DIRECTIVE 2014/25 / EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 FEBRUARY 2014

On the procurement procedures of the bodies responsible for water, energy, transport and postal services and repealing Directive 2004/17 / EC.

Source, Changes, and Updates:

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Preamble

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) In the light of the results of the Commission working document of 27 June 2011 entitled 'Report on the impact assessment and the effectiveness of European Union legislation in the field of public procurement', it is appropriate to maintain rules on procurement water and energy providers and entities providing transport services and postal services as the national authorities continue to be able to influence the behavior of these bodies, including through participation in their share capital or the inclusion of of their own representatives in their administrative, managerial or supervisory bodies. A further reason for continuing to regulate public procurement in these areas is the closed nature of the markets in which agencies operate in these sectors, given the existence of special or exclusive rights granted by the Member States to food, supply or management of the networks to provide the relevant service.

(2) In order to ensure the opening of public procurement contracts for bodies operating in the water, energy, transport and postal services sectors, it is appropriate to establish coordination arrangements for contracts with a value higher than a certain threshold. This coordination is necessary to ensure the application of the principles of the Treaty on the Functioning of the European Union (TFEU), in particular the free movement of goods, freedom of establishment and freedom to provide services, as well as the principles derived therefrom equal treatment, non-discrimination, mutual recognition, proportionality and transparency. Given the nature of the sectors concerned, the coordination of procurement procedures at Union level, while continuing to safeguard the application of these principles, should establish a framework for loyal commercial practices and allow maximum flexibility.

(3) For contracts whose value is lower than the threshold for application of coordination provisions at Union level, reference should be made to the case law of the Court of Justice of the European Union on the correct application of rules and principles of the TFEU.

(4) 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 strategy for smart growth , sustainable and inclusive ") as they are one of the market-based instruments necessary to achieve smart, sustainable and inclusive growth whilst ensuring the more efficient use of public funding. To this end, procurement legislation adopted pursuant to 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 certain concepts and concepts to ensure better legal certainty and to incorporate some aspects of the case-law of the Court of Justice of the European Union in this area.

(5) 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 conditions execution of a contract.

(6) The concept of supply should be as close as possible to the one applied in accordance with Directive 2014/24 / EU of the European Parliament and of the Council (7), taking due account of the specificities of the sectors covered by this Directive.

(7) It is recalled 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 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 could be the case, for example, for the provision of certain services to the community, such as drinking water.

(8) It should also be recalled that this Directive should not affect the laws of the Member States relating to social security. It should not even deal with the liberalization of services of general economic interest, reserved to public or private bodies, nor the privatization of public bodies providing 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.

(9) It should also be recalled 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 provide, including any conditions relating to the quality of the service, in pursuit of 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.

(10) A contract should be considered as a work contract only if its object specifically concerns the execution of the activities listed in Annex I, although the contract may cover the supply of other services necessary for carrying out the said activities . Service contracts, including in the field of real estate management services, may in some circumstances include works. However, if those 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 those works are part of the contract can not justify the qualification of works contracts for the contract, service contracts.

However, given the diversity of works contracts, contracting entities should be able to envisage 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.

(11) In order to carry out a work satisfying the requirements specified by a contracting entity, it is necessary that the institution in question has taken measures to define the type of work or at least that it has had a decisive influence on its design. The possibility that the successful tenderer completes the work in whole or in part by means of own resources or ensures that it is carried out by other means should not change the classification of the contract as a work contract, provided that the direct or indirect obligation is assumed but legally binding, to ensure the realization of the work.

(12) 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 this concept as elaborated by the case-law.

To this end, it should be pointed out that a body operating under normal market conditions is intended to make a profit and sustain losses arising from the pursuit of its activities should not be considered a 'body governed by public law' as it is lawful suppose it was set up for the purpose or with the 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 that are imposed, calculated and collected in accordance with public law rules.

(13) 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 entities 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 entity to consider indivisible the various aspects which constitute a mixed contract should not be sufficient but should be substantiated 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 entity 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.

(14) In the case of mixed contracts that can be separated, contracting entities are always free to award separate contracts for the separate parts of the mixed contract, in which case the provisions applicable to each separate part should be determined solely on the basis of the characteristics of the specific contract. On the other hand, where contracting entities choose to include other elements in the contract, irrespective of the value of the additional elements and the legal regime to which those additional elements would otherwise be subject, the fundamental principle should be that, where a contract must be awarded in accordance with the provisions of this Directive if awarded for its own account, this Directive shall continue to apply to the whole mixed contract.

(15) It is, however, appropriate to lay down specific provisions 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 (8). It should be specified that contracting entities should not be allowed to choose whether to apply this Directive to certain mixed contracts instead of Directive 2009/81 / EC.

(16) It is also possible to award contracts which meet requirements relevant to various activities, which may possibly be subject to different legal regimes. It should be pointed out that the legal regime applicable to a single contract intended to regulate the carrying out of various activities should be subject to the rules applicable to the activity to which it is principally intended. For the purpose of determining the activity to which the contract is awarded as a priority, it may be based on an analysis of the requirements to which the specific contract must be answered by the contracting entity in order to assess the amount of the contract and the draft of the tender documents. In some cases, such as the purchase of a unit for the continuation of activities for which there is no information to enable them to assess their respective utilization rates, it may be objectively impossible to determine the activity to which the contract is intended as a priority. The rules to be applied in such cases should be specified.

(17) It is appropriate to point out that the concept of 'economic operators' should be interpreted broadly in order to include any person and / or entity offering on the market the execution of works, the supply of goods or the provision of services, irrespective of the legal form in which he chooses 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.

(18) It should be noted that groupings of economic operators, 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 specified that contracting entities should be able to explicitly state how economic operators are required to meet the qualifications and qualification requirements and qualification requirements of this Directive required of economic operators who participate in their own business.

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.

(19) The need to ensure effective market liberalization and a fair balance in the application of procurement award rules in the water, energy, transport and postal services sectors requires that the entities concerned be identified irrespective of their legal status. There should therefore be no breach of equal treatment between public sector contracting entities and private sector entities. It is also necessary to ensure that, under Article 345 TFEU, the ownership regime in the Member States is not affected.

(20) The concept of special or exclusive rights is essential for the definition of the scope of this Directive as entities other than contracting authorities or public undertakings within the meaning of this Directive are subject to its application only in the extent to which they exercise one of the activities contemplated on the basis of those rights. It should therefore be clarified that rights granted through a procedure based on objective criteria, in particular in accordance with Union law, and under which adequate advertising is ensured, do not constitute special or exclusive rights for the purposes of this Directive.

This legislation should include Directive 2009/73 / EC of the European Parliament and of the Council (9), Directive 2009/72 / EC of the European Parliament and of the Council (10), Directive 97/67 / EC Council (11), Directive 94/22 / EC of the European Parliament and of the Council (12) and Regulation (EC) 1370/2007 of the European Parliament and of the Council (13). It should also be clarified that this list of legislative acts is not exhaustive and that the rights granted in any form, including by means of concession, by other procedures based on objective criteria and under which adequate advertising is ensured, constitute special or exclusive rights for the purpose of defining the scope of this Directive ratione personae. The concept of exclusive rights should also be used to determine whether the use of the negotiated procedure without prior notice is justified by the fact that works, supplies or services may only be provided by an economic operator determined on the basis of the protection of exclusive rights.

However, bearing in mind the different ratio legis underpinning these provisions, it should be pointed out that the notion of exclusive rights does not necessarily have the same meaning in the two contexts. It should therefore be specified that an entity which has secured the exclusive right to provide a particular service in a particular geographical area following a procedure based on objective criteria, on the basis of which adequate transparency is guaranteed, would not be private body, a contracting entity in itself, but it would nevertheless be the only entity that can provide the service in question in that area.

(21) Certain bodies operate in the production, transmission or distribution in the heating and cooling sectors. There may be uncertainty regarding the rules applicable to the related activities, respectively, for heating and cooling. It should therefore be made clear that contracting authorities, public undertakings and private companies operating in the heating sector are subject to this Directive but, in the case of private undertakings, the additional condition is to operate under special or exclusive rights. On the other hand, contracting authorities operating in the cooling sector are subject to the provisions of Directive 2014/24 / EU, while public undertakings and private undertakings, irrespective of whether they operate under special or exclusive rights , are not subject to procurement rules. Finally, it should be specified that the contracts awarded for the execution of contracts at the same time in the area of heating and cooling should be examined in the light of the provisions on contracts for the pursuit of several activities in order to determine any procurement rules which govern 'award.

(22) Before any changes to the scope of this Directive and to Directive 2014/24 / EU for this sector should be considered, consideration should be given to the situation of the cooling sector in order to obtain sufficient information, in particular as regards the situation of competition, the level of cross-border contracts and the views of interested parties. Given that the application of Directive 2014/23 / EU of the European Parliament and of the Council (14) to the said sector could have significant effects on market opening, this examination should be carried out when assessing the impact of the Directive 2014/23 / EU.

(23) Without extending the scope of this Directive in any way, it should be noted that when it refers to electricity supply, this includes production, wholesale and sale of electricity detail of electricity.

(24) Contracting entities operating in the drinking water sector may, however, carry out other activities related to water management, such as hydraulic engineering projects, irrigation, drainage and evacuation and treatment of wastewater. In

such cases, the contracting entities must be able to apply the procurement procedures laid down in this Directive in respect of all their activities relating to water management and which are part of any phase of the 'water cycle' . However, procurement rules such as those proposed for product deliveries are inadequate for water purchases due to the need to supply them near sources near the site of use.

(25) It is appropriate to exclude petroleum and gas procurement contracts, as it has been found that this sector has been subject to extreme competitive pressure so that the rules contained in the Union's procurement. As oil and gas extraction continues to fall within the scope of this Directive, it may be necessary to distinguish between research and extraction. For this purpose, "research" should be considered to include the activities undertaken to verify its presence in a given oil and gas zone and, if so, whether commercially viable, while 'extraction' should be considered as' »Of oil and gas. In accordance with established practice in mergers, "production" should also be considered to include "development", ie the creation of appropriate infrastructure for future production (platforms, pipelines, terminals, etc.).

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

(27) Council Decision 94/800 / EC (15), 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 3, 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 respect, contracting entities should comply with their obligations provided for by these agreements through the application of this Directive to economic operators in third countries which are signatories thereto.

(28) 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 way of merely a mathematical operation, to possible variations in the value of the euro with respect to 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.

In order to avoid the proliferation of such thresholds, it is also appropriate, without prejudice to the Union's international commitments, to continue applying the same thresholds to all contracting entities, irrespective of the sector in which they operate.

(29) It should be clarified that for the estimate of the value of a contract, it is necessary to take into account all revenues, irrespective of whether they have been obtained by the contracting entity 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 carrying out its activity in the sector in question

(30) In order to estimate the value of a given contract, it is appropriate to specify that relying on a breakdown of the contract should be allowed only if justified by objective reasons. For example, it might be justified to estimate the value of the contracts at the level of a separate operating unit of the contracting entity provided that the unit in question is independently responsible for its procurement. 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 entity simply organizes a contract in a decentralized manner.

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

(32) It should be noted that arbitration and conciliation 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 procurement 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.

(33) 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.

(34) It is appropriate to specify that the concept of financial instruments covered by this Directive is to be understood as having the same meaning as in other legislative acts relating to the internal market and, in view of the recent creation of the European Financial Stability Facility and the Mechanism European stability, you should have that transactions conducted with this bottom and this mechanism are 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.

(35) It should be noted that Article 5 (1) of Regulation (EC) 1370/2007 of the European Parliament and of the Council (16) explicitly states that Directives 2004/17 / EC and 2004/18 / EC apply respectively to service contracts and to public service contracts for public passenger transport services by bus or tram and that 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, è opportuno prevedere esplicitamente che la presente direttiva non sia applicabile ai contratti di servizio pubblico per la fornitura di servizi pubblici di trasporto di passeggeri per ferrovia o metropolitana, la cui aggiudicazione dovrebbe rimanere soggetta a tale regolamento. Nella misura in cui il regolamento (CE) n. 1370/2007 lascia al diritto nazionale la facoltà di distaccarsi dalle norme in esso fissate, gli Stati membri dovrebbero poter continuare a prevedere, nei rispettivi diritti nazionali, che gli appalti pubblici di servizi per i servizi pubblici di trasporto di passeggeri per ferrovia o metropolitana debbano essere aggiudicati mediante una procedura di aggiudicazione secondo le rispettive regole generali in materia di appalti pubblici.

(36) 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 to be chosen 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.
(37) 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 accorded 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.
(38) There is considerable legal uncertainty as to the extent to which contracts concluded between contracting authorities are to 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 various Member States and also by the various contracting authorities. Given that such case-law is equally applicable to public administrations, if they operate in the areas covered by this Directive, it is appropriate to ensure that the same rules are applied and interpreted in the same way both in this Directive and in Directive 2014/24 / EU.
(39) Many contracting entities are organized as economic groups which may include a number of distinct firms; often each of these companies plays a specialized role in the general context of the economic group. It is therefore appropriate to exclude certain contracts for services, supplies and works awarded to an affiliated undertaking whose main activity is to provide such services, supplies or works to the grouping it belongs instead of making them available on the market. It is also appropriate to exclude certain service contracts, supplies and works awarded by a contracting entity to a joint venture, which is composed of several contracting entities to carry out activities covered by this Directive and to which that body belongs. However, it is appropriate to prevent such exclusion from causing distortions of competition for the benefit of undertakings or joint ventures that are linked to the contracting entities; provision should be made for an appropriate set of rules, in particular with regard to the maximum limits within which undertakings may derive part of their turnover from the market and beyond which they would lose the possibility of awarding contracts without any notice of invitation to tender, joint venture and the stability of the relationship between the latter and the contracting entities of which they are incorporated.
(40) It is also appropriate to clarify the interaction between the provisions on cooperation between public administrations and the provisions on the award of contracts to affiliated undertakings or in the context of joint ventures.

(41) Firms should be considered related if there is a direct or indirect dominant influence between the contracting entity and the undertaking concerned or both are subject to the dominant influence of another enterprise; In this context, private participation should not in itself have relevance. Verifying whether an enterprise is linked to a particular contracting entity should be as easy as possible. Consequently, and since the existence of such direct or indirect dominant influence should have already been verified to decide whether the annual accounts of the undertakings and entities concerned should be consolidated, the undertakings should be considered related where their annual accounts are consolidated. However, Union law on consolidated accounts does not apply in certain cases, for example because of the size of the undertakings concerned or because certain conditions regarding their legal form are not met. In such cases, where Directive 2013/34 / EU of the European Parliament and of the Council (17) is not applicable, it will be necessary to examine the existence of direct or indirect dominant

influence by taking into account property, financial participation or rules governing the undertakings in question.
(42) Co-financing of research and development programs (R & D) should be encouraged by sources in the industrial sector. It is therefore appropriate to specify that this Directive only applies in the absence of such co-financing and where the results of R & D activities are intended for the contracting entity concerned. This should exclude the possibility that a service provider carrying out such activities may publish a report on this subject, provided that the contracting entity maintains the exclusive right to use R & D results in the exercise of its activities. However, fictitious sharing of R & D results or symbolic participation in the remuneration of the service provider should not impede the application of this Directive.
(43) This Directive should not apply to contracts intended to enable the performance of one of the activities covered by this Directive nor to design competitions organized to carry out such activities if, in the Member State in which that activity is carried out, it is directly exposed to competition on freely accessible markets. It is therefore appropriate to maintain the procedure applicable to all sectors covered by this Directive or to parts thereof, in order to allow for the effects of a current or future opening to competition. This procedure should provide legal certainty for the entities concerned and an appropriate process of decision-making, ensuring a uniform application of European Union law in this field as soon as possible. For legal certainty it should be stated that all decisions taken before the entry into force of this Directive concerning the applicability of the corresponding provisions of Article 30 of Directive 2004/17 / EC continue to be applicable.
(44) Direct exposure to competition should be assessed on the basis of objective criteria, taking into account the specific characteristics of the sector or parties concerned in the sector in question. However, that assessment is subject to the obligation to comply with a close timetable and must be based on information available to the Commission - either from sources already available or obtained in the context of the request under Article 35 - which can not be integrated using methods which require a considerable amount of time, including, in particular, the use of public inquiries addressed to the economic operators concerned. The assessment of direct exposure to competition in the context of this Directive does not affect the full application of competition law.
(45) The assessment of whether a particular sector or parts of it is directly exposed to competition should take account of the specific area in which the activity or the related parts are carried out by the economic operators concerned, the so-called 'market geographical reference ". Since this concept is essential for the purpose of the evaluation, an appropriate definition should be made on the basis of the notions existing in Union law. It should also be pointed out that the reference geographic market may not coincide with the territory of the Member State concerned; it should therefore be possible to limit decisions on the applicability of the exemption to parts of the territory of the Member State concerned.
(46) The implementation and application of the relevant Union legislation, so as to open access to a given sector or part of it, should be considered sufficient grounds for presuming that there is free access to the relevant market. Such relevant legislation should be specified in an annex that the Commission may update. When updating the Annex, the Commission should take into account, in particular, the possible adoption of measures leading to effective competition in sectors other than those for which the legislation is already mentioned in that Annex, such as for the sector of national rail passenger transport.
(47) If free access to a particular market does not result from the implementation of the relevant Union legislation, it must be demonstrated that such access is free of fact and law. Where a Member State extends the application of a Union legal act which opens up a particular sector to competition to situations outside its scope, for example by applying Directive 94/22 / EC to the coal sector or Directive 2012/34 / EU of the European Parliament and of the Council (18) to passenger services at national level, this circumstance should be taken into account when assessing whether access to the sector in question is free.
(48) Independent national administrations such as sectoral regulatory authorities or competition authorities are usually in possession of specialized know-how, relevant information and knowledge to assess whether a particular activity or parts of it are directly exposed to competition on freely accessible markets. Exemptions should therefore, where appropriate, contain or be accompanied by a recent position on the competitive situation in the sector concerned, adopted by an independent national

administration which is competent in relation to the activity in question.
In the absence of a reasoned and justified position adopted by an independent national administration competent for the activity in question, it would take longer to evaluate an exemption request. The deadline for the Commission to assess these requests should therefore be amended accordingly.
(49) The Commission should always be required to examine requests in accordance with detailed rules for the application of procedures to determine whether a given activity or parts of it are directly exposed to competition on freely accessible markets. It should also be pointed out that the complexity of such requests may be such as to render it sometimes impossible to secure adoption within the applicable time-limits for implementing acts to determine whether a given activity or parts of it are directly exposed to competition on freely accessible markets.
(50) It should be noted that the Commission should be able to ask Member States or contracting entities to provide or supplement or specify information. The Commission should set an appropriate term to this end, taking into account also the need to comply with the deadlines for the adoption of the implementing act by the Commission, factors such as the complexity of the information requested and its accessibility more or less easy.

(51) Work 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 to support the integration or social and professional reintegration of workers with disabilities and disadvantaged workers, 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 power to 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.

(52) In view of adequate integration of environmental requirements, social and working in public procurement procedures, it is particularly important that Member States and contracting entities adopt relevant measures to ensure compliance with the obligations of law environmental, social 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 Union 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 XIV. 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 (19), and to ensure equal treatment and does not discriminate directly or indirectly against economic operators and workers from other Member States.

(53) 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.

(54) 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.

(55) 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.

(56) 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.

(57) 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.

Contracting entities 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" regarding procurement of R & D services which do not fall within the scope 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 procurement of innovation and help Member States in achieving the Union's objectives in this area.

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unforeseeable events not attributable to the contracting authority, or if it is clear from the outset that publication would not trigger more competition or the award of the best results, 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 to real situations exclusivity can justify the use of the negotiated procedure without prior call for competition, if the situation of exclusivity has not been created by the contracting entity in view of future procurement procedure. Contracting entities that 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 entity or the opportunity to consider work supplies and services comparable from a functional point of view.

(57) Research and innovation, including eco-innovation and social innovation, are one of the main drivers of future growth and sono stati Placed at the heart of the Europe 2020 strategy for smart, sustainable and inclusive growth. Contracting entities Should use public procurement strategically in the best possible way to stimulate innovation. The purchase of innovative products, works and services plays a key role in improving the efficiency and quality of public services while addressing the major social challenges. This helps to Achieve A More cost-effective

quality / price ratio, as well as greater economic, environmental, and social benefits by generating new ideas and translating them into innovative products and services, thus promoting sustainable economic growth. It Should be Noted That the Commission Communication of 14 December 2007 Entitled 'Pre-commercial procurement: promoting innovation to Ensure sustainable and high-quality public services in Europe' with regard to R & D services not covered by the scope of this Directive sets out a series of contract award procedures. These models would continue to be available, but this Directive Should Also help to facilitate procurement innovation and help Member States Achieve the Union's objectives in this area.

(58) In view of the Importance of Innovation, contracting entities Should be ENCOURAGED to allow variations as much as possible. It is Therefore Necessary to draw the attention of These bodies to the need to define the minimum requirements That variants must Satisfy before indicating That variants may be submitted.

(59) Where the need to innovative develop products, services or works and to subsequently purchase the supplies, services or work Resulting therefrom can not be met by using solutions Already available on the market, contracting entities

Should Have access to a procedure specific contract with respect to contracts falling Within the scope of this Directive. This specific procedures Should enable contracting entities to Establish a partnership for long-term innovation for the development and Subsequent purchase of novelties and innovations in products, services or works, provided That such product or service can be or will be provided work can be Carried Out with respect to the performance levels and the agreed costs, without the need for a separate procurement procedures for the purchase.The innovation partnerships Should be based on the procedural rules applicable to negotiated procedures preceded by an invitation to tender, and the only award criterion That Should be of the best value for money, Which is best suited to comparing offers for innovative solutions. With regard to large-scale innovative projects or small-scale projects, the innovation partnership Should be structured so as to create the market demand Necessary That can stimulate the development of an innovative solution without precluding access to market itself. Contracting entities Therefore Should not resort to innovation partnerships so as to hinder, restrict or distort competition. In some cases, the creation of partnerships for innovation with different

partners could help to avoid such effects.

(60) Experience has shown That the competitive dialogue provided for in Directive 2014/24 / EU is useful in cases where contracting Authorities are unable to define the means to meet Their needs or to assess what the market can offer in terms of technical, financial or legal solutions. Such a situation may arise in Particular for innovative projects, for the implementation of major integrated transport infrastructure projects, large computer networks or projects Involving complex and structured financing. Therefore Member States Should be allowed to put this instrument at the disposal of the contracting entities. 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 award procedure.

(61) In view of the adverse effects on competition, negotiated procedures without prior notice of competition Should be used only in exceptional circumstances. Exceptionality Should be limited to cases where publication is not possible for causes of extreme urgency two to unforeseeable events not attributable to the contracting entity, or if it is clear from the outset That the publication would not produce competitive More or

better results not least Because in single economic operator is objectively able to execute the contract. This applies to list works of art as the artist's identity inherently Determines the unique character and value of the work of art itself. Also Exclusivity may arise from other Reasons, but only situations of real exclusivity can justify the use of the negotiated procedure without prior notice of competition,exclusivity if the situation was not created by the contracting entity in view of the future tender procedures. Contracting entities making use of this exception Should indicated the Reasons Why there are no viable alternatives or replaceable alternatives: such as the use of alternative distribution channels Also outside the Member State of the contracting entity or The Possibility of taking into works account, supplies and services comparable from a functional point of view.Contracting entities making use of this exception Should indicated the Reasons Why there are no viable alternatives or replaceable alternatives: such as the use of alternative distribution channels Also outside the Member State of the contracting entity or The Possibility of taking into works account, supplies and services comparable from a functional point of view.Contracting entities making use of this exception Should indicated the Reasons Why there are no viable alternatives or replaceable alternatives: such as the use of alternative distribution channels Also

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If the exclusivity situation is two to technical Reasons, These Justified and Should be strictly defined on a case-by-case basis. For example, it could be a case where it is technically almost impossible for another economic operator to Achieve the required results or the need to use specific knowledge, tools or tools That has only one economic operator. Technical Reasons Also may arise from specific interoperability requirements must be met to Ensure That the operation of the works, supplies or services to be outsourced.
Lastly, to procurement procedures is not useful if supplies are Purchased directly on the commodity market, including exchange platforms for basic products such as agricultural products, raw materials and energy, in cui the multilateral regulated trading structure is subject to to watch market prices by its natures.
(62) It Should be Noted That the provisions Concerning the protection of confidential information do not in any way prevent the public dissemination of non-confidential parts of Concluded contracts, including Subsequent Amendments.
(63) Electronic means of information and communication can greatly simplify the publication of contracts and Increase the

effectiveness and transparency of procurement procedures. They Should become the norm for communication and information exchange in the procurement procedures as they greatly Increase the chances of economic operators to participate on in procurement procedures Within the internal market. To this end, it is appropriate to introduce the obligation to transmit tenders and notices electronically and the obligation to make available the tender documents electronically and, after a transitional period of thirty months, the obligation to communicate fully electronic means, ie electronic means of communication at all stages of the procedures, including the transmission of requests for participation and, in Particular,the submission (electronic transmission) of the offers. Member States and contracting entities wishing to do so Should be able to retain the option of introducing more advanced measures. It Should Also be specified That the mandatory use of electronic means of communication Within the meaning of this Directive Should not oblige the contracting entities to make electronic tenders, nor to carry out evaluation electronic or automated processing. Furthermore, the obligation to use electronic means of communication Within the meaning of this Directive Should not cover any element of the public procurement procedure after the award of the contract or the internal communication

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(65) There may be exceptional cases in which the contracting entities should be allowed not 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 a case could occur, for example when contracting entities require the use of appropriate communication means sure to which they provide access.

(66) 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 its catalogs to each procurement procedure, with the result of providing information very similar to each other in different formats depending on the specifications of the entities involved.The standardization of the catalog formats thus increase the level of interoperability and efficiency and also reduce the effort required for economic operators.

(67) 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, when deciding to impose such standards, 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 entities 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 (20).

(68) Prior to specify the level of security required for the electronic means of communication to be used at different stages of the procurement procedure, Member States and contracting entities should assess, on the one hand, the proportionality between the requirements intended to ensure a 'correct and reliable identification of the senders of the communication in question and the integrity of the contents 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 'same deal that 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.

(69) 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 the principle of In particular equal treatment, it is essential that the oral communications with bidders, which might affect the content and has been respected evaluation of tenders, are documented in sufficient extent and by appropriate means, such as written or audio-visual recordings or summaries of the main elements of communication.

(70) 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 by the number of entities involved, or in terms of time in volume and value. 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.

(71) The instrument of framework agreements can be an efficient solution for procurement across the EU; However, there is a need to enhance competition by improving both the transparency of managed procurement through framework agreements is access to contracts themselves. It is therefore appropriate to revise the provisions applicable to framework agreements, in particular by providing that the award of specific contracts based on such agreements to be based on

objective rules and criteria, for example as a result of a mini-race, and by limiting the duration of the agreements painting.

(72) 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 exceeding eight years or l ' possible need for extensive training of existing staff for executing the contract.

It is also appropriate to point out that there may be cases where you should allow the duration of framework agreements is more than eight years. Such cases, which should be duly motivated, in particular by the panel, could for example occur when traders need to have material with a payback period of more than eight years that must be available at any time to the duration of the framework agreement. In the particular context of essential services managers of public utilities may be cases where there is a need for both longer framework agreements and the greater length of individual contracts, for example in the case of framework agreements for securing the ordinary and extraordinary maintenance the networks,that may require the use of expensive equipment by personnel who have received a highly specialized ad hoc training aimed at ensuring the continuity of services and the minimization of the perturbations.

(73) In light of experience, it is also necessary to adjust the rules governing dynamic purchasing systems to enable contracting entities to take full advantage of the opportunities offered by this instrument. The systems must be simplified, and in particular should be managed in the form of restricted procedure and which eliminates, consequently, the need for indicative tenders, identified as one of the major burdens associated with the dynamic purchasing systems. It follows that the participation in procurement procedures carried out through the dynamic purchasing system should be permitted to a trader who submits an application for participation and that satisfies the

selection criteria during its period of validity.

This purchasing technique allows the contracting entity to have a particularly broad range of tenders and hence to ensure optimum use of funds through broad competition regarding products, works or services of common use or ready for use that are generally available on the market.

(74) 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 documentation requirements set by the contracting entities, where appropriate in accordance with the simplified rules of Directive 2014/24 / EU. However, when it is set up for the first time a dynamic purchasing system, contracting entities may, in response to the first publication of the contract notice or the invitation for expressions of interest, be faced with a number of requests to participate is so large make it take longer to examine them of time. It is appropriate to admit this possibility,provided it is not announced any specific contract until all questions have been examined. Contracting entities should be allowed to organize how they intend to consider applications for 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. Contracting entities that make use of the exclusion or selection criteria set out in Directive 2014/24 / EU in the context of a dynamic purchasing system should apply the relevant provisions of that Directive in the same way of contracting authorities make use of a system dynamic purchasing under Directive 2014/24 / EU.

(75) To give SMEs more opportunities to participate in a dynamic large-scale purchasing system, for example managed by a central purchasing, the contracting authority or entity concerned should be empowered to articulate the system into categories objectively defined 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 or entity interested should apply selection

criteria appropriate for the class in question.

(76) It should be clarified that electronic auctions are not normally suitable for certain works contracts and certain service contracts having as their object intellectual performance as the design of works, since they can be the object of electronic auctions only the elements suitable for evaluation automated by electronic means, without any intervention or appreciation by the contracting entity, 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 recalling that affect the right of contracting authorities to apply selection criteria to reduce the number of candidates or bidders before the auction is started, it should not be allowed any further reduction in the number of participating bidders at auction e after the start thereof.

(77) we assist with 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 entities 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. Consequently, 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, works or services which, according to traders, after inward examination, correspond to what is required by the contracting entity. 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. Furthermore,if sufficient guarantees are offered to ensure traceability, equal treatment and predictability, contracting entities 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 under 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 entity does not contain material errors. If there are material errors, the economic operator should not be bound by their elaborate contracting entity unless the 'error to be corrected.

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

(78) In most Member States is increasingly widespread use of centralized purchasing techniques. Central purchasing bodies are responsible for making acquisitions, manage dynamic purchasing systems or awarding contracts / framework agreements for other contracting authorities or other entities, with or without remuneration. Contracting entities 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 professionalise public purchasing.It is therefore necessary to provide a definition of central purchasing bodies Union level used by contracting authorities and to clarify that the 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 entities.

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 entities concerned or, in other cases, by implementing the relevant procurement procedures according to the instructions of the

entities involved in their name and on their behalf. It is also necessary to establish rules for the distribution among the central purchasing and contracting entities that it controls directly or indirectly make use of, the responsibility of monitoring compliance with the obligations arising from this Directive, even when it comes to corrective measures. In the event that the sole responsibility for the conduct of procurement procedures to compete central purchasing,the same is also exclusively and directly responsible for the legality of the procedures. If an entity 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 agency should continue to be responsible for the stages It manages.

(79) The contracting entities should be allowed to award to a central purchasing a service contract for the provision of centralized purchasing activities without following the procedures laid down in this Directive. It should be admitted that these service contracts include the provision of ancillary purchasing activities. The 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 with the contracting entity 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.

(80) 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 an entity 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

contracted by several entities, 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 by entrusting to an entity managing the procurement process on behalf of all the contracting entities.

If several entities 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 entities, the joint liability should apply only to parts of the procedure that were implemented jointly. Each entity should have 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 or reopening of a competition under a framework agreement.

(81) 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.

(82) The award of joint contracts by contracting entities from different Member States are currently confronted with legal difficulties concerning specific conflicts between the different national laws. Despite the fact that Directive 2004/17 / EC implicitly allowing cross-border joint public procurement, contracting entities are still faced with considerable difficulties in the legal and practical purchases at central purchasing bodies in other Member States or awarding joint 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 entity, it is appropriate to remedy these difficulties. It is therefore necessary to establish new rules on cross-border joint procurement in order to facilitate cooperation between contracting entities and increasing the benefits of the internal market by creating cross-border business opportunities for suppliers and service providers. These rules should establish the conditions for the cross-border use of central purchasing bodies and determine the legislation applicable in the field of public procurement, including the applicable legislation in the field of actions, in the cases of cross-border joint procedures,integrating the rules on conflict of laws of Regulation (EC) No. 593/2008 of the European Parliament and of the Council (21). In addition, contracting entities belonging to 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, contracting entities should not rely on the possibility of cross-border joint procurement in order to circumvent the mandatory rules of public law apply to them, in accordance with Union law, 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.

(83) The technical specifications drawn up by 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, to a national standard,They should be taken into consideration by the contracting entities tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety. 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 test reports carried out or has no possibility of obtaining them within the relevant time limits, provided he proves that work,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.

(84) requires contracting authorities to establish technical specifications that take into account accessibility criteria for all procurement intended for use by individuals, whether it is the general public that the contracting entities other personnel, disabled or a design for all users, except in duly justified cases.

(85) Contracting entities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labeling, such as the European Eco-label Eco-label, ecoetichetatture (multi-) national or any other labeling, provided that the requirements for the label such as the product description and its presentation, including packaging requirements, are connected with the object of contract. It is also essential that these requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure involving interested parties, such as government bodies, consumers, manufacturers, distributors and environmental organizations, and that ' 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.

(86) 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) .

(87) It is appropriate that public contracts adjusted to the needs of SMEs. Contracting entities should be encouraged to make use of the European Code of Best Practices, referred to the working document of the services of the Commission of 25 June 2008 entitled 'European Code of Best Practices Facilitating Access by SMEs to Public Procurement " which gives guidance on how such institutions may apply the public procurement legislation in order to facilitate the participation of SMEs. To this end, it should be provided explicitly that contracts may be divided into lots. This division could be performed on a quantitative basis, making sure that the level of individual contracts better suit the capacity of SMEs, or to qualitative criteria,according to various categories and present skills, to better tailor the content of the individual contracts to specialized sectors of SMEs, or in compliance with the various successive phases of the project. The entity and the object of the batches should be freely determined by the contracting entity 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.in accordance with the relevant rules on the calculation of the estimated contract value, it should also have the right to award some of the lots without applying the procedures provided for in this Directive.in accordance with the relevant rules on the calculation of the estimated contract value, it should also have the right to award some of the lots without applying the procedures provided for in this Directive.

Member States should retain the right to go further in their efforts to facilitate the participation of SMEs in the market of public procurement by introducing the obligation to examine the possibility of splitting contracts into lots for contracts of lesser importance, forcing entities 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.

(88) If the contract is divided into lots, contracting entities should be allowed to limit the number of lots for which an economic operator may submit a bid, for instance in 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 entities 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 entity should be allowed to award a contract that involves lots to the bidder concerned. It should be clarified that contracting entities should make this comparative evaluation by first determining which offers better 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.tenderer concerned. It should be clarified that contracting entities should make this comparative evaluation by first determining which offers better 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.tenderer concerned. It should be clarified that contracting entities should make this comparative evaluation by first determining which offers better 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.

(89) 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, in particular 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 need to 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 applicable to open procedures 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 entities should be able to further reduce the time limit for receipt of tenders in open procedures where one makes it impractical regular terms of an open procedure of emergency, but does not render impossible an open procedure with a shorter deadline. Only in exceptional situations where 'extreme urgency brought about by events unforeseeable by the contracting entity in question who are not attributable to it makes it impossible to a procedure is also set within the short time, the contracting entities should, within the limits of what is strictly necessary, have the possibility to award contracts by negotiated procedure without prior call for competition. This may occur when natural disasters requiring immediate action.This may occur when natural disasters requiring immediate action.This may occur when natural disasters requiring immediate action.

(90) 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.

(91) 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 entities without the candidates or tenderers having to request it. It should also be recalled that Directive 92/13 / EEC (22) requires contracting authorities, in this case without the candidates or bidders should be requested to provide the tenderers and candidates concerned a summary of the reasons for some of the decisions taken 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 grounds, which entities should be required 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,be allowed to request information on the conduct and progress of the procedure.

(92) Provided it is compatible with the need to ensure the attainment of the objective of sound commercial practice while allowing for maximum flexibility, it is appropriate to provide for the implementation of Directive 2014/24 / EU as regards the requirements relating to the economic and financial capacity and documentary evidence. The contracting entities should therefore be permitted to apply the selection criteria set out in this Directive and, if they do so, they should have the obligation to apply certain other provisions concerning, in particular, the maximum amount of requirements on minimum turnover as well on the use of the single European race document.

(93) Contracting entities should be able to require that they apply measures or environmental management systems during the execution of a 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 (23), can demonstrate that the economic operator has the technical capability to perform the contract.

As an alternative to registration systems for environmental management, it is necessary to accept as evidence the description of the measures applied by the economic operator to ensure the same level of environmental protection, where the economic operator concerned has no access to those systems or not having the possibility of obtaining them within the relevant time limits.

(94) Since the notion of the award criteria is critical to this Directive, it is 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 Finally winning bids should be chosen based on what the individual entity 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." Therefore, it should be interpreted in accordance with the case law relating to these directives, unless there is clearly different solutions substantially in this Directive.

(95) 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, under conditions of effective competition, which 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 entities they 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 be obliged to state the award criteria and the relative weighting given to each of these criteria. Contracting entities 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 give reasons 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.

(96) 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 entities 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.

(97) In assessing the best value / price, the contracting entities should determine the economic and quality criteria linked to the subject of the award on the basis of which they will assess tenders to determine the most advantageous offer from the economic point of view for the contracting entity. These criteria should therefore allow a comparative evaluation of the level of performance offered by each tender 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. Contracting entities should be encouraged to choose award criteria which allow them to get jobs,supplies and high-quality services that best meet their needs.

The chosen award criteria should not confer on the contracting entity 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 may, at the contracting institution's option, based on the price or on the 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.

(98) 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 social integration of disadvantaged persons or members of vulnerable groups among the people in charge of ' performance 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.

(99) If the quality of personnel affect on the performance of the level, the contracting entities 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 may 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 entities that make use of this possibility should ensure, through appropriate contractual arrangements, that the personnel of execution 'contract effectively meets the specific quality standards, and that such personnel can be replaced only with the consent of the contracting entity which ensures that the replacement staff is of equivalent quality level.

(100) it should be noted that public procurement are essential to foster innovation, which is of primary importance is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of Europe 2020. In this

context, 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 achieving specific objectives in the fields of vehicles for road transport (Directive 2009/33 / EC of the European Parliament and of the Council (24)) and office equipment (Regulation (EC) n. 106/2008 of the European Parliament and of the Council (25)). In addition, the definition of common methodologies for calculating cost of living has made great progress.

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

(101) These sector-specific measures should be complemented by an adaptation of the directives 2004/17 / EC and 2004/18 / EC which allows 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, 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 the contracting entities to evaluate 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 approaches 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.

(102) Furthermore, in order to better integrate social and environmental considerations into procurement procedures, contracting entities should be allowed to use the award criteria or contract performance conditions concerning works, supplies or services covered dell ' public contract under every aspect and at any stage of their life cycles, from the extraction of raw materials for the product at the time of disposal of the same, including factors involved in the specific process of production materials, performance or trade "and related conditions, 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. Conditions for performance based on environmental considerations could include, for example, packaging, delivery and disposal of products and, in respect of works contracts and services, minimization of waste and the efficient use resource.

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 entities should not therefore have the power to require bidders to undertake a policy of social and environmental responsibility.

(103) 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.

(104) can also be the subject of the award criteria or conditions of performance measures for the protection of health of the staff involved in the production processes, the social integration of disadvantaged persons or members of vulnerable groups in the staff responsible for 'contract performance or training regarding 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 contracting entities may provide technical specifications of social requirements that directly characterize the product or service in question, such as accessibility for

people with disabilities or design for all users.

(105) 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, money laundering of proceeds of crime 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. Given that contracting entities which are not contracting authorities, might not have access to indisputable proof on the matter, it should be left to those institutions the choice to decide whether or not to apply the exclusion criteriait should be left to those institutions the choice to decide whether or not to apply the exclusion criteriait should be left to those institutions the choice to decide whether or not to apply the exclusion criteria in Directive 2014/24 / EU. The obligation to apply Article 57, paragraphs 1 and 2 of Directive 2014/24 / EU should therefore be limited only to contracting entities that are contracting authorities.

(106) Contracting entities 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 entity will be responsible for the consequences of a possible erroneous decision, contracting authorities should also maintain the right 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 contracts or contracts with other entities have shown significant shortcomings 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, you should pay particular 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.significant weaknesses 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, you should pay particular 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.significant weaknesses 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, you should pay particular 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.National law should provide a maximum duration for such exclusions. In applying optional grounds for

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(107) Where contracting entities are required to apply or choose to apply the exclusion criteria listed above, they should apply Directive 2014/24 / EU as regards the possibility for economic operators to take measures to remedy the consequences of crimes or violations and to prevent such behavior is not allowed to occur again.

(108) 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 entity should be entitled to reject the offer. Rejection should be mandatory in cases where the contracting entity 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 with international provisions of labor law.

(109) The conditions of execution of a contract are intended to lay down specific requirements regarding 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 are not directly or indirectly discriminatory and are related to the subject of the contract, which includes all the factors involved in the specific production process, supply or marketing . This includes conditions governing the performance of the contract process,but it excludes the requirements concerning general corporate policy.

(110) 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 to 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 entities 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 contracting authorities will have to put in all the procurement procedures, or by virtue of obligations for Member States to impose the main contractor through generale.Dovrebbe provisions also be made clear that the conditions for the control of compliance with obligations in the field of environmental law, social and labor laid down by Union law, national law, collective agreements or the provisions in international environmental law, social and labor provided for in 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 a mechanism joint liability between sub-contractors and main contractor. Also, it should be explicitly stated that Member States should be allowed to impose more stringent conditions,for example by extending the obligations in respect of transparency, thus allowing the

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.

(111) Given the ongoing discussions related to the horizontal rules governing relations with third countries in the context of public procurement, should be maintained for a transitional period, the status quo of the regime currently applicable to the utilities sector in accordance with Articles 58 and 59 of Directive 2004/17 / EC. These provisions should therefore be preserved, including the provision on the adoption of implementing acts where EU companies have difficulty gaining access to third country markets. In these circumstances those implementing acts should continue to be adopted by the Board.

(112) It is recalled that the calculation of the periods covered by this Directive Regulation (EEC, Euratom) No. 1182/71 (26).

(113) It should be clarified, 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.

(114) Contracting entities 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' entity to acquire material, works or services with different technical characteristics which would use or whose maintenance would result in incompatibility or disproportionate technical difficulties.

(115) Contracting entities are sometimes faced with external circumstances that they could not foresee when they awarded the contract, especially when the performance of the contract covers a long period. In this case it is necessary flexibility to adapt the contract to these circumstances without a new procurement procedure. The concept of unforeseeable circumstances refers to circumstances that could not predict despite a reasonable and diligent preparation initial award by the contracting entity, taking into account the means at its disposal, the nature and the characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources invested in preparing l 'award and its foreseeable value.

However, this does not apply if a change is seen to alter the general nature of, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement since, a situation of this kind, it is possible to assume hypothetical influence on the outcome.

(116) In line with the principles of equal treatment and transparency, the successful tenderer should not

be replaced by another economic operator, for example in the event of termination of the contract by reason of deficiencies in performance, without reopening l ' contract out to tender. However, in the course of execution of the contract, in particular if it has been awarded to more than one enterprise, the successful tenderer should be able to undergo certain structural changes due, for example, to purely internal reorganizations, incorporations, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all contracts performed by that agency.

(117) With respect to each contract, the contracting entities should have the possibility to provide for modifications by way of review clauses or options, without such clauses should not give them unlimited discretion. This Directive should therefore establish the extent to which the changes can be foreseen in the original contract. It should therefore be clarified that review clauses or clearly enough formulated option may for example provide for indexation of prices or ensure, for example, that the communication equipment to provide for a specific period of time remain adequate even if the protocol changes communications or other technology changes. It should also be possible, through the insertion of sufficiently clear clauses,predict adaptations of the contract which become necessary as a result of technical difficulties appeared during operation or maintenance. It is also worth mentioning that the procurement could, for example, include routine maintenance and predict the extraordinary maintenance interventions that are necessary to ensure continuity in the provision of a public service.

(118) Contracting entities 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 entities have the possibility, under the conditions established by national law, to terminate a public contract during the period of its validity, if required by EU law.

(119) The results of the working document of the services of the Commission of 27 June 2011 entitled "Evaluation Report: impact and effectiveness of EU legislation on public procurement n", indicating an opportunity to review the decision to exclude certain services from the full application of

Directive 2004/17 / EC. As a result, the full application of this Directive should be extended to a range of services.

(120) Certain categories of services, by their very nature, they continue to have a limited cross-border dimension, namely the so-called services to the person such as certain social, health and education. The services of this type are provided within a particular context that varies widely from one Member State to another due to different cultural traditions. It is therefore necessary to establish a specific regime for contracts for such services, with a higher threshold than that which applies to other services.

In the specific context of procurement in those sectors, the services to the person with values below this threshold will not, in general, of any interest to providers from other Member States, unless there are no concrete indications to the contrary , such as Union financing for transborder projects.

Contracts for services to the person above this threshold should be based on transparency at Union level. Given the importance of the cultural context and the sensitivity of these services, Member States should enjoy wide discretion to organize the choice of service providers in the way they consider most appropriate. The rules of this Directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting entities have the right to apply specific quality criteria for the choice of service providers, such as criteria set out in the voluntary European quality framework for social services, published by the Committee for social protection.In defining the procedures to be used for awarding of personal services contracts, Member States should take into account Article 14 TFEU and Protocol. 26. In this context, Member States should also pursue the objectives of simplification and Reduced 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 special rules.

Member States and contracting entities are free to provide these 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 Cheap that meet the conditions previously defined entity, without

any limits or quotas are envisaged, provided that such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

(121) Similarly, hotel services and catering are generally offered only operators located in the specific place of supply of these services and have therefore also a limited cross-border dimension. They should therefore be covered only in the lighter regime, with a one million euros threshold. The hotel and restaurant services that exceed this threshold may be of interest to economic operators, such as travel agencies and other intermediaries, even across national borders.

(122) Similarly, certain legal services exclusively concern questions of purely national law and are therefore generally offered only operators located in the Member State concerned and have therefore also a limited cross-border dimension. They should therefore be covered only in the lighter regime, with a one million euros threshold. The procurement of legal services in excess of this threshold may be of interest to various economic operators, such as international law firms, even across borders, particularly if they concern legal issues having as source or context, the Union law or international law or legal issues involving more than one country.

(123) Experience shows that a number of other services, such as emergency services, fire services and correctional services, generally have some interest in cross-border level only from the moment in which they acquire a sufficient critical mass through their value relatively high. As not excluded from the scope of this Directive they should be included in the lighter regime. To the extent that their performance is indeed based on contracts, other categories of services, such as investigation and security services, generally would present an interest in cross-border only starting from 1 million euros threshold, and only then should therefore be subject to lighter regime.

(124) In order to ensure continuity of public services, this Directive should provide that the participation in procurement procedures for certain services in the fields of health, social and cultural services can be reserved for organizations based on employee or their active participation in corporate governance and for 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 exclusions otherwise provided by this Directive.These services should be governed by lighter regime.

(125) It is appropriate to identify such services by reference to the specific positions of the "common vocabulary for public procurement" (CPV), adopted by Regulation (EC) No. 2195/2002 of the European Parliament and of the Council (27), a nomenclature hierarchically structured and organized into divisions, groups, classes, categories and subcategories. In order to avoid legal uncertainty, it is appropriate to clarify that the reference to a division does not implicitly involves a reference to the subordinated subdivisions. Such global coverage should instead be explicitly indicated by reference to all relevant positions, if appropriate in the form of series of codes.

(126) Traditionally it has been used to design contests, especially in the fields of area planning, town planning, architecture, engineering or data processing. It should however be noted that these flexible tools could also be used for other purposes and that it may determine that the subsequent service contracts are awarded to the winner or one of the winners of the design competition by means of a negotiated procedure without publication.

(127) The assessment has shown that it is still possible to significantly improve the implementation of EU legislation on public procurement. For the purposes of application of the most efficient and consistent standards it is essential to have a clear picture of the possible structural problems and general trends of national policies on procurement, in order to deal with any problems in a more targeted way. Such a framework should be acquired through proper monitoring, the results of which should be published regularly, in order to allow a informed debate on possible improvements to the rules and practices in procurement. Gaining a clear picture could provide information about the application of public procurement rules in the context of the implementation of Union co-financed projects. Member States should be free to define the details of such monitoring and to decide who will do so in practice; in this context they should also be free to decide whether the monitoring should be based on an ex post facto control extrapolated from

samples or on a systematic ex ante of the 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 that those who carried out the monitoring would be entitled to bring legal proceedings independently before courts and tribunals. Even better guidance and information and better support to contracting authorities and economic operators could contribute extensively to increase the efficiency of public procurement, improving knowledge, legal certainty and the professionalization of the practices on public procurement. This guidance should be made available to contracting authorities and economic operators where they are necessary in order 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 tools as well as best practices in carrying out procedures. As for the legal issues, the guidelines should not necessarily consist of full legal analysis of such issues; They may be limited to a general indication of the factors to be taken into consideration for the subsequent detailed analysis of issues, for example by referring to the law which might be relevant or guidance notes or other sources that have examined the specific question.They may be limited to a general indication of the factors to be taken into consideration for the subsequent detailed analysis of issues, for example by referring to the law which might be relevant or guidance notes or other sources that have examined the specific question.They may be limited to a general indication of the factors to be taken into consideration for the subsequent detailed analysis of issues, for example by referring to the law which might be relevant or guidance notes or other sources that have examined the specific question.

(128) Directive 92/13 / EEC provides that certain procedures are available at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an breach of EU law on public procurement or national rules implementing that law. This Directive should not affect these procedures. However, citizens, stakeholders, organized or not, and other persons or bodies who have no access to the review procedures provided for in Directive 92/13 / EEC are still a legitimate interest as

taxpayers in the smooth operation of procedures of contract. They should therefore have the possibility, in a manner different from the appeal system provided for in Directive 92/13 / EEC and without this necessarily imply their action before the courts and tribunals, to report any violations of this directive authority or competent structure. In order not to create duplication of authority or existing structures, Member States should be able to provide for recourse to authority or general control structures, sectoral supervisors, municipal supervisors, the competent authorities on competition, the Ombudsman or competent national authorities on the audit.

(129) In order to fully exploit the potential of public procurement in achieving the objectives of the Europe 2020 strategy for smart, sustainable and inclusive, even contracts into environmental, social and innovation will have to do their part. It is therefore important to get an overview of developments in the field of strategic procurement making it possible to establish an opinion knowledgeably on general trends at the global level in this area. In this context they can, of course, also be used any already developed appropriate relationships.

(130) Given the potential of SMEs to create jobs, growth and innovation, it is important to encourage their participation in public procurement, both through appropriate provisions in this Directive through national initiatives. The new provisions of this Directive should contribute to the improvement of the level of success, ie the percentage of SMEs in the total value of awarded contracts. It is not appropriate to impose mandatory percentages of success, but we need to closely monitor national initiatives to strengthen the participation of SMEs, given its importance.

(131) It has already been put in place a number of procedures and working methods regarding the Commission's communications and contacts with Member States, such as communications and contacts regarding procedures under Articles 258 and 260 TFEU, the network for the solution of the problems in the internal market (SOLVIT) and EU Pilot, procedures that are not modified by this Directive. They should, however, be supplemented by the designation of a single point of reference in each Member State in cooperation with the Commission, which would act as a single entry point for matters relating to public procurement in the Member State in question. This function can be carried out by

persons or structures that are already in regular contact with the Commission with regard to matters relating to public contracts,such as the National Contact Points, members of the Advisory Committee for Public Procurement, members of the network for public procurement or national coordinating bodies.

(132) The traceability and transparency of decision-making in procurement procedures is essential to ensure fair procedures as well as to effectively fight corruption and fraud. Contracting authorities should therefore keep copies of contracts of high value in order to guarantee to the parties concerned access to those documents in accordance with applicable rules of access to documentation. It is also necessary that the essential elements and the decisions of individual procurement procedures are documented on the procurement by the contracting entities in a relationship. To avoid as far as possible, administrative burdens should be allowed that the report on the procurement references to information already reported in the relevant contract award notice.It is also necessary to improve the electronic systems for the publication of such notices, managed by the Commission in order to facilitate the integration of data and, at the same time, the extraction of global relations and the exchange of data between systems.

(133) In order to promote administrative simplification and reduce the burden imposed on Member States, the Commission should periodically examine whether the quality and completeness of the information contained in the notices that are published on the occasion of procurement procedures are sufficient to enable the Commission to draw the statistical information that otherwise would be transmitted by the Member States.

(134) effective administrative cooperation is necessary for the exchange of information required for the conduct of procurement procedures in cross-border situations, in particular with regard to verification of the grounds for exclusion and selection criteria and the application of standards and environmental quality. The Internal Market Information System (IMI) established by Regulation (EU) No. 1024/2012 of the European Parliament and of the Council (28) could provide a useful electronic tool to facilitate and strengthen administrative cooperation managing the exchange of information on the basis of simple and unified procedures that overcome language barriers. As

much as possible should therefore be rapidly launched a pilot project to evaluate the opportunity to extend 'IMI information exchange in accordance with this Directive.

(135) In order to adapt to rapid technical, economic and regulatory, should be delegated to the Commission the power to adopt acts in accordance with Article 290 TFEU concerning the amendment of a number of non-essential elements of this Directive. Given the need to respect international agreements, it should be delegated to the Commission the power to amend the technical procedures for the calculation methods and thresholds periodically revise the thresholds themselves; references to the CPV nomenclature may undergo regulatory changes at EU level and is necessary to reflect such changes in the text of this Directive; the details and the technical characteristics of the receiving electronic devices must be kept up to date with respect to technological developments; it is also necessary to empower the Commission to make mandatory certain technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments; It should also be conferred on the Commission the power to adapt the list of legislative acts of 'Union establishing common methodologies for the calculation of lifecycle costs; the list of international conventions on the environment and social security, and the list of Union legislation the implementation of which creates the presumption of free access to a given market, as well as Annex II which sets out a list of legal acts by take into account when assessing whether there are special or exclusive rights, they must be promptly adapted to incorporate the measures adopted on a sectoral basis. To meet this need, it should be delegated to the Commission the power to keep updated lists. It is particularly important that during the preparatory work, the Commission carry out appropriate consultations, including at expert level. In the preparation and in 'drawing up delegated acts, the Commission should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

(136) In applying this Directive, the Commission should consult the appropriate groups of experts in electronic procurement, ensuring a

balanced composition of the main stakeholder groups.

(137) In order to ensure uniform conditions for the implementation of this Directive should be conferred on the Commission implementing powers with regard to the mode of data transmission and publication set out in Annex IX, the methods for the preparation and transmission of notices or alerts and the model forms for the publication of notices. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 of the European Parliament and of the Council (29).

(138) For the adoption of implementing acts relating to the model forms for the publication of notices that have no impact or from a financial point of views or on the nature and scope of the obligations under this Directive should to use an advisory committee. On the contrary, these acts are characterized by a mere administrative purpose and are designed to facilitate the application of the rules laid down by this Directive.

Furthermore, decisions to establish whether a given activity is directly exposed to competition in markets where there is free access sno adopted in conditions which ensure uniform procedures for the application of that provision. They should therefore be conferred on the Commission implementing powers also with regard to the detailed rules for the implementation of the procedure referred to in Article 35, to determine whether Article 34 as well as the same are applicable implementing acts. Those powers should be exercised in accordance with Regulation (EU) No. 182/2011 For the adoption of those implementing acts should have recourse to the advisory procedure.

(139) The Commission should review the effects on the internal market resulting from the application of thresholds, and send a report to the European Parliament and the Council. In this context it should take into account factors such as the level of cross-border contracts, the participation of SMEs, transaction costs and the balance of costs and benefits.

In accordance with Article XXII, paragraph 7, the AAP will be subject to further negotiations three years after its entry into force and periodically thereafter. In this context it should be examined the appropriateness of the threshold level, bearing in mind the impact of inflation in the long period in which the thresholds established by the GPA were not changed; if the level of thresholds should change accordingly, the Commission

should, where appropriate, adopt a proposal for a legal act that changes the thresholds provided for in this Directive.

(140) Since the objective of this Directive, namely the coordination of laws, regulations and administrative provisions of the Member States relating to public contracts, can not be sufficiently achieved by the Member States but, because of its scope and its 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 is limited to what is necessary to achieve this objective in accordance with the principle of proportionality set out in that article.

(141) Directive 2004/17 / EC should be repealed.

(142) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the constituent elements of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

They HAVE ADOPTED THIS DIRECTIVE:

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TITLE I - SCOPE, DEFINITIONS AND GENERAL PRINCIPLES

CHAPTER I - SCOPE AND DEFINITIONS

Article 1 Purpose and Scope

1. This Directive establishes rules on the procedures for procurement by contracting entities as far as design and procurement competitions whose value is estimated as below the thresholds referred to in Article 15.

2. For the purposes of this Directive speaks of contract when one or more entities acquire, through a contract for works, supplies and services, works, supplies or services from economic operators chosen by the contracting entities themselves, provided that the works, supplies or services are intended for use for any of the activities referred to in articles 8 to 14.

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 non-economic services of general interest do not fall within the scope of this Directive.

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Article 2 Definitions

For the purposes of this Directive, the following definitions shall apply:

1) "works, supplies and services' contracts for pecuniary interest concluded in writing between one or more contracting entities and one or more economic operators, having as their object the execution of works, the supply of products or the provision of services;

2) 'works contracts': contracts for one of the following activities:

3) "works" means the result of a product of building or civil engineering, which in itself to fulfill an economic or technical function;

4) "supply contracts": 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;

5) "service contracts": contracts for the provision of services other than those referred to in paragraph 2;

6) 'economic operator' means any natural or legal person or entity or consortium of such persons and / or entities, including any temporary association of companies, which offers the execution of works and / or work in the market, supply of products or the provision of services;

7) 'tenderer' means an economic operator who has submitted a tender;

8) 'candidate' means an economic operator which has sought an invitation or has been invited to participate in a restricted or negotiated procedure, a competitive dialogue or an innovation partnership;

9) 'tender document' means any document produced or entity to which the entity refers to describe or determine elements or of the procedure, including - if they are used as a means of calling for competition - the tender race, the periodic indicative notice or notices on the existence of a qualification system, 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;

10) "centralized purchasing activities': activities carried out on a permanent basis, in one of the following forms:

11) "ancillary purchasing activities': activities which consist in the provision of support to purchasing activities, in particular in the following forms:

12) 'central purchasing body' means an entity within the meaning of Article 4, paragraph 1, of this Directive or a contracting authority within the meaning of Article 2, paragraph 1, point 1 of Directive 2014/24 / EU on of centralized purchasing activities and, where appropriate, ancillary purchasing activities.

Contracts managed by a central purchasing body in order to carry out commissions of centralization are the contracts for the exercise of an activity mentioned in Articles 8 to 14. Article 18 does not apply to contracts managed by a central purchasing body in order to perform centralized purchasing activities;

13) 'service provider for procurement' means a public or private body which offers ancillary purchasing activities on the market;

14) '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;

15) '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;

16) 'life cycle' means all consecutive phases and / or interconnected, including the research and development to be carried out, the production, exchanges and related conditions, transport, utilization and maintenance, the life of the product or the job or of the service, from raw material acquisition or generation of resources to disposal, the dismantling and the end of the service or use;

17) 'Design contests' means procedures which enable the contracting entity, especially in the field of spatial planning, urban planning, architecture, engineering or data processing, a plan or design selected by an evaluation committee on the basis of a competition, with or without prizes;

18) "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 in commercial practice, the 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;

19) 'labeling' means any document, certificate or statement in which it confirmed that the works, products and services, processes or procedures in question meet certain requirements;

20) "labeling requirements": requirements that must be met by the works, products, services, processes or procedures in question in order to obtain the relevant labeling.

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Article 3 Contracting authorities

1. For the purposes of this Directive, 'contracting authorities' means the State, regional or local authorities, public bodies and associations formed by one or more of such authorities or one or more of such law; public.

2. 'Regional authorities' include all authorities of the administrative units are listed non-exhaustively in the NUTS 1 and 2, pursuant to Regulation (EC) No. 1059/2003 of the European Parliament and of the Council (30).

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

4. 'public bodies' means bodies that have all of the following:

a) 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.

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Article 4 Contracting entities

1. For the purposes of this Directive, contracting entities are entities that:

a) contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 8 to 14;

b) when they are not contracting authorities or public undertakings, have as one of their activities any of the activities of those referred to in Articles 8 to 14 and operate under special or exclusive rights granted by a competent authority of a Member State.

2. 'public undertaking' means an undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it matter .

dominant An influence by the contracting authorities is assumed in all cases in which these authorities, directly or indirectly:

a) hold the majority of the subscribed capital;

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

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

3. For the purposes of this Article, 'special or exclusive rights' mean rights granted by a competent authority of a Member State, by law, regulation or administrative provision the effect of reservation for one or more entities of the' pursue the activities referred to in articles 8 to 14 and substantially affects the ability of other entities to carry out such activity.

The rights granted under a procedure by which was ensured adequate publicity, and in case the concession was based on objective criteria do not constitute special or exclusive rights pursuant to the first paragraph.

Such procedures include:

a) procurement procedures with a prior call for competition in accordance with Directive 2014/24 / EU Directive 2009/81 / EC, Directive 2014/23 / EU or of this Directive;

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

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 concerning the amendments to the legal acts listed in Annex II Union, when the amendments prove necessary on the basis of the adoption of new acts legal, or repeal or amendment of such legislation.

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Article 5 Mixed contracts covering the same activity

1. Paragraph 2 shall apply 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 5 shall apply.

If part of a contract is governed by Article 346 TFEU or Directive 2009/81 / EC, the provisions of Article 25 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 entities may choose to award separate contracts for distinct parts or award a single contract. If the contracting entities choose to award separate contracts for distinct parts, the decision which determines which legal regime is applicable to each of these separate contracts is adopted according to the characteristics of the distinct part in question.

Where contracting entities choose to award a single contract, this Directive shall apply, except as otherwise provided in Article 25, the contract resulting mixture, regardless of the value of the parts which would apply a different legal regime and the regime legal which these parties would otherwise be subject.

In the case of mixed contracts containing elements of supply, works and services and concessions, the mixed contract was awarded in accordance with this Directive, provided that the estimated value of the contract which constitutes a contract covered by this Directive, calculated according to the article 16, is equal to or exceeds the relevant threshold under Article 15.

5. Where the different parts of a contract are objectively not separable, the applicable legal regime is determined according to the main object of the contract in question.

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Article 6 Contracts covering several activities

1. In the case of contracts intended to cover several activities, entities may choose to award separate contracts for each separate activity or award a single contract. Where contracting entities choose to award separate contracts, the decision determining the legal regime applicable to each such separate contracts shall be taken based on the characteristics of distinct issue.

Notwithstanding Article 5, should the contracting entities choose to award a single contract, the provisions of paragraphs 2 and 3 of this Article. However, when one of the activities concerned is governed by Article 346 TFEU or Directive 2009/81 / EC, the provisions of Article 26 of this Directive.

The decision to award a single contract and to award separate contracts is not adopted, however, in order to exclude the contract or contracts from the scope of this Directive or, where applicable, Directive 2014/24 / EU or Directive 2014/23 / EU.

2. a contract intended to cover several activities shall apply the rules relating to the main activity which it is intended.

3. In the case of contracts for which it is objectively impossible to determine which assets are primarily intended, the applicable rules are determined in accordance with the letters a), b) and c):

a) the contract is awarded in accordance with the Directive 2014/24 / EU if one of the activities for which the contract is intended is subject to this Directive and the other by the Directive 2014/24 / EU;

b) the award is made according to the present Directive if one of the activities for which the contract is intended is subject to this Directive and the other by the Directive 2014/23 / EU;

c) the contract is awarded in accordance with this Directive, if one of the activities which the contract is intended is subject to this Directive and the other is not subject to either this Directive, or to Directive 2014/24 / EU or Directive 2014 / 23 / EU.

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CHAPTER II - ACTIVITIES

Article 7 Common provisions

For the purposes of Articles 8, 9 and 10, "power" includes the generation / production, wholesale and retail.

However, the production of gas in the form of extraction falls within the scope of Article 14.

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Article 8 Gas and thermal energy

1. With regard to gas and thermal energy, this Directive shall apply to the following activities:

a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or thermal energy;

b) the supply of such networks with gas or thermal energy.

2. The supply, by an entity which is not a contracting authority, gas or heat to fixed networks which provide a service to the public is not considered an activity referred to in paragraph 1 if all the following conditions:

a) the production of gas or heat by the entity that is the unavoidable consequence of an activity not covered by paragraph 1 of this Article or in Articles 9 to 11;

b) supply to the public network is aimed only at the economic exploitation of such production and corresponds to a maximum of 20% of the turnover of the contracting entity, considering the average of the last three years, including the current year.

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Article 9 Electricity

1. With regard to electricity, this Directive applies to the following activities:

a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;

b) the supply of such networks with electricity.

2. The supply, by an entity which is not a contracting authority, with electricity of fixed networks providing a service to the public is not considered an activity referred to in paragraph 1, if all the following conditions are met :

a) the production of electricity by the entity takes place because its consumption is necessary for carrying out an activity not covered by paragraph 1 of this Article or in Articles 8, 10 and 11;

b) supply to the public network depends only on their consumption of such entity and does not exceed 30% of the total energy output of the entity, considering the average of the last three years, including the current year.

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Article 10 Water

1. With regard to the water, this Directive applies to the following activities:

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

b) the supply of such networks with drinking water.

2. This Directive shall also apply to contracts or design contests awarded or organized by contracting entities engaged in an activity referred to in paragraph 1 and which relate to one of the following activities:

a) hydraulic engineering projects, irrigation or drainage, wherein the volume of water intended for drinking water represents more than 20% of the total volume of water made available by such projects or irrigation or drainage installations;

b) disposal or treatment of sewage.

3. The supply, by an entity which is not a contracting authority, of drinking water to the fixed networks which provide a service to the public is not considered an activity referred to in paragraph 1 if the following conditions are met :

a) the production of drinking water by the entity takes place because its consumption is necessary for carrying out an activity not provided for in Articles 8 to 11;

b) supply to the public network depends only on their consumption of such entity and does not exceed 30% of the total production of drinking water of such entity, considering the average of the last three years, including the current year.

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Article 11 Transportation Services

This Directive shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of rail, tram, trolley bus, automatic or cable systems.

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

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Article 12 Ports and airports

This Directive shall apply to activities seeking to exploit a geographical area for the provision of airports and maritime or inland ports or other terminal facilities to air, sea and river.

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Article 13 Postal services

1. This Directive shall apply to activities relating to the provision of:

a) postal services;

b) other services other than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of paragraph 2, letter b) of this Article and that the conditions referred to in Article 34, paragraph 1 , they are not satisfied in respect of the services referred to in paragraph 2, letter b) of this Article.

2. For the purposes of this Directive and without prejudice to Directive 97/67 / EC of the European Parliament and of the Council (31), shall apply:

a) 'postal item': an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, it is - for example - of books, catalogs, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

b) 'postal services': services consisting of collection, sorting, transport and delivery of postal items. They include both services falling within the scope of universal service set up under Directive 97/67 / EC, and those who are excluded;

c) "other services than postal services' means services provided in the following areas:

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Article 14 Extraction of oil and gas exploration and prospecting for or extracting coal or other solid fuels

This Directive shall apply to activities seeking to exploit a geographical area for the purpose of:

a) extraction of oil or gas;

b) exploring for or extraction of coal or other solid fuels.

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CHAPTER III - SCOPE OF MATERIAL

SECTION 1 - THRESHOLDS

Article 15 Thresholds amounts

This Directive applies to contracts which are not excluded in accordance with the exceptions provided for in Articles 18 to 23 or pursuant to Article 34 concerning the pursuit of the activity in question and whose tax net value of value added tax (VAT) equals or exceeds the following thresholds:

a) 418 000 EUR for procurement of supplies and services as well as for design contests;

b) 5,225,000 euros for works contracts;

c) 1 million euros for the service contracts for social services and other specific services listed in Annex XVII.

{As amended by European Commission Regulation 24 November 2015 n. 2015/2171, in force since 01.01.2016}

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Article 16 of the estimated value of contracts Calculation Methods

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

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

2. If an entity is composed of distinct operating units, it takes into account the estimated total value for all the individual operating units.

Notwithstanding the first paragraph, if distinct operational unit is responsible independently of their contract or for certain categories of the latter, the values can be estimated at the level of the unit in question.

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. This 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 entity commences the procurement procedure, for example, if appropriate, by contacting economic operators 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 the purposes of Article 15, contracting entities shall include in the estimated value of a works contract both the cost of the works that the total estimated value of all the supplies or services that are put at the disposal of the contracting entities, provided they 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 15, 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 15, 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 15, this Directive shall apply to the awarding of each lot.

10. Notwithstanding paragraphs 8 and 9, the contracting entities 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 EUR 80 000 for supplies or services or EUR 1 million euros for the works. However, the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20% of the aggregate value of all the lots into which 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, it is taken as the basis for calculating the estimated contract value:

a) 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 supply contracts having as their object the financial lease, rental or hire purchase of products, the value to be taken as the basis for calculating the estimated value is as follows:

a) for the specified duration contracts 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 an indefinite period contracts or if this can not be defined, the monthly value multiplied by 48.

13. For service contracts, the value to be taken as a basis for calculating the estimated value is, depending on the circumstances, the following:

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

b) banking and other financial services: the fees, commissions payable, interest and other forms of remuneration;

c) design contracts: fees, commission payable and other forms of remuneration.

14. For service contracts which do not indicate a total price, the value to be taken as a basis for calculating the estimated value is as follows:

a) in the case of procurement of a fixed duration equal to or less than 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.

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Article 17 Revision of the thresholds

1. On 30 June 2013 the Commission shall review every two years that the thresholds referred to in Article 15 a) and b) correspond to the thresholds established in the World Trade Organization on Government Procurement Trade Agreement (GPA) and shall, if necessary, revise them in accordance with this article.

In accordance with the calculation method specified in the GPA, the Commission calculates the value of these thresholds on the basis of the average daily value of the euro compared to the special drawing rights during the twenty-four month period ending August 31 preceding the revision with into force on 1 January. The value of the thresholds thus revised is rounded, if necessary, to thousand euro lower than the figure resulting from this calculation, to ensure compliance with the thresholds in force provided by the AAP and expressed in SDRs.

2. under revised From 1 January 2014, the Commission shall determine, in national currencies of the Member States whose currency is not the euro, the threshold values referred to in Article 15, a) and b) every two years, the this Article, paragraph 1.

Simultaneously, the Commission shall determine, in national currencies of the Member States whose currency is not the euro, the threshold values referred to in Article 15, letter c).

In accordance with the calculation method specified in the GPA Government Procurement Agreement, the determination of these values is based on the average daily values of those currencies corresponding to the applicable threshold expressed in euro during the twenty-four months ending August 31 preceding the review which comes into force on 1 January.

3. The Commission shall publish the revised thresholds referred to in paragraph 1, their values in national currencies referred to in paragraph 2, first paragraph, and the value determined in accordance with paragraph 2, the second paragraph in the Official Journal of the European Union to ' beginning of November following their revision.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 to adapt the methodology set out in this Article, paragraph 1, second paragraph, to changes in the methodology that the GPA for the revision of the thresholds laid down 'Article 15 a) and b), and for the determination of values in the national currencies of the Member States whose currency is not the euro, as mentioned in this Article, paragraph 2.

The Commission shall be empowered to adopt delegated acts in accordance with Article 103 for review of the thresholds referred to in Article 15 a) and b), if necessary.

5. If it becomes necessary to revise the thresholds referred to in Article 15, letters a) and b), and the time constraints do not allow the use of the procedure referred to in Article 103, and therefore imperative grounds of urgency so require the procedure referred to in Article 104 shall apply to delegated acts adopted pursuant to this Article, paragraph 4, second paragraph.

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SECTION 2 - CONTRACTS AND DESIGN CONTESTS EXCLUDED; SPECIAL CONTRACT PROVISIONS RELATING TO DEFENSE AND SECURITY ISSUES

SUB-SECTION 1 - EXCLUSIONS REGARDING ALL THE CONTRACTING ENTITIES AND EXCLUSION SPECIAL FOR WATER AND ENERGY SECTORS

Article 18 Contracts awarded for purposes of resale or lease to third parties

1. This Directive shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities They are free to sell or lease it under the same conditions as the contracting entity.

2. Contracting entities shall notify the Commission, on request, all categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish nellaGazzetta European Union, for information, a list categories of products and activities which it considers excluded. In doing so, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information.

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Article 19 Contracts and design contests awarded or organized for purposes other than the pursuit of an activity covered or for the exercise of an activity in a third country

1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities provided for in Articles 8 to 14, or for the exercise of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union nor to design contests organized for such purposes.

2. Contracting entities shall notify the Commission, upon request, any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the Official Journal, for information purposes, lists of the categories of activities which it considers excluded. In doing so, the Commission will respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.

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Article 20 Contracts awarded and design contests organized pursuant to international rules

1. This Directive shall not apply to contracts or design contests which the contracting entity 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:

a) 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 management of 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 105.

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

financed mainly by an international organization or international financing institution the parties shall agree on applicable procurement procedures.

3. Article 27 shall apply to contracts and design contests on matters of defense and security which are awarded or organized according to international standards. Paragraphs 1 and 2 of this Article shall not apply to such contracts and design contests.

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Article 21 Specific exclusions for service contracts

This Directive does not apply to service contracts:

a) having as their object the purchase or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon.

b) concerning arbitration and conciliation services;

c) for any of the following legal services:

i) legal representation of a client by a lawyer within the meaning of Article 1 of Directive 77/249 / EEC (32):

- in an arbitration or conciliation held in a Member State, a third country or before an arbitration tribunal or international conciliation or

- in court 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) 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;

d) 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 (33) and operations conducted with the Fund European financial stability Facility and the European stability mechanism;

e) relating to loans, regardless of whether they are related issue, sale, purchase or transfer of securities or other financial instruments;

f) concerning the employment contracts;

g) concerning public passenger transport services by rail or metro;

h) concerning civil defense services, civil and preventive protection against the dangers provided by non-profit organizations or 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;

i) Relating to contracts for broadcasting time or the provision of programs AWARDED to providers of radio or audiovisual media services. For the purposes of this subparagraph, the term 'media service providers' have the same meaning as in Article 1, paragraph 1, letter d) of Directive 2010/13 / EU of the European Parliament and of the Council (34). 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 as 'program'.

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