
Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/7, ANNEX 1. (See end of Document for details)

ANNEX 1

Instructions

The ESPD is a self-declaration by economic operators providing preliminary evidence replacing the certificates issued by public authorities or third parties. As provided in Article 59 of Directive 2014/24/EU, it is a formal statement by the economic operator that it is not in one of the situations in which economic operators shall or may be excluded; that it meets the relevant selection criteria and that, where applicable, it fulfils the objective rules and criteria that have been set out for the purpose of limiting the number of otherwise qualified candidates to be invited to participate. Its objective is to reduce the administrative burden arising from the requirement to produce a substantial number of certificates or other documents related to exclusion and selection criteria.

To facilitate the task for economic operators when filling in an ESPD, Member States may issue guidance on the use of the ESPD, for instance to explain which provisions of national law are pertinent in relation to Part III, Section A⁽¹⁾, that official lists of approved economic operators or equivalent certificates might not be established or issued in a given Member State, or to specify which references and information must be given to enable contracting authorities or contracting entities to retrieve a given certificate electronically.

When preparing the procurement documents for a given procurement procedure, contracting authorities and contracting entities must indicate in the call for competition, in procurement documents referred to in the call for competition or in the invitations to confirm interest which information they will require from the economic operators, including an explicit statement as to whether the information set out under Parts II and III⁽²⁾ should or should not be provided in respect of subcontractors on whose capacities the economic operator does **not** rely⁽³⁾. They may also make the task easier for economic operators by indicating this information directly in an electronic version of the ESPD, for instance by using the ESPD service <https://webgate.acceptance.ec.europa.eu/growth/tools-databases/ecertis2/resources/espd/index.html>⁽⁴⁾ that Commission Services will make available, free of charge, for contracting authorities, contracting entities, economic operators, providers of electronic services and other interested parties.

Tenders in open procedures and requests for participation in restricted procedures, competitive procedures with negotiations, competitive dialogues or innovation partnerships, must be accompanied by the ESPD, which economic operators have completed in order to deliver the required information⁽⁵⁾. Except in relation to certain contracts based on framework agreements, the tenderer to whom it is intended to award the contract will have to provide up to date certificates and supporting documents.

Member States may regulate or leave it to contracting authorities and contracting entities to decide whether to use the ESPD also as part of procurement procedures not or not fully subject to the detailed procedural rules of Directives 2014/24/EU or 2014/25/EU, for instance for procurement below the relevant thresholds or procurements subject to the particular rules applicable to social and other specific services (the 'light regime')⁽⁶⁾. Similarly, Member States may regulate or leave it to contracting authorities and contracting entities to decide whether to use the ESPD also in connection with the award of concessions contracts, whether or not subject to the provisions of Directive 2014/23/EU⁽⁷⁾.

The contracting authority or contracting entity may ask any tenderer at any moment during the procedure to submit all or part of the required certificates and supporting documents where this is necessary to ensure the proper conduct of the procedure.

Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/7, ANNEX I. (See end of Document for details)

Economic operators may be excluded from the procurement procedure or be subject to prosecution under national law in cases of serious misrepresentation in filling in the ESPD or, generally, in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, or where such information is withheld or the economic operators are unable to submit the supporting documents.

Economic operators may reuse the information that has been provided in an ESPD which has already been used in a previous procurement procedure as long as the information remains correct and continues to be pertinent. The easiest way to do so is by inserting the information in the new ESPD through use of the appropriate functionalities that are provided to that effect in the above-mentioned electronic ESPD-service. Of course, reuse of information through other forms of copy-paste of information, for instance information stored in the economic operator's IT-equipment (PCs, tablets, servers ...), will also be possible.

According to the second subparagraph of Article 59(2) of Directive 2014/24/EU, the ESPD shall be provided exclusively in electronic form; however, this may be postponed until 18 April 2018 at the latest⁽⁸⁾. This means that both fully electronic and paper-based versions of the ESPD may co-exist until 18 April 2018 at the latest. The just-mentioned ESPD-service will allow economic operators to fill in their ESPD electronically in **all cases**, thus enabling them to draw the full advantages of the facilities offered (not least of reusing information). For use in procurement procedures in which use of electronic means of communication has been postponed (also possible until 18 April 2018 at the latest), the ESPD service allows economic operators to print their electronically filled-in ESPD as a paper document which can then be transmitted to the contracting authority or contracting entity by other means of communication than electronic ones⁽⁹⁾.

As mentioned earlier, the ESPD consists of a formal statement by the economic operator that the relevant grounds for exclusion do not apply, that the relevant selection criteria are fulfilled and that it will provide the relevant information as required by the contracting authority or contracting entity.

Where procurements are divided into lots **and** selection criteria⁽¹⁰⁾ vary from lot to lot, an ESPD should be filled in for each lot (or group of lots with the same selection criteria).

The ESPD further identifies the public authority or third party responsible for establishing the supporting documents⁽¹¹⁾ and contains a formal statement to the effect that the economic operator will be able, upon request and without delay, to provide those supporting documents.

Contracting authorities or contracting entities may choose or may be required⁽¹²⁾ by Member States to limit the information required on selection criteria to a single question whether, yes or no, economic operators meet all the required selection criteria. While this may be followed up by requests for further information and/or documentation, care should be taken to avoid imposing excessive administrative burdens on economic operators through systematic requests of certificates or other forms of documentary evidence of all participants in a given procurement procedure or practices consisting in identifying in a discriminatory manner the economic operators to be requested such documentation.

The obligations for the contracting authorities and contracting entities to obtain the documentation concerned directly by accessing a national database in any Member State that is available free of charge also applies where the information initially requested on selection criteria has been limited to a yes or no answer. If such electronic documentation is requested, economic operators will therefore provide the contracting authority or contracting entity with the information needed to obtain the documentation concerned when the selection criteria are being checked rather than directly in the ESPD.

Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/7, ANNEX I. (See end of Document for details)

Where an extract from the relevant register, for example judicial records, is available electronically to the contracting authority or contracting entity, the economic operator can state where the information can be found (i.e. the name of the repository, internet address, identification of the file or record etc.) so that the contracting authority or contracting entity may retrieve this information. **By indicating this information, the economic operator agrees that the contracting authority or contracting entity may retrieve the relevant documentation subject to the national rules implementing Directive 95/46/EC⁽¹³⁾ on the processing of personal data, and in particular of special categories of data such as on offences, criminal convictions or security measures.**

In accordance with Article 64 of Directive 2014/24/EU of the European Parliament and of the Council, economic operators which are registered on official lists of approved economic operators or possess a relevant certification by bodies established under public or private law may, in respect of the information required under Parts III to V, submit to the contracting authority or contracting entity the certificate of registration issued by the competent authority or the certificate issued by the competent certification body.

An economic operator participating **on its own** and which does **not rely** on the capacities of other entities in order to meet the selection criteria, must fill out **one** ESPD.

An economic operator participating on its own but relying on the capacities of one or more other entities must ensure that the contracting authority or contracting entity receives its own ESPD together with a **separate** ESPD setting out the relevant information⁽¹⁴⁾ for **each of the entities it relies on**.

Finally, where groups of economic operators, including temporary associations, participate together in the procurement procedure, **a separate ESPD** setting out the information required under Parts II to V must be given for **each** of the participating economic operators.

In all cases where more than one person is member of the administrative, management or supervisory body of an economic operator or has powers of representation, decision or control therein, each **may** have to sign the same ESPD, depending on national rules, including those governing data protection.

Concerning the signature(s) of the ESPD, please note that a signature on the ESPD might not be necessary where the ESPD is transmitted as part of a set of documents, whose authenticity and integrity is ensured through the required signature(s) of the means of transmission⁽¹⁵⁾.

For procurement procedures in which a call for competition has been published in the *Official Journal of the European Union*, the information required under Part I will be automatically retrieved, **provided that the above-mentioned electronic ESPD-service is used to generate and fill in the ESPD**.

If there is no call for competition in the OJEU, then the contracting authority or contracting entity must fill in the information allowing the procurement procedure to be unequivocally identified. All other information in all sections of the ESPD is to be filled in by the economic operator

The ESPD includes the following Parts and Sections:

- **Part I. Information concerning the procurement procedure and the contracting authority or contracting entity.**
- **Part II. Information concerning the economic operator.**
- **Part III. Exclusion criteria:**
 - **A: Grounds relating to criminal convictions** (their application is mandatory pursuant to Article 57(1) of Directive 2014/24/EU. Their

Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/7, ANNEX I. (See end of Document for details)

application is also mandatory for contracting authorities pursuant to the second subparagraph of Article 80(1) of Directive 2014/25/EU, whereas contracting entities other than contracting authorities **may** decide to apply these exclusion criteria).

— **B: Grounds relating to the payment of taxes or social security contributions** (their application is mandatory pursuant to Article 57(2) of Directive 2014/24/EU in case of a final and binding decision. Under the same conditions, their application is also mandatory for contracting authorities pursuant to the second subparagraph of Article 80(1) of Directive 2014/25/EU, whereas contracting entities other than contracting authorities **may** decide to apply these exclusion grounds. Please note that national legislation of certain Member States may render exclusion obligatory also where the decision is not final and binding.).

— **C: Grounds relating to insolvency, conflicts of interests or professional misconduct (See Article 57(4) of Directive 2014/24/EU)** (cases in which economic operators may be excluded; application of these exclusion grounds may be rendered obligatory for contracting authorities by their Member States. Pursuant to Article 80(1) of Directive 2014/25/EU all contracting entities, whether or not they are contracting authorities, **may** decide to apply these exclusion grounds or be required by their Member State to do so).

— **D: Other exclusion grounds that may be foreseen in the national legislation of the contracting authority's or contracting entity's Member State.**

— **Part IV. Selection criteria⁽¹⁶⁾:**

— **α: Global indication for all selection criteria**

— **A: Suitability.**

— **B: Economic and financial standing.**

— **C: Technical and professional ability.**

— **D: Quality assurance schemes and environmental management standards⁽¹⁷⁾⁽¹⁸⁾.**

— **Part V. Reduction of the number of qualified candidates⁽¹⁹⁾.**

— **Part VI. Concluding statements.**

Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/7, ANNEX I. (See end of Document for details)

- (1) For instance that economic operators having been convicted under Articles x, y and z of the national penal code must state so when filling in the information concerning convictions for participation in a criminal organisation or money laundering ...
- (2) Information concerning exclusion grounds.
- (3) Cf. the third subparagraph of Article 71(5) of Directive 2014/24/EU and the third subparagraph of Article 88(5) of Directive 2014/25/EU
- (4) This is the link to the preliminary version under development. When available, the link to the full production version will be inserted or made available otherwise.
- (5) The situation is more complex in respect of **negotiated procedures without prior publication**, provided for under Article 32 of Directive 2014/24/EU and Article 50 of Directive 2014/25/EU as these provisions apply to very different realities.
Requesting an ESPD would constitute an unnecessary administrative burden or be otherwise inappropriate 1) where only one, predetermined participant is possible (for the two Directives, respectively Article 32, paragraph 2(b), paragraph 3(b), paragraph 3 (d) and paragraph 5 of Directive 2014/24/EU and Article 50, letters (c), (e), (f) and (i) of Directive 2014/25/EU and 2) because of the urgency involved (respectively Article 32(2)(c) of Directive 2014/24/EU and Article 50, letters (d) and (h) of Directive 2014/25/EU or because of the particular characteristics of the transaction for supplies quoted and purchased on a commodity market (Article 32(3)(c) of Directive 2014/24/EU and Article 50, letter (g) of Directive 2014/25/EU.
On the other hand, the ESPD would play its role in full and should be requested in the remaining cases, which are characterised by the possible participation of more than one participants and the absence of urgency or particular characteristics linked to the transaction; such is the case in respect of Article 32, paragraph 2(a), paragraph 3(a) and paragraph 4 of Directive 2014/24/EU and Article 50, letters (a), (b) and (j) of Directive 2014/25/EU.
- (6) Articles 74 to 77 and 91 to 94 of, respectively, Directives 2014/24/EU and 2014/25/EU.
- (7) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, [OJ L 94, 28.3.2014, p. 1](#).
- (8) Cf. Article 90(3) of Directive 2014/24/EU.
- (9) They will also be able to generate their ESPD as a pdf-file which can be electronically transmitted as an attachment. To be able subsequently to reuse the information, economic operators should save the filled-in ESPD in an appropriate electronic format (such as .xml).
- (10) This might be the case for the minimum required turnover, which in such cases must be determined in function of the maximum estimated value of the single lots.
- (11) Unless the contracting authorities or contracting entities have indicated that general information ('yes'/'no') on meeting the requirements will be sufficient in the first instance. See below for more explanations on this option.
- (12) Such requirements may be general or limited to certain situations only, e.g. only in open procedures or, for two stage procedures, only when all candidates meeting the minimum requirements will be invited to participate.
- (13) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, [OJ L 281, 23.11.1995, p. 31](#).
- (14) See Part II, Section C
- (15) For instance: if the tender and the accompanying ESPD in an open procedure are transmitted by an e-mail which is provided with an electronic signature of the required type, then additional signature(s) on the ESPD might not be necessary. The use of an e-Signature on the ESPD might also not be necessary, when the ESPD is integrated in an e-Procurement platform and e-authentication is required in order to use that platform.
- (16) Pursuant to Article 80(2) of Directive 2014/25/EU, contracting entities, whether or not they are contracting authorities, may decide to apply the selection criteria provided for in Article 58 of Directive 2014/24/EU (Part IV, Sections A, B and C).
- (17) Use of the ESPD by contracting entities in respect of requirements connected with quality assurance schemes and environmental management standards (Part IV, Section D) is not explicitly provided for under Directive 2014/25/EU, but should nevertheless be allowed for practical reasons, as

Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/7, ANNEX I. (See end of Document for details)

Articles 62 and 81 of, respectively, Directives 2014/24/EU and 2014/25/EU are substantially the same.

- (18) Pursuant to Articles 77(2) and 78(1) of Directive 2014/25/EU, contracting entities shall select participants on the basis of objective rules and criteria. As described above, these criteria may in some case be those provided for in Directive 2014/24/EU or involve substantially identical provisions (see footnote 16). However, the objective rules and criteria may also be specific to a given contracting entity or a specific procurement procedure. Such cases can, however, not be covered in a standard form.
- (19) Use of the ESPD by contracting entities in respect of the reduction of the number of qualified candidates (Part V) is not explicitly provided for under Directive 2014/25/EU, but should nevertheless be allowed for practical reasons, as both Articles 65 and 78(2) of, respectively, Directives 2014/24/EU and 2014/25/EU require that any such reduction of numbers shall be carried out in accordance with objective and non-discriminatory criteria or rules.

Changes to legislation:

There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/7, ANNEX 1.