

DIRECTIVE 2014/24 / EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of February 26, 2014

on public procurement and repealing Directive 2004/18 / EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee (1),

Having regard to the opinion of the Committee of the Regions (2),

Acting in accordance with the ordinary legislative procedure (3),

Whereas:

(1) The award of public contracts by or on behalf of Member States' authorities must comply with the principles of the Treaty on the Functioning of the European Union (TFEU) and in particular the free movement of goods, freedom of establishment and freedom to provide services, as well as the principles that result from it, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts with a value above a certain threshold, arrangements should be made to coordinate national procurement procedures in order to ensure that these principles are implemented effectively and that public procurement is open to competition.

(2) Public procurement plays a key role in the Europe 2020 strategy, as reflected in the Commission Communication of 3 March 2010 entitled 'Europe 2020 - A strategy for smart, sustainable and inclusive growth' ('Europe 2020 for smart, sustainable and inclusive ") as they are one of the market-based tools necessary to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funding at the same time. To this end, procurement legislation adopted under Directive 2004/17 / EC of the European Parliament and of the Council (4) and Directive 2004/18 / EC of the European Parliament and of the Council (5) should be revised and updated in in order to increase the efficiency of public spending, in particular by facilitating the participation of small and medium-sized enterprises (SMEs) in public procurement and allowing buyers to use it best to support the achievement of shared social objectives. It is also necessary to clarify some concepts and concepts to ensure legal certainty and incorporate some aspects of the case-law of the European Court of Justice in this matter.

(3) The United Nations Convention on the Rights of Persons with Disabilities (6) should be taken into account in the application of this Directive, in particular as regards the choice of means of communication, technical specifications, award criteria and the conditions for the implementation of the Directive a contract.

(4) The growing diversity of forms of public intervention has made it necessary to define more clearly the very concept of procurement. This clarification as such should not, however, extend the scope of this Directive to that of Directive 2004/18 / EC. The Union legislation on public procurement is not intended to cover all forms of disbursement of public funds, but only those addressed to the acquisition of works, supplies or services for consideration by a public contract. It should be specified that such acquisitions of

works, supplies or services should be subject to this Directive if they are made through purchase, financial leasing or other contractual arrangements.

The notion of acquisition should be broadly understood, namely that contracting authorities obtain the benefits of the works, supplies or services in question without necessarily requiring a transfer of ownership. Moreover, simple funding, in particular through subsidies, of an activity which is often linked to the obligation to repay the amounts received if they are not used for the purposes intended is generally not within the scope of the rules governing public contracts. Likewise, situations in which all operators meeting certain conditions are allowed to carry out a specific task without selectivity, such as customer-based systems and good service systems, should not be considered as procurement systems, but simple authorization systems (for example licensing for medicines or medical services).

(5) It should be borne in mind that no provision of this Directive obliges Member States to entrust to third parties or to outsource the provision of services which they wish to provide themselves or to organize with instruments other than public contracts within the meaning of this Directive. Provision of services on the basis of laws, regulations or employment contracts should fall outside the scope of this Directive. In some Member States, this may be the case, for example, for certain public administrative services such as executive and legislative services or the provision of certain services to the community, such as services related to foreign affairs or justice or compulsory social security services.

(6) It should also be recalled that this Directive should not affect the Member States' legislation on social security. It should not even deal with the liberalization of services of general economic interest, reserved to public or private bodies, or the privatization of public entities that provide services.

It should also be borne in mind that Member States are free to organize the provision of compulsory social services or other services, such as postal services, as services of general economic interest or as non-economic services of general interest or as a combination of such services. It should be clarified that non-economic services of general interest should not fall within the scope of this Directive.

(7) Finally, it should be noted that this Directive does not affect the freedom of national, regional and local authorities to define, in accordance with Union law, services of general economic interest, their operational scope and the characteristics of the service to be provided, including any conditions relating to the quality of the service in order to pursue their public interest objectives. Likewise, this Directive should not affect the ability of national, regional and local authorities to provide, execute and finance services of general economic interest, in accordance with Article 14 TFEU and Protocol No 7. 26 on services of general interest annexed to the TFEU and to the Treaty on European Union (TEU). Furthermore, this Directive does not cover the financing of services of general economic interest or subsidies granted by Member States, in particular in the social sector, in accordance with EU competition rules.

(8) A contract should be regarded as a public works contract only if its object specifically concerns the performance of the activities listed in Annex II, although the contract may cover the provision of other services necessary for carrying out the said activities. Public service contracts, particularly in the field of real estate management services, may, in certain circumstances, include work. However, if such works are ancillary to the main object of the contract and therefore constitute only a possible consequence or a complement to the contract, the fact that these works are part of the contract can not justify the qualification of public works contracts for public service contract.

However, given the diversity of public works contracts, contracting authorities should be able to provide for both the separate award and the joint award of contracts for the design and execution of works. This Directive is not intended to require a separate or joint award of contracts.

(9) In order to carry out a work satisfying the requirements specified by a contracting authority, the administration concerned must take measures to define the type of work or at least that it has had a decisive influence on its design. The possibility that the contractor completes the work in whole or in part by means of own funds or assures him of the realization by other means should not change the classification of the contract as a works contract, provided that the direct or indirect obligation is assumed but legally binding, to ensure the realization of the work.

(10) The notion of 'contracting authorities' and in particular of 'bodies governed by public law' has been repeatedly examined in the case law of the Court of Justice of the European Union. To clarify that the scope of this *ratione personae* directive should remain unchanged, it is appropriate to maintain the definitions on which the Court is based and to include some clarifications provided by that case law as a key to the reading of the definitions without the intention to alter the understanding of that concept as elaborated by the case-law. To this end, it should be pointed out that a body which operates under normal market conditions, aims to make a profit and sustains losses resulting from the exercise of its activities should not be regarded as a 'body governed by public law' it is legitimate to assume that it has been set up for the purpose or task of meeting needs of general interest that are of an industrial or commercial nature.

Similarly, case law has also examined the condition relating to the origin of the funding of the body in question, stating, *inter alia*, that 'majority-funded' means more than half and that such funding may include payments from part of users who are imposed, calculated and collected in accordance with public law rules.

(11) In the case of mixed contracts where the various constituent parts of the contract are objectively non-separable, the applicable rules should be determined according to the main object of the contract. It is therefore appropriate to specify how contracting authorities should determine whether the different parts are separable or not. This clarification should be based on the relevant case law of the Court of Justice of the European Union.

Determination should be made on a case by case basis and for this purpose the intentions expressed or supposed by the contracting authority to consider indivisible the various aspects which constitute a mixed contract should not be sufficient but should be confirmed by objective evidence to justify and motivate them, the need to conclude a single contract. A justified need to conclude a single contract could for example be found in the case of the construction of a single building, of which a party must be used directly by the contracting authority concerned and another party must be managed on the basis of a concession, for example, for parking lots destined for the public. It should be pointed out that the need to conclude a single contract may be due to technical and economic reasons.

(12) In the case of mixed contracts that can be separated, contracting authorities are always free to award separate contracts for the separate parts of the mixed contract, in which case the provisions applicable to each separate part should be determined solely on the basis of the characteristics of the contract specific. On the other hand, where the contracting authorities choose to include other elements in the contract, irrespective of the value of the additional elements and the legal regime to which such additional elements would otherwise be subject, the fundamental principle should be that, where a contract is to be awarded under the provisions of this Directive if they won on their own, this Directive shall continue to apply to the entire mixed contract.

(13) However, provision should be made for specific arrangements for mixed procurement relating to defense or security aspects or parts not falling within the scope of the TFEU. In such cases, it may be possible not to apply this Directive, provided that the award of a single contract is justified by objective reasons and that the decision to award a single contract is not adopted for the purpose of excluding the contract from the application of this Directive or of Directive 2009/81 / EC of the European Parliament and

of the Council (7). It should be noted that the contracting authorities should not be allowed to choose whether to apply this Directive to certain mixed contracts instead of Directive 2009/81 / EC.

(14) It should be pointed out that the notion of 'economic operators' should be interpreted broadly in order to include any person or entity which offers on the market the execution of works, the supply of goods or the provision of services, irrespective of the legal form within which it has chosen to operate. Therefore, companies, branches, subsidiaries, partnerships, cooperative societies, limited liability companies, public or private universities and other forms of bodies other than natural persons should be part of the notion of an economic operator, irrespective of whether they are "legal persons" every circumstance.

(15) It should be noted that groupings of economic operators, including those in the form of a temporary association, may take part in tendering procedures without having to assume a specific legal form. To the extent that this is necessary, for example where solid liability is to be provided, such groupings may be required to assume a specific form if the contract has been awarded to such groupings.

It should also be clarified that contracting authorities should be able to explicitly state how clusters of economic operators are required to meet the requirements relating to economic and financial capacity as set out in this Directive or the criteria relating to the technical and professional capacities required of economic operators, participate in their own.

Execution of contracts by groupings of economic operators may make it necessary to define conditions that are not imposed on individual participants. These conditions, which should be justified by objective reasons and should be proportionate, could include, for example, the requirement for such groups to appoint a joint representative or lead partner for the purposes of the procurement procedure or the request for information on their constitution.

(16) Contracting authorities should make use of all the means available to them under national law to prevent distortions arising from conflicts of interest in the procedures for the award of public contracts. These could include procedures for identifying, preventing, and remedying conflicts of interest.

(17) Council Decision 94/800 / EC (8), in particular, approved the public procurement agreement concluded within the framework of the World Trade Organization ('AAP'). The aim of the AAP is to establish a balanced multilateral framework of public procurement rights and obligations to liberalize and expand world trade. For contracts covered by Annexes 1, 2, 4 and 5 and the general notes relating to the European Union of Appendix I to the AAP and other relevant international agreements that the Union is required to comply with, contracting authorities should comply the obligations arising from these agreements through the application of this Directive to economic operators in third countries which are signatories to them.

(18) The AAP applies to contracts that exceed certain thresholds established in the APA and expressed in special drawing rights. The thresholds laid down in this Directive should be aligned to ensure that they correspond to the euro equivalent of the thresholds indicated in the AAP. It is also appropriate to provide for a periodic review of the thresholds expressed in euro in order to adjust them, by means of a purely mathematical operation, to possible variations in the value of the euro in relation to these special drawing rights. In addition to the above-mentioned periodic mathematical adjustments, the next round of negotiations should consider whether to increase the thresholds established in the AAP.

(19) It should be clarified that for the estimate of the value of a contract, all revenues must be taken into account, irrespective of whether they have been obtained by the contracting authority or by a third party. It should also be made clear that, for the purposes of the threshold assessment, similar supplies should be understood as supplies of products intended for identical or similar uses, such as a range of foods

or of various office furniture. Generally, these supplies are likely to be part of the normal range of products of an economic operator that carries out its business in the sector concerned.

(20) In order to estimate the value of a given contract, it is appropriate to specify that relying on a breakdown of the contract should only be allowed if it is justified by objective reasons. For example, it might be reasonable to estimate the value of the contracts at the level of a separate operating unit of the contracting authority, such as schools or kindergartens, provided that the unit in question is independently liable for its tender. It can be assumed in cases where the separate operating unit independently executes procurement procedures and decides on the purchase, has a separate budget line for the contracts concerned, contracts the contract independently and finances it with a financial budget available. Fractionation is not justified in cases where the contracting authority simply organizes a contract in a decentralized manner.

(21) Public contracts awarded by contracting authorities in the water, energy, transport and postal services sectors and covered by these activities are governed by Directive 2014/25 / EU of the European Parliament and of the Council (9). However, contracts awarded by contracting authorities in the context of their maritime, coastal or river transport services are covered by this Directive.

(22) As far as the Member States are concerned, this Directive does not apply to contracts governed by international organizations, on their own behalf and on their own behalf. However, it is appropriate to specify the extent to which this Directive should apply to contracts governed by specific international standards.

(23) The award of public contracts in connection with certain media and audiovisual media services by media service providers should allow for consideration of cultural and social considerations which render the application of procurement rules inappropriate. For these reasons, provision should be made for an exception to public service contracts awarded by the same media service providers as the subject of the purchase, development, production or co-production of programs ready to be disseminated and others preparatory services such as those relating to scripts or the artistic performances necessary for the implementation of the program. It should also be specified that this exclusion should also apply to radio and television services and to on-demand services (non-linear services). However, this exclusion should not apply to the provision of the technical material necessary for the production, co-production and transmission of such programs.

(24) It is worth recalling that arbitration and conciliation services and other similar forms of alternative dispute resolution are normally provided by approved or selected bodies or persons, in a manner that can not be governed by contract award rules. It should be noted that this Directive does not apply to service contracts for the provision of such services, irrespective of their name in national law.

(25) Certain legal services are provided by service providers designated by a court of a Member State, involve the representation of clients in legal proceedings by lawyers, they must be provided by notaries or are connected with the exercise of public authority. Such legal services are usually provided by bodies or persons selected or designated in a manner that can not be governed by procurement rules such as, for example, the designation of public prosecutors in certain Member States. Such legal services should therefore be excluded from the scope of this Directive.

(26) It is appropriate to specify that the concept of financial instruments covered by this Directive is to be understood in the same sense as other internal market legislation and, in view of the recent creation of the European Financial Stability Facility and the European Stability Mechanism, operations carried out with this fund and such mechanism should be excluded from the scope of this Directive. Lastly, it should be clarified that loans, irrespective of whether they are linked to the issue of securities or other financial instruments or other related transactions, should be excluded from the scope of this Directive.

(27) It should be noted that Article 5 (1) of Regulation (EC) Regulation (EC) No 1370/2007 of the European Parliament and of the Council (10) explicitly states that Directives 2004/17 EC and 2004/18 / EC apply to public service contracts for public passenger transport services by bus or tram, Regulation (EC) No. 1370/2007 applies to public passenger transport services by bus and tram. It should also be recalled that this Regulation continues to apply to public service contracts as well as public service concessions for rail or metro passenger transport. In order to clarify the relationship between this Directive and Regulation (EC) No 1370/2007, it should be explicitly provided that this Directive does not apply to public service contracts for the provision of public passenger transport services by rail or by subway, the award of which should remain subject to that regulation. To the extent that Regulation (EC) 1370/2007 leaves national law the power to dissociate itself from the rules laid down by it, Member States should be able to continue to provide in their national law that public service contracts for public passenger transport services by rail or by subway be awarded through an award procedure in accordance with their general rules on public procurement.

(28) This Directive should not apply to certain emergency services if carried out by non-profit organizations and associations, since the particular nature of such organizations would be difficult to preserve if service providers were selected in accordance with the procedures laid down in this Directive . Their exclusion, however, should not be extended beyond what is strictly necessary. It should therefore be explicitly stated that ambulance patient transport services should not be excluded. In this context, it is also necessary to clarify that in the CPV Group 601 "Land Transport Services" does not include ambulance services, which can be found in class 8514. It should therefore be specified that the services identified by the CPV code 85143000-3, consisting exclusively of services of ambulance patients should be subject to special arrangements for social services and other specific services ("lighter"). Consequently, mixed contracts for the provision of ambulance services in general should also be subject to the lighter regime if the value of ambulance patient transport services exceeds the value of other ambulance services.

(29) It should be noted that this Directive only applies to the contracting authorities of the Member States. Consequently, political parties in general, being contracting authorities, are not subject to its provisions. However, in some Member States there are political parties within the concept of bodies governed by public law.

However, certain services (such as the production of propaganda films and the production of video cassettes for propaganda) are so inseparably linked to the political views of the service provider, if provided in an election campaign, that service providers are normally selected in a manner that can not be governed by the rules for the award of contracts.

Lastly, it should be noted that the statutes and the funding of European political parties and European political foundations are subject to rules other than those laid down in this Directive.

(30) In some cases, a contracting authority or an association of contracting authorities may be the sole source of a given service for which the supply is subject to exclusive rights under statutory or regulatory provisions or published administrative provisions compatible with the TFEU. It should be noted that this Directive may not apply to the award of public service contracts to that contracting authority or to an association of contracting authorities.

(31) There is considerable legal uncertainty as to the extent to which contracts concluded between public sector entities should be governed by public procurement rules. The case law of the Court of Justice of the European Union in this respect is interpreted differently by the different Member States and also by the various contracting authorities. It is therefore necessary to specify in which cases contracts concluded in the public sector are not subject to the application of public procurement rules.

Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice of the European Union. The mere fact that both parties to an agreement are themselves public authorities does not in itself preclude the application of procurement rules. However, the application of public procurement rules should not interfere with the freedom of public authorities to carry out public service tasks entrusted to them by using their own resources, including the possibility of cooperating with other public authorities.

It should be ensured that any exempted public-public cooperation does not distort competition against private economic operators insofar as it places a private service provider in a privileged situation with respect to its competitors.

(32) Public contracts awarded to controlled entities should not be subject to the application of the procedures provided for in this Directive where the contracting authority exercises control similar to that of the legal person in question on its own legal person, provided that the controlled legal person it carries out more than 80% of its activities in the performance of tasks entrusted to it by the contracting authority which controls it or by other legal persons controlled by that contracting authority, irrespective of the recipient of the contract.

The exemption should not extend to situations in which there is direct participation of a private economic operator in the capital of a controlled legal person since, in those circumstances, the award of a public contract without a competitive procedure would enable the private economic operator holding a participation in the capital of the controlled legal person has an undue advantage over its competitors. However, in view of the particular characteristics of compulsory public bodies such as organizations responsible for the operation or operation of certain public services, this should not apply in cases where the participation of certain private economic operators in the capital of a controlled legal person is made compulsory by a national legislative provision in accordance with the Treaties, provided that it is a participation which does not involve control or veto power and which does not confer a decisive influence on the decisions of the controlled legal person. It should also be clarified that the only determining factor is the private participation directed to the capital of the controlled legal person. Therefore, in case of participation of private capital in the administration of the contracting parent or controlling contracting authorities, this does not preclude the award of public contracts to the controlled legal person, without following the procedures laid down in this Directive as these investments do not have a negative effect on competition among private traders.

It should also clarify that contracting authorities such as public bodies, for which it is possible the participation of private capital, should be able to use the exemption for horizontal cooperation. Therefore, if all the other conditions for the horizontal co-operation are fulfilled, the exemption relating thereto should extend to such contracting authorities if the contract is concluded exclusively between contracting authorities.

(33) The contracting authorities should be able to decide to jointly deliver their public services through cooperation without being forced to use any particular legal form. This cooperation could cover all types of activities related to the provision of services and the responsibilities entrusted to the participating authorities or given by them, such as mandatory or optional tasks of local governments or services entrusted to specific bodies under public law. The services provided by the different administrations involved need not be identical; They may also be complementary.

The contracts for the joint provision of public services should not be subject to the application of the rules laid down in this Directive, provided they are exclusively concluded between contracting authorities, that the implementation of such cooperation is only dictated by considerations of public interest and that no private provider of services enjoy an advantage over its competitors.

In order to comply with these conditions, cooperation should be based on a cooperative concept. This cooperation does not mean that all the participating governments take responsibility to execute the main contractual obligations, as long as there were commitments to cooperate with the execution of the public service in question. In addition, the implementation of cooperation, including any financial transfers between the participating contracting authorities should be governed by considerations relating to the public interest.

(34) In some cases a legal entity acts in accordance with the relevant provisions of national law, as an instrument or technical service of certain contracting authorities, is obliged to implement the instructions received from such contracting authorities and has no influence on the remuneration of its performance. This purely administrative matter, in view of its non-contractual nature, should not fall within the scope of the public procurement procedures.

(35) It should encourage co-financing of research and development (R & D) by sources in the industrial sector. It is therefore appropriate to specify that this directive applies only in the absence of such co-financing and where the results of R & D activities are intended for the contracting authority concerned. This should not exclude the possibility that the service provider who has played such activities will publish a report on the matter, provided that the contracting authority retains the exclusive right to use the R & D results in the exercise of its activities. However, fictitious shares of R & D results or purely symbolic participation to the remuneration of the service provider should not prevent 'application of this Directive.

(36) Labor and employment 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 applies to other social enterprises whose main purpose is the integration or social and professional reintegration of persons with disabilities and disadvantaged people, such as the unemployed, people from disadvantaged minorities or otherwise socially marginalized groups. However, such workshops or companies may not be able to obtain contracts under normal conditions of competition. It is therefore appropriate to provide that Member States may have the option of restricting participation in the award of public contracts or for specific lots of contracts to such workshops or businesses or provide for the execution in the context of sheltered employment programs.

(37) In view of adequate integration of environmental requirements, social and working in public procurement procedures, it is particularly important that Member States and contracting authorities should adopt appropriate measures to ensure compliance with the obligations relating to environmental, social law and labor that apply in the place where the works are performed or services provided and arising from laws, regulations, decrees and decisions adopted at both national and EU level, and by collective agreements provided that such rules, and their application, comply with EU law. Likewise, during the execution of a contract it should be applied to obligations under international agreements ratified by all the Member States and listed in Annex X. However, this should in no way prevent the application of terms and conditions of employment which are more favorable to workers.

The relevant measures should be applied in accordance with fundamental principles of EU law, in particular to ensure equal treatment. These relevant measures should be applied in accordance with Directive 96/71 / EC of the European Parliament and of the Council (11), and to ensure equal treatment and does not discriminate directly or indirectly against economic operators and workers from other Member States.

(38) The services should be treated as being supplied in the place where the performance characteristics are performed. If provided at a distance, such as those provided by the call center, the services should be treated as being supplied in the place where they are performed, regardless of the places and by the Member States to which they are intended.

(39) The related obligations may be reflected in contractual clauses. It should also be possible to insert clauses in public procurement that ensure compliance with collective agreements in accordance with EU law. Non-compliance of its obligations may be considered to be grave misconduct by the economic operator in question which may result in the exclusion of the latter from the award of a public contract.

(40) The supervising compliance with the provisions on environmental law, social and labor should be conducted in the relevant stages of the procurement process, applying the general principles governing the selection of participants and award of contracts, applying the exclusion criteria and applying the provisions regarding abnormally low tenders. The required test for this purpose should be carried out in accordance with the relevant provisions of this Directive, in particular those relating to evidence and self-declarations.

(41) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect order, public morality, public security, health, human and animal life or the preservation of plants or other environmental measures, in particular in 'emphasis on sustainable development, provided that such measures are in accordance with the TFEU.

(42) It is essential that the contracting authorities have greater flexibility in the choice of a procurement procedure providing for the negotiation. It is likely that a wider use of these procedures also increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate of cross-border offers. It is appropriate that Member States have the right to use a competitive procedure with negotiation or a competitive dialogue in various situations where it is not that open or restricted procedures without negotiation can lead to satisfactory results in awards of contracts. It should be remembered that the use of the competitive dialogue has been a significant increase in terms of contract values over the past years. It has proved useful in cases where the contracting authorities are unable to define the means of satisfying their needs or to assess what the market can offer in terms of technical, financial or legal solutions. This situation may arise in particular for innovative projects, for the implementation of important integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing. Where appropriate, contracting authorities should be encouraged to appoint a project manager to ensure good cooperation between economic operators and the contracting authority during the tender procedure.

(43) For works contracts, those situations include inconsistent works in normal buildings or involving the design or innovative solutions. For services or supplies that require adaptation activities or planning, is probably convenient recourse to a competitive procedure with negotiation or a competitive dialogue. Such adaptation activities or planning are especially necessary in the case of contracts of a certain complexity related purchases such sophisticated products, intellectual services, such as certain consulting services, architectural or engineering, or large projects in the technology of ' information and communication technologies (ICTs). In such cases, the negotiation may be necessary to ensure that the supplies or services in question meet the requirements of the contracting authority. It is not appropriate use of the competitive procedure with negotiation and the competitive dialogue in the case of services or products ready for use that can be provided by many traders.

(44) It is appropriate that we can resort to the competitive procedure with negotiation even in cases where an open or restricted procedure has resulted in only irregular or unacceptable. In such cases it should allow contracting authorities to conduct negotiations in order to get regular and acceptable offers.

(45) The competitive procedure with negotiation should be accompanied by adequate safeguards ensuring compliance with the principles of equal treatment and transparency. It is especially appropriate that contracting authorities previously indicating the minimum requirements that characterize the nature of the contract and should not be changed during negotiations. To ensure equal treatment to all traders,

the award criteria and their weighting must remain stable throughout the entire procedure and not be subject to negotiation. Negotiations should aim at improving the offers in order to allow contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. The negotiations may include all characteristics of the works, supplies and commissioned services, including for example, quality, quantity, commercial terms and social, environmental and innovative, in so far as they do not constitute minimum requirements.

It should be specified that the minimum requirements that the contracting authority must establish the conditions and characteristics (especially physical, functional and legal) each submission must meet or possess in order to allow the contracting authority to award the contract on the basis of criteria selected. In order to ensure the transparency and traceability of the process, all steps should be duly documented. In addition, all the tenders submitted during the procedure should be made in writing.

(46) Contracting authorities should be allowed to reduce the deadlines applicable to open and restricted procedures and competitive procedures with negotiation in which the terms in question would be impractical because of an urgent situation which should be duly justified by contracting authorities. It should be noted that it is not necessarily situations of extreme urgency resulting from events unforeseeable by the contracting authority and not attributable to it.

(47) The research and innovation, including eco-innovation and social innovation, are one of the main drivers of future growth and have been put at the heart of the Europe 2020 strategy for smart, sustainable and inclusive. Public authorities should use public procurement strategically in the best possible way to stimulate innovation. The purchase of products, works and innovative services plays a key role in improving the efficiency and quality of public services and at the same time addressing the key challenges of social value. This helps to achieve a more favorable price / performance ratio as well as wider economic, environmental and society through the generation of new ideas and translating them into innovative products and services, thus promoting sustainable economic growth.

It should be remembered that the Commission Communication of 14 December 2007 entitled "Pre-commercial Procurement: Driving innovation to ensure sustainable high-quality in Europe", concerning the procurement of R & D services which do not fall under application of this Directive, contains a number of award of procurement models. These models continue to be available, but this Directive should also contribute to facilitating public procurement of innovation and help Member States in achieving the Union's objectives in this area.

(48) In view of the importance of innovation, should be encouraged contracting authorities to allow for variations as often as possible. Therefore necessary to attract the attention of those authorities on the need to define minimum requirements which variants must meet before you indicate that variants may be submitted.

(49) If the need to develop products, services or innovative work and then buy supplies, services or works it shall not be satisfied using solutions already available on the market, contracting authorities should have access to a specific procedure for procurement with regard to contracts falling within the scope of this Directive. This specific procedure should allow contracting authorities to establish a partnership for long-term innovation in the development and subsequent purchase of products, services or works are characterized by novelty and innovation, provided that such product or service can be provided or such work can be carried out in compliance with the performance levels and the agreed costs, without the need for a separate tender procedure for purchase. The innovation partnership should be based on the procedural rules applicable to the competitive procedure with negotiation and the only contract award criterion should be that of the best quality / price ratio, which is the most suitable for comparing the bids for innovative solutions. With regard to innovative projects, large or small projects, the innovation partnership should be structured so as to create the necessary market demand that is likely to encourage

the development of an innovative solution without foreclosing the market. Innovation should be based on the procedural rules applicable to the competitive procedure with negotiation and the only contract award criterion should be that of the best quality / price ratio, which is the most suitable for comparing the bids for innovative solutions. With regard to innovative projects, large or small projects, the innovation partnership should be structured so as to create the necessary market demand that is likely to encourage the development of an innovative solution without foreclosing the market. Innovation should be based on the procedural rules applicable to the competitive procedure with negotiation and the only contract award criterion should be that of the best quality / price ratio, which is the most suitable for comparing the bids for innovative solutions. With regard to innovative projects, large or small projects, the innovation partnership should be structured so as to create the necessary market demand that is likely to encourage the development of an innovative solution without foreclosing the market. which is the most suitable for comparing the bids for innovative solutions. With regard to innovative projects, large or small projects, the innovation partnership should be structured so as to create the necessary market demand that is likely to encourage the development of an innovative solution without foreclosing the market. which is the most suitable for comparing the bids for innovative solutions. With regard to innovative projects, large or small projects, the innovation partnership should be structured so as to create the necessary market demand that is likely to encourage the development of an innovative solution without foreclosing the market. which is the most suitable for comparing the bids for innovative solutions. With regard to innovative projects, large or small projects, the innovation partnership should be structured so as to create the necessary market demand that is likely to encourage the development of an innovative solution without foreclosing the market.

Contracting authorities should therefore not resort to innovation partnerships in order to prevent, restrict or distort competition. In certain cases the creation of partnerships for innovation with different partners could help avoid such effects.

(50) In view of the detrimental effects on competition, negotiated procedures without prior publication of a contract notice should only be used in very exceptional circumstances. The exceptional nature should be limited to cases where publication is either not possible for reasons of extreme urgency due to unforeseeable events not attributable to the contracting authority, or if it is clear from the outset that publication would not trigger more competitiveness or better results contract, not least because a single trader is objectively capable of performing the contract. This applies to works of art, as the artist's identity inherently determines the character and unique value of the artwork itself. Exclusivity may also emanate from other reasons, but only situations of objective exclusivity can justify the use of the negotiated procedure without prior publication, if the situation of exclusivity has not been created by the contracting authority for future tender.

Contracting authorities who make use of this exception should state the reasons why there is no alternative or substitutable viable solutions such as the use of alternative distribution channels also outside the Member State of the contracting authority or the ability to take into account work, supplies and services comparable from a functional point of view.

If the situation of exclusivity is due to technical reasons, these should be rigorously defined and justified case by case. It could re-enter, for example, if it is technically impossible that another economic operator will achieve the required results or the need to use knowledge, tools or means which only one economic operator is provided. Technical reasons may also derive from specific interoperability requirements that must be met to ensure the functioning of the works, supplies or services to be procured.

Finally, a procurement procedure is not useful if supplies are purchased directly on the market of raw materials, including trading platforms for commodities such as agricultural products, raw materials and energy, within which the multilateral trading facility regulated and subject to supervision by its nature guarantees market prices.

(51) It should be specified that the provisions regarding the protection of confidential information shall not preclude in any way to the public dissemination of non-confidential parts of the contracts, including subsequent changes.

(52) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement procedures. They should become the standard means of communication and exchange of information in the course of procurement procedures as they greatly increase the chances of economic operators to participate in tendering procedures under the internal market. To this end, it is appropriate to introduce mandatory transmission of notices electronically and the requirement to make available electronic tender documents and, after a thirty-month transition period, the obligation of communication in full electronic, or communication via electronic means, at all stages of the procedure, including the transmission of requests for participation and, in particular, the presentation (electronic transmission) of tenders. The Member States and the contracting authorities which so wish should retain the right to introduce more advanced measures. It should also be noted that the mandatory use of electronic media in accordance with this Directive should however not require contracting authorities to make the electronic processing of tenders, or to proceed with the evaluation electronic or automated processing. In addition, under this Directive, the obligation to use electronic media should not cover any part of the public procurement procedure after the award of 'contract nor the internal communication within the contracting authority.

(53) The contracting authorities should, except for certain special situations, use of electronic media that have non-discriminatory nature, are commonly available and compatible with the ICT products in general use and shall not restrict the access of economic operators with the procedure award. The use of such media should also take due account accessibility for people with disability. Occorre clarify that it is not appropriate to provide for the obligation to use electronic means in all stages of public procurement procedure if it requires specialized tools or file formats that are not commonly available and whether communication in question can only be dealt with by resorting to specialized equipment for office. In certain cases, which should be listed in an exhaustive manner, it is not therefore appropriate to oblige contracting authorities to require the use of electronic means of communication in the submission process. This Directive provides that in such cases fall situations where it is required the use of specialized equipment for office generally not available for contracting authorities such as large format printers. In certain procurement tender documents may require the presentation of a physical or scaled-down model that can not be presented to the contracting authority by electronic means. In such situations the model should be transmitted to the contracting authority by mail or other suitable support.

However, it should be noted that the use of other means of communication should be limited to items for which the offer is unsolicited electronic media.

It should be clarified that, where necessary for technical reasons, contracting authorities should be able to set a maximum size limit of presentable file.

(54) There may be exceptional cases in which the contracting entities should not be authorized to use electronic means of communication if they do not use electronic means of communication is necessary to protect the particularly sensitive nature of the information. It should be specified that if the use of electronic instruments not commonly available could offer the necessary level of protection, these tools should be used. Such case may for example occur when the contracting authorities require the use of appropriate communication means sure to which they provide access.

(55) technical formats or processes and different standards of messaging between them could hinder interoperability not only within Member States but in particular among Member States. For example, to participate in a procurement procedure in which it is permitted or required the use of electronic catalogs, which is a format for the presentation and organization of information common to all bidders that lends itself to electronic processing, the traders had obliged, in the absence of standardization, to adapt their catalogs to each procurement procedure, with the consequence of providing very similar information between them in different formats depending on the specifications of the contracting

authority concerned. The standardization of the catalog formats thus increase the level of interoperability and efficiency and also reduce the effort required for economic operators.

(56) It is appropriate that, when examining whether it is necessary to ensure or increase the interoperability between different technical formats or data processing and messaging standards by making mandatory the use of specific standards and, in case of positive response, upon deciding what standards imposed, the Commission will take the utmost account of the views of stakeholders. It should also examine the extent to which a particular standard has already been used in practice by economic operators and contracting authorities, and how it worked. Before mandating the use of any special technical standards, the Commission should also carefully examine the costs that this might involve, in particular in terms of adjustment to existing solutions in the field of electronic procurement, including infrastructure, processing or software. If those concerned standards are not processed by an international standards body, national or European, they should meet the requirements applicable to ICT standards referred to in Regulation (EU) No. 1025/2012 of the European Parliament and of the Council (12).

(57) Prior to specify the level of security required for the electronic media to use in the different stages of the procurement procedure, Member States and contracting authorities should consider, on the one hand, the proportionality between the requirements intended to ensure a the contents' correct and reliable identification of the senders of the communication in question and the integrity of the latter and, secondly, the risk of problems, such as in situations where messages are sent from a sender other than that indicated. *Ceteris paribus*, this would mean that the level of security required, for example, to an email sent to ask the exact address is confirmed, which will be holding an information meeting should not be the same level of security required for the offer itself which is binding on the trader. Similarly, thanks to the proportionality assessment could be lowered the levels of security required in case of resubmission of electronic catalogs or submissions in the context of mini-games as part of a framework agreement, or access to the tender documents.

(58) Essential elements of a procurement procedure, such as contract documents, application forms, confirmations of interest and offers should always be in writing, but oral communication with traders on the other hand should remain as long as possible its content is sufficiently documented. This is necessary to ensure an adequate level of transparency that allows to verify whether it has been adhered to the principle of equal treatment. In particular, it is essential that the oral communications with bidders, which could influence the content and evaluation of tenders, are adequately documented, and by appropriate means, such as written or audiovisual recordings or summaries of the main elements of communication.

(59) In the markets of the EU's public procurement there is a strong tendency to aggregation of demand by public purchasers, in order to achieve economies of scale, such as prices and lower transaction costs as well as improved and increased professionalism in the management of contracts. This can be achieved by concentrating purchases either in terms of number of contracting authorities involved or in terms of turnover and value over time. However, the aggregation and centralized purchasing should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, and the ability to market access for SMEs.

(60) The instrument of framework agreements has been widely used and is considered an efficient procurement technique throughout Europe. Therefore, it should be maintained substantially unchanged. However, some aspects should be clarified, in particular the fact that the framework agreements should not be used by contracting authorities that are not identified. To this end, it is appropriate that the contracting authorities which are parts of a specific framework agreement from the outset are clearly indicated by the name or by other means, such as a reference to a particular category of contracting authority as part of a ' clearly delineated geographical area, so that the contracting authority can be easily and clearly identified. Similarly, a framework agreement should not be open to accession by new

businesses after being concluded. It follows that for example if a central purchasing uses a general register of contracting authorities or related categories, such as local administrations in a given geographical area, who are authorized to use framework agreements which it concludes, such central purchasing should do so that you can check not only affected the identity of the contracting authority, but also the date from which it acquires the right to appeal to the framework agreement concluded by the central purchasing, since that date determines the specific framework agreements to which the contracting authority is authorized to use.

(61) The objective conditions for determining which of the economic operators part of the Framework Agreement should play a certain task, such as supplies or services intended for use by individuals, may include, in the context of framework agreements that establish all the terms the requirements or the choice of the individuals concerned.

Contracting authorities should benefit from greater flexibility when they award contracts under framework agreements concluded with more than one economic operator, and in which all terms are given.

In these cases, contracting authorities should be allowed to get jobs, specific services or supplies covered by the framework agreement, or by requesting them from one of the traders determined on the basis of objective criteria and according to the terms established, or by awarding a specific contract for works, services and supplies in question based on a mini-competition between the economic operators parties to the framework agreement. In order to ensure transparency and equal treatment, contracting authorities should specify in the tender documents for the framework agreement the objective criteria on which it will base the choice between those two methods of execution of the framework agreement. These criteria could, for example, relate to the quantity, value or the characteristics of the work, supplies or services concerned, including the need for a higher degree of service or level of security strengthened, or the evolution of the price level relative to an index of fixed prices. You should not use framework agreements improperly or in such a way as to prevent, restrict or distort competition. Contracting authorities should not be obliged, under this Directive, to contract works, supplies and services covered in a framework agreement in accordance with the Framework Agreement. restrict or distort competition. Contracting authorities should not be obliged, under this Directive, to contract works, supplies and services covered in a framework agreement in accordance with the Framework Agreement. restrict or distort competition. Contracting authorities should not be obliged, under this Directive, to contract works, supplies and services covered in a framework agreement in accordance with the Framework Agreement.

(62) It is also appropriate to specify that, while contracts based on a framework agreement must be awarded before the expiry of the framework itself, the duration of individual contracts based on a framework agreement need not necessarily coincide with the duration of that framework agreement but it could possibly be lower or higher. It should in particular be possible to establish the duration of individual contracts based on a framework agreement taking into account factors such as the time required for their execution, the possible inclusion of the maintenance of the material whose useful life is expected more than four years or the possible need for extensive training of existing staff for executing the contract.

It is also appropriate to point out that there may be exceptional cases in which it should be possible that the duration of framework agreements is more than four years. Such cases, which should be duly motivated, in particular by the panel, could for example occur when traders need to have material with an amortization period exceeding four years that must be available at any time to the duration of the framework agreement.

(63) Alla luce dell'esperienza acquisita, è altresì necessario adattare le norme che disciplinano i sistemi dinamici di acquisizione per consentire alle amministrazioni aggiudicatrici di trarre pienamente profitto dalle possibilità offerte da tale strumento. I sistemi devono essere semplificati, in particolare dovrebbero essere gestiti in forma di procedura ristretta e che elimini, di conseguenza, la necessità di

presentare offerte indicative, individuate come uno degli oneri più gravosi associati ai sistemi dinamici di acquisizione. Ne consegue che la partecipazione a procedure di appalto gestite tramite il sistema dinamico di acquisizione dovrebbe essere consentita a un operatore economico che presenti una domanda di partecipazione e che soddisfi i criteri di selezione durante il suo periodo di validità. Questa tecnica di acquisizione consente alle amministrazioni aggiudicatrici di disporre di un ventaglio particolarmente ampio di offerte e, quindi, di assicurare un'utilizzazione ottimale dei mezzi finanziari pubblici mediante un'ampia concorrenza per quanto riguarda prodotti, lavori o servizi di uso comune o pronti per l'uso che sono generalmente disponibili sul mercato.

(64) The examination of these requests for participation should normally be made within a maximum of ten working days, as the evaluation of the selection criteria shall be implemented according to the simplified requirements for documentation set out in this Directive. However, when it is set up for the first time a dynamic purchasing system, contracting authorities may, in response to the first publication of the contract notice or the invitation for expressions of interest, being in front a number of requests to participate so high that it requires a longer period of time to examine them. It is appropriate to admit this possibility, provided it is not announced any specific contract until all questions have been examined. Contracting authorities should have the power to organize the way they intend to examine the question of participation, for example by deciding to carry out such checks only once a week, provided that the terms for the examination of each application are observed.

(65) At any time during the period of validity of the dynamic purchasing system, contracting authorities should have the right to require that economic operators provide a self-renewed and updated concerning the fulfillment of the criteria for qualitative selection, within a reasonable time limit. It should be remembered that the possibility provided for in the general provisions of this Directive concerning the evidence, to require economic operators to submit additional documents and the obligation to do so imposed tenderer to which it has been decided to award the 'contract also exist in the particular context of dynamic purchasing systems.

(66) To give SMEs more opportunities to participate in a dynamic large-scale purchasing system, for example managed by a central purchasing, the contracting authority concerned should be able to articulate the system objectively defined categories of products, works or services . These categories should be defined by reference to objective factors that may include, for example, the amount or maximum amount for the specific contracts to be awarded under the category concerned, or a specific geographic area in which the specific contracts must be performed. If a dynamic purchasing system is divided into categories, the contracting authority should apply selection criteria appropriate for the class in question.

(67) It should be clarified that electronic auctions are not normally suitable for certain public works and certain public service contracts which relate to intellectual performance as the design of works, since they can be the object of electronic auctions only suitable elements automated evaluation by electronic means, without any intervention or appreciation by the contracting authority, in particular the quantifiable elements that can be expressed in figures or percentages.

However, it should also be clarified that electronic auctions can be used in a procurement procedure for the acquisition of a specific intellectual property law. It is also worth remembering that, notwithstanding the right of contracting authorities to reduce the number of candidates or bidders before the auction is started, should not be allowed any further reduction in the number of participating bidders, an electronic auction after the start of the same .

(68) We witness to the constant development of new electronic purchasing techniques, such as electronic catalogs. Electronic catalogs are a format for the presentation and organization of information in a common way for all bidders and that lends itself to electronic processing. The offers presented in the form of spreadsheet may be an example. Contracting authorities should be able to require electronic

catalogs in all procedures available where it is required the use of electronic media. Electronic catalogs help to increase competition and streamline public purchasing, particularly in terms of cost and time savings. However, it must establish certain rules so that their use complies with the present Directive and the principles of equal treatment, non-discrimination and transparency. As a result, the use of electronic catalogs for submission of offers should not entail the possibility that traders are limited to the transmission of their general catalog. Economic operators should continue to have to adapt their general catalogs for the specific procurement procedure. This adaptation ensures that the catalog transmitted in response to a particular procurement procedure contains only products, use of electronic catalogs for submission of offers should not entail the possibility that traders are limited to the transmission of their general catalog. Economic operators should continue to have to adapt their general catalogs for the specific procurement procedure. This adaptation ensures that the catalog transmitted in response to a particular procurement procedure contains only products, works or services which, according to traders, after inward examination, correspond to what is required by the contracting authority. In doing so it should be allowed to traders to copy information contained in their general catalog, but should not be allowed to present the general catalog as such.

Moreover, if they are sufficient guarantees to ensure traceability, equal treatment and predictability, contracting authorities should have the power to issue tenders for specific purchases on the basis of previously transmitted electronic catalogs, in particular where competition has been reopened in 'scope of a framework agreement, or if you use a dynamic purchasing system.

Where the contracting authority has drawn up a bid, the economic operator should have the right to verify that the offer thus constituted by the contracting authority does not contain material errors. If there are material errors, the economic operator should not be bound by their drafted by the Contracting Authority unless the error is corrected.

In line with the requirements of the rules on electronic means of communication, contracting authorities should avoid unjustified obstacles to economic operators' procurement procedures in which tenders are to be submitted in the form of electronic catalogs and which ensure respect for general principles of non-discrimination and equal treatment.

(69) In most Member States is increasingly widespread use of certain centralized purchasing techniques. Central purchasing bodies are responsible for making acquisitions, manage dynamic purchasing systems or awarding public contracts / framework agreements for other contracting authorities, with or without remuneration. The contracting authority for which it has concluded a framework agreement should be allowed to use it for single or repeated purchases. These techniques can help, given the large volume of purchases, increased competition and should help to professionalise public purchasing. It is therefore necessary to provide for a wide definition of central purchasing bodies dedicated to contracting authorities and Union indicate that central purchasing bodies operate in two different ways.

They should, first, be able to act as wholesalers buying, storing and selling and, secondly, they should be able to act as intermediaries, awarding contracts, managing dynamic purchasing systems or concluding framework agreements for use by contracting authorities. This role of intermediary may, in some cases, be carried out by carrying out independently the relevant procurement procedures, without detailed instructions of the contracting authority or, in other cases, by implementing the relevant procurement procedures according to the instructions of the contracting authority on their behalf and on their behalf.

It is also necessary to establish rules for the distribution among the central purchasing body and the contracting authorities which make it directly or indirectly use the responsibility of monitoring compliance with the obligations arising from this Directive. In the event that the sole responsibility for the conduct of the procurement procedures to compete central purchasing body, the same is also exclusively and directly responsible for the legality of the procedures. If a contracting authority manages some parts of the procedure, such as the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, the same administration should continue to be responsible for the stages that manages.

(70) The contracting authorities should have the discretion to award to a central purchasing a public service contract for the provision of centralized purchasing activities without following the procedures laid down in this Directive. It should be admitted that these public service contracts include the provision of ancillary purchasing activities. The public service contracts for the supply of ancillary purchasing activities should, if not made by a central purchasing body in connection with the provision of centralized purchasing activities for the contracting authority concerned, be awarded in accordance with this Directive. It is also worth mentioning that this Directive should not apply in cases where the centralized purchasing activities or ancillary purchasing activities are not carried out through a contract for pecuniary interest which constitutes procurement under this Directive.

(71) The strengthening of the provisions concerning central purchasing bodies should not in any way rule out the current practices regarding the occasional joint procurement, ie systems of acquisition less systematic and institutionalized or established practice of resorting to service providers that prepare and manage procurement procedures on behalf and on behalf of a contracting authority and following his instructions. Some joint contract elements should, instead, be clarified, given the important role it can play, not least in connection with innovative projects.

The joint procurement may take many different forms, ranging from the contract coordinated, through the development of common technical specifications for works, supplies or services to be procured from various contracting authorities, each of which implements a distinct procurement procedure to situations in which contracting authorities concerned shall jointly implement a single procurement procedure, or by acting in common or a contracting authority entrusting the management of the procurement process on behalf of all the contracting authorities.

If more contracting authorities jointly implement a procurement procedure, they should be jointly responsible for compliance with the obligations imposed by this Directive. However, if only parts of the procurement process are implemented jointly by the contracting authorities, the joint liability should apply only to parts of the procedure that were implemented jointly. Each contracting authority should have the sole responsibility for the procedures or parts of implementing procedures on their own, such as the award of a contract, the conclusion of a framework agreement, the management of a dynamic purchasing system, the reopening of a competition under a framework agreement or the choice of 'economic operator part of a framework agreement that will be called to perform a certain task.

(72) The electronic means of communication are particularly well suited to support centralized purchasing practices and tools because of the possibility offered by them for reuse and automatic processing of data and for the reduction of costs related information and transaction. The use of electronic means of communication must therefore, as a first step, be rendered compulsory for central purchasing bodies and, at the same time, enhancing the convergence of practices across the Union. This should be followed the general obligation to use electronic means of communication in all procurement procedures after a thirty-month transition period.

(73) The joint award of public contracts by contracting authorities from different Member States currently encounters specific legal difficulties regarding conflicts between the different national laws.

Despite the fact that Directive 2004/18 / EC implicitly allowing cross-border joint public procurement, contracting authorities are still faced with considerable difficulties in the legal and practical purchases at central purchasing bodies in other Member States or awarding joint public procurement. In order to allow contracting authorities to take full advantage of the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least when it comes to innovative projects that involve risks of such a magnitude that it can not reasonably be supported by a single contracting authority, it is desirable to remedy these difficulties. It is therefore necessary to establish new rules on cross-border joint procurement in order to facilitate cooperation between contracting authorities and increase the benefits of the internal market by creating it is therefore necessary to establish new rules on cross-border joint procurement in order to facilitate cooperation between contracting authorities and increase the benefits of the internal market by creating it is therefore necessary to establish new rules on cross-border joint procurement in order to facilitate cooperation between contracting authorities and increase the benefits of the internal market by creating cross-border business opportunities for suppliers and service providers. These rules should set conditions for the cross-border use of central purchasing bodies and determine the applicable legislation on public procurement, including those applicable to appeals in cases of joint cross border procedures by integrating the rules on conflict of laws Council Regulation (EC) No. 593/2008 of the European Parliament and of the Council (13). In addition, contracting authorities from different Member States should be able to set up joint legal bodies established under national or Union law. It should lay down specific rules for this form of joint procurement.

However, the contracting authorities should not rely on the possibility of cross-border joint procurement in order to circumvent the mandatory rules of public law applicable to them, in accordance with Union law, in the Member State in which they are located. These rules may include, for example, provisions on transparency and access to documents or specific requirements for the traceability of sensitive supplies.

(74) The technical specifications drawn up by public purchasers need to allow the opening up of public procurement to competition and the achievement of sustainability goals. To this end, it should be possible to submit tenders that reflect the diversity of technical solutions, standards and technical specifications prevailing in the market, including those defined on the basis of criteria relating to the provision related to the life cycle and sustainability of the production process for works, supplies and services.

As a result, the technical specifications should be drafted so as to avoid artificially narrowing down competition through requirements that favor a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered. If the technical specifications are fixed in terms of functional requirements for performance, it should be possible, in general, achieve this in the best way possible. The functional requirements and matters of performance are also appropriate instruments to stimulate innovation in public procurement and should be applied as widely as possible. When referring to a European standard or, in the absence thereof, the national standard, they should be taken into consideration by contracting authorities in tenders based on equivalent arrangements. It should be up to the trader the task of demonstrating equivalence with the required labeling.

To demonstrate equivalence, it should be possible to require tenderers to provide third-party verified evidence. However, it should be at any other appropriate means of proof, such as a technical dossier of the manufacturer, if the economic operator concerned has no access to such certificates or reports on tests carried out, or has no possibility of obtaining them within the relevant time limits, provided demonstrate that the works, supplies or services provided meet the requirements or criteria set out in the technical specifications, award criteria or conditions relating to the execution of the contract.

(75) Contracting authorities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labeling, such as the European Eco-label Eco-label, ecoetichetature (multi-) national or any other labeling, provided that the

requirements for labeling, such as the description of the product and its presentation, including packaging requirements, are connected with the object of the contract. It is also essential that these requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure which is open to interested parties, such as government bodies, consumers, manufacturers, distributors and environmental organizations, and that the label is accessible and available to all interested parties. It should be noted that interested parties may be public or private organizations, companies or any type of non-governmental organizations (an organization that is not part of a government and a company is not traditional).

It would also point out that bodies or specific national or governmental organizations may be involved in the definition of labeling requirements that can be used for procurement by public authorities without those bodies or organizations lose their third-party status.

The references to the labeling should not have the effect of limiting innovation.

(76) it is necessary that contracting authorities to establish technical specifications that take into account accessibility criteria for all procurement intended for use by individuals, whether it is the public that the contracting authority, for people with disabilities or design for all users, except in duly justified cases.

(77) In drawing up the technical specifications, contracting authorities should take into account the requirements under EU law on data protection, in particular as regards the design of the processing of personal data (data protection by design) .

(78) È opportuno che gli appalti pubblici siano adeguati alle necessità delle PMI. Le amministrazioni aggiudicatrici dovrebbero essere incoraggiate ad avvalersi del Codice europeo di buone pratiche, di cui al documento di lavoro dei servizi della Commissione del 25 giugno 2008, dal titolo «Codice europeo di buone pratiche per facilitare l'accesso delle PMI agli appalti pubblici», che fornisce orientamenti sul modo in cui dette amministrazioni possono applicare la normativa sugli appalti pubblici in modo tale da agevolare la partecipazione delle PMI. A tal fine e per rafforzare la concorrenza, le amministrazioni aggiudicatrici dovrebbero in particolare essere incoraggiate a suddividere in lotti i grandi appalti. Tale suddivisione potrebbe essere effettuata su base quantitativa, facendo in modo che l'entità dei singoli appalti corrisponda meglio alla capacità delle PMI, o su base qualitativa, in conformità alle varie categorie e specializzazioni presenti, per adattare meglio il contenuto dei singoli appalti ai settori specializzati delle PMI o in conformità alle diverse fasi successive del progetto.

The entity and the object of the batches should be freely determined by the contracting authority that, in accordance with the relevant rules on the calculation of the estimated value, should also have the ability to award some of the lots without applying the procedures provided for in this Directive. The contracting authority should have a duty to consider whether it is appropriate to divide contracts into lots, retaining the right to decide for themselves on the basis of any reason it considers relevant, without being subject to administrative or judicial oversight. If the contracting authority decides that it is not appropriate to divide the contract into lots, the individual relationship or contract documents should contain a 'indication of the main reasons for the choice of the contracting authority. Such reasons may, for example, consist in the fact that the contracting authority considers that this subdivision might risk limit competition or excessively difficult to make the execution of the contract from the technical point of view or too expensive, or that the need to coordinate the various economic operators for the lots would risk seriously undermining the proper performance of the contract. excessively difficult contract from the technical point of view or too expensive, or that the need to coordinate the various economic operators for lots could risk seriously hamper the proper execution of the contract. excessively difficult contract from the technical point of view or too expensive, or that the need to coordinate the various economic operators for lots could risk seriously hamper the proper execution of the contract.

Member States should retain the right to go further in their efforts to facilitate the participation of SMEs in the market of public procurement contracts extending smaller the scope to examine whether it is appropriate to divide contracts into lots for procurement entities less obliging contracting authorities to give reasons for the decision not to divide into lots or making the subdivision into lots mandatory under certain conditions. To the same end, Member States should also have the power to create mechanisms for direct payment to subcontractors.

(79) If the contract is divided into lots, contracting authorities should have the discretion to limit the number of lots for which an economic operator may submit a bid, such as the order to preserve competition or to ensure 'reliability of supply; They should also have the option to limit the number of lots that may be awarded to any one tenderer.

However, the objective of facilitating greater access to public procurement for SMEs could be hindered if the contracting authorities were obliged to award a contract, lot by lot even if this meant having to accept substantially less favorable solutions than that of an award bringing together several lots or all lots. Therefore, if the possibility of applying this method has been clearly shown above, it should be possible for contracting authorities to make a comparative evaluation of the tenders to determine whether those presented by a particular bidder for a specific combination of lots more responsive, overall, the award criteria established in accordance with this Directive in relation to such lots compared to offers for individual lots in question, taken in isolation. In this case, the contracting authority should be allowed to award a contract that involves lots to the bidder concerned. It should be clarified that contracting authorities should carry out that comparative assessment by first determining what offerings best meet the award criteria established for each lot and then compare them, as a whole, to those presented by a particular bidder for a specific combination of lots. contracting authority should be allowed to award a contract that involves lots to the bidder concerned. It should be clarified that contracting authorities should carry out that comparative assessment by first determining what offerings best meet the award criteria established for each lot and then compare them, as a whole, to those presented by a particular bidder for a specific combination of lots. contracting authority should be allowed to award a contract that involves lots to the bidder concerned. It should be clarified that contracting authorities should carry out that comparative assessment by first determining what offerings best meet the award criteria established for each lot and then compare them, as a whole, to those presented by a particular bidder for a specific combination of lots. to those presented by a particular bidder for a specific combination of lots. to those presented by a particular bidder for a specific combination of lots.

(80) In order to make the procedures faster and more effective, the terms for participation in tendering procedures should be as short as possible, without creating undue obstacles to the access of economic operators across the internal market, especially SMEs. It is therefore appropriate to keep in mind that in setting the deadline for the receipt of tenders and requests to participate, contracting authorities should take particular account of the complexity and the time required for drawing up tenders, even if it means setting for longer periods than those stipulated in this Directive. The use of electronic means of information and communication, including full electronic availability traders, tenderers and candidates of the relevant documentation relating to procurement and the electronic transmission of communications, on the other hand entails greater transparency and time savings. It is therefore appropriate to provide for a reduction of the minimum terms in accordance with the provisions of the GPA and on condition that they are compatible with the specific modes of transmission envisaged at Union level. Furthermore, contracting authorities should be able to further reduce the time limit for receipt of requests to participate and tenders in cases where a state of emergency makes it impractical regular terms, but does not render impossible a regular procedure with publication. Only in exceptional situations where extreme urgency brought about by events from 'contracting authority in question that are not imputable to it makes it impossible to use the proper process even within the short time, the contracting authorities should, within the limits of what is

strictly necessary, have the possibility to award contracts by negotiated procedure without prior publication. This may occur when natural disasters requiring immediate action.

(81) It should be clarified that the need to ensure that economic operators sufficient time to develop appropriate offers may involve any extension of the deadline initially set. This would occur, for example, in particular, if significant changes are made to the tender documents. You should also specify that, in this case, to significant changes should be understood in particular those made to the technical specifications to which economic operators would need an additional period of time to understand and adjust appropriately. It should however be stated that these changes should not be so substantial as to permit 'admission of other applicants than those initially selected or to attract more participants to the award procedure. This could be done, in particular, in the case in which the changes make the nature of the contract or framework agreement with respect to the initially contained in the tender documents substantially different.

(82) It should be specified that information on certain decisions taken in the context of a procurement procedure, including the decision to award a contract or not to conclude a framework agreement, should be sent by the contracting authorities without the candidates or tenderers having to request it. It should also be recalled that Directive 89/665 / EEC (14) requires contracting authorities, in this case without the candidates or tenderers having to request it, to provide the tenderers and candidates concerned a summary of the reasons for some of the central decisions in the course of a procurement procedure. Finally, it should be noted that candidates and tenderers should be allowed to request more detailed information on such reasons, contracting authorities should be obliged to provide unless you prevent serious reasons. These reasons should be specified in the Directive. To ensure transparency in the context of procurement procedures involving negotiations and dialogue with tenderers Even tenderers who submitted an admissible should, unless there are serious reasons for not doing so, you are allowed to request information on the conduct and progress of the procedure.

(83) excessively strict requirements concerning economic and financial capacity frequently constitute an unjustified obstacle to the participation of SMEs in public procurement. Any requirements should be relevant and proportionate to the subject of. In particular, contracting authorities should not be allowed to require economic operators to have a minimum turnover which is disproportionate to the object of the contract; the requirement should not normally exceed, at most, twice the estimated value. However, in duly justified circumstances, it should be able to apply more stringent requirements. Such circumstances may relate to the high risks related to the execution of the 'contract or the fact that its timely and correct implementation is of paramount importance, for example in that it constitutes a necessary precondition for the execution of other contracts.

In such cases, contracting authorities duly justified should be free to decide for themselves whether it is appropriate and relevant to establish higher minimum sales requirements without being subject to administrative or judicial oversight. If they were to apply a higher minimum turnover requirements, contracting authorities should retain the option to establish the level provided that it is connected and proportionate to the object of the contract. If the contracting authority decides that the minimum turnover requirement should be set at a higher level than twice the estimated value, the unique relationship or contract documents should contain an indication of the main reasons for the choice of 'contracting authority.

Contracting authorities should also be able to request information on the relationship, for example, between assets and liabilities in the annual accounts. A positive relationship levels show higher activity than those of the liabilities could provide further evidence that the financial capacity of the economic operators is sufficient.

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

The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers unable to produce such evidence. Contracting authorities should also have the right to request at any time any additional documents or part of them if they feel this is necessary for the proper conduct of the procedure. This may particularly be true for the procedures in two stages - restricted procedures, competitive procedures with negotiation, competitive dialogue and innovation partnerships - in which the contracting authorities make use of the possibility to limit the number of candidates invited to tender. The requirement to submit additional documents at the time of selection of candidates to be invited could be justified to prevent the contracting authorities invite the candidates that will not prove able to present supporting documents at the award stage, preventing the participation of otherwise qualified candidates.

It should be explicitly stated that the DGUE should also provide relevant information on the subject to the capacity of which relies on an economic operator, so that the verification of information relating to such subjects can be carried out simultaneously with the relative economic operator verification main and under the same conditions.

(85) It is important that decisions of contracting authorities are based on current information, in particular as it regards the grounds for exclusion, since major changes can happen very quickly, for example in cases of financial hardship that would make the economic operator or unsuitable, on the contrary, because an outstanding debt as to social contributions may have been paid in the meantime. Therefore it is preferable that the contracting authorities verify this information, where possible, through access to relevant databases, which should be national in scope, managed by public authorities. At the present stage of development, may register even cases where this is not possible for technical reasons. The Commission should therefore be made for the promotion of measures that could facilitate the use of updated information by electronic means, such as strengthening tools that provide virtual access to enterprise files, or means to facilitate interoperability between databases or other measures similar accompaniment.

It is also envisaged that the contracting authorities should not require documentation yet to date they already have from previous procurement procedures. However it is also necessary to ensure that the contracting authorities do not face in this context, disproportionate burdens in regard to storage and sorting. As a result, the implementation of this requirement should be applicable only when it is mandatory the use of electronic means of communication, since the electronic management of documents greatly facilitate this task by the contracting authorities.

(86) Further simplification for economic operators and contracting authorities may be obtained by standard forms for self-declarations, which could reduce the problems of precise formulation of formal declarations and consensus statements as well as the problems related to language.

(87) The Commission provides and manages an electronic system - e-Certis, which is currently updated and verified on a voluntary basis by national authorities. The aim of e-Certis is to facilitate the exchange of certificates and other documentary evidence, often requested by contracting authorities. Experience so far indicates that the update and verification on a voluntary basis are insufficient to ensure that e-Certis can deliver its full potential for simplifying and facilitating the exchange of documentation in support of SMEs. The maintenance should therefore be made compulsory in the first phase. The use of e-Certis will be made mandatory at a later stage.

(88) The contracting authorities should be able to require that they apply measures or environmental management systems during the execution of a public contract. Environmental management schemes, whether they are registered under EU instruments, such as Regulation (EC) No. 1221/2009 of the European Parliament and of the Council (15), can demonstrate that the economic operator has the technical capability to perform the contract. This includes certificates Ecolabel criteria that include environmental management. If a trader does not have access to said recording systems for environmental management or does not have the possibility of obtaining them within the required time limits, should be allowed to present a description of the environmental management measures implemented, provided that the economic operator in question demonstrates that such measures ensure the same level of environmental protection measures required in the context of environmental management.

(89) The notion of the award criteria is critical to this Directive. It is therefore important that the relevant provisions are presented as simply and effectively as possible. This can be achieved by the use of the term "most economically advantageous tender" as a priority concept, since all the winning bids should finally be chosen based on what the individual contracting authority considers to be the best solution from an economic point of view among those offered. To avoid confusion with the award criterion currently known as the 'most economically advantageous tender' in Directives 2004/17 / EC and 2004/18 / EC, you must use a different term to translate this concept, the "best quality / price ratio." Consequently, it should be interpreted in accordance with the case law relating to these directives, except in the presence of solutions clearly different in substance in this Directive.

(90) The contract award should be carried out by applying objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment to ensure an objective comparison of the relative value of tenders in order to determine, in conditions of effective competition, what is the most economically advantageous tender. It should state explicitly that the economically most advantageous offer should be evaluated based on the best quality / price ratio, which should always include an element relating to the price or cost. Similarly it should be specified that the most economically advantageous tender could also be carried out only on the basis of price or cost approach / effectiveness. It is also worth mentioning that the contracting authorities are free to set adequate quality standards by using technical specifications or contract performance conditions.

In order to encourage more quality orientation of public contracts, it should be allowed to Member States to prohibit or limit recourse to the only criterion of price or cost for assessing the most economically advantageous tender if they deem it appropriate.

In order to ensure compliance with the principle of equal treatment in the award of contracts, contracting authorities should be obliged to ensure the necessary transparency to enable all tenderers to be reasonably informed of the criteria and procedures to be applied in the decision to contract award. Contracting authorities should therefore be obliged to indicate the award criteria and the relative weighting given to each of these criteria. Contracting authorities should, however, be empowered to waive the requirement to indicate the weighting of the award criteria in duly justified cases, they should be able to motivate, where the weighting can not be established in advance, in particular because of the complexity. In these cases, they must indicate the criteria in descending order of importance.

(91) Article 11 TFEU requires that the requirements associated with environmental considerations to be integrated into the definition and implementation of Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting authorities may contribute to the protection of the environment and promotion of sustainable development, whilst ensuring the possibility of obtaining for their contracts the best quality / price ratio.

(92) In assessing the best value / price, the contracting authorities should determine the economic and quality criteria linked to the subject of who will apply for that purpose. These criteria should therefore

allow a comparative evaluation of the performance level which each offer presents respect to the object of the contract as defined in the technical specifications. In the context of the best quality / price ratio, it is explained in this Directive a non-exhaustive list of possible award criteria, including environmental and social aspects. Contracting authorities should be encouraged to choose award criteria which allow them to get jobs, and supplies high-quality services that best meet their needs.

The chosen award criteria should not confer to the contracting authority an unrestricted freedom of choice and should ensure the possibility of effective and fair competition and be accompanied by provisions that allow for effective verification of the information provided by the tenderers.

In order to determine the most economically advantageous tender, the contract award decision should not be based on criteria which ignore the costs. Qualitative criteria should therefore be accompanied by a criterion based on the costs that might, if the contracting authority choice based on price or on an approach cost / effectiveness, such as the determination of the life cycle costs. However, the award criteria should not affect the application of national provisions that determine the remuneration of certain services or setting out a fixed price for certain supplies.

(93) Where national provisions determine the remuneration of certain services or impose a fixed price for certain supplies, it should point out that it remains possible to assess the quality / price ratio on the basis of factors other than just price or remuneration from alone. Depending on the service or the product concerned, such factors might include, for example, the terms of delivery and payment aspects of after-sales service (eg scope of consultancy and replacement services) or environmental or social factors (for example, whether to print books on recycled paper or paper produced using sustainable timber, the costs allocated to environmental externalities or facilitation or less of 'social integration of disadvantaged persons or members of vulnerable groups among persons charged with the execution of the contract). Given the numerous possibilities for evaluating the quality / price ratio on the basis of substantive criteria, you should avoid using the draw as the only means of contract award.

(94) If the quality of personnel affect on the performance of the level, contracting authorities should also be allowed to use as an award criterion the organization, qualification and experience of the staff assigned to performing the contract in question , as this can affect the quality performance of the contract and, therefore, on the economic value. This hypothesis could be used, for example, in contracts for intellectual services such as consultancy or architectural services. Contracting authorities who make use of this possibility should ensure, through appropriate contractual arrangements, that the personnel of execution 'contract actually meets the specific quality standards, and that such personnel can be replaced only with the consent of the contracting authority that ensures that the replacement staff is of equivalent quality level.

(95) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 strategy for smart, sustainable and inclusive. In this context, it should be noted that public procurement are essential to foster innovation, which is of primary importance for future growth in Europe. Taking into account the significant differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for contracts in the environmental, social and innovation.

The Union legislature has already set mandatory requirements for procurement aimed at obtaining specific goals in the sectors of vehicles for road transport (Directive 2009/33 / EC of the European Parliament and of the Council (16) and office equipment (Regulation (EC) n. 106/2008 of the European Parliament and of the Council (17). Moreover, the definition of common methodologies for the calculation of lifecycle costs has made great progress.

Therefore, it seems appropriate to continue on this road, letting the sector-specific legislation to set targets and prospects binding depending on the particular legal and political conditions in the relevant sector, and promote the development and utilization of a common European approach for cost calculation of the life cycle in order to further promote the use of public procurement in support of sustainable growth.

(96) These sector-specific measures should be complemented by an adaptation of the 2004/17 / EC and 2004/18 / EC allowing contracting authorities to pursue the objectives of the Europe 2020 strategy for smart, sustainable and inclusive in their strategies purchase. It is therefore necessary to clarify that, except if the assessment is based solely on price, the contracting authorities can determine the most economically advantageous tender and the lowest cost using an approach based on life-cycle costs. The concept of whole-life cost includes all costs over the life cycle of works, supplies or services.

The concept embraces the internal costs, such as searches to be carried out, the development, production, transportation, use and maintenance and final disposal costs but may also embrace costs attributable to external environmental factors such as pollution caused by the extraction of the raw materials used in the product that is caused by the product itself or from its manufacture, provided that they can be monetized and controlled. The methods used by contracting authorities to assess the costs allocated to the environmental externalities should be established in advance in an objective and non-discriminatory manner and be accessible to all interested parties. Such methods may be adopted at national, regional or local level but, in order to avoid distortions of competition through ad hoc methods, they should remain general in the sense that they should not be specifically defined for a particular procurement procedure.

It is necessary to develop common methodologies at EU level for the calculation of life-cycle costs for specific categories of supplies or services. In case of processing of such common methodologies, it is appropriate to render compulsory the use.

You should also examine the possibility of establishing a common methodology for the determination of the social costs of the life cycle, taking into account existing methodologies such as guidelines for social analysis of the life cycle of products adopted under the United Nations program the environment.

(97) In addition, in order to better integrate social and environmental considerations into procurement procedures, contracting authorities should be allowed to use the award criteria or contract performance conditions concerning works, supplies or services object of the public under every aspect and at any stage of their life cycles, from the extraction of raw materials for the product to the stage of disposal of such waste, including factors involved in the specific production process, performance or trade "and related conditions, of these works, supplies or services or in a specific process at a later stage of their life cycle, even if these factors are not part of their substantive content. Criteria and conditions relating to this production process or supply may for example consist in the fact that the manufacture of the products purchased, not involving the use of toxic chemicals or that the purchased services are provided using machines efficient from an energy point of view. According to the case law of the Court of Justice of the European Union, may also include the award criteria or contract performance conditions concerning the provision or use of fair trade products in the course of the contract to be awarded. The criteria and conditions relating to the trade and related conditions may, for example, refer to the origin of the product from the fair trade, which includes 'obligation to pay the producers a minimum price and a price premium. Conditions for performance based on environmental considerations They could include, for example, packaging, delivery and disposal of products and, as regards works and service contracts, minimization of waste and the efficient use of resources.

However, the condition of a link to the subject matter rule criteria and conditions concerning the general company policy, which can not be considered a factor that characterizes the specific process of production or provision of works, supplies or services object of 'purchase. Contracting authorities should therefore not have the power to require bidders to undertake a policy of social and environmental responsibility.

(98) It is essential that the award criteria, or contract performance conditions relate to the social aspects of the production process to connect to the works, supplies or services covered. The criteria should also be applied in accordance with Directive 96/71 / EC, as interpreted by the Court of Justice of the European Union, and should not be chosen or applied so as to discriminate directly or indirectly against economic operators from other Member States or countries third parties that are AAP or the agreements on free trade to which the Union is party. The requirements regarding the basic conditions of employment covered by Directive 96/71 / EC, such as minimum wage rates, They should therefore remain at the level set by national legislation or collective agreements applied in accordance with Union law in the context of the directive.

A contract performance conditions may also be designed to support the implementation of measures to promote equality between men and women at work, greater participation of women in the labor market and the reconciliation of work and private life, protection of the environment or animal welfare, to comply in substance with the provisions of the fundamental conventions of the international labor Organization (ILO) and to recruit more disadvantaged persons than are required under national legislation.

(99) They may be the subject of the award criteria or contract performance conditions also for measures to protect the health of the staff involved in the production processes, the social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing award or the training of the skills required for the contract, so long as these the works, supplies or services. For example, such criteria or conditions may refer, inter alia, the assumption of long-term unemployed, the implementation of training programs for the unemployed or young people in the course of the contract to be awarded. In the technical specifications, contracting authorities may provide for the social requirements that directly characterize the product or service in question, such as accessibility for people with disabilities or design for all users.

(100) It should not be awarded public contracts to economic operators who have participated in a criminal organization or who have been found guilty of corruption, fraud against the Union's financial interests, of terrorist offenses, the laundering of the proceeds of illegal activities or terrorist financing. Failure to pay taxes or social security contributions should also lead to the exclusion compulsory at EU level. Member States should, however, be empowered to grant an exception to these mandatory exclusions in exceptional situations in which imperative requirements in the general interest must make the award of a contract. Such a situation might occur, for example, if you can procure vaccines and emergency equipment urgently needed only by an economic operator which otherwise apply the grounds for refusal required.

(101) Contracting authorities should continue to have the option to exclude economic operators which have proven unreliable, for example due to violations of environmental or social obligations, including rules on accessibility for people with disabilities, or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights. It should be clarified that a serious professional misconduct may put into question the integrity of a trader and thus make the latter unfit to secure the award of a public contract regardless of whether it has for the rest of the technical and economic capacity to perform the contract.

Bearing in mind that the contracting authority will be responsible for the consequences of a possible erroneous decision, contracting authorities should also remain entitled to believe that there is a serious professional misconduct if, before it was taken a final and binding decision on the presence of mandatory grounds for exclusion, can demonstrate by any means that the economic operator has violated its obligations, including those relating to the payment of taxes or social security contributions, unless otherwise provided by national law. They should also be able to exclude candidates or tenderers in giving effect to previous public procurement have highlighted significant deficiencies with regard to substantive obligations, for example non-delivery or performance, significant deficiencies of the product or service

provided that make it unusable for its intended purpose or improper behavior that give rise to serious doubts on the reliability of the economic operator. National law should provide a maximum duration for such exclusions.

In applying optional grounds for exclusion, the contracting authorities should pay special attention to the principle of proportionality. Small irregularities should result in the exclusion of an economic operator only in exceptional circumstances. However, repeated instances of minor irregularities may give rise to doubts about the reliability of economic operators that could justify their exclusion.

(102) However, it is appropriate to allow economic operators to take measures to ensure fulfillment of the obligations times to remedy the consequences of crimes or violations and to effectively prevent such misconduct from occurring again. Such measures might consist, in particular, measures in respect of the staff and organization such as the severance of all relations with people or organizations involved in the misconduct, in appropriate measures for the reorganization of personnel, implementation of systems reporting and monitoring, the creation of an internal audit structure to monitor compliance with and the adoption of internal rules of liability and compensation. Where such measures offer sufficient guarantees, the 'economic operator should no longer be excluded on the basis of these reasons. Economic operators should have the possibility to ask for consideration of the measures taken to ensure compliance with the requirements for the purposes of a possible admission to the procurement procedure. However, it should leave Member States free to determine the exact conditions and procedures applicable in such cases. They should be free, in particular, to decide whether to allow the individual contracting authorities to carry out the relevant assessments or entrust that task to other authorities at central or decentralized level. Economic operators should have the possibility to ask for consideration of the measures taken to ensure compliance with the requirements for the purposes of a possible admission to the procurement procedure. However, it should leave Member States free to determine the exact conditions and procedures applicable in such cases. They should be free, in particular, to decide whether to allow the individual contracting authorities to carry out the relevant assessments or entrust that task to other authorities at central or decentralized level. Economic operators should have the possibility to ask for consideration of the measures taken to ensure compliance with the requirements for the purposes of a possible admission to the procurement procedure. However, it should leave Member States free to determine the exact conditions and procedures applicable in such cases. They should be free, in particular, to decide whether to allow the individual contracting authorities to carry out the relevant assessments or entrust that task to other authorities at central or decentralized level. However, it should leave Member States free to determine the exact conditions and procedures applicable in such cases. They should be free, in particular, to decide whether to allow the individual contracting authorities to carry out the relevant assessments or entrust that task to other authorities at central or decentralized level. However, it should leave Member States free to determine the exact conditions and procedures applicable in such cases. They should be free, in particular, to decide whether to allow the individual contracting authorities to carry out the relevant assessments or entrust that task to other authorities at central or decentralized level.

(103) Tenders that appear abnormally low in relation to the works, supplies or services might be based on unsound assumptions or practices from a technical point of view, economically or legally. If the bidder fails to provide a sufficient explanation, the contracting authority should have the right to reject the offer. Rejection should be mandatory in cases where the contracting authority has established that the abnormally low price or proposed costs resulting from non-compliance with mandatory Union law or the national law compatible with it in the areas of social security, the labor law, environmental law or international labor law provisions.

(104) The execution conditions of a contract have the aim to establish specific requirements as regards the performance of the contract. Unlike the contract award criteria that form the basis of a comparative assessment of the quality of tenders, contract performance conditions are pre-established objective

requirements which have no impact on the evaluation of tenders. The execution conditions of a contract should be compatible with this Directive provided that they do not are directly or indirectly discriminatory and are related to the subject of the contract, which includes all the factors involved in the specific process of production, supply and marketing. This includes conditions governing the performance of the contract process, but excludes the requirements concerning general corporate policy.

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

(105) It is important that the compliance by subcontractors, the obligations applicable in the field of environmental law, social and labor laid down by Union law, national law, collective agreements or international provisions of law environmental, social and labor provided for in this Directive, provided that such rules, and their application, comply with Union law, is guaranteed by the competent national authorities, such as labor inspectorates or agencies for the protection of 'environment, using appropriate action within the limits of their responsibilities and mandate.

You also need to ensure a degree of transparency in the chain of subcontracting, as this provides the contracting authorities information about who is present at construction sites in which you are performing the work on their behalf or on which companies provide services in buildings, structures or areas, such as municipalities, municipal schools, sports facilities, ports or highways, of which the contracting authorities are responsible or over which they have direct control. It should be clarified that the obligation to provide the necessary information rests in each case on the principal contractor, under specific clauses that the contracting authority will have to put in all the procurement procedures, or by virtue of obligations for Member States to impose the main contractor through provisions of general application.

It should also be clarified that the conditions relating to monitoring compliance with obligations in the field of environmental law, social and labor laid down by Union law, national law, collective agreements or international provisions on environmental law, social and the work covered by this Directive, provided that such rules, and their application, comply with Union law, they should be applied whenever the national law of a member State provides for a joint liability mechanism between the main contractor and subcontractors. Also, it should be explicitly stated that Member States should be allowed to impose more stringent conditions, for example by extending the obligations on transparency, allowing direct payment to subcontractors, or by allowing or requiring contracting authorities to verify that the subcontractors are not in one of the situations that justify the economic operator exclusion. In applying these measures to subcontractors, necessary to ensure consistency with the provisions applicable to the principal contractors, making sure that the existence of mandatory grounds for exclusion involves the obligation for the main contractor to replace the subcontractor. If the checks demonstrate the presence of non-compulsory grounds for exclusion should be made clear that contracting authorities may require replacement. However, it should also state explicitly that the contracting authorities may be required to seek the replacement of the subcontractor in question when in such cases the exclusion of the main contractor would be required.

It should also be stated explicitly that the Member States remain free to adopt more stringent provisions of national law on liability, or more advanced rules on direct payments to subcontractors.

(106) It is recalled that the calculation of the periods covered by this Directive Regulation (EEC, Euratom) No. 1182/71 (18).

(107) It is necessary to specify, taking into account the relevant case law of the Court of Justice of the European Union, the conditions under which modifications of a contract during its performance require a new procurement procedure. The new procurement procedure is required when substantial changes are made 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 elements or conditions of the contract in question. This occurs particularly when the conditions change would have an impact on the outcome of the basic procedure in the event that had already been part of the initial procedure.

The contract amendments involving a minor modification of the contract value up to a certain value should always be possible without requiring a new procurement procedure. To this end and in order to ensure legal certainty, this Directive should provide for thresholds 'de minimis', below which does not require a new procurement procedure. The contractual changes above these thresholds should be possible without the need for a new procurement procedure insofar as they satisfy the relevant conditions laid down by this Directive.

(108) Contracting authorities may be faced with situations where they are necessary works, supplies or additional services; in such cases can be justified a modification of the original contract without a new procurement procedure, particularly when the additional deliveries which are intended either as a partial replacement or as the extension of services, existing supplies or installations where a change of supplier the obligations' contracting authority to acquire material, works or services with different technical characteristics which would use or whose maintenance would result in incompatibility or disproportionate technical difficulties.

(109) Contracting authorities are sometimes faced with external circumstances which could not be predicted when they had awarded the contract, particularly when the contract was awarded for a long period of time. In this case, there is a need for some flexibility to adapt the contract to such circumstances without resorting to a new procurement procedure. The concept of unforeseeable circumstances refers to circumstances which could not be foreseen despite a reasonable and diligent preparation of the initial award by the contracting authority, taking into account the means at its disposal, the nature and characteristics of the specific project, the good practice in the sector in question and the need to ensure an adequate relationship between the resources invested in preparing the award and its predictable value. However, this does not apply where an amendment involves a change in the general nature of the contract, for example by replacing the works, supplies or services covered by the contract with something different, or involves a substantial change in the nature of the contract because such a situation, it is possible to assume a hypothetical influence on the outcome.

(110) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator, for example in case of termination of the contract due to shortcomings in execution without reopening the contract for competition . However, in the performance of the contract, in particular where it has been awarded to more than one undertaking, the contractor should be able to undergo certain structural changes due to, for example, purely internal reorganizations, incorporations, mergers and acquisitions or insolvency. Such structural changes should not automatically require new tendering procedures for all public contracts carried out by that tenderer.

(111) Contrary to individual contracts, contracting authorities should have the possibility to make changes by means of revision or option clauses, without such clauses granting them unlimited discretion. This Directive should therefore determine the

extent to which modifications may be provided for in the initial contract. It should therefore be clarified that sufficiently clear clauses or options may for example include price indices or ensure, for example, that communication equipment to be provided for a given period of time remains adequate even if the protocols are amended communication or other technological changes. It should also be possible, by providing clauses that are sufficiently clear, to provide for adaptation of the contract as may be necessary due to technical difficulties encountered during operation or maintenance. It should also be borne in mind that contracts could include, for example, routine maintenance and provision of extraordinary maintenance work that is necessary to ensure continuity in the delivery of a public service.

- (112) Contracting authorities are sometimes faced with circumstances that require the early termination of public contracts in order to meet their obligations under EU law in the area of public procurement. Member States should therefore ensure that contracting authorities have the possibility, under the conditions laid down by national law, to settle a public contract during the period of validity of the contract, if so required by Union law.
- (113) The results of the Commission Staff Working Paper of 27 June 2011 entitled "Evaluation Report: Impact and Effectiveness of EU Public Procurement Law" indicated the need to review the decision to exclude certain services from the full implementation of Directive 2004/18 / EC. Consequently, full implementation of this Directive should be extended to a range of services.
- (114) Certain categories of services, by their very nature, continue to have a limited cross-border dimension, namely so-called services to the person such as social, health and school services. Such services are provided within a particular context which varies considerably from one Member State to another due to the different cultural traditions. It is therefore necessary to establish a specific regime for public contracts for these services, with a higher threshold than that applicable to other services.

Services to a person with values below this threshold will generally be of no interest to service providers in other Member States, unless there are concrete indications to the contrary, such as Union funding for cross-border projects.

Contracts for personal services above this threshold should be characterized by transparency at Union level. Due to the importance of the cultural context and the sensitivity of such services, Member States should enjoy wide discretion in order to organize the choice of service providers as they consider it more appropriate. The rules of this Directive take account of this imperative by imposing only compliance with the fundamental principles of transparency and equal treatment and by ensuring that contracting authorities have the power to apply specific quality criteria for the choice of service providers, such as criteria set by the European Voluntary Quality Framework for Social Services, published by the Social Protection Committee. When defining the procedures to be used to award

service contracts to a person, Member States should take into account Article 14 TFEU and Protocol No 1. 26. In this context, Member States should also pursue the objectives of simplifying and reducing the administrative burden for contracting authorities and economic operators; it should be clarified that this could also involve the use of rules applicable to service contracts not subject to the specific regime.

The Member States and public authorities are free to provide those services themselves or to organize 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 licenses or authorizations to all operators economic conditions which meet the conditions previously defined by the contracting authority, without limitations or quotas being provided, provided that such a system ensures sufficient publicity and observes the principles of transparency and non-discrimination.

- (115) Similarly, hotel and restaurant services are generally offered only by operators located in the specific place of provision of such services and therefore also have a limited cross-border dimension. They should therefore only fall under the lightened regime, with a threshold of 750 000 EUR. Hotel and restaurant services that exceed this threshold may be of interest to several economic operators, such as travel agents and other intermediaries, even on a cross-border basis.
- (116) Likewise, certain legal services concern only pure national law issues and are therefore generally only offered by operators located in the Member State concerned and therefore also have a limited cross-border dimension. They should therefore only fall under the lightened regime, with a threshold of 750 000 EUR. Contracts of legal services above this threshold may be of interest to various economic operators, such as international law firms, including on a cross-border basis, particularly when dealing with legal issues having as their source or context Union law or international law or legal issues affecting more than one country.
- (117) Experience shows that a number of other services, such as rescue services, fire services and prison services, generally have a certain cross-border interest only from the moment they acquire a sufficient critical mass through their relatively high value. As they are not excluded from the scope of this Directive, they should be included in the lighter regime. To the extent that their performance is actually based on procurement, other categories of services, such as administrative services or the provision of services to the community, would generally have a cross-border interest only from the threshold of 750 000 EUR and only then should they be subject to a lighter regime.
- (118) In order to ensure the continuity of public services, this Directive should provide that participation in procurement procedures for certain services in the areas of health, social and cultural services may be reserved for employee-employee organizations or their active participation in corporate governance and existing organizations such as cooperatives to participate in the provision of such services

to end users. The application of this provision is limited only to certain health services, social services and services related to certain educational and training services, libraries, archives, museums and other cultural facilities, sporting facilities and domestic services, nor affect any of the exclusions otherwise provided for in this Directive. Such services should be regulated by the lighter regime.

- (119) These services should be identified by reference to the specific positions of the Common Procurement Vocabulary (CPV) adopted by Regulation (EC) No. 2195/2002 of the European Parliament and of the Council ⁽¹⁹⁾, a nomenclature hierarchically structured and organized into divisions, groups, classes, categories and subcategories. In order to avoid legal uncertainty, it should be specified that reference to a division does not implicitly imply a reference to subordinate subdivisions. This global coverage should instead be explicitly indicated by reference to all relevant positions, if appropriate in the form of a series of codes.
- (120) Traditionally, design competitions have been used, especially in the field of spatial planning, urban planning, architecture, engineering or data processing. It should however be noted that these flexible tools could also be used for other purposes, such as getting financial engineering programs to optimize support to SMEs in the context of the Joint European Resources for Micro to Medium Enterprises (JEREMIE) or other Union programs in support of SMEs in a given Member State. The design contest used to obtain such financial engineering programs could also establish that successive service contracts for the execution of such financial engineering are awarded to the winner or to one of the winners of the design contest through a negotiated procedure without publication.
- (121) The evaluation has highlighted that it is still possible to considerably improve the application of EU legislation on public procurement. For the purpose of applying more efficient and coherent rules, it is essential to have a clear picture of the possible structural problems and general tendencies in national procurement policies, in order to address the issues more clearly. This framework should be acquired through adequate monitoring, the results of which should be published periodically, in order to allow an informed debate on possible improvements in procurement rules and practices. Acquiring a clear framework could provide information on the application of public procurement rules in the context of the implementation of Union-co-financed projects. Member States should retain the power to define the modalities of such monitoring and to decide who will have to do so in practice; in this context, they should also retain the power to decide whether monitoring should be based on ex-post sample checks or ex ante systematic audits of public procurement procedures covered by this Directive. It should be possible to bring any problems to the attention of the competent bodies; To this end, it should not be necessary for those who carried out the monitoring to be legally independent in court before courts and tribunals.

Better guidelines and information and better support for contracting authorities and economic operators could also greatly contribute to increasing public procurement

efficiency by improving knowledge, legal certainty and the professionalisation of public procurement practices. These guidelines should be made available to contracting authorities and economic operators whenever necessary to improve the correct application of the rules. The guidelines provide could embrace all the relevant aspects of public procurement, such as procurement planning, procedures, the choice of techniques and instruments as well as best practices in carrying out procedures. As far as legal issues are concerned, the guidelines should not necessarily consist of a full legal analysis of these issues; could be limited to a general indication of the elements to be taken into account for the subsequent detailed analysis of the issues, for example by referring to case law that may be relevant or to guidance notes or other sources that have considered the specific issue.

- (122) Directive 89/665 / EEC provides that certain recourse procedures are accessible at least to anyone who has or has been interested in obtaining the award of a contract and has been or is likely to be harmed by a breach of law of the Union in the field of public procurement or of national rules transposing that right. This Directive should not affect such recourse procedures. However, the public, the persons concerned, whether or not organized, and other persons or bodies who do not have access to the appeal procedures provided for in Directive 89/665 / EEC have a legitimate interest as contributors for the proper conduct of the procedures of the contract. They should therefore be able to report any breaches of this Directive to the authority or to the competent authorities in a manner different from the remedies provided for in Directive 89/665 / EEC and without necessarily having to do so before courts or tribunals. competent structure. In order not to create duplication of existing authorities or structures, Member States should be able to provide for the use of authorities or structures of general supervision, sectoral supervisory bodies, municipal supervisory authorities, competition authorities, the Ombudsman or to national audit authorities.
- (123) In order to fully exploit the potential of public procurement in achieving the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth, environmental, social and innovation procurement will also have to be part of it. It is therefore important to gain an overview of the developments in the field of strategic procurement, which will enable you to form a reasoned opinion on global trends in this sector. In this context, obviously, any appropriate reports that have already been elaborated can also be used.
- (124) Given the potential of SMEs for job creation, growth and innovation, it is important to encourage their participation in public procurement, either through appropriate provisions in this Directive or through national initiatives. The new provisions of this Directive should contribute to improving the level of success, ie the percentage of SMEs compared to the overall value of the contracts awarded. It is not appropriate to impose compulsory percentages of success, but national initiatives to strengthen the participation of SMEs, given its importance, need to be closely monitored.

- (125) A number of procedures and working methods have already been set up with regard to Commission communications and contacts with Member States, such as communications and contacts concerning the procedures set out in Articles 258 and 260 TFEU, the Network for Solution problems in the internal market (SOLVIT) and EU Pilot, procedures that are not amended by this Directive. They should, however, be supplemented by the designation of a single point of reference in each Member State for cooperation with the Commission, which would act as a single entry point for public procurement matters in the Member State concerned. This function may be exercised by people or structures who are already in regular contact with the Commission on public procurement matters such as national contact points, members of the Public Procurement Advisory Committee, public procurement network members or national coordination bodies.
- (126) The traceability and transparency of decision-making in procurement procedures is essential to ensure loyal procedures and to effectively combat corruption and fraud. The contracting authorities should therefore keep copies of high-value contracts in order to ensure that interested parties have access to such documents in accordance with the applicable rules on access to documentation. It is also necessary that the essential elements and the decisions of the individual procurement procedures are documented in a contract report. In order to avoid administrative burdens, as far as possible, it should be possible for the contract report to refer to information already provided in the relevant notice of award. It is also necessary to improve the electronic systems for the publication of such alerts, managed by the Commission, in order to facilitate the insertion of data and, at the same time, the extraction of global relations and the exchange of data between systems.
- (127) In order to facilitate administrative simplification and reduce the burden on Member States, the Commission should periodically examine whether the quality and completeness of the information contained in the notices published in the context of procurement procedures are sufficient to enable the Commission to extract statistical information which should otherwise be transmitted by the Member States.
- (128) Effective administrative cooperation is needed for the exchange of information required for the conduct of award procedures in cross-border situations, in particular as regards the exclusion criteria and selection criteria, the application of quality and environmental standards and lists of approved economic operators. Information exchange is subject to national confidentiality legislation. This Directive does not therefore oblige Member States to exchange information that goes beyond what the national contracting authorities may have access to. The Internal Market Information System (IMI) established by Regulation (EU) No. 1024/2012 of the European Parliament and of the Council [\(20\)](#) could provide a useful electronic tool to facilitate and strengthen administrative cooperation by managing information exchange based on simple and unified procedures that overcome language barriers. A pilot project should therefore be launched as soon

as possible to assess the possibility of extending IMI to the exchange of information under this Directive.

- (129) In order to adapt to the rapid technical, economic and regulatory developments, the Commission should be empowered to adopt acts in accordance with Article 290 TFEU as regards the amendment of a number of non-essential elements of this Directive. Given the need to comply with international agreements, the Commission should be empowered to amend the technical modalities for the calculation of thresholds and periodically review the thresholds and adapt them to Annexes V and XI; the lists of central government authorities are subject to changes due to administrative changes at national level. These measures are notified to the Commission, which should have the power to adapt Annex I; references to the CPV nomenclature may be subject to regulatory changes at Union level and it is necessary to reflect such changes in the text of this Directive; the details and technical characteristics of electronic reception devices should be kept up-to-date with technological developments; it is also necessary to confer on the Commission the power to make the technical standards for electronic communications compulsory in order to ensure interoperability of technical formats, processes and messaging of procurement procedures conducted using electronic means of communication, taking into account technological developments; the list of EU legislative acts establishing common methods for calculating life cycle costs should be timely adjusted to take account of measures taken on a sectoral basis. In order to meet these needs, the Commission should have the power to keep up-to-date the list of legislative acts including cost-cutting methods. It is of particular importance that, during the preparatory work, the Commission carries out appropriate consultations, including at expert level. In preparing and drawing up delegated acts, the Commission should ensure that the relevant documents to the European Parliament and the Council are properly and timely and appropriately transmitted.
- (130) In the application of this Directive, the Commission should consult appropriate expert groups in the field of electronic procurement, ensuring a balanced composition among the main groups of stakeholders.
- (131) In order to ensure uniform conditions of implementation of this Directive, implementing powers should be conferred on the Commission with regard to the formulation of forms for the publication of alerts and a model for self-declaration form. Such powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council [\(21\)](#).
- (132) Adoption of implementing acts relating to the forms for the publication of alerts, which have no financial implications or on the nature and scope of the obligations arising from this Directive, should be consulted. On the contrary, those acts are purely administrative and are intended to facilitate the application of the rules laid down in this Directive.

(133) For the adoption of the self-declaration form template, the examination procedure should be used, taking into account the impact of such self-declaration on the contract and the fact that they play a central role in simplifying documentary requirements in the procedures d 'contract.

(134) The Commission should re-examine the effects on the internal market resulting from the application of the thresholds and submit a report on this matter to the European Parliament and the Council. In this context, account should be taken of factors such as the level of cross-border contracts, SME participation, transaction costs and the balance between costs and benefits.

In accordance with Article XXII (7), the AAP will be subject to further negotiations three years after its entry into force and thereafter at regular intervals. In this context, the adequacy of the threshold level could also be considered, taking into account the impact of long-term inflation in which the thresholds foreseen by the AAP have not been altered; Should the threshold level change accordingly, the Commission should, where appropriate, adopt a proposal for a legal act modifying the thresholds laid down in this Directive.

(135) Given the ongoing discussions on the horizontal provisions governing relations with third countries in the context of public procurement, the Commission should carefully monitor the trend of world trade and assess the competitive position of the Union.

(136) Since the objective of this Directive, namely the coordination of laws, regulations and administrative provisions of the Member States in the field of public procurement, can not be sufficiently achieved by the Member States but, by reason of its scale and effects , can be better achieved at Union level, the Union may adopt measures in accordance with the subsidiarity principle enshrined in Article 5 of the Treaty on European Union. This Directive does not go beyond what is necessary in order to achieve that objective in accordance with the principle of proportionality set out in that Article.

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

(138) In accordance with the Joint Political Declaration of 28 September 2011 of the Member States and the Commission on explanatory documents, the Member States undertook to accompany, in justified cases, the notification of their transposition measures by one or more documents clarifying the relationship between the the constituent elements of the Directive and the corresponding parts of the national transposition instruments. As regards this Directive, the legislature considers that the transmission of such documents is justified,

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Section 1
Subject and definitions

Article 1

Subject matter and scope

1. This Directive establishes rules on the procedures for procurement by contracting authorities with respect to public contracts as design contests, whose value is estimated to be not less than the thresholds set out in Article 4.
2. For the purposes of this Directive speaks of contract when one or more contracting authorities acquire, by public tender works, supplies or services from economic operators chosen by the contracting authorities themselves, regardless of whether the works, supplies or services are intended for a public purpose.
3. The application of this Directive is subject to Article 346 TFEU.
4. This Directive is without prejudice to 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 organized and financed, in compliance the rules on state aid, and what specific obligations they should be subject to. Similarly, this Directive is without prejudice to the possibility for public authorities to decide whether, how and to what extent wish to perform public functions autonomously in accordance with Article 14 TFEU and Protocol. 26.
5. This Directive shall not affect the way in which Member States organize their systems in the field of social security.
6. The agreements, decisions or other legal instruments governing the transfer of powers and responsibilities for the implementation of public tasks between contracting authorities or associations of contracting authorities and do not provide for compensation in exchange for a contractual service are considered internal organizational issues the member State concerned and, as such, fall altogether under this Directive.

Article 2

definitions

1. 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, or associations formed by one or several such authorities or one or several of such bodies governed by public law;

- 2) 'Central government authorities' means the contracting authorities listed in Annex I and the legal entities, their successor insofar as corrections or amendments have been made at national level;
- 3) 'Sub-central contracting authorities' means all contracting authorities which are not central government authorities;
- 4) "Governed by public law" means bodies that have all of the following:
 - a) They are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
 - b) They have legal personality; is
 - c) They are financed for the most part by the State, regional or local authorities or other public bodies; or their management is under the supervision of those authorities or bodies; or their administrative, managerial or supervisory board consists of members more than half of which is designated by the State, regional or local authorities or other public bodies;
- 5) 'Public contracts': contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services;
- 6) "Public works contracts": public contracts having as their object one of the following actions:
 - a) the execution, or the design and execution, of works related to one of the activities listed in Annex II;
 - b) the execution, or the design and execution of a work; or
 - c) the realization, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the works;
- 7) A 'work' means the result of a product of building or civil engineering, which in itself to fulfill an economic or technical function;
- 8) "Public supply contracts": public contracts for the purchase, lease, rental or hire purchase, with or without option to buy, of products. A supply contract may include, as an incidental matter, siting and installation operations;
- 9) "Public service contracts": public contracts for the provision of services other than those referred to in paragraph 6;
- 10) 'Economic operator' means any natural or legal person or public entity or group of such persons and / or entities, including any temporary association of companies, which offers to the execution of works and / or a work, the supply of products or the provision of services;

- 11) 'Tenderer' means an economic operator who has submitted a tender;
- 12) 'Candidate' means an economic operator which has sought an invitation or has been invited to participate in a restricted procedure, a competitive procedure with negotiation, the negotiated procedure without prior publication of a competitive dialogue or an innovation partnership;
- 13) "Tender document" means any document produced by the contracting authority or to whom the contracting authority refers to describe or determine elements or of the procedure, including the invitation to tender, the warning prior information in the case in which both used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, the models for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;
- 14) "Centralized purchasing activities": activities on a permanent basis, in one of the following forms:
 - t) the acquisition of supplies and / or services intended for contracting authorities;
 - b) the award of contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;
- 15) "Ancillary purchasing activities": activities which consist in the provision of support to purchasing activities, in particular in the following forms:
 - t) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;
 - b) advice on the conduct or design of procurement procedures;
 - c) preparation and management of procurement procedures on behalf of the contracting authority concerned;
- 16) 'Central purchasing body ": a contracting authority providing centralized purchasing activities and, where appropriate, ancillary purchasing activities;
- 17) 'Service provider for procurement' means a public or private body which offers ancillary purchasing activities on the market;
- 18) 'Written' or 'in writing': a set of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;
- 19) 'Electronic means': an electronic instrument for the processing (including digital compression) and storage of disseminated data, transmitted and received by wire, by radio, by optical means or by other electromagnetic means;

- 20) 'Life cycle' means all consecutive phases and / or interconnected, including the research and development to be carried out, the production, exchanges and related conditions, the transport, use and maintenance of the product life or work or of the service, from raw material acquisition or generation of resources to disposal, the dismantling and the end of the service or use;
 - 21) 'Design contests' are those procedures which enable the contracting authority, especially in the field of spatial planning, urban planning, architecture, engineering or data processing, a plan or design selected by a jury after being put out to competition, with or without prizes;
 - 22) "Innovation": the implementation of a product, service or new or significantly improved process, including, but not limited to, production processes, building or construction, a new marketing method or organizational business practice, in ' organization of the workplace or external relations, among other things in order to help address societal challenges, or to support the Europe 2020 strategy for smart, sustainable and inclusive growth;
 - 23) 'Labeling' means any document, certificate or statement in which it confirmed that the works, products, services, processes or procedures in question meet certain requirements;
 - 24) "Labeling requirements": requirements that must be met by the works, products, services, processes or procedures in question in order to obtain the relevant labeling.
2. For the purposes of this Article, "regional authorities" includes the authorities listed non-exhaustively in the NUTS 1 and 2, pursuant to Regulation (EC) No. 1059/2003 of the European Parliament and of the Council ([22](#)), while "local authorities" include all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as defined in Regulation (EC) No. 1059/2003.

Article 3

mixed contracts

1. Paragraph 2 applies to mixed contracts for different types of contract, all covered by this Directive.

Paragraphs 3 to 5 shall apply to mixed contracts for procurement covered by this Directive and other legal regimes.

2. The contracts for 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 characterizes the main object of the contract in question.

In the case of mixed contracts consisting partly in services under Title III, Chapter I, and partly in other services or Mixed contracts including services in part and partly supplies, the main object is determined based on the estimated value higher among those of the respective services or supplies.

3. If the different parts of a contract are objectively separable, the scope of paragraph 4. If the different parts of a contract are objectively not separable, paragraph 6 applies.

If part of a contract is governed by Article 346 TFEU or Directive 2009/81 / EC, the provisions of Article 16 of this Directive.

4. In the case of contracts relating to contracts covered by this Directive as well as object contracts which do not fall within the scope of this Directive, contracting authorities may choose to award separate contracts for distinct parts or award a single contract. If the contracting authorities choose to award separate contracts for distinct parts, the decision that determines which scheme legal applies to each of these separate contracts it is adopted according to the characteristics of the distinct part in question.

Se le amministrazioni aggiudicatrici scelgono di aggiudicare un appalto unico, la presente direttiva si applica, salvo se altrimenti previsto all'articolo 16, all'appalto misto che ne deriva, a prescindere dal valore delle parti cui si applicherebbe un diverso regime giuridico e dal regime giuridico cui tali parti sarebbero state altrimenti soggette.

Nel caso di contratti misti che contengono elementi di appalti di forniture, lavori e servizi e di concessioni, il contratto misto è aggiudicato in conformità con la presente direttiva, purché il valore stimato della parte del contratto che costituisce un appalto disciplinato dalla presente direttiva, calcolato secondo l'articolo 5, sia pari o superiore alla soglia pertinente di cui all'articolo 4.

5. Nel caso di contratti aventi per oggetto sia appalti disciplinati dalla presente direttiva sia appalti per l'esercizio di un'attività soggetta alla direttiva 2014/25/UE, le norme applicabili sono determinate, fatto salvo il paragrafo 4 del presente articolo, a norma degli articoli 5 e 6 della direttiva 2014/25/UE.

6. Se le diverse parti di un determinato contratto sono oggettivamente non separabili, il regime giuridico applicabile è determinato in base all'oggetto principale del contratto in questione.

Sezione 2

Soglie

Articolo 4

Importi delle soglie

La presente direttiva si applica agli appalti con un importo, al netto dell'imposta sul valore aggiunto (IVA), pari o superiore alle soglie seguenti:

- t) 5 186 000 EUR per gli appalti pubblici di lavori;
- b) 134 000 EUR per gli appalti pubblici di forniture e di servizi aggiudicati dalle autorità governative centrali e per i concorsi di progettazione organizzati da tali autorità; se gli appalti pubblici di forniture sono aggiudicati da amministrazioni aggiudicatrici operanti nel settore della difesa, questa soglia si applica solo agli appalti concernenti i prodotti menzionati nell'allegato III;

- c) 207 000 EUR per gli appalti pubblici di forniture e di servizi aggiudicati da amministrazioni aggiudicatrici sub-centrali e concorsi di progettazione organizzati da tali amministrazioni; tale soglia si applica anche agli appalti pubblici di forniture aggiudicati dalle autorità governative centrali che operano nel settore della difesa, allorché tali appalti concernono prodotti non menzionati nell'allegato III;
- d) 750 000 EUR per gli appalti di servizi sociali e di altri servizi specifici elencati all'allegato XIV.

Articolo 5

Metodi di calcolo del valore stimato degli appalti

1. Il calcolo del valore stimato di un appalto è basato sull'importo totale pagabile, al netto dell'IVA, valutato dall'amministrazione aggiudicatrice, compresa qualsiasi forma di eventuali opzioni e rinnovi eventuali dei contratti come esplicitamente stabilito nei documenti di gara.

Quando l'amministrazione aggiudicatrice prevede premi o pagamenti per i candidati o gli offerenti, ne tiene conto nel calcolo del valore stimato dell'appalto.

2. Se un'amministrazione aggiudicatrice è composta da unità operative distinte, si tiene conto del valore totale stimato per tutte le singole unità operative.

In deroga al primo comma, se un'unità operativa distinta è responsabile in modo indipendente del proprio appalto o di determinate categorie di quest'ultimo, i valori possono essere stimati al livello dell'unità in questione.

3. The choice of method for the calculation of the estimated value of a contract may not be made with the intention of excluding from the scope of this Directive. A contract can not be split in order to avoid falling within the scope of this Directive, unless there are objective reasons to justify this.

4. The estimated value is valid at the time of shipment of the opinion for competition or, in cases where there is no provision un'indizione race, at the time when the contracting authority commences the procurement procedure, for example, where appropriate, by contacting traders in connection with the contract.

5. For framework agreements and dynamic purchasing systems, the value to be taken into consideration is the maximum estimated value net of VAT of the complex of the contracts envisaged for the total duration of the framework agreement or dynamic purchasing system .

6. In the case of innovation partnerships, the value to be considered is the maximum estimated value, net of VAT, of the research and development activities that will take place for all stages of the envisaged partnership as well as supplies, services or works to develop and deliver at the end of the partnership.

7. For public works contracts, calculation of the estimated value shall take account of the works and the total estimated value of all supplies and all the services that are made

available to the contractor by the contracting authority, provided which are necessary for executing the works.

8. Where a proposed work or a supply of scheduled services may give rise to contracts awarded for separate lots, the total estimated value of all such lots.

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

9. When a proposal for the acquisition of similar supplies may result in contracts being awarded in separate lots, the application of Article 4, b) and c), takes into account the estimated value of all such lots.

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

10. Notwithstanding paragraphs 8 and 9, the contracting authorities may award contracts for individual lots without applying the procedures provided for in this Directive, provided that the estimated value net of VAT of the lot concerned is less than 80 000 EUR for supplies or services or to 1 000 000 EUR for the work. 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 have been divided in the proposed work, the proposed acquisition of similar supplies or the project of provision of services.

11. If the procurement of supplies or services which are regular in nature or which are intended to be renewed within a given period, is taken as the basis for calculating the estimated contract value:

- to) the total actual value of the successive contracts of the same type awarded during the preceding twelve months or financial year adjusted, if possible, in order to take account of changes in quantity or value over the twelve months following the initial contract;
- b) or the estimated aggregate value of successive contracts awarded during the twelve months following the first delivery, or during the financial year if that is longer than twelve months.

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

- to) for the procurement of fixed duration equal to or less than twelve months, the total estimated value for its duration, or, if the duration exceeds twelve months, the total value including the estimated value of the remaining amount;
- b) for public contracts without a fixed term or the term can not be defined, the monthly value multiplied by 48.

13. For public service contracts, the value to be taken as the basis for calculating the estimated contract value shall, as appropriate, the following:

- to) insurance services: the premium payable and other forms of remuneration;

- b) Banking and other financial services: the fees, commissions payable, interest and other forms of remuneration;
 - c) design contracts: fees, commission payable and other forms of remuneration.
14. For public service contracts which do not indicate a total price, the value to be taken as the basis for calculating the estimated contract value is as follows:
- to) in the case of fixed-term contracts less than or equal to forty-eight months: the total value for their full term;
 - b) in the case of contracts of indefinite duration or greater than forty-eight months: the monthly value multiplied by 48.

Article 6

Revision of the thresholds and the list of central government authorities

1. Dal 30 giugno 2013 la Commissione verifica ogni due anni che le soglie di cui all'articolo 4, lettere a), b) ec), corrispondano alle soglie stabilite nell'accordo sugli appalti pubblici dell'Organizzazione mondiale del commercio (AAP) e procede, se necessario, alla loro revisione in conformità del presente articolo.

In conformità con il metodo di calcolo di cui all'AAP, la Commissione calcola il valore di tali soglie sulla base del valore giornaliero medio dell'euro rispetto ai diritti speciali di prelievo durante i ventiquattro mesi che terminano il 31 agosto precedente la revisione che entra in vigore il 1^o gennaio. Il valore delle soglie in tal modo rivedute è arrotondato, se necessario, al migliaio di euro inferiore al dato risultante da tale calcolo, per assicurare il rispetto delle soglie in vigore previste dall'AAP che sono espresse in diritti speciali di prelievo.

2. Al momento di effettuare la revisione ai sensi del presente articolo, paragrafo 1, la Commissione inoltre rivede:

- to) la soglia di cui all'articolo 13, primo comma, lettera a), allineandola alla soglia riveduta relativa agli appalti pubblici di lavori;
- b) la soglia di cui all'articolo 13, primo comma, lettera b), allineandola alla soglia riveduta relativa agli appalti pubblici di servizi aggiudicati dalle amministrazioni aggiudicatrici sub-centrali.

3. Dal 1^o gennaio 2014, ogni due anni la Commissione determina, nelle valute nazionali degli Stati membri la cui moneta non è l'euro, i valori delle soglie di cui all'articolo 4, lettere a), b) ec), rivedute a norma del presente articolo, paragrafo 1.

Contestualmente, la Commissione determina, nelle valute nazionali degli Stati membri la cui moneta non è l'euro, i valori della soglia di cui all'articolo 4, lettera d).

In conformità con il metodo di calcolo di cui all'AAP sugli appalti pubblici, la determinazione di tali valori è basata sulla media del valore giornaliero di tali valute corrispondente alla soglia applicabile espressa in euro durante i ventiquattro mesi che terminano il 31 agosto precedente la revisione che entra in vigore il 1^o gennaio.

4. La Commissione pubblica le soglie rivedute di cui al paragrafo 1, il loro controvalore nelle valute nazionali di cui al paragrafo 3, primo comma, e il valore determinato conformemente al paragrafo 3, secondo comma, nella *Gazzetta ufficiale dell'Unione europea* all'inizio del mese di novembre successivo alla loro revisione.

5. Alla Commissione è conferito il potere di adottare atti delegati conformemente all'articolo 87 per adattare la metodologia di cui al presente articolo, paragrafo 1, secondo comma, alle modifiche della metodologia di cui all'AAP per la revisione delle soglie di cui all'articolo 4, lettere a), b) e c), e per la determinazione dei valori corrispondenti nelle valute nazionali degli Stati membri la cui moneta non è l'euro, come menzionato al presente articolo, paragrafo 3.

The Commission shall be empowered to adopt delegated acts in accordance with Article 87 to revise the thresholds referred to in Article 4, paragraphs a), b) and c), pursuant to this Article, paragraph 1, and for the revision of thresholds referred to in Article 13 a) and b), under this Article, paragraph 2.

6. Should it be necessary to revise the thresholds referred to in Article 4, letters a), b) and c), of the thresholds referred to in Article 13, first paragraph, letters a) and b), and the time constraints do not allow the use of the procedure referred to in Article 87 and therefore imperative grounds of urgency so require, the procedure referred to in Article 88 shall apply to delegated acts adopted pursuant to this article, paragraph 5, second paragraph.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 to amend Annex I in order to update the list of contracting authorities on the basis of notifications from Member States, where such amendments prove necessary to correctly identify contracting authorities.

Section 3 Exclusions

Article 7

Contracts in the water, energy, transport and postal services

This Directive does not apply to public contracts and to design contests under Directive 2014/25 / EU which are awarded or organized by contracting authorities exercising one or more of the activities referred to in Articles 8 to 14 of that Directive and they are awarded for the exercise of such activities, to public contracts excluded from the scope of the directive by virtue of articles 18, 23 and 34, or to contracts awarded by a contracting authority which provides postal services within the meaning of Article 13, paragraph 2, letter b) of that directive to pursue the following activities:

- t) Special services related to electronic instruments and provided entirely by electronic means (including the secure electronic transmission of coded documents, address management services and transmission of registered electronic mail);
- b) Financial services identified with the codes of the CPV from 66100000-1 to 66720000-3 and falling within the scope of Article 21, letter d) of Directive 2014/25 / EU, including in particular postal money orders and transfers from accounts giro;

- c) philatelic services; or
- d) logistics services (services combining physical delivery and / or storage of the cargoes to other functions non-postal services).

Article 8

Specific exclusions in the electronic communications sector

This Directive does not apply to public contracts and to design contests principal purpose of permitting the contracting authorities to provide or exploit public telecommunications networks or to provide to the public one or more electronic communications services.

For the purposes of this Article, the terms 'public communications network' and 'electronic communications service' have the same meaning as in Directive 2002/21 / EC of the European Parliament and of the Council ⁽²³⁾ .

Article 9

Public contracts awarded and design contests organized pursuant to international rules

1. This Directive does not apply to public contracts and design contests which the contracting authority is obliged to award or organize in accordance with procurement procedures other than those provided for in this Directive and established according to one of the following ways:

- t) a legal instrument creating international legal obligations, such as an international agreement, concluded in conformity with the Treaties, between a Member State and one or more third countries or on the joints and related works, supplies or services intended for the joint implementation or joint management a project on the part of the signatories;
- b) an international organization.

Member States shall communicate all the legal instruments referred to in this paragraph, first paragraph, letter a), the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 89.

2. This Directive does not apply to public contracts and design contests which the contracting authority awarded or organized on the basis of public procurement rules provided by an international organization or international financing institution for contracts and design contests in question they are fully financed by this organization or institution; in the case of public contracts and design contests co-financed mainly by an international organization or international financing institution the parties shall agree on applicable procurement procedures.

3. L'articolo 17 si applica agli appalti e ai concorsi di progettazione concernenti aspetti di difesa o di sicurezza che sono aggiudicati o organizzati in base a norme internazionali. I paragrafi 1 e 2 del presente articolo non si applicano a tali appalti e concorsi di progettazione.

Articolo 10

Esclusioni specifiche per gli appalti di servizi

La presente direttiva non si applica agli appalti pubblici di servizi:

- t) aventi per oggetto l'acquisto o la locazione, quali che siano le relative modalità finanziarie, di terreni, fabbricati esistenti o altri beni immobili o riguardanti diritti su tali beni;
- b) aventi per oggetto l'acquisto, lo sviluppo, la produzione o coproduzione di programmi destinati ai servizi di media audiovisivi o radiofonici che sono aggiudicati da fornitori di servizi di media audiovisivi o radiofonici, o appalti concernenti il tempo di trasmissione o la fornitura di programmi aggiudicati ai fornitori di servizi audiovisivi o radiofonici. Ai fini della presente lettera, i termini «servizi di media audiovisivi» e «fornitori di servizi di media» hanno rispettivamente lo stesso significato di cui all'articolo 1, paragrafo 1, lettere a) ed), della direttiva 2010/13/UE del Parlamento europeo e del Consiglio ⁽²⁴⁾. The term "program" has the same meaning as in Article 1, paragraph 1, letter b) of that Directive, but also includes radio programs and materials associated with the radio programs. In addition, for the purposes of this provision, the term 'material associated to the programs' has the same meaning of 'program';
- c) concerning arbitration and conciliation services;
- d) concerning any of the following legal services:
 - the) legal representation of a client by a lawyer within the meaning of Article 1 of Directive 77/249 / EEC ⁽²⁵⁾ :
 - in an arbitration or conciliation held in a Member State, a third country or before an arbitration tribunal or international conciliation; or
 - in judicial proceedings before courts or public authorities of one Member State or third country or before judicial bodies or international institutions;
 - ii) legal advice provided in preparation for one of the processes referred to in this letter, point i), or if there is a concrete and a high probability clue that the question at issue in the advice should be the subject of the procedure in question, provided that the legal advice is provided by a lawyer within the meaning of Article 1 of Directive 77/249 / EEC;
 - iii) Services of certification and authentication of documents that must be provided by notaries;
 - iv) Legal services provided by trustees or designated guardians or other legal services whose providers are appointed by a court in the Member State concerned or are designated by law to perform specific tasks under the supervision of these courts;
 - v) other legal services which, in the Member State concerned, are connected, even occasionally, with the exercise of official authority;
- is) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments pursuant to Directive 2004/39 / EC of the European

Parliament and of the Council (36) services provided by central banks and completed transactions with the European financial stability Facility and the European stability mechanism;_

- f) concerning loans, regardless of whether they are related issue, sale, purchase or transfer of securities or other financial instruments;
- g) concerning employment contracts;
- h) concerning civil defense services, civil protection and prevention against the dangers provided by non-profit organizations and associations identified with CPV code 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000 -7, 75222000-8; 98113100-9 and 85143000-3 except for the ambulance patient transport services;
- the) concerning public passenger transport services by rail or metro;
- j) concerning services related to policy, identified by CPV code 79341400-0, 92111230-3 and 92111240-6 campaigns, if awarded by a political party in the context of an election campaign.

Article 11

Service contracts awarded on the basis of an exclusive right

This Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a statutory or regulatory provisions or provisions a published that are compatible with the TFEU.

Article 12

Public contracts between entities within the public sector

1. A public contract awarded by a contracting authority to a legal person of public law or of private law does not fall within the scope of this Directive where the following conditions are met:

- to) the contracting authority exercises over the legal person concerned a control similar to that which it exercises over its own departments;
- b) more than 80 % of the subsidiary's corporate activities are carried out in the performance of tasks entrusted to it by the contracting parent or other legal persons controlled by that contracting authority; is
- c) the controlled legal person there is no direct participation of private capital, with the exception of forms of participation of private capital that do not involve control or veto power, prescribed by national laws, in accordance with the Treaties, not exercising decisive influence the controlled legal person.

Si ritiene che un'amministrazione aggiudicatrice eserciti su una persona giuridica un controllo analogo a quello esercitato sui propri servizi ai sensi della lettera a) qualora essa eserciti un'influenza determinante sia sugli obiettivi strategici che sulle decisioni significative della persona giuridica controllata. Tale controllo può anche essere esercitato da una persona giuridica diversa, a sua volta controllata allo stesso modo dall'amministrazione aggiudicatrice.

2. Il paragrafo 1 si applica anche quando una persona giuridica controllata che è un'amministrazione aggiudicatrice aggiudica un appalto alla propria amministrazione aggiudicatrice controllante o ad un altro soggetto giuridico controllato dalla stessa amministrazione aggiudicatrice, a condizione che nella persona giuridica alla quale viene aggiudicato l'appalto pubblico non vi sia alcuna partecipazione diretta di capitali privati, ad eccezione di forme di partecipazione di capitali privati che non comportano controllo o potere di veto prescritte dalle disposizioni legislative nazionali, in conformità dei trattati, che non esercitano un'influenza determinante sulla persona giuridica controllata.

3. Un'amministrazione aggiudicatrice che non eserciti su una persona giuridica di diritto privato o pubblico un controllo ai sensi del paragrafo 1 può nondimeno aggiudicare un appalto pubblico a tale persona giuridica senza applicare la presente direttiva quando sono soddisfatte tutte le seguenti condizioni:

- to) l'amministrazione aggiudicatrice esercita congiuntamente con altre amministrazioni aggiudicatrici un controllo sulla persona giuridica di cui trattasi analogo a quello da esse esercitato sui propri servizi;
- b) oltre l'80 % delle attività di tale persona giuridica sono effettuate nello svolgimento dei compiti ad essa affidati dalle amministrazioni aggiudicatrici controllanti o da altre persone giuridiche controllate dalle amministrazioni aggiudicatrici di cui trattasi; is
- c) nella persona giuridica controllata non vi è alcuna partecipazione diretta di capitali privati, ad eccezione di forme di partecipazione di capitali privati che non comportano controllo o potere di veto prescritte dalle disposizioni legislative nazionali, in conformità dei trattati, che non esercitano un'influenza determinante sulla persona giuridica controllata.

Ai fini del primo comma, lettera a), le amministrazioni aggiudicatrici esercitano su una persona giuridica un controllo congiunto quando sono soddisfatte tutte le seguenti condizioni:

- the) gli organi decisionali della persona giuridica controllata sono composti da rappresentanti di tutte le amministrazioni aggiudicatrici partecipanti. Singoli rappresentanti possono rappresentare varie o tutte le amministrazioni aggiudicatrici partecipanti;
- ii) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the legal person; is
- iii) the controlled legal person does not pursue interests contrary to those of the controlling contracting authorities.

4. An agreement concluded exclusively between two or more contracting authorities do not fall within the scope of this Directive, where the following conditions are met:

- to) The contract establishes or creates cooperation between the participating contracting authorities aimed at ensuring that public services they are required to carry out is undertaken in order to achieve the objectives they have in common;
- b) the implementation of that cooperation is governed only by considerations relating to the public; is
- c) contracting authorities participants play in the open market for less than 20 % of the activity covered by the cooperation.

5. To determine the percentage of the assets referred to in paragraph 1, first paragraph, letter b), paragraph 3, first paragraph, letter b) and paragraph 4, letter c), considering the average total turnover, or a suitable alternative measure based on the activity, such as costs incurred by the contracting authority or legal person in question in the fields of services, supplies and works for the three years preceding the award of the contract.

If, because of the date of incorporation or the start of the legal entity or contracting authority concerned, namely due to the reorganization of its activities, revenues, or an alternative measure based on the activity, such as costs, not available for the three previous years or is no longer relevant, it is sufficient to prove, in particular on the basis of projections, that the measure of the activity is credible.

Section 4
specific situations
Subsection 1

Contracts subsidized and research and development services

Article 13

Contracts subsidized by contracting authorities

This Directive shall apply to the awarding of the following contracts:

- to) subsidized works contracts directly by more than 50 % by contracting authorities and the estimated value, net of VAT, is equal to or greater than 5 186 000 EUR, in the event that such contracts involve one of the following activities:
 - the) activities that involve civil engineering activities referred to in Annex II;
 - ii) building work for hospitals, sports, recreation and leisure, school and university buildings and buildings used for administrative purposes;
- b) service contracts directly subsidized by more than 50 % by contracting authorities and the estimated value, net of VAT, is equal to or exceeding 207 000 EUR where these contracts are connected to a works contract referred to in subparagraph a) .

Contracting authorities which grant the subsidies referred to in the first paragraph a) and b) ensure compliance with this Directive where aggiudichino themselves the subsidized

contracts or where they aggiudichino such contracts in the name and on behalf of other entities.

Article 14

research and development services

This Directive applies only to for research and development service contracts identified with the CPV code 73000000-2 to 73120000-9, 73300000-5, 73420000-2 or 73430000-5, provided they meet both of the following conditions:

- t) the benefits accrue exclusively to the contracting authority for its use in the conduct of its business, and
- b) the service provided is wholly remunerated by the contracting authority.

Subsection 2

Procurement on matters of defense and security

Article 15

Defense and security

1. This Directive shall apply to the awarding of public contracts and design contests organized in the fields of defense and security, except for the following contracts:

- t) contracts falling within the scope of Directive 2009/81 / EC;
- b) contracts covered by Directive 2009/81 / EC does not apply pursuant to Articles 8, 12 and 13 thereof.

2. This Directive does not apply to public contracts and to design contests shall not otherwise exempted under paragraph 1, to the extent that the protection of the essential security interests of a Member State can not be guaranteed by less invasive measures, such as the 'impose conditions designed to protect the confidentiality of the information which the contracting authorities make available in a tender procedure, as provided for in this Directive.

In addition, in accordance with Article 346, paragraph 1, letter a) of the TFEU, this Directive does not apply to public contracts and to design contests shall not otherwise exempted under paragraph 1 of this Article to the extent that the application of this Directive oblige the member State to supply information the disclosure of which it considers contrary to the essential interests of its security.

3. If the allocation and the public contract or design contest are declared 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 does not apply to provided that member State has determined that the essential interests in question can not be protected by less invasive measures, such as those referred to in paragraph 2, first paragraph.

Article 16

Mixed contracts on matters of defense and security

1. In the case of mixed contracts for contracts covered by this Directive and contracts governed by Article 346 TFEU or Directive 2009/81 / EC, this Article shall apply.
2. If the different parts of a particular procurement are objectively separable, contracting authorities may choose to award separate contracts for different parts or award a single contract.

If the contracting authorities choose to award separate contracts for distinct parts, the decision which determines the legal regime applicable to each of these separate contracts is adopted according to the characteristics of the distinct part in question.

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

- t) if part of a particular contract is governed by Article 346 TFEU, the contract can be awarded without applying this Directive, provided that the award of a single contract is justified for objective reasons;
- b) if part of a particular contract is governed by Directive 2009/81 / EC, the contract may be awarded in accordance with this Directive, provided that the award of a single contract is justified for objective reasons. This letter is without prejudice to thresholds and exclusions provided for by the directive.

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

3. Paragraph 2, third paragraph, letter a), it applies to mixed contracts which might otherwise apply both a) and b) of this paragraph.
4. If the different parts of a particular contract are objectively not separable, the contract can be awarded without applying this Directive when including elements covered by Article 346 TFEU; otherwise it can be awarded in accordance with Directive 2009/81 / EC.

Article 17

Public contracts and design contests on matters of defense and security which are awarded or organized according to international standards

1. This Directive does not apply to public contracts and to design contests on matters of defense and security that the contracting authority is obliged to award or organize in accordance with procurement procedures other than those provided for in this Directive and established pursuant to a of the following ways:
 - t) international agreement or arrangement concluded in accordance with the Treaties, between a Member State and one or more third countries or on joints and covering works, supplies or services intended for the joint implementation or joint operation of a project by their signatories ;

- b) international agreement or arrangement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- c) an international organization.

All agreements or arrangements referred to in this paragraph, first paragraph, letter a) shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 89.

2. This Directive does not apply to public contracts and to design contests on matters of defense or security that it shall award based on procurement rules provided by an international organization or international financing institution for contracts public and design contests in question are fully financed by this organization or institution. In the case of public contracts and design contests co-financed mainly by an international organization or international financing institution the parties shall agree on applicable procurement procedures.

CHAPTER II ***General provisions***

Article 18

Principles of awarding contracts

1. The contracting authorities shall treat economic operators on an equal footing and in non-discriminatory manner and act in a transparent and proportionate manner.

The design of the procurement procedure has no intention of excluding it from the scope of this Directive or of artificially narrowing competition. It is believed that competition is artificially limited where the design of the procurement process is carried out with the intent to unduly favor or disadvantage certain traders.

2. Member States shall take appropriate measures to ensure that traders, in the execution of public contracts, comply with the obligations applicable in the field of environmental law, social and labor laid down by Union law, national law, by collective agreements or by International provisions on environmental law, social and labor listed in Annex X.

Article 19

economic operators

1. Economic operators who, according to the Member State in which they are established, are entitled to provide the service in question, can not be rejected solely on the fact that, according to the Member State in which the contract is awarded, they should be individuals or legal persons.

However, for public service contracts and public works contracts as well as public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request for participation the names and professional qualifications of the staff responsible for the performance of the contract in question.

2. The groupings of economic operators, including joint ventures, are allowed to participate in procurement procedures. They may not be bound by the contracting authorities to have a specific legal form in order to submit a tender or a request to participate.

Where necessary, the contracting authority may specify in the tender documents the ways in which the economic operators must meet the requirements for economic and financial capacity or technical and professional capacity referred to in Article 58, provided that this is proportionate and justified by objective reasons. Member States may establish the general conditions relating to compliance with those rules by economic operators.

The conditions for the execution of a contract on the part of these groups of economic operators other than those imposed on individual participants, are justified by objective reasons and proportionate.

3. Notwithstanding paragraph 2, the contracting authorities may impose on economic operators groups to assume a specific legal form once it has been their awarded the contract, to the extent that this change is necessary for the satisfactory execution.

Article 20

reserved contracts

1. Member States may reserve the right to participate in procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of people with disabilities or disadvantaged or may provide for such execution in the context of sheltered employment programs when at least 30 % of the employees of those workshops, economic operators or programs are composed of employees with disabilities or disadvantaged workers.

2. The call for competition refer to this article.

Article 21

Confidentiality

1. Except as otherwise provided in this Directive or in the national law governing the contracting authority, in particular legislation regarding access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information requirements of candidates and tenderers set out in articles 50 and 55, the contracting authority shall not disclose information forwarded by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

2. Contracting authorities may impose on economic operators requirements aimed at protecting the confidential nature of the information which the contracting authorities make available throughout the procurement process.

Article 22

Rules applicable to communication

1. Member States shall ensure that all communications and exchanges of information provided for in this Directive, in particular the transmission electronically, are performed using electronic means of communication in accordance with the provisions of this Article. The instruments and devices to be used for communicating by electronic means, as well as their technical characteristics, non-discriminatory, are commonly available and compatible with the ICT products in general use and shall not restrict the access of economic operators to the procurement procedure.

Notwithstanding the first subparagraph, contracting authorities are not obliged to request electronic means of communication in the submission process in the following situations:

- t) because of the specialized nature of the use of electronic media require specific tools, devices or file formats that are typically not available or are not typically managed by commonly available programs;
- b) Programs can handle file formats suitable to describe the offers using the file formats that can not be handled by any other open programs or generally available or are protected by proprietary license and can not be made available for downloading, for remote use by the contracting authority;
- c) the use of electronic means would require specialized office equipment not commonly available to the contracting authority;
- d) tender documents require the submission of a physical or scaled-down model that can not be transmitted by electronic means.

With regard to communications for which are not used electronic means of communication pursuant to the second paragraph, the communication takes place by mail or other suitable support or by a combination of mail or any other suitable support and electronic means.

Notwithstanding the first subparagraph of this paragraph, the contracting authorities are not obliged to request electronic means of communication in the submission process to the extent that the use of electronic means other than media is necessary due to a security breach of electronic means of communication or for the protection of particularly sensitive nature of information that require such a high level of protection can not be adequately ensured by the use of instruments and electronic devices that are generally available to the economic operators, or which can be put at their disposal through alternative mode of access in accordance with paragraph 5.

The contracting entities that require, in accordance with this paragraph, the second paragraph of media other than those for the electronic submission procedure, indicating the reasons for the request in the individual report referred to in Article 84. Where appropriate, the contracting authorities indicate in the individual report the reasons why the use of different media by electronic means has been deemed necessary pursuant to this paragraph, fourth paragraph.

2. Notwithstanding paragraph 1, the oral communication can be used in relation to different communications from those relating to the essential elements of the procurement process, provided the content of oral communication is sufficiently documented. To this end, the essential elements of the procurement process including tender documents,

requests to participate, the confirmations of interest and offers. In particular, the oral communications with bidders that may significantly affect the content and the evaluation of bids are documented to a sufficient extent and by appropriate means, such as written or audio-visual recordings or summaries of the main elements of communication.

3. In all communication, exchange and storage of information, contracting authorities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. They examine the content of tenders and requests to participate only after the expiry of the deadline for their submission.

4. For public works contracts and design contests, Member States may require the use of specific electronic tools, such as e-simulation tools for building information or similar instruments. In such cases, the contracting authorities provide alternative access, as provided in paragraph 5 mode, until such time as these tools become generally available in accordance with paragraph 1, first paragraph, second sentence.

5. Contracting authorities may, where necessary, require the use of tools and devices that are not generally available, provided that they offer alternative means of access.

It is believed that the contracting authorities offer suitable alternative means of access in the following situations:

- t) if they offer free full access, unlimited and directed by electronic means to these tools and devices with effect from the date of publication, in accordance with Annex VIII, or the date on which the invitation to confirm interest. The text of the notice or invitation to confirm interest indicates the Internet address at which those tools and devices are accessible;
- b) if they ensure that tenderers who do not have access to tools and devices in question or do not have the possibility of obtaining them within the relevant time, provided that the responsibility for the lack of access is not attributable to the tenderer concerned can access the procurement procedure using electronic temporary provisional credentials for authentication provided for free online; or
- c) if they offer an alternative channel for electronic submission of tenders.

6. In addition to the requirements of Annex IV, to the tools and transmission devices and electronic receipt of tenders and for the electronic receipt of requests to participate, the following rules apply:

- t) information on specifications for submission of tenders and requests to participate by electronic means, including encryption and time-stamping, shall be available to interested parties;
- b) Member States or contracting authorities operating in a global framework established by the Member State concerned, specifying the level of security required for the electronic media to use for the various stages of the award of the specific procurement procedure; the level is proportional to the risks;
- c) if the United States or the contracting authorities operating in a global framework established by the Member State concerned, consider that the level of risks, assessed

in accordance with this paragraph, letter b), is such that advanced electronic signatures are required, as defined Directive 1999/93 / EC of the European Parliament and of the Council (27), accept advanced electronic signatures based on a qualified certificate, considering where such certificates are provided by a provider of certification services present in the trusted list provided for in Commission decision 2009/767 / EC (28), created with or without a device for creating a secure signature to the following conditions: _

the) the contracting authorities shall lay down the format of the advanced electronic signature on the basis of formats established in Commission Decision 2011/130 / EU (29) and implement the measures necessary for further processing; if it used a different format of electronic signature, electronic signature, or the support of the electronic document contains information about existing validation possibilities, which are the responsibility of the Member State. The validation option allows the contracting authority to validate online, for free and in an understandable way for non-native speakers, electronic signatures received as advanced electronic signatures based on a qualified certificate. _

Member States shall communicate the information about the provider of validation services to the Commission, which puts on the Internet, available to the public, information received from Member States;

ii) in the case of tenders signed with the support of a qualified certificate in the Trusted List, contracting authorities do not apply additional requirements that may hinder the use of those signatures by tenderers.

With respect to documents used in the context of a procurement procedure that are signed by the competent authority of a Member State or by another entity responsible for the release, the authority or competent institution of release can establish the required advanced signature format accordance with the requirements of Article 1, paragraph 2 of decision 2011/130 / EU. They shall adopt the necessary measures to deal technically this format including the information necessary for the treatment of the signature in the documents in question. These documents contain the electronic signature or in support of the electronic document existing validation possibilities that allow you to validate the received electronic signatures online, free and in an understandable way for non-native speakers.

7. The Commission is empowered to adopt delegated acts in accordance with Article 87 to modify the terms and technical characteristics listed in Annex IV to take account of technical progress.

The Commission shall be empowered to adopt delegated acts in accordance with Article 87 to modify the list referred to in paragraph 1, second paragraph, letter a) to d) of this Article if technological developments render inadequate the constants exceptions to ' use of electronic means of communication or, in exceptional cases, should be provided for new exceptions because of technological developments.

To ensure the interoperability of technical formats as well as data processing and messaging standards, especially in a transboundary context, the Commission shall be empowered to adopt delegated acts in accordance with Article 87 to establish the

mandatory use of such specific technical standards, in particular as regards the use of electronic submission, electronic catalogs and means for electronic authentication, only if the technical standards have been tested and have shown utility practice. Before mandating the use of any technical standards, the Commission also examines carefully the costs that this may entail, particularly in terms of adjustment to existing solutions in the field of electronic procurement, including infrastructure, processing or software.

Article 23

nomenclature

1. References to nomenclatures in the context of public procurement shall be made using the "common vocabulary for public procurement" (CPV), adopted by Regulation (EC) No. 2195/2002.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 to adapt the CPV codes set out in this Directive when changes in the CPV nomenclature must be reflected in this Directive and do not involve a modification to the scope of the latter .

Article 24

Conflicts of interest

Member States shall ensure that contracting authorities take appropriate measures to prevent, detect and remedy effectively to conflicts of interest in carrying out procurement procedures in order to avoid any distortion of competition and ensure equal treatment of all traders.

The concept of conflicts of interest covering at least the cases in which staff of a contracting authority or a provider of services for account of the contracting authority involved in carrying out the procurement procedure or may influence the outcome of this procedure has directly or indirectly, a financial, economic or other personal interest that may be perceived as a threat to its impartiality and independence in the context of the procurement process.

TITLE II

PROVISIONS APPLICABLE TO PUBLIC PROCUREMENT

CHAPTER I

procedures

Article 25

Conditions relating to the GPA and other international agreements

As far as covered by Annexes 1, 2, 4 and 5 and by the General Notes of Appendix 1 of the European Union ' AAPE from other international agreements to which the Union is bound, contracting authorities shall accord to the works, supplies, services and economic

operators of the signatories to those agreements treatment no less favorable than that accorded to the works, supplies, services and economic operators of the Union.

Article 26

Choice of procedures

1. In awarding their public contracts, contracting authorities shall apply the national procedures adjusted to be in conformity with this Directive, provided that, subject to the provisions of Article 32, has been issued a notice of a call for competition in accordance with this Directive .

2. Member States shall provide that contracting authorities may apply open or restricted procedures as regulated in this Directive.

3. Member States shall provide that contracting authorities may use innovation partnerships as regulated in this Directive.

4. Member States shall provide that contracting authorities may apply a competitive procedure with negotiation or a competitive dialogue in the following situations:

t) as it regards works, supplies or services which meet one or more of the following criteria:

the) the contracting authority's requirements can not be met without the adoption of solutions immediately available;

ii) involve design or innovative solutions;

iii) the contract can not be awarded without prior negotiations because of special circumstances in relation to the nature, complexity and financial and legal make-or because of the risks attached to them;

iv) the technical specifications can not be established with sufficient precision by the contracting authority with reference to a norm, a European Technical Assessment, a common technical specification or a technical reference under points 2 to 5 of Annex VII;

b) as it regards works, supplies or services for which, in response to an open or restricted procedure, have submitted only irregular or unacceptable. In such situations, the contracting authorities are not obliged to publish a contract notice where they include in all procedures, and only, the tenderers which satisfy the requirements set out in Articles 57 to 64 which, in the open or restricted procedure, have submitted offers complying with the formal requirements of the procurement process.

In particular they are considered irregular tenders which do not comply with the concession documents, which were received late, in relation to which there is evidence of corruption or collusion, or that the contracting authority has judged to be abnormally low. In particular they are considered unacceptable tenders submitted by tenderers who do not possess the necessary qualifications and bids whose price exceeds the amount placed by the contracting authority based on the race of the

contracting authority established and documented prior to the start of the procurement process .

5. The competition is made by means of a contract notice pursuant to Article 49.

In the event that the contract is awarded by restricted or competitive procedure with negotiation, Member States may, notwithstanding the first subparagraph of this paragraph, provide that contracting authorities sub-stations or specific categories of the same they can hold the race by a warning prior information notice in accordance with Article 48, paragraph 2.

If the competition is made by means of a notice of prior information referred to in Article 48, paragraph 2, the economic operators who have expressed interest in following the publication of the prior information notice shall subsequently be invited to confirm their interest in writing by means of a 'call to confirm interest 'in accordance with Article 54.

6. In the cases and specific circumstances expressly provided for in Article 32, Member States may provide that the contracting authorities exercise a negotiated procedure without prior publication of a contract notice. Member States shall not permit the application of this procedure in cases other than those referred to in Article 32.

Article 27

open procedure

1. In open procedures, any economic operator may submit tenders in response to a call for competition.

The minimum time limit for receipt of tenders is thirty days from the date on which the contract notice.

Offers are accompanied by the information required by the contracting authority for qualitative selection.

2. In cases where the contracting authorities have published a warning prior information that was not itself used as a means of calling for competition, the time limit for receipt of tenders as provided in this Article, paragraph 1, second subparagraph may be reduced to fifteen days provided all the following conditions are met:

t) the warning information notice contains all the information required for the contract notice set out in Annex V, Part B, Section I, provided that these are available at the time of publication of the prior information ;

b) the warning information notice was sent for publication between no less than thirty days and not more than twelve months before the date on which the contract notice.

3. If, for reasons of urgency duly substantiated by the contracting authority, the time limits set out in the second paragraph of paragraph 1 can not be met, the contracting authority may set a term not less than fifteen days from the date of dispatch of the notice .

4. The contracting authority may reduce by five days the time limit for receipt of tenders referred to in this Article, paragraph 1, second paragraph, where it accepts that tenders may be submitted electronically in accordance with Article 22, paragraph 1, first paragraph and Article 22, paragraphs 5 and 6.

Article 28

Restricted procedure

1. In restricted procedures, any economic operator may submit a request for participation in response to a notice of invitation to tender containing the information referred to in Annex V, Part B or C as the case may be, providing the information requested by the contracting authority qualitative selection.

The minimum time limit for the receipt of applications for participation is thirty days from the date of the invitation to tender or, if a pre-information notice is used as a means of inviting a tender, from the date of the invitation to confirm interest .

2. Only those economic operators invited to that effect by the contracting authorities following the evaluation of the information provided may submit a tender. Contracting authorities may limit the number of eligible candidates to be invited to participate in the procedure in accordance with Article 65.

The minimum time limit for receipt of tenders is 30 days from the date of transmission of the invitation to tender.

3. In the event that the contracting authorities have published a pre-information notice which is not used as an invitation to tender, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may be reduced to ten days provided that all of the following conditions are met:

- t) the pre-information notice shall contain all the information required in Annex V, Part B, Section I, provided that such information is available at the time of publication of the Pre-information Notice;
- b) the pre-information notice was sent to the public not less than thirty-five days and not more than twelve months before the date of the call for tenders.

4. Member States may provide that all sub-central contracting authorities or specific categories thereof may fix the time limit for receipt of tenders in agreement with the contracting authority and the candidates selected, provided that all candidates selected have the same term to draw up and present their offers. In the absence of an agreement on the deadline for receipt of tenders, the deadline may not be less than ten days after the date of the invitation to submit tenders.

5. The time limit for receipt of tenders referred to in paragraph 2 of this Article may be reduced by five days when the contracting authority agrees that tenders may be submitted electronically in accordance with Article 22 (1), (5) and (6).

6. Where, on imperative grounds of urgency, the contracting authority has demonstrated that it is impossible to comply with the minimum time limits laid down in this Article, it may fix:

- t) for the receipt of applications for participation, a period not less than 15 days from the date of the invitation to tender;
- b) a time limit for receipt of tenders not less than 10 days from the date of the invitation to submit tenders.

Article 29

Competitive negotiation procedure

1. In competitive tendering procedures, any economic operator may submit a request for participation in response to a notice of invitation to tender containing the information referred to in Annex V Parts B and C by providing the information requested by the contracting authority for the qualitative selection .

In the tender documents, the contracting authorities shall identify the subject matter of the contract by providing a description of their needs and explaining the required characteristics of the supplies, works or services to be awarded and specifying the criteria for the award of the contract. They also indicate what elements of the description define the minimum requirements that all tenderers must meet.

The information provided is sufficiently precise to allow economic operators to identify the nature and scope of the contract and decide whether to apply for the procedure.

The minimum time limit for the receipt of applications for participation is thirty days from the date of the invitation to tender or, if a pre-information notice is used as a means of inviting a tender, from the date of the invitation to confirm interest . The minimum deadline for receipt of initial bids is thirty days from the date of the invitation. Article 28 (3) to (6) shall apply.

2. Only the economic operators invited by the contracting authority following its assessment of the information provided may submit an initial offer which forms the basis for subsequent negotiations. Contracting authorities may limit the number of eligible candidates to be invited to participate in the procedure in accordance with Article 65.

3. Except as provided for in paragraph 4, contracting authorities shall negotiate with tenderers the initial bids and all subsequent tenders submitted by them, except for the final bids pursuant to paragraph 7, in order to improve their content.

Minimum requirements and award criteria are not subject to negotiation.

4. Contracting authorities may award contracts on the basis of initial bids without negotiation if they have indicated in the call for tenders or in the invitation to confirm interest that reserves that possibility.

5. In the course of negotiations, contracting authorities shall ensure equal treatment between all tenderers. To this end, they do not disclose information that can advantage certain bidders over others. They shall inform in writing all tenderers whose tenders have

not been excluded in accordance with paragraph 6 of the changes in specifications and other contract documents other than those which establish the minimum requirements. Following these changes, the contracting authorities shall allow tenderers a sufficient time to modify and re-issue, where appropriate, the modified tenders.

In accordance with Article 21, contracting authorities may not disclose to the other participants any confidential information communicated by the candidate or tenderer participating in the negotiations without the agreement of the contracting authority. This agreement does not take the form of a general derogation, but is considered to refer to the disclosure of specific information expressly indicated.

6. Negotiating competitive procedures may take place at a later stage to reduce the number of bids to be negotiated by applying the award criteria specified in the call for tenders, in the invitation to confirm interest or in another tender document. In the notice of invitation to tender, in the invitation to confirm interest or in another tender document, the contracting authority shall indicate whether it makes use of that right.

7. When the contracting authorities intend to conclude the negotiations, they shall inform the other tenderers and establish a common term within which new or modified tenders may be submitted. They shall verify that the final bids comply with the minimum requirements and Article 56 (1) shall evaluate the final bids according to the award criteria and award the contract in accordance with Articles 66 to 69.

Article 30

Competitive dialogue

1. In competitive dialogue, any economic operator may apply to participate in a call for competition by providing the information required by the awarding authority for qualitative selection.

The minimum time limit for the receipt of applications for participation is 30 days from the date of the call for tenders.

Only the economic operators invited by the contracting authorities following the evaluation of the information provided may participate in the dialogue. Contracting authorities may limit the number of eligible candidates to be invited to participate in the procedure in accordance with Article 65. The contract is awarded solely on the basis of the award criterion of the best value for money in accordance with Article 67 , paragraph 2.

2. Contracting authorities shall indicate in their call for tenders their requirements and requirements, and shall specify them in the notice itself and / or in a descriptive document. At the same time and in the same documents, they indicate and define the selection criteria chosen and set an indicative term.

3. The contracting authorities shall start with the selected participants in accordance with the relevant provisions of Articles 56 to 66 a dialogue aimed at identifying and defining the means best suited to meet their needs. During the dialogue phase, all aspects of the contract can be discussed with the selected participants.

During the dialogue, contracting authorities shall ensure equal treatment of all participants. For this purpose, they do not provide discriminatory information that can benefit certain participants from others.

In accordance with Article 21, contracting authorities may not disclose to the other participants the proposed solutions or other confidential information communicated by a candidate or tenderer participating in the dialogue without the agreement of the latter. This agreement does not take the form of a general derogation, but is considered to refer to the disclosure of specific information expressly indicated.

4. Competitive dialogues may take place at a later stage in order to reduce the number of solutions to be discussed during the dialogue phase by applying the award criteria set out in the call for tenders or the descriptive document. In the invitation to tender or the descriptive document, the contracting authorities shall indicate whether they will choose this option.

5. The contracting authority continues the dialogue until it is able to identify the solution or solutions that can meet its needs.

6. After declaring the dialogue concluded and informing the remaining participants, the contracting authorities invite each of them to submit their final bids according to the solution or solutions presented and specified in the dialogue phase. These bids contain all the elements required and necessary for the execution of the project.

At the request of the contracting authority, such tenders may be clarified, clarified and refined. However, such clarifications, clarifications, refinements or information supplements may not have the effect of altering the essential aspects of the public offer or of the public contract, including the requirements and requirements set out in the notice of invitation to tender or the descriptive document where the variations such requirements, requirements and requirements may jeopardize competition or have a discriminatory effect.

7. Contracting authorities shall evaluate tenders received on the basis of the award criteria set out in the notice of invitation to tender or the descriptive document.

Negotiations may be conducted at the request of the contracting authority with the tenderer who has submitted the best value for money in accordance with Article 67 in order to confirm the financial commitments or other terms contained in the offer through the completion of contract terms, provided that this does not result in substantial modification of essential elements of the public offer or contract, including the requirements and requirements set out in the notice of invitation to tender or the descriptive document and that there is no risk of distorting competition or create discrimination.

8. Contracting authorities may provide for prizes or payments for participants in the dialogue.

Article 31

Innovation Partnerships

1. In innovation partnerships, any economic operator may submit a request for participation in response to a call for competition by submitting the information requested by the awarding authority for qualitative selection.

In the tender documents, the contracting authority identifies the need for innovative products, services or works that can not be met by purchasing products, services or works available on the market. It also indicates which elements of the description define the minimum requirements that all tenderers must meet. The information provided is sufficiently precise to allow economic operators to identify the nature and scope of the requested solution and decide whether to apply for the procedure.

The contracting authority may decide to establish a partnership for innovation with only one partner or multiple partners conducting separate research and development activities.

The minimum time limit for the receipt of applications for participation is 30 days from the date of the call for tenders. Only the economic operators invited by the contracting authorities following the evaluation of the information provided may participate in the procedure. Contracting authorities may limit the number of eligible candidates to be invited to participate in the procedure in accordance with Article 65. Contracts shall be awarded solely on the basis of the best quality / price-performance award criterion in accordance with Article 67 .

2. The Innovation Partnership aims to develop innovative products, services or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and the maximum costs agreed between the contracting authorities and the participants.

The innovation partnership is structured in successive stages according to the sequence of stages of the research and innovation process, which may include the manufacture of products or the provision of services or the execution of works. The innovation partnership sets out intermediate objectives that the parties must achieve and provides for the payment of remuneration by a fair rate.

According to these objectives, the contracting authority may decide, after each stage, to resolve the innovation partnership or, in the case of a partnership with several partners, reduce the number of partners by solving individual contracts, provided that he has indicated in the competition documents such possibilities and conditions to use it.

3. Unless otherwise provided for in this Article, contracting authorities shall negotiate with tenderers the initial bids and all subsequent bids submitted, except for the final bids, in order to improve their content.

Minimum requirements and award criteria are not subject to negotiation.

4. In the course of negotiations, contracting authorities shall ensure equal treatment between all tenderers. To this end, they do not disclose information that can advantage certain bidders over others. They shall inform in writing all tenderers whose tenders have not been excluded in accordance with paragraph 5 of the changes in specifications and other contract documents other than those which establish the minimum requirements. Following these changes, the contracting authorities will give tenderers sufficient time to modify and re-submit, where appropriate, modified tenders.

In accordance with Article 21, the contracting authorities shall not disclose to the other participants any confidential information communicated by a candidate or tenderer participating in the negotiations without the agreement of the latter. This agreement does not take the form of a general derogation, but is considered to refer to the disclosure of specific information expressly indicated.

5. Negotiations during the innovation partnership procedures may take place at a later stage to reduce the number of bids to be negotiated by applying the award criteria specified in the call for tenders, in the invitation to confirm interest or in the tender documents. In the invitation to tender, in the invitation to confirm interest or tender documents, the contracting authority shall indicate whether it will use that option.

6. In selecting candidates, contracting authorities apply, in particular, the criteria for candidates' capacity in research and development and in the development and implementation of innovative solutions.

Only the economic operators invited by the contracting authorities following the evaluation of the information requested may submit research and innovation projects in order to meet the needs identified by the contracting authority, which can not be met by existing solutions.

In the tender documents, the contracting authority defines the regime applicable to intellectual property rights. In the case of a partnership partnership with several partners, the contracting authority shall not reveal to the other partners, in accordance with Article 21, the proposed solutions or other confidential information communicated by a partner within the partnership without the agreement of same. This agreement does not take the form of a general derogation, but is considered as referring to the provision of specific information.

7. The contracting authority shall ensure that the structure of the partnership and, in particular, the duration and value of the various phases reflect the degree of innovation of the proposed solution and the sequence of research and innovation activities necessary for the development of an innovative solution still available on the market. The estimated value of supplies, services or works is not disproportionate to the investment required for their development.

Article 32

Use of the negotiated procedure without prior publication

1. In the specific cases and circumstances referred to in paragraphs 2 to 5, Member States may provide for contracting authorities to award public contracts through a negotiated procedure without prior publication.

2. In the case of public works, supplies and services contracts, the negotiated procedure without prior publication may be used in the following cases:

- t) where no suitable bid or offer has been submitted nor any application for participation or any appropriate application for participation, following the examination of an open or restricted procedure, provided that the initial terms of the contract are not

substantially altered and provided that report shall be forwarded to the Commission at the latter's request.

An offer is not deemed appropriate unless it has any relevance to the contract and is therefore manifestly inadequate, subject to substantial modifications, to meet the needs of the contracting authority and the requirements specified in the tender documents. An application for participation is not deemed appropriate if the economic operator concerned is or may be excluded under Article 57 or does not meet the selection criteria established by the contracting authority in accordance with Article 58;

b) when works, supplies or services can only be provided by a particular economic operator for one of the following reasons:

the) the purpose of the contract consists in the creation or acquisition of a unique artwork or artwork;

ii) competition is absent for technical reasons;

iii) protection of exclusive rights, including intellectual property rights.

The exceptions referred to in points (ii) and (iii) apply only where there are no reasonable substitutes or alternatives and the absence of competition is not the result of an artificial limitation of the parameters of the contract;

c) to the extent strictly necessary where, for reasons of extreme urgency arising from unforeseeable events by the contracting authority, the terms for open procedures or restricted procedures or negotiated competitive procedures can not be complied with. The circumstances invoked to justify extreme urgency are in no way attributable to the contracting authorities.

3. In the case of public supply contracts, the negotiated procedure without prior publication may be used in the following cases:

t) where the products in question are manufactured solely for the purpose of research, experimentation, study or development; however, contracts awarded under this letter do not include production in quantities to ascertain the commercial viability of the product or to amortize research and development costs;

b) in the case of ancillary deliveries made by the original supplier and intended for the partial renewal of supplies or installations or the extension of existing supplies or installations where the change of supplier obliges the contracting authority to purchase supplies of different technical characteristics whose use or whose maintenance would result in disproportionate technical incompatibility or technical difficulties; the duration of such contracts and renewable contracts can not, as a general rule, exceed three years;

c) for listed and purchased supplies on the commodity market;

d) for the purchase of supplies or services at particularly advantageous conditions, by a supplier who ceases business permanently, or by the administrator or liquidator of a bankruptcy, of a court settlement or of a similar procedure provided for in national laws or regulations.

4. The negotiated procedure without prior publication may be used for services when the contract in question comes to a design contest organized in accordance with this Directive and must, under the rules laid down in the design contest, be awarded to the winner or to one of the winners of this competition; in the latter case, all winners must be invited to participate in the negotiations.

5. The negotiated procedure without prior publication may be used for new works or services consisting in the repetition of similar works or services already entrusted to the awarding economic operator of the initial contract by the same contracting authorities, provided that such works or services are in conformity with a project and that this project has been the subject of a first contract awarded under a procedure in accordance with Article 26 (1). The basic designation indicates the extent of any additional works or services and the conditions under which they will be awarded.

The possibility of using this procedure is indicated since the start of the competitive comparison in the first transaction and the total amount planned for the continuation of works or the provision of services is taken into account by the contracting authorities for the application of Article 4 .

The use of this procedure is limited to the three years following the conclusion of the initial contract.

CHAPTER II

Techniques and tools for electronic and aggregate procurement

Article 33

Framework Agreements

1. Contracting authorities may conclude framework agreements, provided they apply the procedures laid down in this Directive.

'Framework agreement' means an agreement concluded between one or more contracting authorities and one or more economic operators with a view to defining the terms of the contracts to be awarded during a given period, in particular as regards prices and, where case, the expected quantities.

The duration of a framework agreement shall not exceed four years, except in duly justified exceptional cases, in particular by the subject of the framework agreement.

2. Contracts based on a framework agreement shall be awarded in accordance with the procedures set out in this paragraph and paragraphs 3 and 4.

Such procedures shall apply only between the contracting authorities clearly identified for that purpose in the notice of invitation to tender or in the invitation to confirm interest and the economic operators of the framework agreement concluded.

Contracts based on a framework agreement may under no circumstances be subject to substantive changes to the conditions laid down in that framework agreement, in particular in the case referred to in paragraph 3.

3. When a framework agreement is concluded with only one economic operator, contracts based on such a framework agreement shall be awarded within the limits of the conditions laid down in the framework agreement.

For the award of such contracts, contracting authorities may consult the economic operator in the framework of the framework agreement in writing, requesting it to complete, if necessary, its tender.

4. When a framework agreement is concluded with more than one economic operator, it is executed in one of the following ways:

- t) in accordance with the terms and conditions of the framework agreement, without reopening competitive confrontation, whether the framework agreement contains all the terms governing the performance of the works, services and supplies concerned, as well as the objective conditions for determining which of the economic operators parts of the framework agreement will perform this performance; these conditions are indicated in the tender documents for the framework agreement;
- b) whether the framework agreement contains all the terms governing the performance of the works, services and supplies in question, in part without the reopening of the competitive comparison in accordance with (a) and partly with the reopening of the competitive confrontation between economic operators parts of the framework agreement in accordance with point (c) where that possibility has been established by the contracting authorities in the framework contract documents. The choice as to whether specific works, supplies or services must be acquired following the reopening of the competitive confrontation or directly under the terms of the framework agreement is based on objective criteria, which are set out in the tender dossiers, Framework Agreement. These tender documents also specify which conditions may be subject to the reopening of the competitive comparison.

The possibilities provided for in the first subparagraph of this letter shall also apply to each lot of a framework agreement for which all the terms governing the performance of the works, services and supplies concerned are defined in the framework agreement, that all the terms governing the provision of the works, services and supplies concerned have been established for other lots.

- c) reopening the competitive comparison between economic operators of the framework agreement, if the framework agreement does not contain all the terms governing the performance of works, services and supplies.

5. Comparisons competitive referred to in paragraph 4, b) and c) are based on the same conditions as applied for the award of the framework agreement, if necessary, more precisely, and, where appropriate, other terms referred to in the tender documents for the 'Framework Agreement, in accordance with the following procedure:

- t) for each contract to be awarded by the contracting authorities, consult in writing the economic operators who are in a position to carry out the contract;
- b) the contracting authorities shall set a time limit for submitting tenders for each specific contract taking into account elements such as the complexity of the contract and the time necessary for the submission of tenders;
- c) tenders are submitted in writing and their content is not made public until the expiry of the deadline for their submission;
- d) the contracting authorities shall award each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the tender documents for the framework agreement.

Article 34

Dynamic acquisition systems

1. For current-use purchases, whose features, as well as generally available on the market, meet the needs of contracting authorities, it is possible to use a dynamic acquisition system. A dynamic capture system works as a fully electronic acquisition process and is open for the entire duration of the acquisition system to any economic operator that meets the selection criteria. It can be categorized into objectively defined categories of products, works or services based on the characteristics of the contract to be performed in the category concerned. Such features may include a reference to the maximum eligible quantity of specific successive contracts to a specific geographic area in which subsequent specific procurement will be executed.
2. For contracting under a dynamic purchasing system, contracting authorities follow the rules of the restricted procedure. All candidates who meet the selection criteria are admitted to the system; the number of candidates admitted to the system is not limited to Article 65. If they have split the system into categories of products, works or services in accordance with paragraph 1 of this Article, contracting authorities specify the selection criteria applicable for each category .

Subject to Article 28, the following terms shall apply:

- t) the minimum time limit for the receipt of applications for participation is 30 days from the date of the invitation to tender or, if a pre-information notice is used as a means of inviting an invitation to tender, from the date of the invitation to confirm interest . No further terms shall be applicable for the receipt of applications for participation once the call for tenders for the first specific contract in the dynamic purchasing system has been sent;
- b) the minimum time limit for receipt of tenders shall be at least ten days after the date of transmission of the invitation to tender. Where appropriate, Article 28 (4) shall apply. Article 28 (3) and (5) shall not apply.

3. All communications under a dynamic acquisition system shall be carried out exclusively by electronic means in accordance with Article 22 (1), (3), (5) and (6).

4. In order to award contracts under a dynamic purchasing system, the contracting authorities:

- t) publish a notice of a call for competition making it clear that a dynamic purchasing system;
- b) specify in the procurement documents at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including the method of operation of the dynamic purchasing system, the electronic equipment used and the arrangements and specific connection systems;
- c) indicate a possible division into categories of products, works or services and features that define the categories;
- d) They offer free access, direct and complete, until the system is valid, to the tender documents in accordance with Article 53.

5. Contracting authorities shall give any economic operator, throughout the period of validity of the dynamic purchasing system, the possibility to apply for admission to the system under the conditions referred to in paragraph 2. The contracting authorities shall complete the assessment of such questions according to the selection criteria within ten working days of receipt. The period may be extended up to fifteen working days in justified individual cases, in particular the need to examine additional documentation or occur otherwise if the selection criteria have been met.

Notwithstanding the first paragraph, provided that the invitation to tender for the first specific contract in a dynamic purchasing system has not been sent, the contracting authority may extend the evaluation period that place during the extended evaluation period is not issued any invitation to tender. The contracting authorities shall indicate in the procurement documents the duration of the extended period they wish.

The contracting authorities shall as soon as the relevant economic operator if it is admitted or not to the dynamic purchasing system.

6. Contracting authorities shall invite all participants invited to tender for each specific procurement under the dynamic purchasing system, in accordance with Article 54. If a dynamic purchasing system has been divided into categories of products, works or services, contracting authorities shall invite all the participants admitted to the category that corresponds to the specific contract to tender.

They shall award the contract to the tenderer which has submitted the best tender on the basis of award criteria set out in the contract notice for the dynamic purchasing system or, where a prior information notice is used as a means of calling for competition, in ' invitation to confirm interest. Those criteria may, if appropriate, be specified in the invitation to tender.

7. Contracting authorities may, at any time during the period of validity of the dynamic purchasing system, which allowed the participant submit a self-renewed and updated provided for in Article 59, paragraph 1 within five working days from the date on which it is transmitted this request.

Article 59, paragraphs 4 to 6 shall apply for the entire period of the dynamic purchasing system.

8. The contracting authorities shall indicate in the call for competition the period of validity of the dynamic purchasing system. They shall inform the Commission of any change in that period of validity using the following standard forms:

- t) if the validity period is changed without terminating the system, the model used initially for the call for competition for the dynamic purchasing system;
- b) if it is an end to the system, a contract award notice referred to in Article 50.

9. They may not be billed to the interested economic operators or participants in the dynamic system of acquisition of administrative contributions before or during the period of validity of the dynamic purchasing system.

Article 35

electronic auctions

1. Contracting authorities may use electronic auctions in which new prices, revised downwards, and / or new values concerning certain elements of tenders.

To this end, the contracting authorities structure the electronic auction as an electronic process in successive phases, which occurs after an initial full evaluation of tenders and allows them to be classified on the basis of an automatic treatment.

Taluni appalti di servizi e di lavori che hanno per oggetto prestazioni intellettuali, come la progettazione di lavori, che non possono essere classificati sulla base di un trattamento automatico non sono oggetto di aste elettroniche.

2. Nelle procedure aperte, ristrette o competitive con negoziazione, le amministrazioni aggiudicatrici possono decidere che l'aggiudicazione di un appalto pubblico è preceduta da un'asta elettronica quando il contenuto dei documenti di gara, in particolare le specifiche tecniche, possono essere fissati in maniera precisa.

Alle stesse condizioni, esse possono ricorrere all'asta elettronica in occasione della riapertura del confronto competitivo fra le parti di un accordo quadro, di cui all'articolo 33, paragrafo 4, lettere b) oc), e dell'indizione di gare per appalti da aggiudicare nell'ambito del sistema dinamico di acquisizione di cui all'articolo 34.

3. L'asta elettronica si fonda su uno dei seguenti elementi delle offerte:

- t) unicamente i prezzi quando l'appalto viene aggiudicato sulla sola base del prezzo;
- b) i prezzi e/o i nuovi valori degli elementi dell'offerta indicati nei documenti di gara quando l'appalto è aggiudicato sulla base del miglior rapporto qualità/prezzo o all'offerta con il costo più basso sulla base di un approccio costo/efficacia.

4. Le amministrazioni aggiudicatrici che decidono di ricorrere a un'asta elettronica lo indicano nel bando di gara o nell'invito a confermare interesse. I documenti di gara comprendono almeno le informazioni di cui all'allegato VI.

5. Prima di procedere all'asta elettronica le amministrazioni aggiudicatrici effettuano una prima valutazione completa delle offerte conformemente al criterio o ai criteri di aggiudicazione stabiliti e alla relativa ponderazione.

Un'offerta è considerata ammissibile se è stata presentata da un offerente che non è stato escluso ai sensi dell'articolo 57, che soddisfa i criteri di selezione e la cui offerta è conforme alle specifiche tecniche senza essere irregolare o inaccettabile ovvero inadeguata.

In particolare sono considerate irregolari le offerte che non rispettano i documenti di gara, che sono state ricevute in ritardo, in relazione alle quali vi sono prove di corruzione o collusione, o che l'amministrazione aggiudicatrice ha giudicato anormalmente basse. In particolare sono considerate inaccettabili le offerte presentate da offerenti che non possiedono la qualificazione necessaria e le offerte il cui prezzo supera l'importo posto dall'amministrazione aggiudicatrice a base di gara stabilito e documentato prima dell'avvio della procedura di appalto.

Un'offerta non è ritenuta appropriata se non presenta alcuna pertinenza con l'appalto ed è quindi manifestamente inadeguata, salvo modifiche sostanziali, a rispondere alle esigenze dell'amministrazione aggiudicatrice e ai requisiti specificati nei documenti di gara. Una domanda di partecipazione non è ritenuta appropriata se l'operatore economico interessato deve o può essere escluso a norma dell'articolo 57 o non soddisfa i criteri di selezione stabiliti dall'amministrazione aggiudicatrice ai sensi dell'articolo 58.

Tutti gli offerenti che hanno presentato offerte ammissibili sono invitati simultaneamente, per via elettronica, a partecipare all'asta elettronica utilizzando, a decorrere dalla data e dall'ora previste, le modalità di connessione conformi alle istruzioni contenute nell'invito. L'asta elettronica può svolgersi in più fasi successive e non ha inizio prima di due giorni lavorativi a decorrere dalla data di invio degli inviti.

6. L'invito è corredato del risultato della valutazione completa dell'offerta in questione, effettuata conformemente alla ponderazione di cui all'articolo 67, paragrafo 5, primo comma.

L'invito precisa altresì la formula matematica che determinerà, durante l'asta elettronica, le riclassificazioni automatiche in funzione dei nuovi prezzi e/o dei nuovi valori presentati. Salvo nel caso in cui l'offerta economicamente più vantaggiosa è individuata sulla base del solo prezzo, tale formula integra la ponderazione di tutti i criteri stabiliti per determinare l'offerta economicamente più vantaggiosa, quale indicata nel bando di gara o in altri documenti di gara. A tal fine le eventuali forcelle devono essere precedentemente espresse con un valore determinato.

Qualora siano autorizzate varianti, per ciascuna variante deve essere fornita una formula separata.

7. Nel corso di ogni fase dell'asta elettronica, le amministrazioni aggiudicatrici comunicano in tempo reale a tutti gli offerenti almeno le informazioni che consentono loro

di conoscere in ogni momento la rispettiva classificazione. Esse possono, se questo era precedentemente indicato, comunicare altre informazioni riguardanti altri prezzi o valori presentati. Esse possono inoltre annunciare in qualsiasi momento il numero di partecipanti alla fase specifica dell'asta. In nessun caso, tuttavia, esse possono rendere nota l'identità degli offerenti durante lo svolgimento delle fasi dell'asta elettronica.

8. Le amministrazioni aggiudicatrici dichiarano conclusa l'asta elettronica secondo una o più delle seguenti modalità:

- t) alla data e all'ora preventivamente indicate;
- b) quando non ricevono più nuovi prezzi o nuovi valori che rispondono alle esigenze degli scarti minimi, a condizione che abbiano preventivamente indicato il termine che rispetteranno a partire dalla ricezione dell'ultima presentazione prima di dichiarare conclusa l'asta elettronica; or
- c) quando il numero di fasi dell'asta preventivamente indicato è stato raggiunto.

Se le amministrazioni aggiudicatrici intendono dichiarare conclusa l'asta elettronica ai sensi del primo comma, lettera c), eventualmente in combinazione con le modalità di cui alla lettera b), l'invito a partecipare all'asta indica il calendario di ogni fase dell'asta.

9. Dopo aver dichiarata conclusa l'asta elettronica, le amministrazioni aggiudicatrici aggiudicano l'appalto ai sensi dell'articolo 67, in funzione dei risultati dell'asta elettronica.

Article 36

electronic catalogs

1. If both richiestol'uso of electronic means of communication, contracting authorities may require tenders to be presented in the form of an electronic catalog or that include an electronic catalog.

Member States may make the use of electronic catalogs for certain types of procurement. Tenders submitted in the form of an electronic catalog may be accompanied by other documents, completing the tender.

2. Electronic catalogs are established by the candidates or tenderers with a view to participating in a specific procurement procedure in accordance with the technical specifications and format established by the contracting authority.

Electronic catalogs also meet the requirements for electronic communication tools as well as any additional requirements set by the contracting authority in accordance with Article 22.

3. When the submission of tenders in the form of electronic catalogs is accepted or required, contracting authorities:

- t) state that fact in the contract notice or in the invitation to confirm interest, when the means of calling for competition is a prior information notice;

b) indicate in the procurement documents all the information required under article 22, paragraph 6, concerning the format, the electronic equipment used and the arrangements and technical specifications for the catalog.

4. Where a framework agreement is concluded with several economic operators after the submission of tenders in the form of electronic catalogs, contracting authorities may provide for the re-opening to competition for specific contracts takes place on the basis of updated catalogs. In such a case, contracting authorities shall use one of the following methods:

t) invite tenderers to resubmit their electronic catalogs, adapted to the requirements of the contract in question; or

b) inform the tenderers who intend to use the information gathered from electronic catalogs already presented to constitute tenders adapted to the requirements of the contract in question; provided that the use of this possibility was envisaged in the tender documents relating to the Framework Agreement.

5. If reopen competition for specific contracts in accordance with paragraph 4, letter b), the contracting authorities shall indicate to bidders the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the contract specifically in question and shall give tenderers the possibility to refuse such collection of information.

Contracting authorities shall provide for an appropriate period of time between the notification and the actual collection of information.

Before awarding the contract, contracting authorities shall present the collected information to the tenderer concerned so as to offer the opportunity to contest or confirm that the offer made up as it does not contain material errors.

6. Contracting authorities may award contracts based on a dynamic purchasing system requiring that tenders for a particular contract are presented in the form of an electronic catalog.

Contracting authorities may also award contracts based on a dynamic purchasing system in accordance with paragraph 4, letter b) and paragraph 5, provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalog in accordance with specifications technical and format established by the contracting authority. This catalog is completed subsequently by the candidates, when they are informed of the intention of the contracting authority to be offered through the procedure referred to in paragraph 4, letter b).

Article 37

centralized purchasing activities and central purchasing bodies

1. Member States may provide that contracting authorities may purchase supplies and / or services from a central purchasing body that provides the centralized purchasing activities referred to in Article 2, paragraph 1, point 14, letter a).

Member States may also provide that contracting authorities may purchase works, supplies and services under contracts awarded by a central purchasing, through dynamic purchasing systems managed by a central purchasing body or at a rate determined in Article 33, paragraph 2, second paragraph, by means of a framework agreement concluded by a central purchasing body that provides the centralized purchasing activities referred to in Article 2, paragraph 1, point 14, point b). If a dynamic purchasing managed by a central purchasing system can be used by other contracting authorities, this is indicated in the notice of the call for competition for the establishment of the dynamic purchasing system.

In relation to the first and second paragraph, Member States may provide that certain contracts are realized through use of central purchasing body or one or more plants of specific clients.

2. A contracting authority comply with its obligations under this Directive when purchasing supplies or services from a central purchasing body that provides the centralized purchasing activities referred to in Article 2, paragraph 14, paragraph 1, letter a).

Also a contracting authority comply with its obligations under this Directive when purchasing works, supplies and services under contracts awarded by central purchasing bodies, dynamic systems through the acquisition managed by the central purchasing body or at a rate determined in Article 33, paragraph 2, second paragraph, by means of a framework agreement concluded by the central purchasing body that provides the centralized purchasing activities referred to in Article 2, paragraph 1, point 14, point b).

However, the contracting authority in question is responsible for fulfilling the obligations under this Directive in respect of shares held by it, such as:

- t) the award of a contract in the context of a dynamic purchasing system managed by a central purchasing;
- b) the conduct of the reopening of the competitive comparison as part of a framework agreement concluded by a central purchasing;
- c) under Article 33, paragraph 4, letter a) or b), the determination of which of the economic operators party to the framework will play a certain task under a framework agreement concluded by a central purchasing body.

3. All of procurement procedures carried out by a central purchasing are carried out using electronic means of communication, in accordance with the requirements of Article 22.

4. The contracting authorities, without following the procedures laid down in this Directive, may award to a central purchasing a public service contract for the provision of centralized purchasing activities.

These public service contracts may also include the provision of ancillary purchasing activities.

Occasional joint procurement

1. Two or more contracting authorities may decide to jointly perform certain specific procurements.
2. If the procurement process in its entirety is carried out jointly in the name and on behalf of all the contracting authority they are jointly responsible for fulfilling the obligations under this Directive. This applies also to cases where a contracting authority manages the procedure on their own behalf and on behalf of other contracting authorities concerned.

If the tender procedure is not carried out jointly in its entirety in the name and on behalf of the contracting authority they are jointly responsible only for the parts made jointly. Each contracting authority is responsible for fulfilling the obligations under this Directive only in respect of the shares it held in its own name and on their own.

Article 39

Contracts involving contracting authorities from different Member States

1. Without prejudice to Article 12, contracting authorities from different Member States can act together in the award of public contracts by one of the means provided for in this Article.

Le amministrazioni aggiudicatrici non si avvalgono dei mezzi previsti nel presente articolo al fine di eludere l'applicazione di norme di diritto pubblico vincolanti conformi al diritto dell'Unione, cui sono soggette nel loro Stato membro.

2. Uno Stato membro non vieta alle sue amministrazioni aggiudicatrici di ricorrere ad attività di centralizzazione delle committenze offerte da centrali di committenza ubicate in un altro Stato membro.

Per quanto riguarda le attività di centralizzazione delle committenze offerte da una centrale di committenza ubicata in un altro Stato membro rispetto all'amministrazione aggiudicatrice, gli Stati membri possono tuttavia scegliere di specificare che le rispettive amministrazioni aggiudicatrici possono ricorrere unicamente alle attività di centralizzazione delle committenze definite all'articolo 2, paragrafo 1, punto 14, lettera a) ob).

3. La fornitura di attività di centralizzazione delle committenze da parte di una centrale di committenza ubicata in un altro Stato membro è effettuata conformemente alle disposizioni nazionali dello Stato membro in cui è ubicata la centrale di committenza.

Le disposizioni nazionali dello Stato membro in cui la centrale di committenza è ubicata si applicano altresì:

- t) award of a contract on a dynamic purchasing system;
- b) to conduct a reopening of the competitive comparison in the context of a framework agreement;

c) the determination, in accordance with Article 33, paragraph 4, letter a) or b), of which, among economic operators of the Framework Agreement, will play a certain task.

4. Several contracting authorities from different Member States may award a public contract, a framework agreement or manage a dynamic purchasing system jointly. They may also, at a rate determined in Article 33, paragraph 2, second paragraph, awarding contracts based on the framework agreement or dynamic purchasing system. Unless the necessary elements were not regulated by an international agreement concluded between the Member States concerned, the participating contracting authorities shall conclude an agreement that determines:

t) responsibilities of the parties and the relevant national provisions;

b) the internal organization of the procurement procedure, including the management of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

A contracting party meets its obligations under this Directive when purchasing works, supplies and services from responsible stewardship contracting of the procurement process. In determining the responsibilities and the applicable national law referred to in subparagraph a), the participating contracting authorities can be assigned to each other specific responsibilities and establish national provisions of national law of their respective States. The assignment of responsibilities and the national consequently applicable law are mentioned in the tender documents for public contracts awarded jointly.

5. If more contracting authorities from different Member States have set up a joint entity including European Groupings of territorial cooperation under Regulation (EC) No. 1082/2006 of the European Parliament and of the Council ⁽³⁰⁾, or other entities established under Union law, the participating contracting authorities, with a relevant governing body of the joint entity, agree on national standards for procedures the tender of one of the following Member States: -

t) national rules in the Member State in which the combined entity has its registered office;

b) national rules in the Member State where the joint entity is carrying out its activities.

The agreement referred to in the first paragraph may be made applicable for an indefinite period, when fixed in the constitutive act of the joint entity, or limited to a specific period, for certain types of contracts or to one or more individual contract awards.

CHAPTER III

Procedural History

Section 1

Preparation

Article 40

Preliminary market consultations

Before launching a procurement procedure, contracting authorities may conduct market consultations for the preparation of the contract and to inform economic operators of their procurement plans and requirements regarding the latter.

To this end, contracting authorities may, for example, seek or accept advice from experts or independent authorities or market participants. These consultations can be used in the planning and conduct of the procurement process, provided they do not have the effect of distorting competition and do not involve a violation of the principles of non-discrimination and transparency.

Article 41

Previous participation of candidates or tenderers

If a candidate or tenderer or an undertaking related to a candidate or tenderer has provided a contracting authority consulting, in the context of Article 40 or less, or has otherwise been involved in the preparation of the procurement procedure, 'contracting authority shall take appropriate measures to ensure that competition is not distorted by the participation of the candidate or tenderer in question.

These measures include communication with other candidates and tenderers of relevant information exchanged in the context of the participation of the candidate or tenderer in the preparation of the procedure or obtained as a result of this investment and the establishment of adequate time limits for receipt of tenders. The candidate or tenderer concerned is excluded from the procedure only in case there are no other means to ensure compliance with the obligation 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 an element capable of distorting competition. The measures taken are documented in the individual report required by Article 84.

Article 42

Technical specifications

1. The technical specifications as defined in point 1 of Annex VII set out in the tender documents. The technical specifications define the characteristics required of a works, service or supply.

These characteristics may also refer to the specific process or method of manufacture or delivery of the works, supplies or services, or a specific process for another phase of its life cycle even if these factors are not part of their substantive content, provided they are linked to the subject and proportionate to its value and its objectives.

Specifications may also indicate whether it will be required the transfer of intellectual property rights.

For all procurement intended for use by individuals, whether it is the public that the contracting authority, it is necessary that the technical specifications, except in duly

justified cases, be drawn up so as to take account of accessibility criteria for people with disabilities or design for all users.

If the accessibility requirements required to be adopted by a Union legal act, the technical specifications must be defined by reference thereto as far as accessibility criteria for people with disabilities or design for all users.

2. The specifications allow equal access of economic operators to the award procedure and not the effect of creating unjustified obstacles to the opening of public procurement to competition.

3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with European Union law, the technical specifications shall be formulated in one of the following ways:

- t) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow bidders to determine the subject and the contracting authorities to award the contract;
- b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European technical assessments, common technical specifications, international standards, other technical reference systems established by the European standardization bodies or, if not there is nothing to that effect, to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of works and use of the supplies; each reference contains the words 'or equivalent';
- c) in terms of performance or functional requirements referred to in point a), with reference to the specifications mentioned in subparagraph b) as a means of presuming conformity with such performance or with said functional requirements;
- d) by reference to the technical specifications referred to in point b) for certain characteristics and performance or functional requirements referred to in point a) for other characteristics.

4. Unless it is justified by the contract, those specifications may not refer to a specific make or source or a particular process characteristic of the products or services provided by a specific economic operator, nor refer to a mark, a patent or a type, origin or to a specific production that would have the effect of favoring or eliminating certain undertakings or certain products. Such reference shall be permitted, by way of exception, in the case where a sufficiently precise and intelligible description of the object is not possible by applying paragraph 3. Such a mention or a reference shall be accompanied by "or equivalent ».

5. Where they exercise the option of referring to the specifications referred to in paragraph 3, letter b), the contracting authorities may not reject a tender on the grounds that the works, supplies or services do not meet the technical specifications to which they have made reference, if in their bids the test agent, by any appropriate means, including the means of evidence referred to in Article 44, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.

6. Quando si avvalgono della facoltà, prevista al paragrafo 3, lettera a), di definire le specifiche tecniche in termini di prestazioni o di requisiti funzionali, le amministrazioni aggiudicatrici non possono respingere un'offerta di lavori, di forniture o di servizi conformi ad una norma nazionale che recepisce una norma europea, ad una omologazione tecnica europea, ad una specifica tecnica comune, ad una norma internazionale o ad un sistema tecnico di riferimento adottato da un organismo europeo di normalizzazione se tali specifiche contemplano le prestazioni o i requisiti funzionali da esse prescritti.

In his tender, the tenderer must prove by any appropriate means, including the evidence referred to in Article 44, that the works, supplies or services comply with the standard meets the performance or functional requirements of the contracting authority .

Article 43

labeling

1. Contracting authorities who wish to purchase works, supplies or services with specific environmental, social or otherwise, may be imposed in the technical specifications, award criteria or conditions for performance of the contract, specific labeling as a means of proof that the works, supplies or services matching your search criteria, provided that all the following conditions are met:

- t) the requirements for the label only concern the criteria related to the object of the contract and are appropriate to define characteristics of the works, supplies or services to be procured;
- b) the requirements for the label are based on objective, verifiable and non-discriminatory;
- c) the labels are established in the framework of an open and transparent process would draw together all stakeholders, including government bodies, consumers, the social partners, manufacturers, distributors and non-governmental organizations;
- d) the labels are accessible to all interested parties;
- is) the requirements for the label are set by third parties over which the economic operator applying for the label can not exercise a decisive influence.

If the contracting authority does not require that the works, supplies or services meet all the requirements for labeling, indicate which requirements for the label referenced.

Contracting authorities requiring a specific labeling accept all labeling which confirm that the works, supplies or services meet the requirements for equivalent labeling.

If a trader is shown not to have a chance to get the specific label indicated by the contracting authority or equivalent labeling by the required deadline, for reasons not attributable to the economic operator in question, the contracting authority shall accept other means of test fit, which may include a technical dossier from the manufacturer, provided that the economic operator concerned to prove that the works, supplies or

services you should pay satisfy the specific labeling requirements or specific requirements set by the contracting authority.

2. When labeling satisfies the conditions set out in paragraph 1, b) letters c), d) and e), but also sets out requirements not linked to the subject, the contracting authorities may not require labeling as such, but may define the technical specification by reference to those of the detailed specifications of that label, or, if necessary, parts of these, related to the subject of the contract and appropriate to define the characteristics of the object in question.

Article 44

Test reports, certification and other means of proof

1. Contracting authorities may require that economic operators submit, as evidence of compliance with the requirements or the criteria laid down in the technical specifications, award criteria or conditions relating to the execution of the contract, with a test report of a body assessment of conformity or a certificate issued by a conformity assessment body.

Where contracting authorities require the production of certificates issued by a specific conformity assessment body also accept certificates from other assessment bodies equivalent compliance.

For purposes of this paragraph, 'conformity assessment body' means a body that performs conformity assessment activities, including calibration, testing, inspection and certification, accredited in accordance with Regulation (EC) No. 765/2008 of the European Parliament and of the Council [\(31\)](#).

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, as a technical dossier of the manufacturer where the economic operator did not have access to the certificates or test reports referred to in paragraph 1, or possibility of obtaining them within the relevant time limits, provided that the lack of access to the economic operator is not attributable to the economic operator's liability concerned and provided that person concerned to prove that the works, supplies or services provided meet the requirements or criteria set out in the technical specifications, the award criteria or conditions relating to the execution of the contract.

3. Member States shall make available to the other Member States, upon request, information relating to the evidence and documents submitted in accordance with Article 42, paragraph 6, Article 43 and in this Article, paragraphs 1 and 2. The competent authorities of the member economic operator is established shall communicate such information under Article 86.

Article 45

variants

1. Contracting authorities may authorize or require the submission of variants by tenderers. They shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest require

consent or variations or less; In the absence of this indication, the variants are not authorized and are related to the subject of the contract.

2. Contracting authorities that allow or require variants shall state in the procurement documents the minimum requirements which variants must satisfy, and the specific requirements for their presentation, especially if variants may only be submitted where also has been made an offer, which is different from a variant. They also ensure that the chosen award criteria can be applied to variants meeting those minimum requirements as to conforming tenders which are not variants.

3. Only variants meeting the minimum requirements prescribed by the contracting authorities are taken into account.

In procedures for awarding public supply or service contracts, contracting authorities which have authorized or required variants may not reject a variant on the sole ground that, if successful, lead to either a service contract rather than a public contract supply or a supply contract rather than a public service contract.

Article 46

Division of contracts into lots

1. Contracting authorities may decide to award a contract in the form of separate lots, and can determine the size and the subject of these lots.

Except for contracts whose subdivision has been made compulsory in accordance with paragraph 4 of this Article, contracting authorities indicate the main reasons for their decision not to divide into lots; these reasons are given in the tender documents or in the individual report referred to in Article 84.

2. The contracting authorities shall indicate in the contract notice or in the invitation to confirm interest whether tenders may be submitted for one lot, for several lots or for all.

Contracting authorities may, even where there exists the possibility to bid for some or all lots, limit the number of lots that may be awarded to a single tenderer, provided that the maximum number of lots per tenderer is indicated in the contract notice or the invitation to confirm interest. The contracting authorities shall indicate in the procurement documents the rules or objective and non-discriminatory criteria they intend to apply to determine which lots will be awarded if the application of the award criteria would result in the award to one tenderer of a number of top lots to the maximum number .

3. Member States may provide that, in cases where the same bidder may be awarded more than one lot, contracting authorities may award contracts that combine some or all lots, where they have specified in the contract notice or invitation to confirm interest, who reserve this possibility and indicating the lots or groups of batches that can be associated.

4. Member States may implement the second subparagraph of paragraph 1 by making it compulsory to award a contract in the form of separate lots on terms to be defined in accordance with their national law and in compliance with EU law. In such cases apply paragraph 2, first paragraph and, where appropriate, paragraph 3.

Article 47

Setting of time limits

1. In setting the dates for the receipt of requests to participate and tenders, contracting authorities shall take particular account of the complexity and the time required for drawing up tenders, without prejudice to the minimum time limits set out in Articles 27 to 31.
2. Where tenders can only be made following a visit to the site or after on the spot inspection of the documents attached to the tender documents, the time limit for receipt of tenders, which must be higher than the minimum time limits set out in Articles 27 to 31, they are set so that all economic operators concerned may be aware of all the information needed to produce tenders.
3. Contracting authorities extending the deadline for receipt of tenders so that all economic operators to acquaint themselves with all the information needed to produce tenders in the following cases :
 - to) If, for any reason, additional information, although requested in good time by the economic operator are not provided no later than six days before the deadline for receipt of tenders. In the case of accelerated procedure in accordance with Articles 27, paragraph 3, and 28, paragraph 6, the deadline is four days;
 - b) if they make significant changes to the tender documents.

The length of the extension is proportional to the importance of the information or changes.

If the additional information has not been sought in due time or their importance for the implementation of appropriate offers is insignificant, contracting authorities are not obliged to extend the periods.

Section 2

Publicity and transparency

Article 48

Prior information notices

1. Contracting authorities may make known their intentions of planned procurements through the publication of a prior information notice. Those notices shall contain the information specified in Annex V, Part B, Section I, are published by the European Union or by the contracting authorities on their buyer profile, described in section 2, letter b), Annex VIII. If a prior information notice is published by the contracting authorities on their buyer profile, they shall send to the Office of the European Union a notice of the publication on their buyer profile as described in Annex VIII. These shall include the information set out in Annex V, Part A.
2. For restricted procedures and competitive procedures with negotiation, sub-central contracting authorities may use a prior information notice as a call for competition in

accordance with Article 26, paragraph 5, provided that the notice fulfills all of the following conditions:

- to) It refers specifically to the supplies, works or services which will be object of the contract to be awarded;
- b) It indicates that the contract will be awarded by restricted or competitive procedure with negotiation without further publication of a notice of a call for competition and invite interested economic operators to express their interest;
- c) contains, in addition to the information listed in Annex V, Part B, Section I, the information listed in Annex V, Part B, Section II;
- d) It was sent for publication between no less than thirty days and not more than twelve months before the date of dispatch to confirm interest referred to in Article 54, paragraph 1.

Such notices are not published on a buyer profile. However any additional national publication under Article 52 can be performed on the buyer profile.

The period covered by notice of prior information can take up to twelve months from the date of dispatch of the publication. However, in the case of public contracts for social services and other specific services, the prior information notice referred to in Article 75, paragraph 1, letter b), may cover a longer period of twelve months.

Article 49

Public notices

The notices are used as a means of calling for all procedures, without prejudice to Article 26, paragraph 5, second paragraph and Article 32. They contain the information specified in Annex V, Part C, and published in accordance with Article 51.

Article 50

Seminars related to contracts awarded

1. Within thirty days after the conclusion of a contract or a framework agreement to follow to its award decision or conclusion, the contracting authorities shall send a notice of award showing the results of the procurement procedure for the award.

These shall include the information set out in Annex V, Part D, and are published in accordance with Article 51.

2. If the tender for the contract in question was made by means of a prior information notice and if the contracting authority has decided he does not win more contracts in the period covered by notice of prior information, the award notice shall contain a specific indication to about.

In the case of framework agreements concluded in accordance with Article 33, contracting authorities are exempted from the obligation to send a notice of the results of the award procedure for each contract based on that agreement. Member States may provide that

contracting authorities regroup warnings on results of the tender procedure for contracts based on the framework agreement on a quarterly basis. In that case, they shall send the grouped notices within thirty days of the end of each quarter.

3. Contracting authorities shall send a contract award notice within thirty days from 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 not later than thirty days after the end of each quarter.

4. Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator public or private, or might prejudice fair competition between economic operators.

Article 51

Form and manner of publication of such notices

1. The notices referred to in Articles 48, 49 and 50 contain the information specified in Annex VI in the format of standard forms, including standard forms for the corrections.

These standard forms are established by the Commission through implementing acts. Those implementing acts shall be adopted by the advisory procedure referred to in Article 89, paragraph 2.

2. The notices referred to in Articles 48, 49 and 50 are drawn up, transmitted to the Office of the European Union electronically and published in accordance with Annex VIII. They shall be published within five days after they are sent. The costs of publication of the notices and announcements from the Office of the European Union are borne by the Union.

3. The notices referred to in Articles 48, 49 and 50 are published in full in the official languages of the Union institutions chosen by the contracting authority. The text published in these languages is the only authentic text. A summary of the important elements of each notice or notice is published in the other official languages of the EU institutions.

4. The Publications Office of the European Union guarantees that the full text and the summary of prior information notices referred to in Article 48, paragraph 2, and the Calls for competition setting up a dynamic purchasing system referred to 'Article 34, paragraph 4, letter a), continue to be published:

- to) in the case of prior information notices, for twelve months or until receipt of a contract award notice referred to in Article 50 stating that in the twelve month period covered by the call for competition will not be awarded any other contract. However, in the case of public contracts for social services and other specific services, the prior information notice referred to in Article 75, paragraph 1, letter b), continued to be published until the expiry of the validity period indicated initially or until receipt of a contract award notice as provided for in Article 50 indicating that no further contracts will be awarded in the period covered dall'indizione race;

b) in the case of calls for competition setting up a dynamic purchasing system, for the duration of the dynamic purchasing system.

5. Contracting authorities are able to supply proof of the dates on which notices o bandi.

The Publications Office of the European Union shall give the contracting authority confirmation of the publication of the opinion and the information transmitted receipt, indicating the date of publication. Such confirmation shall constitute proof of publication.

6. Contracting authorities may publish notices relating to public contracts which are not subject to the publication requirement laid down in this Directive, provided that they are transmitted to the Office of the European Union electronically using the model and methods in Annex VIII of transmission.

Article 52

Publication at national level

1. The notices referred to in Articles 48, 49 and 50 and their contents are not published at national level before the publication pursuant to Article 51. However, publication may however take place at the national level where such publication is not notified to the contracting authority within 48 hours of confirmation of receipt of the notice in accordance with Article 51.

2. The Notices published at national level shall not contain information other than that contained in the notices sent to the Office of the European Union or published on a buyer profile, but shall mention the date of dispatch of the notice to ' publications Office of the European Union or its publication on the buyer profile.

3. The contract forecasts are not published on the client profile before transmission to the Office of the European Union considers that notice of their publication in that form. The notices in question indicate the date of that dispatch.

Article 53

Electronic availability of tender documents

1. Contracting authorities offer free access, unlimited and directed, by electronic means, to the tender documents from the date of publication of a notice in accordance with Article 51 or sending an invitation to confirm interest. The text of the notice or invitation to confirm interest indicates the Internet address where the tender documents are accessible.

If it is not possible to offer free access, unlimited and directed electronically to certain tender documents for one of the reasons referred to in Article 22, paragraph 1, second paragraph, the contracting authority may specify in the notice or the invitation to confirm interest in the tender documents in question will be transmitted by means other than the electronic accordance with this Article, paragraph 2. in this case, the deadline for submission of tenders shall be extended by five days, except in duly substantiated cases of urgency which Article 27, paragraph 3, Article 28, paragraph 6, and Article 29, paragraph 1, fourth paragraph.

Qualora non sia possibile offrire accesso gratuito, illimitato e diretto per via elettronica a determinati documenti di gara perché le amministrazioni aggiudicatrici intendono applicare l'articolo 21, paragrafo 2, della presente direttiva, queste indicano nell'avviso o nell'invito a confermare interesse quali misure richiedono al fine di proteggere la natura confidenziale delle informazioni e in che modo è possibile ottenere accesso ai documenti in questione. In tal caso, il termine per la presentazione delle offerte è prorogato di cinque giorni, tranne nei casi di urgenza debitamente dimostrati di cui all'articolo 27, paragrafo 3, all'articolo 28, paragrafo 6, e all'articolo 29, paragrafo 1, quarto comma.

2. Provided that it has been requested in good time, additional information on the specifications and supporting documents shall be supplied by the contracting authorities to all tenderers participating in the tendering procedure at least six days before the final date fixed for receipt of offers. In the case of accelerated procedure, in accordance with Article 27, paragraph 3 and Article 28, paragraph 6, the period shall be four days.

Article 54

Invitations to candidates

1. In restricted procedures, competitive dialogue procedures, in innovation partnerships and competitive procedures with negotiation, contracting authorities shall invite simultaneously and in writing the selected candidates to submit their tenders or, in the case of a competitive dialogue, to take part in dialogue.

If as a means of calling for competition is used a prior information notice in accordance with Article 48, paragraph 2, the contracting authorities shall invite simultaneously and in writing the economic operators having expressed their interest to confirm their continuing interest.

2. The invitations referred to in paragraph 1 of this article mention the electronic address at which they are made directly available by electronic tender documents. These calls are accompanied by the tender documents, if such documents are not subject to free access, direct and unlimited, for the reasons set out in Article 53, paragraph 1, second or third paragraph, and they have not been made available to other means. Also invitations referred to in paragraph 1 of this Article shall include the information set out in Annex IX.

Article 55

Informing candidates and tenderers

1. The contracting authorities shall inform each candidate and each bidder, as soon as possible of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing system.

2. At the request of the candidate or tenderer, the contracting authority shall as soon as possible, and in any event within fifteen days of receipt of a written request:

- t) any unsuccessful candidate of the reasons for rejection of his application,
 - b) any unsuccessful bidder, the reasons for rejection of his tender, including, for the cases referred to in Article 42, paragraphs 5 and 6, the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements,
 - c) any tenderer who has made an admissible of the characteristics and relative advantages of the tender selected, as the name of the tenderer or the parties to the framework agreement was awarded,
 - d) any tenderer who has made an admissible, the conduct and progress of negotiations and dialogue with tenderers.
3. Contracting authorities may decide to withhold certain information on the contract award, the conclusion of framework agreements or admittance to a dynamic purchasing system referred to in paragraphs 1 and 2, where their disclosure would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators.

Section 3

Selection of participants and award of contracts

Article 56

General principles

1. Contracts are awarded on the basis of criteria established in accordance with Articles 67 to 69, if the contracting authority has verified in accordance with Articles 59 to 61 that all the following conditions are met:
- t) the offer complies with the requirements, the conditions and criteria set out in the contract notice or the invitation to confirm interest and in the procurement documents, taking into account, where appropriate, Article 45;
 - b) the offer comes from a tenderer that is not excluded under Article 57 and that meets the selection criteria established by the contracting authority under Article 58 and, where appropriate, non-discriminatory rules and criteria laid down ' Article 65.

L'amministrazione aggiudicatrice può decidere di non aggiudicare un appalto all'offerente che presenta l'offerta economicamente più vantaggiosa, se ha accertato che l'offerta non soddisfa gli obblighi applicabili di cui all'articolo 18, paragrafo 2.

2. In open procedures, the contracting authorities may decide to examine tenders before verifying the absence of grounds for exclusion and the respect of the selection criteria within the meaning of Articles 57 to 64. If they make use of this possibility, contracting authorities shall ensure that the verification of the absence of grounds for exclusion and respect of the selection criteria is carried out in an impartial and transparent, so that no

contract is awarded to a tenderer who should have been excluded pursuant to Article 57 or not meets the selection criteria established by the contracting authority.

Member States may exclude or limit the use of the procedure in the first paragraph to certain types of contracts or to specific circumstances.

3. If the information or documentation that traders must submit are or appear to be incomplete or incorrect, or if a lack of specific documents, the contracting authorities may request, unless otherwise provided under national law implementing this Directive, the economic operators concerned to present, integrate, clarify or complete information or documentation in question within a reasonable period, provided that such request is made in full compliance with the principles of equal treatment and transparency.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 to amend the list in Annex X, when this proves necessary to add new international agreements ratified by all the Member States or where the international commitments regulations referred to are no longer ratified by all Member States or are otherwise modified, for example in the field of application level, content or denomination.

Subsection 1 **Criteria for qualitative selection**

Article 57

Reasons for exclusion

1. Contracting authorities exclude an economic operator from participation in a procurement procedure if they have established through an audit in accordance with Articles 59, 60 and 61 or are aware of any other way that such economic operator has been convicted by a final judgment one of the following reasons:

- to) participation in a criminal organization, as defined in Article 2 of Council Framework Decision 2008/841 / JHA ⁽³²⁾ ;
- b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Community or the European Union ⁽³³⁾ and Article 2, paragraph 1 of the Framework Decision 2003/568 / JHA ⁽³⁴⁾ ; as well as corruption as defined in the national law of the contracting authority or the economic operator; _ _
- c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European Communities ⁽³⁵⁾ ;
- d) terrorist offenses or offenses linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475 / JHA ⁽³⁶⁾ , or inciting, competition, attempting to commit an offense, as defined in Article 4 of that framework decision; _
- is) laundering of proceeds of crime or terrorist financing, as defined in Article 1 of Directive 2005/60 / EC of the European Parliament and of the Council ⁽³⁷⁾ ;
- f) child labor and other forms of trafficking in persons as defined in Article 2 of Directive 2011/36 / EU of the European Parliament and of the Council ⁽³⁸⁾ .

The obligation to exclude an economic operator shall apply in cases where the sentenced person is definitely a member of the board, management or supervision of such economic operator, or there is a person with powers of representation, decision making or control.

2. An economic operator is excluded from participation in a procurement procedure if the contracting authority is aware that the economic operator has not fulfilled obligations relating to the payment of taxes or social security contributions, and if it was established by a decision judicial or administrative authority of a definitive effect and binding according to the law of the country where it is established or the member State of the contracting authority.

In addition, contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure a trader if the contracting authority can demonstrate by any appropriate means that the economic operator has not fulfilled obligations relating to the payment of taxes or social security contributions.

This paragraph is no longer applicable when the economic operator has fulfilled his obligations or paying through a binding commitment to pay taxes or social security contributions due, including any interest or penalties.

3. The Member States may, in exceptional cases, a derogation from the compulsory exclusions referred to in paragraphs 1 and 2 for overriding reasons relating to a general interest such as public health and environmental protection.

Member States may also provide for an exemption from the compulsory exclusions referred to in paragraph 2 in cases where an exclusion would be clearly disproportionate, especially if they have not been paid only small amounts of taxes or social security contributions or if the trader has been informed precise amount due as a result of its breach of obligations relating to the payment of taxes or social security contributions in a time when he had the opportunity to take action on, as provided in paragraph 2, third paragraph, before the expiry of the deadline for requesting participation or, in open procedures, the deadline for submission of offers.

4. Le amministrazioni aggiudicatrici possono escludere, oppure gli Stati membri possono chiedere alle amministrazioni aggiudicatrici di escludere dalla partecipazione alla procedura d'appalto un operatore economico in una delle seguenti situazioni:

- t) ove l'amministrazione aggiudicatrice possa dimostrare con qualunque mezzo adeguato la violazione degli obblighi applicabili di cui all'articolo 18, paragrafo 2;
- b) se l'operatore economico è in stato di fallimento o è oggetto di una procedura di insolvenza o di liquidazione, se è in stato di amministrazione controllata, se ha stipulato un concordato preventivo con i creditori, se ha cessato le sue attività o si trova in qualsiasi altra situazione analoga derivante da una procedura simile ai sensi di leggi e regolamenti nazionali;
- c) se l'amministrazione aggiudicatrice può dimostrare con mezzi adeguati che l'operatore economico si è reso colpevole di gravi illeciti professionali, il che rende dubbia la sua integrità;

- d) se l'amministrazione aggiudicatrice dispone di indicazioni sufficientemente plausibili per concludere che l'operatore economico ha sottoscritto accordi con altri operatori economici intesi a falsare la concorrenza;
- e) se un conflitto di interessi ai sensi dell'articolo 24 non può essere risolto efficacemente con altre misure meno intrusive;
- f) se una distorsione della concorrenza derivante dal precedente coinvolgimento degli operatori economici nella preparazione della procedura d'appalto di cui all'articolo 41 non può essere risolta con altre misure meno intrusive;
- g) se l'operatore economico ha evidenziato significative o persistenti carenze nell'esecuzione di un requisito sostanziale nel quadro di un precedente contratto di appalto pubblico, di un precedente contratto di appalto con un ente aggiudicatore o di un precedente contratto di concessione che hanno causato la cessazione anticipata di tale contratto precedente, un risarcimento danni o altre sanzioni comparabili;
- h) se l'operatore economico si è reso gravemente colpevole di false dichiarazioni nel fornire le informazioni richieste per verificare l'assenza di motivi di esclusione o il rispetto dei criteri di selezione, non ha trasmesso tali informazioni o non è stato in grado di presentare i documenti complementari di cui all'articolo 59; or
- the) se l'operatore economico ha tentato di influenzare indebitamente il procedimento decisionale dell'amministrazione aggiudicatrice, ha tentato di ottenere informazioni confidenziali che possono conferirgli vantaggi indebiti rispetto alla procedura di aggiudicazione dell'appalto, oppure ha fornito per negligenza informazioni fuorvianti che possono avere un'influenza notevole sulle decisioni riguardanti l'esclusione, la selezione o l'aggiudicazione.

Fermo restando il primo comma, lettera b), gli Stati membri possono esigere o prevedere la possibilità che l'amministrazione aggiudicatrice non escluda un operatore economico che si trovi in una delle situazioni di cui a tale lettera, qualora l'amministrazione aggiudicatrice abbia stabilito che l'operatore economico in questione sarà in grado di eseguire il contratto, tenendo conto delle norme e misure nazionali applicabili in relazione alla prosecuzione delle attività nelle situazioni di cui alla lettera b).

5. Le amministrazioni aggiudicatrici escludono un operatore economico in qualunque momento della procedura qualora risulti che l'operatore economico si trova, a causa di atti compiuti o omessi prima o nel corso della procedura, in una delle situazioni di cui ai paragrafi 1 e 2.

Le amministrazioni aggiudicatrici possono escludere oppure gli Stati membri possono esigere che le amministrazioni aggiudicatrici escludano un operatore economico in qualunque momento della procedura qualora risulti che l'operatore economico si trova, a causa di atti compiuti o omessi prima o nel corso della procedura, in una delle situazioni di cui al paragrafo 4.

6. Un operatore economico che si trovi in una delle situazioni di cui ai paragrafi 1 e 4 può fornire prove del fatto che le misure da lui adottate sono sufficienti a dimostrare la

sua affidabilità nonostante l'esistenza di un pertinente motivo di esclusione. Se tali prove sono ritenute sufficienti, l'operatore economico in questione non è escluso dalla procedura d'appalto.

A tal fine, l'operatore economico dimostra di aver risarcito o di essersi impegnato a risarcire qualunque danno causato dal reato o dall'illecito, di aver chiarito i fatti e le circostanze in modo globale collaborando attivamente con le autorità investigative e di aver adottato provvedimenti concreti di carattere tecnico, organizzativo e relativi al personale idonei a prevenire ulteriori reati o illeciti.

Le misure adottate dagli operatori economici sono valutate considerando la gravità e le particolari circostanze del reato o dell'illecito. Se si ritiene che le misure siano insufficienti, l'operatore economico riceve una motivazione di tale decisione.

Un operatore economico escluso con sentenza definitiva dalla partecipazione alle procedure di appalto o di aggiudicazione delle concessioni non è autorizzato ad avvalersi della possibilità prevista a norma del presente paragrafo nel corso del periodo di esclusione derivante da tale sentenza negli Stati membri in cui la sentenza è effettiva.

7. By virtue of the laws, regulations or administrative provisions and in compliance with EU law, Member States shall specify the conditions of application of this Article. In particular they determine the maximum period of exclusion in the case in which the economic operator fails to take any measures referred to in paragraph 6 in order to demonstrate its reliability. If the exclusion period has not been established by a final judgment, such period shall not exceed five years from the date of conviction by final judgment in the cases referred to in paragraph 1 and three years from the date of the event in question in the cases referred to in paragraph 4 .

Article 58

Selection criteria

1. The selection criteria may include:
 - to) to pursue the professional;
 - b) Economic and financial capacity;
 - c) technical and professional capacity.

Contracting authorities may impose on economic operators, such as membership, only the criteria set out in paragraphs 2, 3 and 4. The contracting authorities shall limit the requirements to those appropriate to ensure that a candidate or tenderer has the legal and financial viability and technical and professional skills needed to perform the contract to be awarded. All requirements are relevant and proportionate to the subject of.

2. As for the qualification to the professional activity, contracting authorities may require that economic operators are entered in a professional or trade register, kept in their Member State of establishment, as described in Annex XI, or meet any another requirement in this Annex.

In procurement procedures for services, if economic operators must possess a particular authorization or to a particular organization to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove ownership such authorization or membership in question.

3. With regard to economic and financial standing, contracting authorities may impose requirements to ensure that economic operators possess the economic and financial capacity to perform the contract. To this end, contracting authorities may require in particular that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the contracted activities. Furthermore, contracting authorities may require economic operators to provide information about their annual accounts highlighting the relationships, for example, assets and liabilities. They may also require an adequate level of insurance covering professional risks.

The minimum annual turnover that traders should have not more than twice the estimated contract value, except in duly justified circumstances relating to the risks specific to the nature of the works, services or supplies. The contracting authority shall indicate the main reasons for this requirement in the tender documents or in the individual report referred to in Article 84.

For example it is possible to take into account the relationship between assets and liabilities if the specific contracting authority, in the tender documents, the methods and criteria to take into account this relationship. These methods and criteria are transparent, objective and non-discriminatory.

For contracts divided into lots this Article shall apply for each lot. However, the contracting authority may set the minimum yearly turnover that traders must have with reference to groups of lots in the event that the successful tenderer is awarded several lots to be executed simultaneously.

If contracts based on a framework agreement must be awarded following the reopening of competition, the requirement of maximum annual turnover in the second subparagraph of this paragraph is calculated based on the maximum expected value of the specific contracts that will be run simultaneously, if known otherwise on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the annual turnover of the maximum requirement referred to in the second paragraph is calculated on the basis of the maximum value expected for the specific contracts to be concluded under this system.

4. With regard to technical and professional ability, contracting authorities may impose requirements to ensure that economic operators possess the necessary human and technical resources and experience to perform the contract with an appropriate quality standard.

Contracting authorities may, in particular, that economic operators have a sufficient level of expertise demonstrated by appropriate references for contracts previously executed. A contracting authority may consider that a trader does not have the professional skills required when it is satisfied that the applicant has conflicts of interest that may adversely affect the implementation of the contract.

In procurement procedures for supplies requiring siting or installation work, services or works, the professional capacity of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency, experience and reliability.

5. The contracting authorities shall indicate the required conditions for participation, which can be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or the invitation to confirm interest.

Article 59

Single European tender Document

1. When submitting requests to participate or tenders, contracting authorities shall accept the European single tender document (DGUE) consisting of a self-declaration as a preliminary documentary evidence in lieu of certificates issued by public authorities or third parties which confirms that the trader in question meets the following conditions:

- t) It is not located in one of the situations referred to in Article 57, in which cases the economic operators must or may be excluded;
- b) meets the relevant selection criteria defined in accordance with Article 58;
- c) if applicable, it meets the objective rules and criteria established under Article 65.

Se l'operatore economico si affida alle capacità di altri soggetti a norma dell'articolo 63, nel DGUE sono comprese altresì le informazioni di cui al presente paragrafo, primo comma, in relazione a tali soggetti.

Il DGUE consiste in una dichiarazione formale da parte dell'operatore economico, in cui si attesta che il pertinente motivo di esclusione non si applica e/o che il pertinente criterio di selezione è soddisfatto, e fornisce le informazioni rilevanti come richiesto dall'amministrazione aggiudicatrice. Il DGUE indica inoltre l'autorità pubblica o il terzo responsabile per determinare il documento complementare e include una dichiarazione formale secondo cui l'operatore economico sarà in grado, su richiesta e senza indugio, di fornire tali documenti complementari.

Se l'amministrazione aggiudicatrice può ottenere i documenti complementari direttamente accedendo a una banca dati a norma del paragrafo 5, il DGUE riporta altresì le informazioni richieste a tale scopo, quali l'indirizzo Internet della banca dati, eventuali dati di individuazione e, se del caso, la necessaria dichiarazione di consenso.

Gli operatori economici possono riutilizzare il DGUE utilizzato in una procedura d'appalto precedente purché confermino che le informazioni ivi contenute sono tuttora valide.

2. Il DGUE è elaborato sulla base di un modello di formulario. La Commissione stabilisce tale modello di formulario mediante atti d'esecuzione. Tali atti di esecuzione sono adottati secondo la procedura di esame di cui all'articolo 89, paragrafo 3.

Il DGUE è fornito esclusivamente in forma elettronica.

3. Fermo restando l'articolo 92, la Commissione riesamina l'applicazione pratica del DGUE tenendo conto degli sviluppi tecnici delle banche dati negli Stati membri e riferisce in materia al Parlamento europeo e al Consiglio entro il 18 aprile 2017.

Se del caso, la Commissione formula proposte per soluzioni volte a ottimizzare l'accesso transfrontaliero a tali banche dati e l'utilizzo di certificati e attestati nel mercato interno.

4. L'amministrazione aggiudicatrice può chiedere a offerenti e candidati, in qualsiasi momento nel corso della procedura, di presentare tutti i documenti complementari o parte di essi, qualora questo sia necessario per assicurare il corretto svolgimento della procedura.

Prima dell'aggiudicazione dell'appalto, l'amministrazione aggiudicatrice richiede all'offerente cui ha deciso di aggiudicare l'appalto, tranne nel caso di appalti basati su accordi quadro se conclusi ai sensi dell'articolo 33, paragrafo 3, o dell'articolo 33, paragrafo 4, lettera a), di presentare documenti complementari aggiornati conformemente all'articolo 60 e, se del caso, all'articolo 62. L'amministrazione aggiudicatrice può invitare gli operatori economici a integrare o chiarire i certificati ricevuti ai sensi degli articoli 60 e 62.

5. In deroga al paragrafo 4, agli operatori economici non è richiesto di presentare documenti complementari o altre prove documentali qualora e sempre che l'amministrazione aggiudicatrice abbia la possibilità di ottenere i certificati e le informazioni pertinenti direttamente accedendo a una banca dati nazionale che sia disponibile gratuitamente in un qualunque Stato membro, come un registro nazionale degli appalti, un fascicolo d'impresa virtuale (Virtual Company Dossier), un sistema elettronico di archiviazione dei documenti o un sistema di preselezione.

In deroga al paragrafo 4, agli operatori economici non è richiesto di presentare documenti complementari qualora l'amministrazione aggiudicatrice, avendo aggiudicato l'appalto o concluso l'accordo quadro, possieda già tali documenti.

For the purposes of the first paragraph, Member States shall ensure that the databases containing relevant information on economic operators and that can be consulted by the respective contracting authorities may be also consulted on the same conditions, by the contracting authorities of other Member States.

6. Member States shall make available and update on e-Certis a complete list of databases containing relevant information on the economic operators who may be consulted by the contracting authorities of other Member States. On request, Member States shall communicate to the other Member States, information about the databases referred to in this article.

Article 60

Evidence

1. Contracting authorities may require certificates, statements and other evidence referred to in paragraphs 2, 3 and 4 of this Article and Annex XII as evidence of the absence of grounds for exclusion in Article 57 and compliance with the selection criteria under Article 58.

Contracting authorities shall not require evidence other than those referred to in this Article and Article 62. In accordance with Article 63, economic operators may make use of any appropriate means to prove to the contracting authority that they will have the necessary resources.

2. Contracting authorities shall accept the following documents as the economic operator sufficient proof of non-applicability of any of the cases referred to in Article 57:

- t) with regard to paragraph 1 of that article, an extract from the relevant register, as the extract from the judicial record or, failing that, an equivalent document issued by a competent judicial or administrative authority or the Member State of origin or provenance , which establishes the fulfillment of prescribed conditions;
- b) with regard to paragraph 2 and paragraph 3, letter b) of that Article, a certificate issued by the competent authority of the Member State or the country in question;

If the Member State or the country in question does not issue such documents or certificates, or where these do not cover all the cases referred to in Article 57, paragraphs 1 and 2, and Article 57, paragraph 4, letter b), of ' Article 57, they may be replaced by a declaration on oath or, in Member States or countries where there is no such declaration, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a professional body qualified in the member State or country of origin or in the member State or the country in which the economic operator is established.

Where appropriate, a Member State shall provide an official statement stating that the documents or certificates referred to in this paragraph shall not be issued or that they do not mention all the cases provided for in Article 57, paragraphs 1 and 2, and to ' Article 57, paragraph 4, letter b). Such official statements are made available through the online registry of certificates (e-Certis) of Article 61.

3. As a rule, the proof of economic and financial economic operator capacity may be provided by one or more references listed in Annex XII, Part I.

The economic operator for any valid reason is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority.

4. The technical capacity of economic operators may be provided by one or more of the means listed in Annex XII, Part II, depending on the nature, quantity or importance and use of the works, supplies or services.

5. On request Member States shall make available to the other Member States with information regarding the exclusion grounds listed in Article 57, the suitability to pursue the professional, financial capacity and tenderers as defined in Article 58, as well as any information relating to the evidence referred to in this article.

Article 61

Register online certificates (e-Certis)

1. In order to facilitate cross-border biddings, Member States shall ensure that the information concerning certificates and other forms of documentary evidence introduced in e-Certis and established by the Commission are constantly updated.
2. The contracting authorities resort to e-Certis and demand in the first place the types of certificates or forms of documentary evidence are covered by e-Certis.
3. The Commission shall make available on the e-Certis DGUE in all language versions.

Article 62

Warranty terms of quality and environmental management standards

1. Should they require the presentation of certificates issued by independent bodies attesting that the economic operator meets certain quality assurance standards, including accessibility for the disabled, the contracting authorities shall refer to quality assurance systems based on the series of European standards in subject and certified by accredited bodies. They shall recognize equivalent certificates from bodies established in other Member States. They also accept other evidence of equivalent quality assurance measures, if the traders concerned did not have the possibility of obtaining such certificates within the time required for reasons not attributable to the same economic operators, provided that the economic operators to satisfy the quality assurance measures proposed meet the quality assurance standards required.
2. The contracting authorities require the presentation of certificates issued by independent bodies attesting the compliance of the economic operator with certain systems or environmental management standards, they shall refer to the Union eco-management and audit (EMAS) or other environmental management systems to the extent that they comply with Article 45 of Regulation (EC) No. 1221/2009 or even with other environmental management standards based on European or international standards, certified by accredited bodies. They shall recognize equivalent certificates from bodies established in other Member States.

Where economic operators have shown to have no access to such certificates or not having the possibility of obtaining them within the relevant time limits for reasons beyond their economic operators, the contracting authority also accepts other documentary evidence of environmental management measures in condition that traders indicate that those measures are equivalent to those required in the context of the system or environmental management standard applicable.

3. In accordance with Article 86, Member States shall make available to the other Member States, upon request, information relating to the documents produced as evidence of compliance with environmental and quality standards referred to in paragraphs 1 and 2.

Article 63

Reliance on the capacities of other entities

1. As for the criteria of economic and financial capacity as established in accordance with Article 58, paragraph 3, and the criteria relating to technical and professional capacity as established in accordance with Article 58, paragraph 4, an economic operator may,

where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of its links with them. As for the criteria for indicating the educational and professional qualifications specified in Annex XII, Part II f), or any relevant professional experience, economic operators may rely on the capacities of other entities only if these are carrying out the works or services for which these capacities are required. If a trader wants to rely on the capacities of other entities, prove to the contracting authority that will have the necessary means, for example by producing an undertaking assumed by those entities to that effect.

The contracting authority shall verify, in accordance with Articles 59, 60 and 61, if the subjects on which the economic operator intends to rely capabilities meet the

relevant selection criteria or if there are grounds for exclusion within the meaning of Article 57. The contracting authority shall require the economic operator to replace a person who does not comply with a relevant selection criterion or for which there are compulsory grounds for exclusion. The contracting authority may require or be required by the Member State to require the economic operator to substitute a person for whom there are non-mandatory exclusionary grounds.

If an economic operator relies on the ability of other parties with regard to the criteria relating to economic and financial capacity, the contracting authority may require that the economic operator and the persons referred to above be jointly and severally liable for the performance of the contract.

Under the same conditions, a group of economic operators as referred to in Article 19 (2) may rely on the capacity of group participants or other persons.

2. In the case of works contracts, service contracts and installing or installing works in the context of a supply contract, contracting authorities may require certain essential tasks to be carried out directly by the tenderer or, in the case of a tender, tender submitted by a grouping of economic operators referred to in Article 19 (2) by a pool participant.

Article 64

Official lists of approved economic operators and certification by bodies governed by public or private law

1. Member States may establish or maintain official lists of approved contractors, suppliers, or service providers or certify certification bodies in accordance with the European certification standards set out in Annex VII.

They shall inform the Commission and the other Member States of the address of the certification body or of the person responsible for the official list to which the applications must be submitted.

2. Member States shall adapt the conditions for inclusion in the official lists referred to in paragraph 1 and the certificates of certification issued by the certification bodies in accordance with the provisions of this subsection.

Member States shall also adapt these conditions to Article 63 for applications submitted by economic operators forming part of a grouping and having means provided to them by

other pooling companies. Such operators shall in that case demonstrate to the issuing authority the official list of such means for the entire duration of the certificate attesting to their inclusion in the official list and that such companies will continue to satisfy, during that period, the qualitative selection requirements laid down in the official list or certificate issued by the operators for the purposes of their inclusion.

3. Economic operators who are entered in official lists or who have a certificate may, at each contract, submit to the contracting authorities an attestation certificate issued by the competent authority or certificate issued by the competent certification body.

Such certificates shall indicate the references which allow economic operators to enter the official list or to obtain the certification and its classification.

4. The registration in an official list certified by the competent authorities or the certificate issued by the certification body constitutes a presumption of fitness for the purposes of the qualitative selection requirements laid down in the official list or certificate.

5. The data resulting from enrollment in official lists or certification is not disputed without justification. With regard to the payment of social security contributions and the payment of taxes and fees, an additional statement may be required for each contractor for each contract.

Contracting authorities of other Member States shall apply paragraph 3 and the first paragraph of this paragraph only to economic operators established in the Member State holding the official list.

6. The test requirements for the qualitative selection criteria laid down in the official list or certification are in accordance with Article 60 and, where appropriate, Article 62. For the registration of economic operators in the other Member States on an official list or for their certification does not require further tests and statements beyond those required by national economic operators.

Economic operators may at any time request their inclusion on an official list or the issue of the certificate. They shall be informed within a reasonably short timeframe of the decision of the authority drawing up the official list or the competent certification body.

7. Such registration or certification may not be imposed on economic operators in other Member States for the purpose of their participation in a public contract. Contracting authorities shall recognize the equivalent certificates of bodies established in other Member States. They also accept other equivalent test methods.

8. Upon request, Member States shall provide the other Member States with information on the documents submitted as proof that economic operators meet the requirements to be included in the official list of approved economic operators or whether economic operators another Member State has an equivalent certification.

Subsection 2

Reduce the number of candidates, offers and solutions

Reduce the number of qualified candidates to be invited to attend

1. In restricted procedures, competitive procedures with negotiation, in the competitive dialogue and partnership procedures for innovation, contracting authorities may limit the number of candidates meeting the selection criteria that they will invite to tender or to conduct a dialogue, provided that the minimum number of qualified candidates is available in paragraph 2.

2. Contracting authorities shall indicate in the invitation to tender or invitation to confirm interest, the criteria or the objective and non-discriminatory rules they intend to apply, the minimum number of candidates who intend to invite and, where appropriate, the maximum number.

In restricted procedures the minimum number of candidates is five. In the competitive negotiating procedure, the minimum number of candidates in the competitive dialogue process and in the innovation partnership is three. In any case, the number of candidates invited must be sufficient to ensure effective competition.

The contracting authorities shall invite a minimum of at least the minimum number of candidates. However, if the number of candidates meeting the selection criteria and the minimum level of capacity referred to in Article 58 (5) is lower than the minimum number, the contracting authority may continue the procedure by inviting candidates with the requisite skills. The contracting authority may not include in the same procedure other economic operators who have not applied for membership or candidates who do not have the required skills.

Article 66

Reduce the number of offers and solutions

When awarding the option to reduce the number of bids to be negotiated referred to in Article 29 (6) or the solutions to be discussed in accordance with Article 30 (4), contracting authorities shall make this reduction by applying the award criteria indicated in the tender documents. In the final phase, this number must allow for effective competition, provided there is sufficient number of qualified bids, solutions or candidates.

Subsection 3

Awarding of the contract

Article 67

Award criteria

1. Without prejudice to national laws, regulations or administrative provisions relating to the price of certain supplies or the remuneration of certain services, contracting authorities shall award the contracts on the basis of the most economically advantageous tender.

2. The most economically advantageous tender from the point of view of the contracting authority is identified on the basis of price or cost, following a cost-effective approach such as the life cycle cost in accordance with Article 68 and may include the best ratio quality / price, assessed on the basis of criteria such as the qualitative, environmental and

/ or social aspects related to the subject of the public contract in question These criteria may include, for example:

- t) quality, including technical, aesthetic and functional features, accessibility, adequate design for all users, social, environmental and innovative features, and marketing and related conditions;
- b) organization, qualifications and experience of the staff responsible for carrying out the contract, where the quality of the staff involved may have a significant influence on the level of performance of the contract; or
- c) after-sales services and technical assistance, delivery terms such as delivery date, delivery process and delivery or execution time.

The cost element may also take the form of a fixed price or cost based on which economic operators will compete only on the basis of qualitative criteria.

Member States may provide that contracting authorities may not use only the price or cost as the sole award criterion or to limit their use to certain categories of contracting authorities or certain types of contract.

3. The award criteria are considered to be related to the subject of the public contract in respect of works, supplies or services to be provided under this contract in any aspect and at any stage of their life cycle, including the factors involved:

- t) in the specific process of production, supply or exchange of such works, supplies or services; or
- b) in a specific process for a subsequent phase of their life cycle,

even though these factors are not part of their substantial content.

4. The award criteria do not have the effect of conferring on the contracting authority an unlimited freedom of choice. They guarantee the possibility of effective competition and are accompanied by specifications that allow for effective verification of the information provided by tenderers in order to assess the degree of satisfaction of the tendering criteria. In case of doubt, the contracting authorities effectively verify the accuracy of the information and evidence provided by the tenderers.

5. The contracting authority shall specify in the tender documents the relative weighting that each of the criteria chosen will determine the most economically advantageous tender, except where it is found solely on the basis of the price.

This weighting can be expressed by providing a fork in which the gap between the minimum and the maximum must be adjusted.

If weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in descending order of importance.

Article 68

Life cycle costs

1. Lifecycle costs include, as relevant, all of the following costs, or parts of them, related to the life cycle of a product, service or job:

t) costs incurred by the contracting authority or by other users, such as:

the) costs related to the acquisition;

ii) costs associated with use such as energy consumption and other resources;

iii) maintenance costs;

iv) end-of-life costs such as collection and recycling costs;

b) costs attributable to environmental externalities related to products, services or works during the life cycle, provided that their monetary value can be determined and verified; such costs may include the costs of greenhouse gas emissions and other pollutants as well as other costs associated with mitigating climate change.

2. When assessing costs by using a lifecycle cost system, contracting authorities shall indicate in the tender documents the data that tenderers are required to provide and the method that the contracting authority will use in order to determine the life cycle costs based on such data.

The method used to evaluate the costs charged to environmental externalities meets all of the following conditions:

t) is based on objective, verifiable and non-discriminatory criteria. In particular, if it has not been set up for repeated or continuous application, it does not unduly favor or unduly disadvantage certain economic operators;

b) is accessible to all interested parties;

c) the required data can be provided with reasonable effort by normally diligent traders, including third-party economic operators of the AAP or other international agreements that the Union is required to comply with.

3. Whenever a common method for calculating life-cycle costs has been made mandatory by a Union legislative act, this common method is applied for lifecycle cost assessment.

A list of such legislative acts and, where necessary, the delegated acts which integrate them is contained in Annex XIII. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 concerning the updating of such a list where an update is made necessary by the adoption of new legislation which makes it compulsory for a common method or for reasons of repeal or modification of existing legal acts.

Article 69

Abnormally low deals

1. Contracting authorities require economic operators to provide explanations on the price or the costs incurred in bidding if these appear abnormally low compared to works, supplies or services.

2. The explanations referred to in paragraph 1 may in particular refer to:

t) the economy of the manufacturing process of products, services provided or construction method;

b) the technical solutions chosen or the exceptionally favorable conditions offered by the tenderer to provide the products, to provide the services or to carry out the works,

c) the originality of the works, supplies or services offered by the tenderer;

d) compliance with the obligations laid down in Article 18 (2);

is) compliance with the obligations laid down in Article 71;

f) the probability that the tenderer will receive state aid.

3. The contracting authority shall evaluate the information provided by consulting the tenderer. It may reject the offer only if the evidence provided does not sufficiently justify the low level of prices or proposed costs, taking into account the elements referred to in paragraph 2.

The contracting authority shall reject the tender if it has established that the tender is abnormally low as it does not comply with the applicable obligations referred to in Article 18 (2).

4. The contracting authority which ensures that an offer is abnormally low as the tenderer has received State aid may refuse that offer solely for that reason only after consulting the tenderer and if the tenderer is unable to demonstrate within a sufficient period laid down by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 TFEU. When the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.

5. Upon request, Member States shall make available to the other Member States, by way of administrative cooperation, all the information at their disposal, such as laws, regulations, universally applicable collective agreements or national technical standards relating to evidence and documents produced in to the details referred to in paragraph 2.

CHAPTER IV

Execution of the contract

Article 70

Conditions for completion of the contract

Contracting authorities may require particular conditions concerning performance of the contract, provided that related to the subject of the contract in accordance with Article 67, paragraph 3, and indicated in the call for competition or in the tender documents. These

conditions may include economic considerations linked to innovation, environmental, social or employment-related considerations.

Article 71

subcontracting

1. Compliance with the obligations referred to in Article 18 (2) by subcontractors shall be ensured by appropriate actions of the competent national authorities acting within their respective responsibilities and competences.
2. In the tender documents, the contracting authority may ask or may be required by a Member State to ask the tenderer to indicate, in its offer, any parts of the contract to be subcontracted to third parties and the proposed subcontractors.
3. Member States may provide that, at the request of the subcontractor and if the nature of the contract so permits, the contracting authority transfers the payments due directly to the subcontractor for the services, supplies or works provided to the economic operator to whom the contract was awarded, public contract (the principal contractor). Such measures may include appropriate mechanisms enabling the principal contractor to object to undue payments. Agreements concerning such payment arrangements are indicated in the tender documents.
4. Paragraphs 1 to 3 shall be without prejudice to the liability of the principal contractor.
5. In the case of works contracts and services to be provided at the plant under the direct supervision of the contracting authority, after the award of the contract and at the latest on the day on which the contract is awarded, the contracting authority shall require the contractor principal to indicate the name, address and legal representatives of its subcontractors involved in such works or services, to the extent that they are known at the time of the request. The contracting authority shall require the principal contractor to notify the contracting authority of any changes to such information during the contract as well as the information required for any new subcontractors subsequently involved in such works or services.

Without prejudice to the first subparagraph, Member States may impose on the principal contractor the obligation to transmit the information required.

Where necessary for the purposes of paragraph 6 (b) of this Article, the information requested shall be accompanied by the sub-contractors' declarations as provided for in Article 59. The implementing measures referred to in paragraph 8 of this Article may provide that the subcontractors submitted following the award of the contract, provide the certificates and other supporting documents instead of the self-declaration.

The first paragraph does not apply to suppliers.

Contracting authorities may extend or may be required by the Member States to extend the obligations laid down in the first subparagraph, for example:

- t) supply contracts, service contracts other than those relating to services to be provided at installations under the direct supervision of the contracting authority, or to suppliers involved in works or services contracts;

b) subcontractors of the subcontractors of the principal contractor or subcontractors in the subcontracting chain.

6. In order to avoid breaches of the obligations referred to in Article 18 (2), appropriate measures may be taken such as:

t) if the national legislation of a Member State provides for a mechanism of solidarity between subcontractors and the principal contractor, the Member State concerned shall ensure that the relevant rules are applied in accordance with the conditions laid down in Article 18 (2);

b) contracting authorities may, in accordance with Articles 59, 60 and 61, verify or be required by Member States to ascertain whether there are grounds for excluding subcontractors under Article 57. In such cases, contracting authorities shall require the economic operator to replace the subcontractors for which the verification has shown that there are compulsory grounds for exclusion. Contracting authorities may require or require a Member State to require that an economic operator substitutes subcontractors for which the verification has shown that there are non-compulsory exclusionary grounds.

7. Member States may lay down more stringent domestic law provisions on liability, including in the area of internal law on direct payments to subcontractors, for example by providing for direct payments to subcontractors without the need for direct payments.

8. Member States which have chosen to provide for measures under paragraphs 3, 5 or 6 shall specify, in accordance with the laws, regulations or administrative provisions and in accordance with Union law, the conditions for the implementation of such measures. In this context, Member States may limit their applicability, for example to certain types of contracts, to certain categories of contracting authorities or economic operators or to certain amounts.

Article 72

Modification of contracts during the period of validity

1. Contracts and framework agreements may be amended without a new procurement procedure under this Directive in the following cases:

t) whether the changes, irrespective of their monetary value, have been provided in the initial tender documents in clear, precise and unambiguous clauses, which may include pricing 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 employed. They do not make any changes or options that would have the effect of altering the general nature of the contract or framework agreement;

b) for additional works, services or supplies by the original contractor that were necessary and were not included in the initial contract, where a change of contractor:

the) is impracticable for economic or technical reasons such as compliance with the interchangeability or interoperability requirements between existing equipment, services or facilities provided under the initial contract; is

ii) involves considerable disagreement on the contracting authority or a substantial duplication of costs;

However, any price increase should not exceed 50 % of the value of the initial contract. In the case of several subsequent changes, this limitation applies to the value of each change. Such subsequent amendments are not intended to circumvent this Directive;

c) where all of the following conditions are met:

the) the need for change is determined by circumstances which a diligent contracting authority could not foresee;

ii) the modification does not alter the general nature of the contract;

iii) the price increase may not exceed 50 % of the value of the initial contract or framework agreement. In the case of several subsequent changes, this limitation applies to the value of each change. Such subsequent amendments are not intended to circumvent this Directive;

d) if a new contractor substitutes the contract initially awarded by the contracting authority because of one of the following circumstances:

the) an unambiguous clause or revision option in accordance with letter a);

ii) to the initial contractor, in whole or in part, following corporate restructuring, including disclosure, merger, acquisition or insolvency, another economic operator meeting the initial qualitative selection criteria provided that this does not entail other substantive changes to the contract and is not intended to circumvent the application of this Directive; or

iii) where the contracting authority itself assumes the obligations of the principal contractor vis-à-vis its subcontractors, where such possibility is provided for by national law in accordance with Article 71;

is) whether the changes, irrespective of their value, are not substantial in accordance with paragraph 4.

Contracting authorities which have modified a contract in the situations referred to in this paragraph (b) and (c) shall issue a notice in that regard in *Journal of the European Union*. That notice shall contain the information set out in Annex V, Part G, and shall be published in accordance with Article 51.

2. Furthermore, and without further need to check whether the conditions referred to in paragraph 4 (a) to (d) are met, contracts may also be amended without the need for a new procurement procedure under this Directive if the value of the change is below both of the following values:

the) the thresholds laid down in Article 4; is

ii) the 10th % of the initial value of the contract for service and supply contracts and 15 % of the initial value of the contract for works contracts.

However, the modification can not alter the overall nature of the contract or framework agreement. In case of several subsequent changes, the value is determined on the basis of the net total value of the subsequent changes.

3. For the purpose of calculating the price referred to in paragraph 2 and paragraph 1 (b) and (c), the updated price is the reference value when the contract provides for an index clause.

4. An amendment to a contract or a framework agreement during its period of validity is considered substantial in accordance with paragraph 1 (e) when it substantially changes the nature of the contract or the framework agreement with respect to the one initially concluded. In any case, without prejudice to paragraphs 1 and 2, a change shall be deemed to be substantial if one or more of the following conditions are met:

t) the amendment introduces conditions which, if they were contained in the initial procurement procedure, would have allowed candidates other than those initially selected or accepting a bid other than those initially accepted or would have attracted additional participants in the procedure of the award;

b) the change changes the economic balance of the contract or framework agreement to the contractor in a way not covered by the initial contract or the framework agreement;

c) the amendment extends considerably the scope of the contract or framework agreement;

d) if a new contractor substitutes the contract initially awarded by the contracting authority in cases other than those referred to in paragraph 1 (d).

5. A new procurement procedure in accordance with this Directive is required for amendments to the provisions of a public contract and a framework agreement during the period of its validity other than those provided for in paragraphs 1 and 2.

Article 73

Settlement of contracts

Member States shall ensure that contracting authorities have the power, at least under the following circumstances and under the conditions laid down by applicable national law, to settle a public contract during the period of validity of the contract where:

t) the contract has undergone a substantial change requiring a new procurement procedure within the meaning of Article 72;

- b) the successful tenderer was, at the time of the award of the contract, in one of the situations referred to in Article 57 (1) and should therefore be excluded from the procurement procedure;
- c) the contract should not have been awarded to the successful tenderer in view of a serious breach of the obligations arising out of the Treaties and this Directive as recognized by the Court of Justice of the European Union in proceedings under Article 258 TFEU.

TITLE III
PARTICULAR REGULATIONS OF CONTRACT
CHAPTER I
Social services and other specific services

Article 74

Awarding of social services and other specific services

Public procurement of social services and other specific services referred to in Annex XIV shall be awarded in accordance with this Chapter where the value of such contracts is equal to or greater than the threshold referred to in Article 4 (d).

Article 75

Publication of alerts and announcements

1. Contracting authorities which intend to award a public contract for the services referred to in Article 74 shall make known this intention by any of the following:

- to) by means of a call for tenders, which shall include the information referred to in Part H of Annex V, in accordance with the model forms referred to in Article 51; or
- b) by means of a pre-information notice, which is published on a continuous basis and contains the information set out in Annex V, Part I. The pre-information notice refers specifically to the types of service that will be the subject of the contracts to be awarded. It indicates that the contracts will be awarded without further publication and invites interested traders to express their interest in writing.

However, the first subparagraph shall not apply where a negotiated procedure without prior publication may have been used in accordance with Article 32 for the award of public service contracts.

2. Contracting authorities which have awarded a public contract for the services referred to in Article 74 shall make known the outcome of the procurement procedure by means of an award notice containing the information referred to in Annex V, Part J, in accordance with the model of the forms referred to in Article 51. However, they may group such notices on a quarterly basis. In that case, they will send the alerts grouped at the latest thirty days after the end of each quarter.

3. The forms of forms referred to in paragraphs 1 and 2 of this Article shall be established by the Commission by means of implementing acts. Implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 89 (2).
4. The notices referred to in this Article shall be published in accordance with Article 51.

Article 76

Principles of awarding contracts

1. Member States shall introduce national rules for the award of contracts under the provisions of this Chapter, in order to ensure full respect of the principles of transparency and equal treatment of economic operators by the contracting authorities. The Member States are free to determine their procedures applicable as long as these rules allow contracting authorities to take into account the specificities of the services in question.
2. Member States shall ensure that contracting authorities may take into account the need to ensure quality, continuity, accessibility, including economic, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged groups and vulnerable, the involvement and empowerment of users and innovation. Member States may also provide that the choice of the service provider to be based on the offer presenting the best quality / price ratio, taking into account the criteria of quality and sustainability of social services.

Article 77

Reserved contracts for certain services

1. Gli Stati membri possono prevedere che le amministrazioni aggiudicatrici possano riservare ad organizzazioni il diritto di partecipare alle procedure per l'aggiudicazione di appalti pubblici esclusivamente per i servizi sanitari, sociali e culturali di cui all'articolo 74 identificati con i codici CPV 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, da 85000000-9 a 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8.
2. Un'organizzazione di cui al paragrafo 1 deve soddisfare tutte le seguenti condizioni:
 - t) il suo obiettivo è il perseguimento di una missione di servizio pubblico legata alla prestazione dei servizi di cui al paragrafo 1;
 - b) Profits are reinvested in order to achieve the organization's goal. If profits are distributed or redistributed, this should be based on equity considerations;
 - c) facilities management or ownership of the organization performing the contract are based on the principles of ownership or shareholding employees, or require the active participation of employees, users or stakeholders; is
 - d) the contracting authority concerned has awarded the organization a contract for the services in question pursuant to this article in the past three years.

3. The maximum duration of the contract shall not exceed three years.
4. The call for competition refer to this article.
5. Subject to Article 92, the Commission shall evaluate the effects of this Article and shall submit a report to the European Parliament and the Council by 18 April 2019.

CHAPTER II
Rules governing design contests

Article 78

Scope

This Chapter shall apply to:

- to) design contests organized as part of a procedure for the award of public service contracts;
- b) to design contests with prizes or payments to participants.

In the cases referred to in this article, first paragraph, letter a), the threshold referred to in Article 4 is calculated based on the estimated value net of VAT of the public services, including any possible prizes or payments participants.

In the cases referred to in this article, first paragraph, letter b), the threshold is the total value of the prizes and payments, including the estimated value net of VAT of the public services contract which might subsequently be concluded under ' Article 32, paragraph 4, where the contracting authority has announced plans to award the contract in the announcement.

Article 79

Notices

1. Contracting authorities wishing to organize a design contest shall make known their intention by means of a competition.

If they wish to award a contract for the following services in accordance with Article 32, paragraph 4, what is shown in the notice or in the announcement.

2. Contracting authorities which have held a design contest shall send a notice of the results of the contest in accordance with Article 51 and must be able to prove the date of dispatch.

However, they may not be published related information in the award of design contests which obstacles disclosure law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular enterprise, public or private, or might prejudice fair competition between service providers.

3. The notices referred to in this Article, paragraphs 1 and 2 shall be published in accordance with Article 51, paragraphs 2 to 6 and Article 52. They contain the information specified in Annex V, respectively the parties E and F, in accordance with the standard model.

These standard forms are established by the Commission through implementing acts. Those implementing acts shall be adopted by the advisory procedure referred to in Article 89, paragraph 2.

Article 80

Organization of design contests and the selection of participants

1. When organizing design contests, contracting authorities shall apply procedures comply with the provisions of Title I and this Chapter.
2. The admission of participants to design contests shall not be limited:
 - t) to the territory of a Member State or a part of it;
 - b) by the fact that participants, according to the Member State in which the contest is organized, be natural or legal persons.
3. Where design contests are restricted participation of a limited number of participants, the contracting authorities shall lay down clear and non-discriminatory selection criteria. As for the number of candidates invited to participate in design competitions, it still takes account of the need to ensure genuine competition.

Article 81

Composition of the jury

The jury shall be composed exclusively of independent natural persons who are participants in the design contest. If participants in a design contest requires a specific professional qualification, at least a third of the jury members shall have this qualification or an equivalent qualification.

Article 82

Decisions of the jury

1. The jury shall be autonomous in its decisions and in its opinions.
2. The jury shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria specified in the announcement.
3. The selection board in a report, signed by its members, their own choices, made according to the merits of each project, together with its remarks and any points that may need clarification.
4. Anonymity must be observed until the opinion or decision of the jury.
5. Candidates may be invited, if necessary, to answer questions which the jury has recorded in the minutes to clarify any aspects of the projects.
6. It is drafted Complete minutes of the dialogue between jury members and candidates.

TITLE IV

GOVERNANCE

Article 83

Application

1. In order to in an effective manner to ensure proper and effective implementation, Member States shall ensure that at least the tasks referred to in this Article is conducted by one or more bodies, authorities or structures. They inform the Commission of all authorities, bodies or structures responsible for these tasks.

2. Member States shall ensure the monitoring of public procurement rules.

If the authority or the control structures identified on its own initiative or on the basis of information received specific or systemic issues violations, have the power to report such problems to the national supervisory authorities, courts and other authorities or appropriate structures such as the Ombudsman, the national Parliament or its committees.

3. The results of the control activities pursuant to paragraph 2 shall be made available to the public through effective information tools. These results are also made available to the Commission. For example it can be reported in the audit reports referred to in this paragraph, second paragraph.

By 18 April 2017 and every three years Member States shall submit to the Commission an audit report containing where appropriate information on the most frequent causes of incorrect application or of legal uncertainty, including possible structural or recurring problems in applying the rules on level of SME participation in public procurement and the prevention, detection and proper reporting of cases of fraud, corruption, conflict of interest and other serious irregularities in procurement.

The Commission may ask Member States, at least every three years, information on the practical implementation of the national strategic policies on strategic procurement.

Ai fini del presente paragrafo e del paragrafo 4 del presente articolo, le «PMI» sono da intendersi quali definite nella raccomandazione 2003/361/CE della Commissione [\(39\)](#).

Sulla base delle informazioni ricevute a norma del presente paragrafo, la Commissione pubblica a intervalli regolari una relazione sull'attuazione delle politiche nazionali in materia di appalti e sulle relative migliori prassi nel mercato interno.

4. Gli Stati membri provvedono affinché:

t) siano disponibili gratuitamente orientamenti e informazioni per l'interpretazione e l'applicazione del diritto dell'Unione sugli appalti pubblici, al fine di assistere le amministrazioni aggiudicatrici e gli operatori economici, in particolare le PMI, nella corretta applicazione della normativa dell'Unione in materia, e

b) sia disponibile il sostegno alle amministrazioni aggiudicatrici per quanto riguarda la pianificazione e la conduzione delle procedure d'appalto.

5. Fatte salve le procedure generali ei metodi di lavoro fissati dalla Commissione per le sue comunicazioni e per i suoi contatti con gli Stati membri, questi ultimi indicano un

punto di riferimento per la cooperazione con la Commissione per quanto riguarda l'applicazione della normativa in materia di appalti pubblici.

6. The contracting authorities retain, at least for the duration of the contract, copies of all concluded contracts with a value equal to or greater than:

- to) 1 000 000 EUR in the case of public supply or service;
- b) 10 000 000 EUR in the case of public works contracts.

Contracting authorities shall provide access to such contracts; However, you can deny access to specific information and documents to the extent and under the conditions provided for by national or Union rules governing access to documents and data protection.

Article 84

only reports on the procurement procedures

1. For every contract or any agreement context covered by this Directive and whenever set up a dynamic purchasing system, the contracting authority shall prepare a report containing at least the following information:

- to) the name and address of the contracting authority, the subject and value of the contract, framework agreement or dynamic purchasing system;
- b) if appropriate, the results of the qualitative selection and / or the reduction of the numbers in accordance with Articles 65 and 66, namely:
 - the) the names of the candidates or tenderers and the reasons for selection;
 - ii) names of the candidates or tenderers rejected and the reasons;
- c) the reasons for the rejection of tenders found to be abnormally low;
- d) the name of the successful tenderer and the reasons for his tender was selected and, if known, any share or framework agreement which the successful tenderer intends to subcontract to third parties; and, if known at the time of writing, the names of any subcontractors of the main contractor;
- is) for competitive procedures with negotiation and the competitive dialogue, the circumstances referred to in Article 26 which justify the use of these procedures;
- f) regarding a negotiated procedure without prior publication of a contract notice, the circumstances referred to in Article 32 which justify the use of these procedures;
- g) appropriate, the reasons for which the contracting authority has decided not to award a contract, a framework agreement or to establish a dynamic purchasing system;
- h) possibly, the reasons for which for the submission of bids were used different means of communication by electronic means;

the) where appropriate, the conflicts of interest are identified and the measures taken subsequently.

The report is not required for contracts based on framework agreements concluded in accordance with Article 33, paragraph 3, or Article 33, paragraph 4, letter a).

To the extent that the contract award notice drawn up in accordance with Article 50 or Article 75, paragraph 2, contains the information required under this paragraph, the contracting authorities may refer to the warning.

2. The contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means or otherwise. To do this, ensure the preservation of sufficient documentation to justify decisions taken in all phases of the procurement process, such as the documentation relating to communications with economic operators and internal deliberations, preparation of tender documents, dialogue or negotiation if any, selection and award of the contract. The record must be kept for at least three years from the date of contract award.

3. The report, or its main elements are communicated to the Commission or to the authorities, bodies or relevant structures provided for in Article 83 where they so request.

Article 85

Presentation of national reports and statistical information

1. The Commission shall review the quality and completeness of data that can be drawn from the notices referred to in Articles 48, 49, 50, 75 and 79, published in accordance with Annex VIII.

If the quality and completeness of the data referred to in this paragraph, the first paragraph are not compliant with obligations in Article 48, paragraph 1, Article 49, Article 50, paragraph 1, Article 75, paragraph 2, and Article 79, paragraph 3, the Commission requests additional information from the member State concerned. Within reasonable time, the Member State concerned shall provide the missing statistical information required by the Commission.

2. By 18 April 2017 and every three years thereafter, Member States shall communicate to the Commission, for contracts which would be within the scope of this Directive if their value had exceeded the relevant threshold set out in Article 4, a statistical relationship , indicating an estimate of the total aggregate value of that contract during the reference period. This estimate may be based in particular on data available in accordance with national requirements for publication or on estimates extrapolated from samples.

The report may be included in the report referred to in Article 83, paragraph 3.

3. Member States shall make available to the Commission information on their institutional organization related to the implementation, monitoring and application of this Directive as well as on national initiatives taken to provide guidance or to assist in the implementation of EU legislation public procurement, or to cope with the difficulties that arise in the implementation of such legislation.

This information can be included in the report referred to in Article 83, paragraph 3.

Article 86

administrative cooperation

1. Member States shall give each other mutual assistance and take measures for effective mutual cooperation in order to ensure exchange of information on issues referred to in Articles 42, 43, 44, 57, 59, 60, 62, 64 and 69. They shall ensure the confidentiality of the information which they exchange.
2. The competent authorities of all Member States concerned shall exchange information in accordance with the rules on personal data protection under Directive 95/46 / EC of the European Parliament and of the Council (40) and Directive 2002/58 / EC of the European Parliament and of the Council (41).
3. To assess the opportunity to use the information system of the internal market (IMI) established by Regulation (EU) No. 1024/2012 of the European Parliament and of the Council for the exchange of information covered by this Directive by 18 April 2015 has launched a pilot project.

TITLE V

DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS

Article 87

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this article.
2. The power to adopt delegated acts referred to in Articles 6, 22, 23, 56 and 68 is conferred on the Commission for an indeterminate period of time from April 17, 2014.
3. The delegation of power referred to in Articles 6, 22, 23, 56 and 68 may be revoked at any time by the European Parliament or the Council. The revocation decision terminates the delegation of the power specified. 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 delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and the Council.
5. A delegated act adopted pursuant to Articles 6, 22, 23, 56 and 68 shall enter into force only if neither the European Parliament nor the Council has objected to within the period of two months from the date on which it was notified to them or if, before the expiry of that period, both the European Parliament and the Council have informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 88

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force immediately and apply as long as no objection in accordance with paragraph 2. The notification of a delegated act to the European Parliament and the Council shall state the reasons for the use of the emergency procedure.
2. The European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 87, paragraph 5. In this case, the Commission shall repeal the act without delay following the notification of the decision by which the European Parliament or the Council has objected.

Article 89

Committee procedure

1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306 / EEC (42). It is a committee within the meaning of Regulation (EU) No. 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No. 182/2011.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No. 182/2011.

Article 90

Transposition and transitional provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 18 April 2016. They shall forthwith communicate to the Commission the text of those provisions.
2. Notwithstanding paragraph 1 of this Article, Member States may postpone application of Article 22, paragraph 1, until 18 October 2018, except in cases where the use of electronic means is mandatory pursuant to Articles 34, 35 or 36, Article 37, paragraph 3, Article 51, paragraph 2, or Article 53.

Notwithstanding paragraph 1 of this Article, Member States may postpone application of Article 22, paragraph 1, of central purchasing up to 18 April 2017.

If a Member State decides to postpone application of Article 22, paragraph 1, that Member State shall ensure that contracting authorities can choose between the following media for all communications and exchanges of information:

- a) electronic means in accordance with Article 22;
- b) mail or other suitable support;
- c) fax;

- d) a combination of these means.
3. Notwithstanding paragraph 1 of this Article, Member States may postpone application of Article 59, paragraph 2, second paragraph, until 18 April 2018.
4. Notwithstanding paragraph 1 of this Article, Member States may postpone application of Article 59, paragraph 5, second paragraph, until 18 October 2018.
5. Notwithstanding paragraph 1 of this Article, Member States may postpone application of Article 61, paragraph 2, until 18 October 2018.
6. The provisions of paragraphs 1 to 5 adopted by Member States contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The reference shall be determined by Member States.
7. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 91

Repeals

Directive 2004/18 / EC is repealed dal18 April 2016.

References to the Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex XV.

Article 92

review

The Commission shall review the economic effects on the internal market, particularly in relation to factors such as the awarding of cross-border procurement and transaction costs, resulting from the application of the thresholds referred to in Article 4 and transmits a report to the European Parliament and the Council by 18 April 2019.

The Commission assesses, where possible and appropriate, whether to propose an increase in the amounts of the thresholds applicable under the GPA during the next round of negotiations. In the event of any change to the thresholds of the contracts applicable under the GPA, the relationship, if any, followed by a proposal for a legal act amending the thresholds set out in this Directive.

Article 93

Entry into force

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

Article 94

Recipients

Member States are recipients of this Directive.

Done at Strasbourg, 26 February 2014

For the European Parliament

President

M. SCHULZ

For the Council

President

D. KOURKOULAS

⁽¹⁾ [OJ C 191, 29.6.2012, p. 84](#) .

⁽²⁾ [OJ C 391, 18.12.2012, p. 49](#) .

⁽³⁾ of the European Parliament of 15 January 2014 (not yet published in the Official Journal) and Council Decision of 11 February 2014.

⁽⁴⁾ 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, energy, transport and postal services ([OJ L 134 30.4.2004, p. 1](#)).

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

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

⁽⁷⁾ Directive 2009/81 / EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply and services in the defense and security sectors by contracting authorities / entities, and amending Directives 2004/17 / EC and 2004/18 / EC ([OJ L 216, 20.8.2009, p. 76](#)).

⁽⁸⁾ 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 (1986-1994) ([OJ L 336, 23.12.1994, p. 1](#)).

⁽⁹⁾ Directive 2014/25 / EU of the European Parliament and of the Council of 26 February 2014 coordinating the procurement procedures of entities operating in the water, energy, energy, transport and postal services (see. page 243 of this Official Journal).

⁽¹⁰⁾ Regulation (EC) No. 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by road and rail and repealing Regulations (EEC) No. 1191/69 and (EEC) No. 1107/70 ([OJ L 315, 3.12.2007, p. 1](#)).

⁽¹¹⁾ Directive 96/71 / EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ([OJ L 18, 21.1.1997, p. 1](#)).

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

⁽¹³⁾ Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) ([OJ L 177, 4.7.2008, p. 6](#)).

⁽¹⁴⁾ Directive 89/665 / EEC of 21 December 1989 on the coordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts ([OJ L 395 30.12.1989, p. 33](#)).

- (¹⁵) Regulation (EC) No. 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organizations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No. 761/2001 and Commission Decisions 2001/681 / EC and 2006/193 / EC ([OJ L 342, 22.12.2009, p. 1](#)).
- (¹⁶) Directive 2009/33 / EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles ([OJ L 120, 15.5.2009, p. 5](#)).
- (¹⁷) Regulation (EC) No. 106/2008 of the European Parliament and of the Council of 15 January 2008 on a relative to the efficient use of energy labeling Community program for office equipment ([OJ L 39, 13.2.2008, p. 1](#)).
- (¹⁸) Regulation (EEC, Euratom) No. 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits ([OJ L 124, 8.6.1971, p. 1](#)).
- (¹⁹) Regulation (EC) No. 2195/2002 of the European Parliament and of the Council of 5 November 2002 concerning the common vocabulary for public procurement (CPV) ([OJ L 340, 16.12.2002, p. 1](#)).
- (²⁰) 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 Decision 2008/49 / EC ('IMI Regulation') ([OJ L 316, 14.11.2012, p. 1](#)).
- (²¹) 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 Member States of the exercise of implementing powers conferred on the Commission ([OJ L 55, 28.2.2011, p. 13](#)).
- (²²) Regulation (EC) No. 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of Territorial Units for Statistics (NUTS) [OJ L 154, 21.6.2003, p. 1](#) ([OJ L 154, 21.6.2003, p. 1](#)).
- (²³) Directive 2002/21 / EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for networks and electronic communications services (Framework Directive) ([OJ L 108, 24.4.2002, p. 33](#)).
- (²⁴) Directive 2010/13 / EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain laws, regulations and administrative provisions of the Member States concerning the provision of audiovisual media services (Directive on audiovisual media services) ([OJ L 95, 15.4.2010, p. 1](#)).
- (²⁵) Directive 77/249 / EEC of 22 March 1977 to facilitate the effective exercise of freedom to provide services by lawyers ([OJ L 78, 26.3.1977, p. 17](#)).
- (²⁶) Directive 2004/39 / EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611 / EEC and 93/6 / EEC and Directive 2000 / 12 / EC of the European Parliament and of the Council and repealing Council Directive 93/22 / EEC ([OJ L 145, 30.4.2004, p. 1](#)).
- (²⁷) 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](#)).
- (²⁸) Decision 2009/767 / EC of 16 October 2009 setting out measures facilitating the use of procedures by electronic means through points of single contact under Directive 2006/123 / EC of the European Parliament and of the Council services in the internal market ([OJ L 274, 20.10.2009, p. 36](#)).
- (²⁹) Decision 2011/130 / EU of 25 February 2011 establishing minimum requirements for the cross-border processing of documents signed electronically by competent authorities under Directive 2006/123 / EC of the European Parliament and of the Council on services in the internal market ([OJ L 53, 26.2.2011, p. 66](#)).
- (³⁰) Regulation (EC) No. 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGCC) ([OJ L 210, 31.7.2006, p. 19](#)).
- (³¹) Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93 ([OJ L 218, 13.8.2008, p. 30](#)).
- (³²) Framework Decision 2008/841 / JHA of 24 October 2008 on the fight against organized crime ([OJ L 300 dell'11.11.2008, p. 42](#)).
- (³³) [OJ C 195, 25.6.1997, p. 1](#) .

(³⁴) Framework Decision 2003/568 / JHA of 22 July 2003 on combating corruption in the private sector ([OJ L 192, 31.7.2003, p. 54](#)).

(³⁵) OJ C 316, 27.11.1995, p. 48 .

(³⁶) Council Framework Decision of 13 June 2002 on combating terrorism ([OJ L 164, 22.6.2002, p. 3](#)).

(³⁷) Directive 2005/60 / EC of the European Parliament and of the Council of 26 October 2005 on the use of the financial system for the purpose of laundering the proceeds of criminal activity and terrorist financing ([OJ L 309, 25.11 .2005, p. 15](#)).

(³⁸) Directive 2011/36 / EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting victims ([OJ L 101, 15.4.2011](#)).

(³⁹) Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ([OJ L 124, 20.5.2003, p. 36](#)).

(⁴⁰) Directive 95/46 / EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([OJ L 281, 23.11.1995 , p. 31](#)).

(⁴¹) Directive 2002/58 / EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ([OJ L 201, 31.7.2002, p. 37](#)).

(⁴²) Decision 71/306 / EEC of 26 July 1971 setting up an Advisory Committee for public works contracts ([OJ L 185, 16.8.1971, p. 15](#)).