants undertakings from other third countries more favourable treatment than Community undertakings.	(c) grants undertakings from other third countries more favourable treatment than Community undertakings.
	<i>4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by the undertakings established in their territories and which are due to the non-observance of the international social and environmental law provisions listed in Annex XIV when those undertakings have tried to secure the award of contracts in third countries.</i>	4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international labour law provisions listed in Annex XIV when these undertakings have tried to secure the award of contracts in third countries.	4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international labour law provisions listed in Annex XIV when these undertakings have tried to secure the award of contracts in third countries.
	<i>5. In the circumstances referred 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:</i>	5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council adopt an implementing act to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:	5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council adopt an implementing act to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:
	<i>(a) undertakings governed by the law of the third country in question;</i>	(a) undertakings governed by the law of the third country in question;	(a) undertakings governed by the law of the third country in question;
	<i>(b) undertakings affiliated to the undertakings specified in point (a) and</i>	(b) undertakings affiliated to the undertakings specified in point	(b) undertakings affiliated to the undertakings specified in point

	<i>having their registered office in the Union but having no direct and effective link with the economy of a Member State;</i>	(a) and having their registered office in the Community but having no direct and effective link with the economy of a Member State;	(a) and having their registered office in the Community but having no direct and effective link with the economy of a Member State;
	<i>(c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.</i>	(c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.	(c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.
	<i>The Council shall act, by qualified majority, as soon as possible.</i>	The Council shall act, by qualified majority, as soon as possible.	The Council shall act, by qualified majority, as soon as possible.
	<i>The Commission may propose these measures on its own initiative or at the request of a Member State.</i>	The Commission may propose these measures on its own initiative or at the request of a Member State.	The Commission may propose these measures on its own initiative or at the request of a Member State.
	<i>6. This Article shall be without prejudice to the commitments of the Union in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO. [Am. 196]</i>	6. This Article shall be without prejudice to the commitments of the Community in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO.	6. This Article shall be without prejudice to the commitments of the Community in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO.
Chapter IV Contract performance	Chapter IV Contract performance	Chapter IV Contract performance	Chapter IV Contract performance
<i>Article 80</i> <i>Conditions for performance of contracts</i>	Article 80 Conditions for performance of contracts	<i>Article 80</i> <i>Conditions for performance of contracts</i>	<i>Article 80</i> <i>Conditions for performance of contracts</i>
Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for	Contracting entities may lay down special conditions linked to the subject matter and relating to the performance of a contract, provided that they are	Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject-	Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject-

<p>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.</p>	<p>indicated in the call for competition or in the specifications. Those conditions may, in particular, concern include economic, innovation-related, environmental, social and environmental or employment-related 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. [Am. 197]</p>	<p>matter of the contract within the meaning of Article 76(3) and indicated in the call for competition or in the procurement documents. Those conditions may, in particular, concern social and environmental considerations. [...]</p>	<p>matter of the contract within the meaning of Article 76(3) and indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation-related, environmental, social or employment-related considerations.</p>
<p><i>Article 81 Subcontracting</i></p>	<p>Article 81 Subcontracting</p>	<p><i>Article 81 Subcontracting</i></p>	<p>Article 81 Subcontracting</p>
<p>1. In the procurement documents, the contracting entity may ask, or may be required by a Member State to ask, the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.</p>	<p>1. In the procurement documents, the contracting entity may ask, or may be required by a Member State to shall ask, the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors. [Am. 198]</p>	<p>In the procurement documents, the contracting entity may ask, or may be required by a Member State to ask, the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors. Such an indication shall be without prejudice to the question of the principal economic operator's liability.</p>	<p>1. Observance of the obligations referred to in Article 29(2) by subcontractors is ensured through appropriate action by the competent national authorities acting within the scope of their responsibility and remit.</p>
	<p>1a. After the tenderer has been selected, it shall indicate to the contracting entities the name, contact details and legal representatives of the subcontractors and any changes related to that information during the course of the contract. The</p>		<p>2. In the procurement documents, the contracting entity may ask, or may be required by a Member State to ask, the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed</p>

	<i>information shall be provided to the tenderer by each subcontractor in the subcontracting chain through the subcontractor's direct contractor. Each subcontractor shall keep the information up to date during the course of the contract. [Am. 199]</i>		subcontractors.
2. Member States may provide that, at the request of the subcontractor and where the nature of the contract so allows, the contracting entity shall transfer due payments directly to the subcontractor for services, supplies or works provided to the 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.	2. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting entity shall transfer due payments directly to the subcontractor for services, supplies or works provided to the 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.	deleted	3. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting entity shall transfer due payments directly to the subcontractor for services, supplies or works provided to the economic operator to whom the contract has been awarded (the main contractor). Such measures may include appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.
3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.	3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.	deleted	4. Paragraphs 1 to 3 shall be without prejudice to the question of the main contractor's liability.
	<i>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</i>		5. In the case of works contracts and in respect of services to be provided at the facilities under the direct oversight of the contracting entity, after the award of the contract and at the latest when the performance of

	<p><i>obligations referred to in Article 29(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 that subcontractor fails to comply with one of those provisions or is insolvent. When a direct contractor is insolvent, such system should provide that the next solvent direct contractor up the subcontracting chain, including the main contractor, is liable.</i></p>		<p>the contract commences, the contracting entity shall require the main contractor to indicate to the contracting entity the name, contact details and legal representatives of its subcontractors, involved in such works or services, insofar as known at this point in time. The contracting entity shall require the main contractor to notify the contracting entity of any changes to this information during the course of the contract as well as of the required information for any new subcontractors which it subsequently involves in such works or services. Alternatively, Member States may impose the obligation to deliver the required information directly on the main contractor.</p> <p>Where necessary for the purposes point b of paragraph 6 the required information shall be accompanied by the subcontractors' self-declarations as referred to in Article 74(3). The implementing measures pursuant to paragraph 8 may provide that subcontractors which are presented after the award of the contract shall provide the certificates and other supporting documents instead of the</p>
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			<p>self-declaration.</p> <p>The first subparagraph shall not apply to suppliers.</p> <p>Contracting entities may extend or may be required by a Member State to extend the obligations provided for in the first subparagraph for instance:</p> <p>(a) to supply contracts, to services contracts other than those concerning services to be provided at the facilities under the direct oversight of the contracting entity or to suppliers involved in works or services contracts;</p> <p>(b) to subcontractors of the main contractor's subcontractors or further down the subcontracting chain.</p>
	<p>3b. Member States may provide for more stringent liability rules under national law. [Am. 200]</p>		<p>6. With the aim of avoiding breaches of the obligations referred to in Article 29(2), appropriate measures may be taken, such as:</p> <p>(a) Where the national law of a Member State provides for a mechanism of joint liability between subcontractors and the main contractor, the Member State concerned shall ensure that the</p>

			<p>relevant rules are applied in compliance with the conditions set in out in Article 29.2.</p> <p>(b) Contracting authorities may, in accordance with Article 74(3), verify or may be required by Member States to verify whether there are grounds for exclusion of subcontractors pursuant to Article 55 of [Directive ... replacing 2004/18/EC]. In such cases, the contracting authority shall require that the economic operator substitutes a subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion. The contracting authority may require or may be required by a Member State to require that the economic operator substitutes a subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion.</p>
			<p>7. Member States may provide for more stringent liability rules under national law or to go further under national law on direct payments to subcontractors, for instance by providing for direct payments to subcontractors without it being necessary for them to request this.</p>

			8. Member States having chosen to provide for measures pursuant to paragraphs 3, 5 or 6 shall, by law, regulation or administrative provisions and having regard for Union law, specify the implementing conditions for those measures. In so doing, Member States may limit their applicability, for instance in respect of certain types of contracts, certain categories of contracting entities or economic operators or as of certain amounts.
<i>Article 82</i> <i>Modification of contracts during their term</i>	Article 82 Modification of contracts during their term	<i>Article 82</i> <i>Modification of contracts during their term</i>	<i>Article 82</i> <i>Modification of contracts during their term</i>
1. A substantial modification of the provisions of a works, supply or service 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 works, supply or service 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 works, supply or service 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.	1. Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Directive in any of the following cases: (a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses, or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions

			<p>under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract or framework agreement;</p>
<p>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:</p>	<p>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 paragraphs 3 and 4, a modification shall be considered substantial where one of the following conditions is met:</p>	<p>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:</p>	<p>(b) for additional works, services or supplies by the original contractor, irrespective of their value, that were not included in the initial procurement where a change of contractor:</p> <p>(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and (ii) would cause significant inconvenience or substantial duplication of costs for the contracting entity.</p> <p>(c) where the following cumulative conditions are fulfilled:</p> <p>(i) the need for modification has been brought about by circumstances which a diligent contracting entity could not foresee;</p>

			(ii) the modification does not alter the overall nature of the contract;
	<i>(-a) it alters the nature of the contract;</i>		Contracting entities <u>having modified a contract in the cases set out under points b and c</u> shall publish in the Official Journal of the European Union a notice <u>to that effect</u> . Such notices shall contain the information set out in Annex XVI and be published in accordance with Article 65;
	<i>(-aa) it entails replacement of the contractual partner; [Am. 201]</i>		<p><u>(d) Where a new contractor replaces the one to which the contracting entity had initially awarded the contract as a consequence of either:</u></p> <p><u>(i) an unequivocal review clause or option in conformity with point (a).</u></p> <p><u>(ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive; or</u></p>

			<p>(iii) in the event that the contracting entity itself assumes the main contractor's obligations towards its subcontractors where this possibility is provided for under national legislation pursuant to Article 81;</p> <p>(e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph 4.</p>
<p>(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;</p>	<p>(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;</p>	<p>(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;</p>	<p>2. Furthermore, and without any need to verify whether the conditions set out under points a to d of paragraph 4 are met, contracts may equally be modified without a new procurement procedure in accordance with this Directive being necessary where the value of the modification is below both of the following values:</p> <p>(i) the thresholds set out in Article 12, and</p> <p>(ii) 10% of the initial contract value for service and supply contracts and below 15% of the initial contract value for works contracts.</p> <p>However, the modification may not alter the overall nature of the contract or framework agreement.</p>

			Where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications.
(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;	3. For the purpose of the calculation of the price referred to in paragraph 2 of this Article, the updated price shall be the reference value when the contract includes an indexation clause.
(c) the modification extends the scope of the contract considerably to encompass supplies, services or works not initially covered.	(c) the modification extends the scope subject of the contract considerably to encompass supplies, services or works not initially covered. [Am. 202]	(c) the modification extends the scope of the contract or framework agreement considerably [...]	4. A modification of a contract or a framework agreement during its term shall be considered substantial within the meaning of point (e) of paragraph 1, where it renders the contract or the framework agreement materially different in character from the one initially concluded. In any case, without prejudice to paragraphs 1 and 2, a modification shall be considered substantial where one of the following conditions is met:
3. The replacement of the contractual partner shall be considered a substantial modification within the meaning of paragraph 1.	3. The replacement of the contractual partner shall be considered a substantial modification within the meaning of paragraph 1. [Am. 203]	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	(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

		nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract or framework agreement.	have attracted additional participants in the procurement procedure;
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.	However, the first subparagraph Point (-aa) of paragraph 2 shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations or , transfer of capital or assets between undertakings or the taking-on of a contractual partner after his insolvency, or 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 the event of the take-over of the main contractors' signatory status by the contracting entity in accordance with Member States' provisions in line with Article 81. [Am. 204]	[Moved to paragraph 6]	(b) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement; (c) the modification extends the scope of the contract or framework agreement considerably [...]; (d) <u>where a new contractor replaces the one to which the contracting entity had initially awarded the contract in other cases than those provided for under point d) of paragraph 1.</u>
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	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,	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	5. A new procurement procedure in accordance with this Directive shall be required for other modifications of the provisions of a works, supply or service contract or

<p>paragraph 1, where its value does not exceed the thresholds set out in Article 12 and where it is below 5% of the price of the initial 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.</p>	<p>where its value does not exceed the thresholds set out in Article 12 and or where it is below 5% 10 % of the price of the initial 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. [Am. 205]</p>	<p>paragraph 1, where its value does not exceed the thresholds set out in Article 12 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 cumulative value of the successive modifications.</p>	<p>a framework agreement during its term than those provided for under paragraphs 1 and 2.</p>
	<p><i>4a. A modification shall not be considered to be substantial within the meaning of paragraph 1 where the scope of the contract might evolve pursuant to:</i></p>		
	<p><i>(a) significant innovations or technological changes;</i></p>		
	<p><i>(b) a technical difficulty in operation or maintenance requiring the intervention of the initial contractor;</i></p>		
	<p><i>(c) the necessary implementation of emergency and unforeseeable works, services or supplies which cannot be technically or economically separated from the main contract without causing major disruption to the contracting entity. [Am. 206]</i></p>		

<p>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.</p>	<p>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, <i>or in the form of a price revision clause</i>. 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. [Am. 207]</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 entity could not foresee;</p>	
		<p>(b) the modification does not alter the overall nature of the contract.</p>	
		<p>Contracting entities 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 XVI and be published in accordance with Article 65.</p>	
<p>6. By way of derogation from paragraph 1, a substantial modification shall not require a new procurement procedure where the</p>	<p>6. By way of derogation from paragraph <i>paragraph</i> 1, a substantial modification shall not require a new procurement procedure where the</p>	<p>6. Without prejudice to paragraph 3, the substitution of a new contractor for the one to which the contracting authority</p>	

following cumulative conditions are fulfilled:	following cumulative conditions are fulfilled:	had initially awarded the contract shall be considered a substantial modification within the meaning of paragraph 1.	
		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 Directive.	
(a) the need for modification has been brought about by circumstances which a diligent contracting entity could not foresee;	(a) the need for modification has been brought about by circumstances which a diligent contracting entity could not foresee;	---	
(b) the modification does not alter the overall nature of the contract.	(b) the modification does not alter the overall nature of the contract;	---	
(c) any increase in price is not higher than 50 % of the value of the original contract.	(c) any increase in price is not higher than 50 % of the value of the original contract.	---	
Contracting entities shall publish in the Official Journal of the European Union a notice on such	Contracting entities shall publish in the Official Journal of the European Union a notice on such modifications. Such	---	

modifications. Such notices shall contain the information set out in Annex XVI and be published in accordance with Article 65.	notices shall contain the information set out in Annex XVI and be published in accordance with Article 65.		
	6a. For the purpose of the calculation of the price referred to in paragraph 4 of this Article, the updated price shall be the reference value when the contract includes an indexation clause. [Am. 208]		
7. Contracting entities shall not have recourse to modifications of the contract in the following cases:	7. Contracting entities shall not have recourse to invoke the provisions of this Article concerning modifications of the contract in the following cases:	deleted	deleted
(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;	(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;	deleted	deleted
(b) where the modification would aim at compensating risks of price increases that have been hedged by the contractor.	(b) where the modification would aim at compensating risks of price increases that have been hedged by the contractor. [Am. 209]	deleted	deleted
<i>Article 83</i> <i>Termination of contracts</i>	<i>Article 83</i> <i>Termination of contracts</i>	<i>Article 83</i> <i>Termination of contracts</i>	Article 83 Termination of contracts
Member States shall ensure that contracting entities have the possibility, under the conditions determined by the applicable national contract law, to terminate a works, supply or service contract	1. Member States shall ensure that contracting entities have the possibility, under the conditions determined by the applicable national contract law, to terminate a works, supply or service contract during its term, where one of	Member States shall ensure that contracting entities have the possibility, at least under the following circumstances and under the conditions determined by the applicable national [...] law, to	Member States shall ensure that contracting entities have the possibility, at least under the following circumstances and under the conditions determined by the applicable national law, to terminate

during its term, where one of the following conditions is fulfilled:	the following conditions is fulfilled:	terminate a works, supply or service contract during its term, where it turns out that :	a works, supply or service contract during its term, where it turns out that :
(a) the exceptions provided for in Article 21 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 21 (4);	(a) the exceptions provided for in Article 21 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 21 (4), except for non-controlling or legally enforced forms of private participation; [Am. 210]	(a) the exceptions provided for in Article 21 cease to apply following a [...] participation by private undertakings in the legal person awarded the contract pursuant to Article 21 (5);	---
(b) a modification of the contract constitutes a new award within the meaning of Article 82;	(b) a modification of the contract constitutes a new award within the meaning of Article 82;	(b) the contract has been subject to a substantial modification that constitutes a new award within the meaning of Article 82;	(b) the contract has been subject to a substantial modification that constitutes a new award within the meaning of Article 82;
		(b a) the contractor has been, at the time of contract award, in one of the situations referred to in Article 55(1) of Directive 2004/18/EC and should therefore have been excluded from the procurement procedure pursuant to the second subparagraph of Article 74(1) of this Directive;	(ba) the contractor has been, at the time of contract award, in one of the situations referred to in [Article 55(1) of Directive ... replacing Directive 2004/18/EC and should therefore have been excluded from the procurement procedure pursuant to the second subparagraph of Article 74(1) of this Directive;
(c) the Court of Justice of the European Union finds, in a procedure under 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 entity belonging to that Member State has awarded the	(c) the Court of Justice of the European Union finds, in a procedure under 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 entity belonging to that Member State has awarded the contract in question	(c) the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and this Directive that has been declared by the Court of Justice of the European Union [...] in a procedure	(c) the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and this Directive that has been declared by the Court of Justice of the European Union in a procedure

contract in question without complying with its obligations under the Treaties and this Directive.	without complying with its obligations under the Treaties and this Directive.	under Article 258 of the Treaty. [...]	under Article 258 of the Treaty.
	<i>1a. Member States shall ensure that contracting entities 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.</i> [Am. 211]		
TITLE III PARTICULAR PROCUREMENT REGIMES	TITLE III PARTICULAR PROCUREMENT REGIMES	TITLE III PARTICULAR PROCUREMENT REGIMES	TITLE III PARTICULAR PROCUREMENT REGIMES
CHAPTER I Social and other specific services	CHAPTER I Social and other specific services	CHAPTER I Social and other specific services	CHAPTER I Social and other specific services
<i>Article 84</i> <i>Award of contracts for social and other specific services</i>	Article 84 Award of contracts for social and other specific services	<i>Article 84</i> <i>Award of contracts for social and other specific services</i>	<i>Article 84</i> <i>Award of contracts for social and other specific services</i>
Contracts for social and other specific services listed in Annex XVII shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in Article 12(c).	Contracts for social and other specific services listed in Annex XVII shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in Article 12(c).	Contracts for social and other specific services, such as hotel and restaurant services or certain legal, rescue or administrative services , listed in Annex XVII shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in Article 12(c).	Contracts for social and other specific services, listed in Annex XVII shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in Article 12(c).

Article 85 <i>Publication of notices</i>	Article 85 Publication of notices	Article 85 <i>Publication of notices</i>	Article 85 <i>Publication of notices</i>
1. Contracting entities intending to award a contract for the services referred to in Article 84 shall make known their intention by means of a contract notice.	1. Contracting entities intending to award a contract for the services referred to in Article 84 shall make known their intention by means of a contract notice <i>periodic indicative notice, which shall be published continuously and contain the information set out in Annex XVIII part A. The periodic indicative notice shall indicate that the contract will be awarded without further publication and invite interested economic operators to express their interest in writing. [Am. 212]</i>	1. Contracting entities intending to award a contract for the services referred to in Article 84 shall make known their intention by any of the following means:	1. Contracting entities intending to award a contract for the services referred to in Article 84 shall make known their intention by any of the following means:
		(a) by means of a contract notice;	(a) by means of a contract notice; or
		(b) by means of a periodic indicative notice, which shall be published continuously. The periodic indicative notice shall refer specifically to the types of services that will be the subject of the contracts to be awarded. It shall indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing;	(b) by means of a periodic indicative notice, which shall be published continuously. The periodic indicative notice shall refer specifically to the types of services that will be the subject of the contracts to be awarded. It shall indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing; or
		(c) By means of a notice on the existence of a qualification system, which shall be published	(c) By means of a notice on the existence of a qualification system, which shall be published

		continuously.	continuously.
		The first subparagraph shall, however, not apply where a negotiated procedure without prior call for competition could have been used in conformity with the provisions of Article 44 for the award of a service contract.	The first subparagraph shall, however, not apply where a negotiated procedure without prior call for competition could have been used in conformity with the provisions of Article 44 for the award of a service contract.
2. Contracting entities that have awarded a contract for the services referred to in Article 84 shall make known the results by means of contract award notice.	2. Contracting entities that have awarded a public contract for the services referred to in Article 84 shall make known the results by means of a contract award notice.	2. Contracting entities that have awarded a contract for the services referred to in Article 84 shall make known the results by means of contract award notice. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 2 months of the end of each quarter.	2. Contracting entities that have awarded a contract for the services referred to in Article 84 shall make known the results by means of contract award notice. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.
3. The notices referred to in paragraphs 1 and 2 shall contain the information referred to in Annex XVIII in accordance with the standard model notices. The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.	3. The notices notice referred to in paragraphs 1 and paragraph 2 shall contain the information referred to in Annex XVIII part B , in accordance with the standard model notices. The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100. [Am. 213]	3. The notices referred to in paragraphs 1 and 2 shall contain the information referred to in Annex XVIII, respectively in parts A, B, C or D , in accordance with the standard model notices. The Commission shall establish the standard forms by means of implementing acts . Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.	3. The notices referred to in paragraphs 1 and 2 shall contain the information referred to in Annex XVIII, respectively in parts A, B, C or D , in accordance with the standard model notices. The Commission shall establish the standard forms by means of implementing acts . Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.
4. The notices referred to in paragraphs 1 and 2 shall be published in accordance with Article	The notices referred to in paragraphs 1 and 2 shall be published in accordance with Article 65.	4. The notices referred to in this article shall be published in accordance with Article 65.	4. The notices referred to in this article shall be published in accordance with Article 65.

65.			
<p style="text-align: center;"><i>Article 86</i> <i>Principles of awarding contracts</i></p>	<p style="text-align: center;"><i>Article 86</i> <i>Principles of awarding contracts</i></p>	<p style="text-align: center;"><i>Article 86</i> <i>Principles of awarding contracts</i></p>	<p style="text-align: center;"><i>Article 86</i> <i>Principles of awarding contracts</i></p>
<p>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 operators and allowing contracting entities to take into account the specificities of the services in question.</p>	<p>1. Member States shall put in place appropriate <i>simplified</i> procedures <i>in accordance with Article 85(1)</i>, for the award of contracts subject to this Chapter, ensuring full compliance with the principles of transparency and equal treatment of economic operators and allowing contracting entities to take into account the specificities of the services in question. [Am. 214]</p>	<p>1. Member States shall put in place national rules for the award of contracts subject to this Chapter, in order to ensure contracting entities comply with the principles of transparency and equal treatment of economic operators. Member States are free to determine the procedural rules applicable as long as such rules allow contracting entities to take into account the specificities of the services in question.</p>	<p>1. Member States shall put in place national rules for the award of contracts subject to this Chapter, in order to ensure contracting entities comply with the principles of transparency and equal treatment of economic operators. Member States are free to determine the procedural rules applicable as long as such rules allow contracting entities to take into account the specificities of the services in question.</p>
<p>2. Member States shall ensure that contracting entities 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.</p>	<p>2. Member States shall ensure that contracting entities may take into account the need to ensure <i>high</i> quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, <i>including disadvantaged and vulnerable groups</i>, the involvement and empowerment of users and innovation. Member States may also provide <i>shall ensure</i> that the choice of the service provider shall be not be made solely on the basis of the price for the provision of the service, <i>but takes into account quality and sustainability criteria for social services</i>. [Am. 215]</p>	<p>2. Member States shall ensure that contracting entities 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.</p>	<p>2. Member States shall ensure that contracting entities may take into account the need to ensure quality, continuity, accessibility, <i>affordability</i>, availability and comprehensiveness of the services, the specific needs of different categories of users, <i>including disadvantaged and vulnerable groups</i>, the involvement and empowerment of users and innovation. Member States may also provide that the choice of the service provider <i>shall be made on the basis of the most economically advantageous tender, taking into account quality and sustainability</i></p>

			<i>criteria for social services.</i>
			<i>Article 86 (a)</i> <i>Reserved contracts for certain services</i>
			1. Member States may provide that contracting entities which are contracting authorities may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to in Article 84, as covered by CPV reference numbers 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8.
			2. The organisation referred to in paragraph 1 must fulfil the following cumulative conditions: (a) its objective is <u>the pursuit of a public service mission</u> linked to the delivery of the services referred to in Paragraph 1;

			<p>(b) profits are reinvested with a view to achieving the organisation's objective. Where profits are distributed or redistributed, this should be based on participatory considerations;</p> <p>(c) the structures of management or ownership of the organisation performing the contract shall be based on employee ownership or participatory principles, or shall require the active participation of employees, users or stakeholders;</p> <p>(d) the organisation shall not have been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Article within the past three years.</p>
			3. The maximum duration of the contract shall not be longer than three years.
			4. The call for competition shall make reference to this Article.
			5. Notwithstanding the provisions of Article 103, the Commission shall assess the effects of this Article and report to the European Parliament and the Council by three years later than the date provided for in Article 101(1).

| CHAPTER II
RULES GOVERNING DESIGN
CONTESTS |
|--|--|--|--|
| Article 87
General provisions | Article 87
General provisions | --- | |
| 1. The rules for the organisation of design contests shall be in conformity with this Chapter and shall be made available to those interested in participating in the contest. | 1. The rules for the organisation of design contests shall be in conformity with this Chapter and shall be made available to those interested in participating in the contest. | --- | |
| 2.. The admission of participants to design contests shall not be limited: | 2.. The admission of participants to design contests shall not be limited: | --- | |
| (a) by reference to the territory or part of the territory of a Member State; | (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. | (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. | --- | |
| <i>Article 88</i>
<i>Scope</i> | <i>Article 88</i>
<i>Scope</i> | <i>Article 88</i>
<i>Scope</i> | <i>Article 88</i>
<i>Scope</i> |
| 1. This Chapter shall apply to design contests organised as part of a procurement procedure for a service contract, provided that the estimated value of the contract, net of VAT, and including any possible prizes or payments to participants, is equal to or greater than the amount set out in point (a) of Article 12. | 1. This Chapter shall apply to design contests organised as part of a procurement procedure for a service contract, provided that the estimated value of the contract, net of VAT, and including any possible prizes or payments to participants, is equal to or greater than the amount set out in point (a) of Article 12. | 1. This Chapter shall apply to design contests organised as part of a procurement procedure for a service contract, provided that the estimated value of the contract, net of VAT, and including any possible prizes or payments to participants, is equal to or greater than the amount set out in point (a) of Article 12. | 1. This Chapter shall apply to design contests organised as part of a procurement procedure for a service contract, provided that the estimated value of the contract, net of VAT, and including any possible prizes or payments to participants, is equal to or greater than the amount set out in point (a) of Article 12. |
| 2. This Chapter shall apply to all | 2. This Chapter shall apply to all | 2. This Chapter shall apply to | 2. This Chapter shall apply to |

design contests where the total amount of contest prizes and payments to participants, including the estimated value net of VAT of the service contract which might subsequently be concluded under point (k) of Article 44 if the contracting entity does not exclude such an award in the contest notice, is equal to or greater than the amount set out in point (a) of Article 12.	design contests where the total amount of contest prizes and payments to participants, including the estimated value net of VAT of the service contract which might subsequently be concluded under point (k) of Article 44 if the contracting entity does not exclude such an award in the contest notice, is equal to or greater than the amount set out in point (a) of Article 12.	all design contests where the total amount of contest prizes and payments to participants, including the estimated value net of VAT of the service contract which might subsequently be concluded under point (k) of Article 44 if the contracting entity does not exclude such an award in the contest notice, is equal to or greater than the amount set out in point (a) of Article 12.	all design contests where the total amount of contest prizes and payments to participants, including the estimated value net of VAT of the service contract which might subsequently be concluded under point (k) of Article 44 if the contracting entity does not exclude such an award in the contest notice, is equal to or greater than the amount set out in point (a) of Article 12.
<i>Article 89 Notices</i>	<i>Article 89 Notices</i>	<i>Article 89 Notices</i>	<i>Article 89 Notices</i>
1. Contracting entities that intend to organise a design contest shall call for competition by means of a contest notice. Where they intend to award a subsequent service contract pursuant to point (k) of Article 44, this shall be indicated in the design contest notice. Contracting entities that have held a design contest shall make the results known by means of a notice.	1. Contracting entities that intend to organise a design contest shall call for competition by means of a contest notice. Where they intend to award a subsequent service contract pursuant to point (k) of Article 44, this shall be indicated in the design contest notice. Contracting entities that have held a design contest shall make the results known by means of a notice.	1. Contracting entities that intend to organise a design contest shall call for competition by means of a contest notice. Where they intend to award a subsequent service contract pursuant to point (k) of Article 44, this shall be indicated in the design contest notice. Contracting entities that have held a design contest shall make the results known by means of a notice.	1. Contracting entities that intend to organise a design contest shall call for competition by means of a contest notice. Where they intend to award a subsequent service contract pursuant to point (k) of Article 44, this shall be indicated in the design contest notice. Contracting entities that have held a design contest shall make the results known by means of a notice.
2. The call for competition shall include the information set out in Annex XIX and the notice of the results of a design contest shall include the information set out in Annex XX in the format of standard forms. The Commission shall	2. The call for competition shall include the information set out in Annex XIX and the notice of the results of a design contest shall include the information set out in Annex XX in the format of standard forms. The Commission shall establish the standard	2. The call for competition shall include the information set out in Annex XIX and the notice of the results of a design contest shall include the information set out in Annex XX in the format of standard forms by means of implementing	2. The call for competition shall include the information set out in Annex XIX and the notice of the results of a design contest shall include the information set out in Annex XX in the format of standard forms by means of implementing

<p>establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.</p>	<p>forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.</p>	<p>acts. The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.</p>	<p>acts. The Commission shall establish the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100.</p>
<p>The notice of the results of a design contest shall be forwarded to the Commission within two months of the closure of the design contest.</p> <p>Where release of information on the outcome of the contest would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators, such information may be withheld from publication.</p>	<p>The notice of the results of a design contest shall be forwarded to the Commission within two months of the closure of the design contest.</p> <p>Where release of information on the outcome of the contest would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators, such information may be withheld from publication.</p>	<p>The notice of the results of a design contest shall be forwarded to the Commission within two months of the closure of the design contest.</p> <p>Where release of information on the outcome of the contest would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators, such information may be withheld from publication.</p>	<p>The notice of the results of a design contest shall be forwarded to the Commission within 30 days of the closure of the design contest.</p> <p>Where release of information on the outcome of the contest would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators, such information may be withheld from publication.</p>
<p>3. Paragraphs (2) to (6) of Article 65 shall also apply to notices relating to design contests.</p>	<p>3. Paragraphs (2) to (6) of Article 65 shall also apply to notices relating to design contests.</p>	<p>3. Paragraphs (2) to (6) of Article 65 shall also apply to notices relating to design contests.</p>	<p>3. Paragraphs (2) to (6) of Article 65 shall also apply to notices relating to design contests.</p>
<p><i>Article 90</i> <i>Rules on the organisation of design contests, the selection of participants and the jury</i></p>	<p><i>Article 90</i> <i>Rules on the organisation of design contests, the selection of participants and the jury</i></p>	<p><i>Article 90</i> <i>Rules on the organisation of design contests, the selection of participants and the jury</i></p>	<p><i>Article 90</i> <i>Rules on the organisation of design contests, the selection of participants and the jury</i></p>
<p>1. When organising design contests, contracting entities shall apply</p>	<p>1. When organising design contests, contracting entities shall apply</p>	<p>1. When organising design contests, contracting entities shall</p>	<p>1. When organising design contests, contracting entities shall</p>

procedures which are adapted to this Directive.	procedures which are adapted to this Directive.	apply procedures which are adapted to Title I and this Chapter.	apply procedures which are adapted to Title I and this Chapter.
		1a. The admission of participants to design contests shall not be limited:	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;	(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.	(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, contracting entities shall establish clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.	2. Where design contests are restricted to a limited number of participants, contracting entities shall establish clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.	2. Where design contests are restricted to a limited number of participants, contracting entities shall establish clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.	2. Where design contests are restricted to a limited number of participants, contracting entities shall establish clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.
3. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required of participants in a contest, at least a third of the jury members shall have the same qualification or an equivalent qualification.	3. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required of participants in a contest, at least a third of the jury members shall have the same qualification or an equivalent qualification.	3. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required of participants in a contest, at least a third of the jury members shall have the same qualification or an equivalent qualification.	3. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required of participants in a contest, at least a third of the jury members shall have the same qualification or an equivalent qualification.
<i>Article 91</i> <i>Decisions of the jury</i>			

		<i>Directive 2004/17/EC: Articles 66</i>	
1. The jury shall be autonomous in its decisions or opinions.	1. The jury shall be autonomous in its decisions or opinions.	1. The jury shall be autonomous in its decisions or opinions.	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.	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.	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.	2. The jury shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.
3. The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.	3. The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.	3. The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.	3. The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.
4. Anonymity shall be observed until the jury has reached its opinion or decision.	4. Anonymity shall be observed until the jury has reached its opinion or decision.	4. Anonymity shall be observed until the jury has reached its opinion or decision.	4. Anonymity shall be observed until the jury has reached its opinion or decision.
5. Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspects of the projects.	5. Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspects of the projects.	5. Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspects of the projects.	5. Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspects of the projects.
6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.	6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.	6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.	6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.
TITLE IV GOVERNANCE	TITLE IV GOVERNANCE	TITLE IV GOVERNANCE	TITLE IV GOVERNANCE
Article 92 Enforcement	Article 92 <i>Implementation and enforcement by competent authorities and structures</i> [Am. 216]	Article 92 Enforcement Article 72 Directive 2004/17/EC	Article 92 Enforcement
In conformity with Council	1. In conformity with Council	1. In order to effectively	1. In order to effectively

<p>Directive 92/13/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 entities.</p>	<p>Directive 92/13/EEC <i>order to effectively ensure correct and efficient implementation</i>, 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 entities <i>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 those tasks.</i> [Am. 217]</p>	<p>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.</p>	<p>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.</p>
	<p><i>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. Such monitoring shall be used to prevent, detect and adequately report possible instances of procurement</i></p>	<p>2. Member States shall ensure that the application of public procurement rules is monitored.</p>	<p>2. Member States shall ensure that the application of public procurement rules is monitored.</p>
	<p><i>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,</i></p>	<p>Where monitoring authorities or structures identify by their own initiative or upon the receipt of information specific violations or systemic problems, they shall be empowered to indicate those problems to national auditing authorities, courts or tribunals or</p>	<p>Where monitoring authorities or structures identify by their own initiative or upon the receipt of information specific violations or systemic problems, they shall be empowered to indicate those problems to national auditing authorities, courts or tribunals or</p>

	<i>national Parliaments or committees thereof. [Am. 218]</i>	other appropriate authorities or structures, such as the ombudsman, national Parliaments or committees thereof.	other appropriate authorities or structures, such as the ombudsman, national Parliaments or committees thereof.
	<i>1b. The results of the monitoring activities pursuant to paragraph 2 shall be made available to the public through appropriate means of information. In particular, Member States shall publish, at least every two years, an overview of the most frequent sources of incorrect application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, possible cases of fraud and other illegal behaviours.</i>	3. The results of the monitoring activities pursuant to paragraph 2 shall be made available to the public through appropriate means of information.	3. The results of the monitoring activities pursuant to paragraph 2 shall be made available to the public through appropriate means of information. These results shall also be made available to the Commission. For instance, they may be integrated in the monitoring reports referred to in the second subparagraph of this paragraph.
	<i>Member States shall transmit to the Commission every two years, 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.</i>	Member States shall transmit to the Commission every three years, a monitoring report covering, where applicable, information on the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules.	Member States shall transmit to the Commission every three years, a monitoring report covering, where applicable, information on the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, on the level of SME participation in public procurement and about prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities.

	<i>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. [Am. 219]</i>	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.	
		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.	The Commission may, at most every three years, request Member States to provide information on the practical implementation of national strategic procurement policies.
			For the purposes of this paragraph, SME shall be understood as defined in Commission Recommendation 2003/361/EC.
		For the purposes of this paragraph, SME shall be understood as defined in Commission Recommendation 2003/361/EC¹⁰².	On the basis of the data received, the Commission shall regularly issue a report on the implementation and best practices of national procurement policies in the internal market.

¹⁰² 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><i>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 entities and economic operators, in particular SMEs, in correctly applying the Union public procurement rules. [Am. 220]</i></p>	<p>4. 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.</p>	<p>4. Member States shall ensure that: - information and guidance on the interpretation and application of the Union public procurement law is available free of charge to assist contracting authorities and economic operators, in particular SMEs, in correctly applying the Union public procurement rules. and - that support is available to contracting authorities with regard to planning and carrying out procurement procedures.</p>
	<p><i>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. [Am. 221]</i></p>	<p>5. Member States shall, without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, designate a point of reference for cooperation with the Commission as regards the application of public procurement legislation.</p>	<p>5. Member States shall, without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, designate a point of reference for cooperation with the Commission as regards the application of public procurement legislation.</p>
	<p><i>1e. Contracting entities shall, at least for the duration of the contract, keep copies of all concluded contracts</i></p>	<p>6. Contracting authorities shall, at least for the duration of the contract, keep copies of all</p>	<p>6. Contracting authorities shall, at least for the duration of the contract, keep copies of all</p>

	<i>with a value equal to or greater than:</i>	concluded contracts with a value equal to or greater than:	concluded contracts with a value equal to or greater than:
	<i>(a) 1 000 000 EUR in the case of supply contracts or service contracts;</i>	(a) 1 000 000 EUR in the case of supply contracts or service contracts;	(a) 1 000 000 EUR in the case of supply contracts or service contracts;
	<i>(b) 10 000 000 EUR in the case of works contracts. [Am. 222]</i>	(b) 10 000 000 EUR in the case of works contracts.	(b) 10 000 000 EUR in the case of works contracts.
		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.	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.
Article 93 Public oversight	Article 93 Public oversight	Deleted	Deleted
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. All contracting entities shall be subject to such oversight.	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. All contracting entities shall be subject to such oversight.	deleted	Deleted
2. The competent authorities involved in the implementation activities shall be organised in such a manner that conflicts of interests	2. The competent authorities involved in the implementation activities shall be organised in such a manner that conflicts of interests are avoided. The	Deleted	Deleted

<p>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>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 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>(a) an indication of the success rate of small and medium-sized enterprises (SMEs) in 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>	Deleted	Deleted
<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>(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>	deleted	Deleted
<p>(c) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those</p>	<p>(c) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those affecting</p>	Deleted	Deleted

affecting projects cofinanced by the budget of the Union.	projects cofinanced by the budget of the Union.		
3. The oversight body shall be responsible for the following tasks:	3. The oversight body shall be responsible for the following tasks:	Deleted	Deleted
(a) monitoring the application of public procurement rules and the related practice by contracting entities and in particular by central purchasing bodies;	(a) monitoring the application of public procurement rules and the related practice by contracting entities and in particular by central purchasing bodies;	Deleted	Deleted
(b) providing legal advice to contracting entities on the interpretation of public procurement rules and principles and on the application of public procurement rules in specific cases;	(b) providing legal advice to contracting entities on the interpretation of public procurement rules and principles and on the application of public procurement rules in specific cases;	Deleted	Deleted
(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;	(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;	deleted	Deleted
(d) establishing and applying comprehensive, actionable 'red flag' indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious	(d) establishing and applying comprehensive, actionable 'red flag' indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious	Deleted	Deleted

irregularities;	irregularities;		
(e) drawing the attention of the national competent institutions, including auditing authorities, to specific violations detected and to systemic problems;	(e) drawing the attention of the national competent institutions, including auditing authorities, to specific violations detected and to systemic problems;	Deleted	Deleted
(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 entities, 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;	(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 entities, 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;	Deleted	Deleted
(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 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.	(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 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.	deleted	deleted

<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 92/13/EEC.</p> <p>Member States shall empower the oversight body to seize the jurisdiction competent according to national law for the review of contracting entities' decisions where it has detected a violation in the course of its monitoring and legal advising activity.</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 92/13/EEC.</p> <p>Member States shall empower the oversight body to seize the jurisdiction competent according to national law for the review of contracting entities' decisions where it has detected a violation in the course of its monitoring and legal advising activity.</p>	<p>Deleted</p>	<p>Deleted</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 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</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 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</p>	<p>deleted</p>	<p>deleted</p>

<p>indirectly funded by the Union.</p> <p>The Commission may in particular refer to the oversight body the treatment of individual cases where the 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 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>funded by the Union.</p> <p>The Commission may in particular refer to the oversight body the treatment of individual cases where the 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 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>		
5. The investigation and	5. The investigation and enforcement	deleted	deleted

enforcement activities carried out by the oversight body to ensure that contracting entities' decisions comply with this Directive and the general principles of the Treaty on the Functioning of the European Union 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, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.	activities carried out by the oversight body to ensure that contracting entities' decisions comply with this Directive and the general principles of the Treaty on the Functioning of the European Union 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, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.		
6. Contracting authorities shall transmit to the national oversight body the full text of all concluded contracts with a value equal to or greater than	6. Contracting authorities shall transmit to the national oversight body the full text of all concluded contracts with a value equal to or greater than	deleted	Deleted
(a) 1 000 000 EUR in the case of supply contracts or service contracts;	(a) 1 000 000 EUR in the case of supply contracts or service contracts;	deleted	Deleted
(b) 10 000 000 EUR in the case of works contracts.	(b) 10 000 000 EUR in the case of works contracts.	deleted	Deleted
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.	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	deleted	deleted

<p>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> <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>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> <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 mentioned in paragraph 2.</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 mentioned in paragraph 2.</p>	<p>deleted</p>	<p>Deleted</p>
<p><i>Article 94</i> <i>Individual reports on procedures for the award of contracts</i></p>	<p><i>Article 94</i> <i>Individual reports on procedures for the award of contracts</i></p>	<p><i>Article 94</i> <i>Individual reports on procedures for the award of contracts</i></p>	<p>Article 94 Individual reports on procedures for the award of contracts</p>
<p>1. Contracting entities shall keep appropriate information on each contract, framework agreement and</p>	<p>1. Contracting entities shall keep appropriate information on each contract, framework agreement and</p>	<p>1. Contracting entities shall keep appropriate information on each contract or framework</p>	<p>1. Contracting entities shall keep appropriate information on each contract or framework</p>

each time a dynamic purchasing system is established. This information shall be sufficient to permit them at a later date to justify decisions taken in connection with:	each time a dynamic purchasing system is established, <i>for all procurement contracts with a value equal to or greater than the thresholds laid down in Article 12</i> . This information shall be sufficient to permit them at a later date to justify decisions taken in connection with: [Am. 224]	agreement covered by this Directive and each time a dynamic purchasing system is established. This information shall be sufficient to permit them at a later date to justify decisions taken in connection with:	agreement covered by this Directive and each time a dynamic purchasing system is established. This information shall be sufficient to permit them at a later date to justify decisions taken in connection with:
(a) the qualification and selection of economic operators and the award of contracts;	(a) the qualification and selection of economic operators and the award of contracts;	(a) the qualification and selection of economic operators and the award of contracts;	(a) the qualification and selection of economic operators and the award of contracts;
(b) the use of negotiated procedures without a call for competition by virtue of Article 44;	(b) the use of negotiated procedures without a call for competition by virtue of Article 44;	(b) the use of negotiated procedures without a call for competition by virtue of Article 44;	(b) the use of negotiated procedures without a call for competition by virtue of Article 44;
(c) the non-application of Chapters II to IV of Title II by virtue of the derogations provided for in Chapters II and III of Title I.	(c) the non-application of Chapters II to IV of Title II by virtue of the derogations provided for in Chapters II and III of Title I.	(c) the non-application of Chapters II to IV of Title II by virtue of the derogations provided for in Chapters II and III of Title I	(c) the non-application of Chapters II to IV of Title II by virtue of the derogations provided for in Chapters II and III of Title I
		(d) where necessary, the reasons why other means of communication than electronic means for the e-submission have been used.	(d) where necessary, the reasons why other means of communication than electronic means for the e-submission have been used.
		To the extent that the contract award notice drawn up pursuant to Articles 64 or 85(2) contains the information required in this paragraph, contracting entities may refer to that notice.	To the extent that the contract award notice drawn up pursuant to Articles 64 or 85(2) contains the information required in this paragraph, contracting entities may refer to that notice.
Contracting entities shall document the progress of all procurement procedures, whether or not the procedures are conducted by	Contracting entities shall document the progress of all procurement procedures, whether or not the procedures <i>those</i> are conducted by electronic means. To that	2. Contracting entities shall document the progress of all procurement procedures, whether or not the procedures are conducted by	2. Contracting entities shall document the progress of all procurement procedures, whether or not the procedures are conducted by

<p>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.</p>	<p>end, they shall document ensure that they keep sufficient documentation to justify decisions taken at all stages in of the procurement procedure, including all on communications with economic operators and internal deliberations, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract. [Am. 225]</p>	<p>electronic means. To that end, they shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiation if any, selection and award of the contract. The documentation shall be kept for at least three years from the date of award of the contract.</p>	<p>electronic means. To that end, they shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiation if any, selection and award of the contract. The documentation shall be kept for at least three years from the date of award of the contract.</p>
<p>2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission or the national oversight body where they so request it.</p>	<p>2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission or the national oversight body where they so request it.</p>	<p>3. The information or documentation, or the main elements thereof, shall be communicated to the Commission or the national authorities, bodies or structures referred to in Article 92 where they so request.</p>	<p>3. The information or documentation, or the main elements thereof, shall be communicated to the Commission or the national authorities, bodies or structures referred to in Article 92 where they so request.</p>
<p><i>Article 95</i> <i>National reporting</i></p>	<p>Article 95 National reporting</p>	<p><i>Article 95</i> <i>Statistical information</i></p>	<p><i>Article 95</i> <i>Statistical information</i></p>
<p>1. The bodies established or appointed in accordance with Article 93 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.</p>	<p>1. The bodies established or appointed in accordance with Article 93 Member States shall forward to the Commission an implementation and a statistical report on each year, based on a standard form, not later than 31 October of the following year. [Am. 226]</p>	<p>1. The Commission shall review the quality and completeness of data that can be extracted from the notices, referred to in Articles 61 to 65, 85 and 89, which are published in accordance with Annex IX.</p>	<p>1. The Commission shall review the quality and completeness of data that can be extracted from the notices, referred to in Articles 61 to 65, 85 and 89, which are published in accordance with Annex IX.</p>

		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 61(1), 62(1), 63 and 64(1), 85(3) and 89(2), the Commission shall request complementary information from the Member State concerned. Within a reasonable time, the Member State concerned shall supply the missing statistical information requested by the Commission.	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 61(1), 62(1), 63 and 64(1), 85(3) and 89(2), the Commission shall request complementary information from the Member State concerned. Within a reasonable time, the Member State concerned shall supply the missing statistical information requested by the Commission.
2. The report referred to in paragraph 1 shall contain at least the total value, broken down by category of activity to which Articles 5 to 11 refer, of the contracts awarded below the thresholds set out in Article 12 but which would be covered by this Directive if their value exceeded the threshold.	2. The report referred to in paragraph 1 shall contain at least the total value, broken down by category of activity to which Articles 5 to 11 refer, of the contracts awarded below the thresholds set out in Article 12 but which would be covered by this Directive if their value exceeded the threshold.	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 12 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.	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 12 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.
		This report may be integrated in the report referred to in Article 92 paragraph 3.	This report may be integrated in the report referred to in Article 92 paragraph 3.

<p>3. Member States shall ensure that this report contains at least the number and value of contracts awarded, broken down by categories of activity to which Articles 5 to 11 refer and any other information required to verify the proper application of the Agreement. This shall include the number and value of contracts awarded pursuant to a negotiated procedure without a call for competition, broken down according to the circumstances referred to in Article 44 and by categories of activity to which Articles 5 to 11 refer. It shall also specify the Member State or third country of the successful contractor.</p>	<p>3. <i>For all contracts above the thresholds laid down in Article 12,</i> Member States shall ensure that this report contains at least the number and value of contracts awarded, broken down by categories of activity to which Articles 5 to 11 refer and any other information required to verify the proper application of the <i>WTO Government Procurement</i> Agreement. This shall include the number and value of contracts awarded pursuant to a negotiated procedure without a call for competition, broken down according to the circumstances referred to in Article 44 and by categories of activity to which Articles 5 to 11 refer. It shall also specify the Member State or third country of the successful contractor. [Am. 227]</p>	<p>deleted</p>	
<p>4. The yearly report shall furthermore, for each of the activities to which Articles 5 to 11 refers, contain a list of contracting entities exercising the activity concerned, indicating for each entity the unique identification number where such number is provided for in national legislation.</p> <p>The Commission may periodically publish the list of those contracting entities for information in the</p>	<p>4. The yearly report shall furthermore, for each of the activities to which Articles 5 to 11 refers, contain a list of contracting entities exercising the activity concerned, indicating for each entity the unique identification number where such number is provided for in national legislation.</p> <p>The Commission may periodically publish the list of those contracting</p>	<p>deleted</p>	

Official Journal of the European Union.	entities for information in the Official Journal of the European Union.		
5. The Commission shall establish the standard form for the drawing-up of 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 100.	5. The Commission shall establish the standard form for the drawing-up of 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 100. [Am. 228]	deleted	
6. The acts referred to under paragraph 5 shall ensure that:	6. The acts referred to under paragraph 5 shall ensure that:	deleted	
(a) in the interests of administrative simplification, the statistical data may be collected on the basis of sampling, provided that its representativeness is not jeopardised;	(a) in the interests of administrative simplification, the statistical data may be collected on the basis of sampling, provided that its representativeness is not jeopardised;	deleted	
(b) the confidential nature of the information provided is respected.	(b) the confidential nature of the information provided is respected.	deleted	
<i>Article 96</i> <i>Assistance to contracting entities and businesses</i>	<i>Article 96</i> Assistance to contracting entities and businesses [Am. 229]	<i>deleted</i>	
1. Member States shall make available technical support structures in order to provide legal and economic advice, guidance and assistance to contracting entities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting entity can obtain	1. Member States shall make available technical support structures in order to provide legal and economic advice information , guidance and assistance to contracting entities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting entity can obtain competent technical assistance	deleted	

competent assistance and advice on individual questions.	and advice <i>information</i> on individual questions, <i>in particular in relation to Articles 70, 71, 74 and 81.</i> [Am. 230]		
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.	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. [Am. 231]	deleted	Deleted
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 cover administrative requirements in the Member State concerned, as well as possible obligations related to electronic procurement.	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 cover administrative requirements in the Member State concerned, as well as possible obligations related to electronic procurement. [Am. 232]	deleted	Deleted
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	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		deleted

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.	provided and which will be applicable to the works carried out on site or to the services provided during the performance of the contract. [Am. 233]		
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 case due coordination between those bodies and structures.	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 case due coordination between those bodies and structures. [Am. 234]	deleted	Deleted
<i>Article 97</i> <i>Administrative cooperation</i>	<i>Article 97</i> <i>Administrative cooperation</i>	<i>Article 97</i> <i>Administrative cooperation</i>	<i>Article 97</i> <i>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 56, 75 and 79. 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 71, 72, 56, 75 and 79. They shall ensure the confidentiality of the information which they exchange. [Am. 235]	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 56, 75 and 79. 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 56, 75 and 79. 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	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	2. The competent authorities of all Member States concerned shall exchange information in compliance with personal data protection legislation provided for in Directives	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 ¹⁰³ and 2002/58/EC of the European Parliament and of the Council ¹⁰⁴ .	the European Parliament and of the Council and 2002/58/EC of the European Parliament and of the Council.	95/46/EC of the European Parliament and of the Council and 2002/58/EC of the European Parliament and of the Council.	95/46/EC of the European Parliament and of the Council and 2002/58/EC of the European Parliament and of the Council.
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.	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. [Am. 236]	deleted	Deleted
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 ¹⁰⁵ [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]. Member States shall supply information requested by other	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 [proposal for a Regulation of the European Parliament Parliament and Council on the administrative cooperation through the Internal Market Information System ('the IMI Regulation') COM(2011)0522]. Member States shall supply information requested by other Member States within the shortest	---	<u>3. To test the suitability of using the Internal Market Information System (IMI) established by Regulation (EU) No. 1024/2012 of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System for the purpose of exchanging information covered by the Directive, a pilot project shall be launched at the latest 12 months after its entry into force.</u>

¹⁰³ OJ L 281, 23.11.1995, p. 31.

¹⁰⁴ OJ L 201, 31.7.2002, p. 37.

¹⁰⁵ OJ L [...]

Member States within the shortest possible period of time.	possible period of time.		
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	TITLE V DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS
<i>Article 98</i> <i>Exercise of the delegation</i>	<i>Article 98</i> <i>Exercise of the delegation</i>	<i>Article 98</i> <i>Exercise of the delegation</i>	<i>Article 98</i> <i>Exercise of the delegation</i>
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	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 4, 35, 33, 38, 25, 65, 70, 77, 85 and 95 shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of this Directive].	2. The delegation of power referred to in Articles 4, 35, 33 , 38, 25, 65, 70, 77, 85 and 95 shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of this Directive]. [Am. 237]	2. The delegation of power referred to in Articles 4, 8, 14 , 25, 33, 35, 38, 70 and 77 [...] shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of this Directive].	2. The delegation of power referred to in Articles 4, 8, 14 , 25, 33, 35, 38, 70 and 77 shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of this Directive].
3. The delegation of power referred to in Articles 4, 35, 33, 38, 25, 65, 70, 77, 85 and 95 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 Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	3. The delegation of power referred to in Articles 4, 35, 33 , 38, 25, 65, 70, 77, 85 and 95 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 Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force. [Am. 238]	3. The delegation of power referred to in Articles 4, 8, 14 , 25, 33 , 35, 38, 70 and 77 [...] 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 Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts	3. The delegation of power referred to in Articles 4, 8, 14 , 25, 33 , 35, 38, 70 and 77 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 Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

		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.	4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 98 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 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 2 months at the initiative of the European Parliament or the Council.	5. A delegated act adopted pursuant to Article 98 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 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 2 months at the initiative of the European Parliament or the Council.	5. A delegated act adopted pursuant to Article 98 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 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 2 months at the initiative of the European Parliament or the Council.	5. A delegated act adopted pursuant to Article 98 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 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 2 months at the initiative of the European Parliament or the Council.
<i>Article 99</i> <i>Urgency procedure</i>	<i>Article 99</i> <i>Urgency procedure</i>	<i>Article 99</i> <i>Urgency procedure</i>	<i>Article 99</i> <i>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.	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.	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.	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	2. Either the European Parliament or the Council may object to a delegated	2. Either the European Parliament or the Council may	2. Either the European Parliament or the Council may object

delegated act in accordance with the procedure referred to in Article 98(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.	act in accordance with the procedure referred to in Article 98(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.	object to a delegated act in accordance with the procedure referred to in Article 98(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.	to a delegated act in accordance with the procedure referred to in Article 98(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 100 Committee procedure</i>	<i>Article 100 Committee procedure</i>	<i>Article 100 Committee procedure</i>	<i>Article 100 Committee procedure</i>
1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306/EEC ¹⁰⁶ . That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306/EEC ¹⁰⁷ . That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	1. The Commission shall be assisted by the Advisory Committee for Public Procurement established by Council Decision 71/306/EEC ¹⁰⁸ . That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	1. The Commission shall be assisted by the Advisory Committee for Public Procurement established by Council Decision 71/306/EEC ¹⁰⁹ . 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.	2. Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.	2. Where reference is made to this paragraph , Article 4 of Regulation (EU) No 182/2011 shall apply.	2. Where reference is made to this paragraph , Article 4 of Regulation (EU) No 182/2011 shall apply.
		3. Where reference is made to this paragraph , Article 5 of Regulation (EU) No 182/2011 shall apply.	3. Where reference is made to this paragraph , Article 5 of Regulation (EU) No 182/2011 shall apply.
<i>Article 101 Transposition</i>	<i>Article 101 Transposition</i>	<i>Article 101 Transposition and transitional</i>	<i>Article 101 Transposition and transitional</i>

¹⁰⁶ OJ L 185, 16.8.1971, p. 15

¹⁰⁷ OJ L 185, 16.8.1971, p. 15

¹⁰⁸ OJ L 185, 16.8.1971, p. 15

¹⁰⁹ OJ L 185, 16.8.1971, p. 15

		<i>provisions</i>	provisions
<p>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.</p> <p>When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	<p>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.</p> <p>When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	<p>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 104. They shall forthwith communicate to the Commission the text of those provisions.</p>	<p>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 104. They shall forthwith communicate to the Commission the text of those provisions.</p>
.		<p>2. Notwithstanding paragraph 1, Member States may postpone the application of Article 33(1) until 54 months after the entry into force of this Directive , except where use of electronic means is mandatory pursuant to Articles 46, 47, 48, Articles 49(4) or 65(2) or Article 67.</p>	<p>2. Notwithstanding paragraph 1, Member States may postpone the application of Article 33(1) until 54 months after the entry into force of this Directive, except where use of electronic means is mandatory pursuant to Articles 46, 47, 48, Articles 49(4) or 65(2) or Article 67.</p>
		<p>Notwithstanding paragraph 1, the application of Article 33(1) for central purchasing bodies pursuant to Article 49(4) may be postponed by Member States until 36 months after the entry into</p>	<p>Notwithstanding paragraph 1, the application of Article 33(1) for central purchasing bodies pursuant to Article 49(4) may be postponed by Member States until 36 months after the entry into</p>

		force of this Directive.	force of this Directive.
		Where a Member State chooses to postpone the application of Article 33(1), that Member State shall provide that contracting authorities may choose between the following means of communication for all communication and information exchange:	Where a Member State chooses to postpone the application of Article 33(1), that Member State shall provide that contracting entities may choose between the following means of communication for all communication and information exchange:
		(a) electronic means in accordance with Article 33;	(a) electronic means in accordance with Article 33;
		(b) post;	(b) post;
		(c) fax;	(c) fax;
		(d) a combination of those means.	(d) a combination of those means.
		3. When Member States adopt the measures referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	3. When Member States adopt the measures referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
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	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.	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.	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.
<i>Article 102 Repeal</i>	<i>Article 102 Repeal</i>	<i>Article 102 Repeal</i>	<i>Article 102 Repeal</i>

Directive 2004/17/EC is hereby repealed with effect from 30 June 2014.	Directive 2004/17/EC is hereby repealed with effect from 30 June 2014.	Directive 2004/17/EC is hereby repealed with effect from 24 months following the entry into force pursuant to Article 104.	Directive 2004/17/EC is hereby repealed with effect from 24 months following the entry into force pursuant to Article 104.
References to the repealed Directive shall be construed as being made to this Directive and shall be read in accordance with the correlation table in Annex XXI.	References to the repealed Directive shall be construed as being made to this Directive and shall be read in accordance with the correlation table in Annex XXI.	References to the repealed Directive shall be construed as being made to this Directive and shall be read in accordance with the correlation table in Annex XXI.	References to the repealed Directive shall be construed as being made to this Directive and shall be read in accordance with the correlation table in Annex XXI.
<i>Article 103 Review</i>	<i>Article 103 Review</i>	<i>Article 103 Review</i>	<i>Article 103 Review</i>
The Commission shall review the economic effects on the internal market resulting from the application of the thresholds set in Article 12 and report thereon to the European Parliament and the Council by 30 June 2017.	The Commission shall review the economic effects on the internal market resulting from the application of the thresholds set in Article 12 and report thereon to the European Parliament and the Council by 30 June 2017.	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 12 and report thereon to the European Parliament and the Council by 3 years later than the date provided for in Article 101(1).	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 12 and report thereon to the European Parliament and the Council by 3 years later than the date provided for in Article 101(1).
In the event of any change to the threshold amounts applicable under the Agreement, the report shall, if appropriate, be followed by a legislative proposal amending the thresholds set out in this Directive.	In the event of any change to the threshold amounts applicable under the Agreement, the report shall, if appropriate, be followed by a legislative proposal amending the thresholds set out in this Directive.	In the event of any change to the threshold amounts applicable under the Agreement, the report shall, if appropriate, be followed by a legislative proposal amending the thresholds set out in this Directive.	The Commission shall, where possible and appropriate, consider suggesting an increase of the threshold amounts applicable under the Agreement during the next round of negotiations. In the event of any change to the threshold amounts applicable under the Agreement, the report shall, if appropriate, be followed by a

			legislative proposal amending the thresholds set out in this Directive.
<i>Article 104</i> <i>Entry into force</i>			
This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
<i>Article 105</i> <i>Addressees</i>	<i>Article 105</i> <i>Addressees</i>	<i>Article 105</i> <i>Addressees</i>	<i>Article 105</i> <i>Addressees</i>
This Directive is addressed to the Member States. Done at Brussels, For the European Parliament The President The President	This Directive is addressed to the Member States. Done at Brussels, For the European Parliament The President The President	This Directive is addressed to the Member States. Done at Brussels, For the European Parliament The President The President	This Directive is addressed to the Member States. Done at Brussels, For the European Parliament The President The President

COMMISSION PROPOSAL	EP IMCO AMENDMENTS ¹¹⁰	COUNCIL GENERAL APPROACH ¹¹¹	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
	<i>Annex I</i>		
Remains identical to the text in initial Commission proposal both in the position of the EP and of Council.	Remains identical to the text in initial Commission proposal both in the position of the EP and of Council.	Remains identical to the text in initial Commission proposal both in the position of the EP and of Council.	Remains identical to the text in initial Commission proposal both in the position of the EP and of Council.

¹¹⁰ Based on final report adopted in IMCO on 24 January 2013 (A7-0034/2013)..

¹¹¹ Based on document 18011/12

LIST OF UNION LEGISLATION REFERRED TO IN ARTICLE 4(2)	Annex II as proposal	LIST OF UNION LEGISLATION REFERRED TO IN ARTICLE 4(3)	LIST OF UNION LEGISLATION REFERRED TO IN ARTICLE 4(3)
<p>Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute "special or exclusive rights" within the meaning of this Directive. The following lists procedures, ensuring adequate prior transparency, for granting authorisations on the basis of other legislative acts of the European Union which do not constitute "special or exclusive rights" within the meaning of this Directive:</p> <p>II. (a) granting authorisation to operate natural gas installations in accordance with the procedures laid down in Article 4 of Directive 98/30/EC;</p> <p>III. (b) authorisation or an invitation to tender for the construction of new electricity production installations in accordance with Directive 96/92/EC;</p> <p>IV. (c) the granting in accordance with the procedures laid down in Article 9 of Directive</p>	<p>as proposal</p>	<p>Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute "special or exclusive rights" within the meaning of this Directive. The following lists procedures, ensuring adequate prior transparency, for granting authorisations on the basis of other legislative acts of the European Union which do not constitute "special or exclusive rights" within the meaning of Article 4 of this Directive:</p> <p>VI. (a) granting authorisation to operate natural gas installations in accordance with the procedures laid down in Article 4 of Directive 2009/73/EC;</p> <p>VII. (b) authorisation or an invitation to tender for the construction of new electricity production installations in accordance with Directive 2009/72/EC;</p> <p>VIII. (c) the granting in</p>	<p>Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute "special or exclusive rights" within the meaning of this Directive. The following lists procedures, ensuring adequate prior transparency, for granting authorisations on the basis of other legislative acts of the European Union which do not constitute "special or exclusive rights" within the meaning of Article 4 of this Directive:</p> <p>X. (a) granting authorisation to operate natural gas installations in accordance with the procedures laid down in Article 4 of Directive 2009/73/EC;</p> <p>XI. (b) authorisation or an invitation to tender for the construction of new electricity production installations in accordance with Directive 2009/72/EC;</p> <p>XII. (c) the granting in</p>

<p>97/67/EC of authorisations in relation to a postal service which is not or shall not be reserved;</p> <p>V. (d) a procedure for granting an authorisation to carry on an activity involving the exploitation of hydrocarbons in accordance with Directive 94/22/EC;</p> <p>(e) public service contracts within the meaning of Regulation (EC) No 1370/2007 which have been awarded on the basis of a competitive tendering procedure in accordance with its Article 5(3).</p>	<p><i>(ea) the procedures to allocate railway infrastructure capacity, railway licences or safety certifications in accordance with the Directives 95/18/EC, 2001/14/EC and 2004/49/EC</i></p>	<p>accordance with the procedures laid down in Article 9 of Directive 97/67/EC of authorisations in relation to a postal service which is not or shall not be reserved;</p> <p>IX. (d) a procedure for granting an authorisation to carry on an activity involving the exploitation of hydrocarbons in accordance with Directive 94/22/EC;</p> <p>(e) public service contracts within the meaning of Regulation (EC) No 1370/2007 for the provision of public passenger transport services by bus, tramway, rail or metro which have been awarded on the basis of a competitive tendering procedure in accordance with its Article 5(3), provided that its length is in conformity with Article 4(3) or 4(4) of the Regulation.</p>	<p>accordance with the procedures laid down in Article 9 of Directive 97/67/EC of authorisations in relation to a postal service which is not or shall not be reserved;</p> <p>XIII. (d) a procedure for granting an authorisation to carry on an activity involving the exploitation of hydrocarbons in accordance with Directive 94/22/EC;</p> <p>(e) public service contracts within the meaning of Regulation (EC) No 1370/2007 for the provision of public passenger transport services by bus, tramway, rail or metro which have been awarded on the basis of a competitive tendering procedure in accordance with its Article 5(3), provided that its length is in conformity with Article 4(3) or 4(4) of the Regulation.</p>
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	Annex III		
LIST OF UNION LEGISLATION REFERRED TO IN ARTICLE 27(3)	as proposal	LIST OF UNION LEGISLATION REFERRED TO IN ARTICLE 27(3)	LIST OF UNION LEGISLATION REFERRED TO IN ARTICLE 27(3)
A. TRANSPORT OR DISTRIBUTION OF GAS OR HEAT Directive 2009/73/EC	as proposal	A. TRANSPORT OR DISTRIBUTION OF GAS OR HEAT Directive 2009/73/EC	A. TRANSPORT OR DISTRIBUTION OF GAS OR HEAT Directive 2009/73/EC
B. PRODUCTION, TRANSMISSION OR DISTRIBUTION OF ELECTRICITY Directive 2009/72/EC	as proposal	B. PRODUCTION, TRANSMISSION OR DISTRIBUTION OF ELECTRICITY Directive 2009/72/EC	B. PRODUCTION, TRANSMISSION OR DISTRIBUTION OF ELECTRICITY Directive 2009/72/EC
C. PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER None	as proposal	C. PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER None	C. PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER None
D. CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES <u>Rail Freight transport</u>	D. CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES Rail [...] transport	D. CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES Rail Freight transport	D. CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES Rail Freight transport

<p>Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways¹¹²</p> <p><u>Rail passenger transport</u></p> <p>None</p>	<p>Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways¹¹³</p> <p>[...]</p> <p>[...]</p>	<p>Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways¹¹⁴</p> <p>Rail passenger transport</p> <p>None</p>	<p>Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area¹¹⁵</p> <p>International rail passenger transport</p> <p>Directive 2012/34/EU</p> <p>National rail passenger transport</p> <p>None</p>
<p>E. CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEYBUS OR MOTOR BUS SERVICES</p> <p>None</p>	<p>as proposal</p>	<p>E. CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEYBUS OR MOTOR BUS SERVICES</p> <p>None</p>	<p>E. CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEYBUS OR MOTOR BUS SERVICES</p> <p>None</p>
<p>F. CONTRACTING ENTITIES IN THE FIELD OF POSTAL SERVICES</p> <p>Directive 97/67/EC</p>	<p>as proposal</p>	<p>F. CONTRACTING ENTITIES IN THE FIELD OF POSTAL SERVICES</p> <p>Directive 97/67/EC</p>	<p>F. CONTRACTING ENTITIES IN THE FIELD OF POSTAL SERVICES</p> <p>Directive 97/67/EC</p>

¹¹² OJ L 237, 24.8.1991, p. 25
¹¹³ OJ L 237, 24.8.1991, p. 25
¹¹⁴ OJ L 237, 24.8.1991, p. 25
¹¹⁵ OJ L 343, 14.12.2012, p. 32

G. EXTRACTION OF OIL OR GAS Directive 94/22/EC	as proposal	G. EXTRACTION OF OIL OR GAS Directive 94/22/EC	G. EXTRACTION OF OIL OR GAS Directive 94/22/EC
H. EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS None	as proposal	H. EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS None	H. EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS None
I. CONTRACTING ENTITIES IN THE FIELD OF SEAPORT OR INLAND PORT OR OTHER TERMINAL EQUIPMENT None	as proposal	I. CONTRACTING ENTITIES IN THE FIELD OF SEAPORT OR INLAND PORT OR OTHER TERMINAL EQUIPMENT None	I. CONTRACTING ENTITIES IN THE FIELD OF SEAPORT OR INLAND PORT OR OTHER TERMINAL EQUIPMENT None
J. CONTRACTING ENTITIES IN THE FIELD OF AIRPORT INSTALLATIONS None	as proposal	J. CONTRACTING ENTITIES IN THE FIELD OF AIRPORT INSTALLATIONS None	J. CONTRACTING ENTITIES IN THE FIELD OF AIRPORT INSTALLATIONS None

	Annex III A		
			Deadlines for the adoption of the implementing acts referred to in Article 28
			31. The implementing acts referred to in Article 28 shall be adopted within the following periods:
			(a) 90 working days where free access to a given market is presumed on the basis of the first subparagraph of Article 27(3);
			(b) 130 working days in cases other than those referred to in point (a).
			The periods set out in points a and b of this paragraph shall be prolonged by 15 working days where the request is not accompanied by a reasoned and substantiated position, adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the conditions for the possible applicability of Article 27(1) to the activity concerned in accordance with its paragraphs 2 and 3.
			Those deadlines shall commence on the first working day following the date on which the Commission receives the request referred to in

			<p>Article 28(1) or, where the information to be supplied with the request is incomplete, on the working day following the receipt of the complete information. The periods set out in the first subparagraph may be extended by the Commission with the agreement of the Member State or contracting entity which has presented the request.</p>
			<p>2. The Commission may require the Member State or the contracting entity concerned or the independent national authority referred to under paragraph 1 of this Annex or any other competent national authority to provide all necessary information or to supplement or clarify information given within an appropriate time limit. In the event of late or incomplete answers, the periods set out in the first subparagraph of paragraph 1 of this Annex shall be suspended for the period between the expiry of the time limit set in the request for information, and the receipt of the complete and correct information.</p>

SERVICES REFERRED TO IN ARTICLE 84		Annex XVII as proposal		SERVICES REFERRED TO IN ARTICLE 17		SERVICES REFERRED TO IN ARTICLE 17	
CPV Code	Description	CPV Code	Description	CPV Code	Description	CPV Code	Description
79611000-0 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)	Health and social services	79611000-0; 75200000-8; 75231200-6; 75231240-8; from 85000000- 9 to 85323000- 9 (except 85321000-5 and 85322000-2); and 98133100- 5 and 98200000-5	Health, social <i>and</i> <i>related</i> services	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	Health and social and related services	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	Health and social and related services

				98500000-8 [Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services]		[Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services]	
75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80100000-5 to 80660000-8 (except 80533000-9,	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	Administrative educational, healthcare and cultural services	85321000-5 and 85322000-2, 75000000-6 [Administrati on, defence and social security services],	Administrative social, educational, healthcare and cultural services	85321000-5 and 85322000-2, 75000000-6 [Administratio n, defence and social security services], 75121000-0, 75122000-7,	Administrative social, educational, healthcare and cultural services

<p>80533100-0, 80533200-1); from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)</p>		<p>80533000-9, 80533100-0, 80533200-1); from 92000000- 1 to 92700000- 8 (except 92230000-2, 92231000-9, 92232000-6)</p>		<p>75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92700000-8 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services],</p>		<p>75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92700000-8 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival</p>	
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				79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3 [Fashion shows organisation services], 79956000-0 [Fair and exhibition organisation services]		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 ¹	75300000-9	Compulsory social security services ¹¹⁶	75300000-9	Compulsory social security services ¹¹⁷
75310000-2, 75311000-9, 75312000-6, 75313000-3,	Benefit services	75310000-2, 75311000-9, 75312000-6, 75313000-3,	Benefit services	75310000-2, 75311000-9, 75312000-6, 75313000-3,	Benefit services	75310000-2, 75311000-9, 75312000-6, 75313000-3,	Benefit services

¹¹⁶ 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.

¹¹⁷ 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.

75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1		75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1		75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1		75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	
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	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
98120000-0	Services furnished by trade unions	98120000-0	Services furnished by trade unions	deleted	deleted	Deleted	deleted
98131000-0	Religious services	98131000-0	Religious services	98131000-0	Religious services	98131000-0	Religious services
				55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering	Hotel and restaurant services	55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering	Hotel and restaurant services

			<p>services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service]</p> <p>55510000-8 [Canteen services], 55511000-5 [Canteen and other restricted-clientele cafeteria services], 55512000-2 [Canteen management services], 55523100-3 [School-meal services],</p> <p>55520000-1 [Catering services], 55522000-5 [Catering</p>	<p>services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service]</p> <p>55510000-8 [Canteen services], 55511000-5 [Canteen and other restricted-clientele cafeteria services], 55512000-2 [Canteen management services], 55523100-3 [School-meal services],</p> <p>55520000-1 [Catering services], 55522000-5 [Catering</p>	
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				services for transport enterprises], 55523000-2 [Catering services for other enterprises or other institutions], 55524000-9 [School catering services]		services for transport enterprises], 55523000-2 [Catering services for other enterprises or other institutions], 55524000-9 [School catering services]	
		<i>From 80100000-5 to 80660000-8 (except 80533000- 9, 80533100-0, 80533200-1)</i>	<i>Education and vocational education services</i>				
		<i>from 79100000-5 to 79140000-7</i>	<i>Legal services to the extent that they are not excluded under point (b) of the first paragraph of Article 19(b)</i>	79100000-5 to 79140000-7; 75231100-5;	Legal services, to the extent not excluded pursuant to Article 10(ca)	79100000-5 to 79140000-7; 75231100-5;	Legal services, to the extent not excluded pursuant to Article 10(ca) 19(ba)
				75100000-7 to 75120000-3; 75123000-4; 75125000-8	Other administrative services and government	75100000-7 to 75120000-3; 75123000-4; 75125000-8	Other administrative services and government

				to75131000-3	services	to75131000-3	services
				75200000-8 to 75231000-4	Provision of services to the community	75200000-8 to 75231000-4	Provision of services to the community
				75231210-9 to75231230-5; 75240000-0 to75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services	75231210-9 to75231230-5; 75240000-0 to75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services, to the extent not excluded pursuant to Article 19(ga)
				79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm- monitoring services, Guard services, Surveillance services, Tracing system services, Absconder- tracing services,	Investigation and security services	79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm- monitoring services, Guard services, Surveillance services, Tracing system services, Absconder- tracing services,	Investigation and security services

				Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1[Graphology services], 79723000-8 [Waste analysis services]		Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1[Graphology services], 79723000-8 [Waste analysis services]	
				98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]	International services		

				64000000-6 [Postal and telecommunic ations services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services],	Postal Services		
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				64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]			
				50116510-9 [Tyre-remoulding services], 71550000-8 [Blacksmith services]	Miscellaneous services		

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Annex XVIII

<p align="center"><u>INFORMATION TO BE INCLUDED IN NOTICES CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES (AS REFERRED TO IN ARTICLE 85)</u></p>	<p align="center"><u>as proposal</u></p>	<p>INFORMATION TO BE INCLUDED IN NOTICES CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES (AS REFERRED TO IN ARTICLE 85)</p>	<p>INFORMATION TO BE INCLUDED IN NOTICES CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES (AS REFERRED TO IN ARTICLE 85)</p>
<p>Part A Contract notice</p>	<p>as proposal</p>	<p>Part A Contract notice</p>	<p>Part A Contract notice</p>
<p>1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.</p>	<p>as proposal</p>	<p>1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.</p>	<p>1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.</p>
<p>2. Main activity exercised.</p>	<p>as proposal</p>	<p>2. Main activity exercised.</p>	<p>2. Main activity exercised.</p>
<p>3. Description of the services or categories thereof and where applicable, incidental works and supplies to be procured, including an indication of the quantities or values involved, nomenclature reference No(s).</p>	<p>as proposal</p>	<p>3. Description of the services or categories thereof and where applicable, incidental works and supplies to be procured, including an indication of the quantities or values involved, nomenclature reference No(s).</p>	<p>3. Description of the services or categories thereof and where applicable, incidental works and supplies to be procured, including an indication of the quantities or values involved, nomenclature reference No(s).</p>
<p>4. NUTS code for the main place of performance of the services.</p>	<p>as proposal</p>	<p>4. NUTS code for the main place of performance of the services.</p>	<p>4. NUTS code for the main place of performance of the services.</p>

5. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.	as proposal	5. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.	5. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
6. Main conditions to be fulfilled by the economic operators in view of their participation, or, where appropriate, the electronic address where detailed information may be obtained.	as proposal	6. Main conditions to be fulfilled by the economic operators in view of their participation, or, where appropriate, the electronic address where detailed information may be obtained.	6. Main conditions to be fulfilled by the economic operators in view of their participation, or, where appropriate, the electronic address where detailed information may be obtained.
7. Time limit(s) for contacting the contracting entity in view of participation.	as proposal	7. Time limit(s) for contacting the contracting entity in view of participation.	7. Time limit(s) for contacting the contracting entity in view of participation.
8. Any other relevant information.	as proposal	8. Any other relevant information.	8. Any other relevant information.
Part B Contract award notice		Part B Contract award notice	Part B Contract award notice
1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.	as proposal	1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.	1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.	as proposal	2. Main activity exercised.	2. Main activity exercised.

3. At least a summary indication of the nature and quantity of the services and where applicable, incidental works and supplies provided.	as proposal	3. At least a summary indication of the nature and quantity of the services and where applicable, incidental works and supplies provided.	3. At least a summary indication of the nature and quantity of the services and where applicable, incidental works and supplies provided.
4. Reference of publication of the notice in the <i>Official Journal of the European Union</i>	as proposal	4. Reference of publication of the notice in the <i>Official Journal of the European Union</i>	4. Reference of publication of the notice in the <i>Official Journal of the European Union</i>
5. Number of tenders received.	as proposal	5. Number of tenders received.	5. Number of tenders received.
6. Name and address of the chosen economic operator(s).	as proposal	6. Name and address of the chosen economic operator(s).	6. Name and address of the chosen economic operator(s).
7. Any other relevant information.	as proposal	7. Any other relevant information.	7. Any other relevant information.

	Annex XIX		
INFORMATION TO BE INCLUDED IN THE DESIGN CONTEST NOTICE (as referred to in Article 89(1))	as proposal	INFORMATION TO BE INCLUDED IN THE DESIGN CONTEST NOTICE (as referred to in Article 89(1))	INFORMATION TO BE INCLUDED IN THE DESIGN CONTEST NOTICE (as referred to in Article 89(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 entity and, where different, of the service from which additional information may be obtained.	as proposal	1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.	1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.	as proposal	2. Main activity exercised.	2. Main activity exercised.
3. Project description (nomenclature reference No(s)).	as proposal	3. Project description (nomenclature reference No(s)).	3. Project description (nomenclature reference No(s)).
4. Nature of the contest: open or restricted.	as proposal	4. Nature of the contest: open or restricted.	4. Nature of the contest: open or restricted.
5. In the case of open contests: final date for receipt of projects.	as proposal	5. In the case of open contests: final date for receipt of projects.	5. In the case of open contests: final date for receipt of projects.
6. . In the case of restricted contests: (a) the number of participants envisaged, or range; (b) where applicable, names of participants already selected;	as proposal	6. . In the case of restricted contests: (a) the number of participants envisaged, or range; (b) where applicable, names of participants already selected;	6. . In the case of restricted contests: (a) the number of participants envisaged, or range; (b) where applicable, names of participants already selected;

(c) criteria for the selection of participants; (d) final date for receipt of requests to participate.		(c) criteria for the selection of participants; (d) final date for receipt of requests to participate.	(c) criteria for the selection of participants; (d) final date for receipt of requests to participate.
7. Where applicable, indication of whether participation is reserved to a particular profession.	as proposal	7. Where applicable, indication of whether participation is reserved to a particular profession.	7. Where applicable, indication of whether participation is reserved to a particular profession.
8. Criteria to be applied in the evaluation of projects.	as proposal	8. Criteria to be applied in the evaluation of projects.	8. Criteria to be applied in the evaluation of projects.
9. Where applicable, names of the selected members of the jury.	as proposal	9. Where applicable, names of the selected members of the jury.	9. Where applicable, names of the selected members of the jury.
10. Indication of whether the decision of the jury is binding on the authority.	as proposal	10. Indication of whether the decision of the jury is binding on the authority.	10. Indication of whether the decision of the jury is binding on the authority.
11. Where applicable, number and value of prizes.	as proposal	11. Where applicable, number and value of prizes.	11. Where applicable, number and value of prizes.
12. Where applicable, details of payments to all participants.	as proposal	12. Where applicable, details of payments to all participants.	12. Where applicable, details of payments to all participants.
13. Indication of whether the prize-winners are permitted any follow-up contracts.	as proposal	13. Indication of whether the prize-winners are permitted any follow-up contracts.	13. Indication of whether the prize-winners are permitted any follow-up contracts.
14. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures.	as proposal	14. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the	14. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information

Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.		time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.	concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
15. Date of dispatch of the notice.	as proposal	15. Date of dispatch of the notice.	15. Date of dispatch of the notice.
16. Any other relevant information	as proposal	16. Any other relevant information	16. Any other relevant information

Annex XX			
INFORMATION TO BE INCLUDED IN THE RESULTS OF DESIGN CONTEST NOTICES (as referred to in Article 89(1))	as proposal	INFORMATION TO BE INCLUDED IN THE RESULTS OF DESIGN CONTEST NOTICES (as referred to in Article 89(1))	INFORMATION TO BE INCLUDED IN THE RESULTS OF DESIGN CONTEST NOTICES (as referred to in Article 89(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 entity and, where different, of the service from which additional information may be obtained.	as proposal	1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.	1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, email and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.	as proposal	2. Main activity exercised.	2. Main activity exercised.
3. Project description (nomenclature reference No(s)).	as proposal	3. Project description (nomenclature reference No(s)).	3. Project description (nomenclature reference No(s)).
4. Total number of participants.	as proposal	4. Total number of participants.	4. Total number of participants.
5. Number of foreign participants.		5. Number of foreign participants.	5. Number of foreign participants.
6. Winner(s) of the contest.	as proposal	6. Winner(s) of the contest.	6. Winner(s) of the contest.
7. Where applicable, the prize(s).	as proposal	7. Where applicable, the prize(s).	7. Where applicable, the prize(s).
8. Other information.	as proposal	8. Other information.	8. Other information.
9. Reference of the design contest notice.	as proposal	9. Reference of the design contest notice.	9. Reference of the design contest notice.
10. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone	as proposal	10. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address,	10. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the

number, fax number and e-mail address of the service from which this information may be obtained.		telephone number, fax number and e-mail address of the service from which this information may be obtained.	name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
11. Date of dispatch of the notice.	as proposal	11. Date of dispatch of the notice.	11. Date of dispatch of the notice.