Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (Text with EEA relevance)

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

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on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 and Article 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 staff working paper of 27 June 2011 entitled ‘Evaluation Report — Impact and Effectiveness of EU Public Procurement Legislation’, it appears appropriate to maintain rules on procurement by entities operating in the water, energy, transport and postal services sectors, since national authorities continue to be able to influence the behaviour of those entities, including participation in their capital and representation in the entities’ administrative, managerial or supervisory bodies. Another reason to continue to regulate procurement in those sectors is the closed nature of the markets in which the entities in those sectors operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the service concerned.

(2) In order to ensure the opening up to competition of procurement by entities operating in the water, energy, transport and postal services sectors, provisions should be drawn up coordinating procurement procedures in respect of contracts above a certain value. Such coordination is needed to ensure the effect of the principles of the Treaty on the Functioning of the European Union (TFEU) and in particular the free movement of goods, the freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual

recognition, proportionality and transparency. In view of the nature of the sectors affected, the coordination of procurement procedures at the level of the Union should, while safeguarding the application of those principles, establish a framework for sound commercial practice and should allow maximum flexibility.

(3) For procurement the value of which is lower than the thresholds triggering the application of the provisions of Union coordination, it is advisable to recall the case-law of the Court of Justice of the European Union regarding the proper application of the rules and principles of the TFEU.

(4) Public procurement plays a key role in the Europe 2020 strategy, set out in the Commission Communication of 3 March 2010 entitled 'Europe 2020, a strategy for smart, sustainable and inclusive growth' ('Europe 2020 strategy for smart, sustainable and inclusive growth'), as one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the public procurement rules 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 modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises (SMEs) in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

(5) When implementing this Directive, the United Nations Convention on the Rights of Persons with Disabilities[(6)] should be taken into account, in particular in connection with the choice of means of communications, technical specifications, award criteria and contract performance conditions.

(6) It is appropriate that the notion of procurement is as close as possible to that applied pursuant to Directive 2014/24/EU of the European Parliament of the Council[(7)], having due regard to the specificities of the sectors covered by this Directive.

(7) It should be recalled that nothing in this Directive obliges Member States to contract out or externalise the provision of services that they wish to provide themselves or to organise by means other than procurement within the meaning of this Directive. The provision of services based on laws, regulations or employment contracts, should not be covered. In some Member States, this might for example be the case for the provision of certain services to the community, such as the supply of drinking water.

(8) It is also appropriate to recall that this Directive should not affect the social security legislation of the Member States. Nor should it deal with the liberalisation of services of general economic interest, reserved to public or private entities, or with the privatisation of public entities providing services.
It should equally be recalled that Member States are free to organise the provision of compulsory social services or of other services such as postal services either as services of general economic interest or as non-economic services of general interest or

as a mixture thereof. It is appropriate to clarify that non-economic services of general interest should not fall within the scope of this Directive.

(9) It should finally be recalled that this Directive is without prejudice to the freedom of national, regional and local authorities to define, in conformity with Union law, services of general economic interest, their scope and the characteristics of the service to be provided, including any conditions regarding the quality of the service, in order to pursue their public policy objectives. This Directive should also be without prejudice to the power of national, regional and local authorities to provide, commission and finance services of general economic interest in accordance with Article 14 TFEU and Protocol No 26 on Services of General Interest annexed to the TFEU and to the Treaty on European Union (TEU). In addition, this Directive does not deal with the funding of services of general economic interest or with systems of aids granted by Member States, in particular in the social field, in accordance with Union rules on competition.

(10) A contract should be deemed to be a works contract only if its subject-matter specifically covers the execution of activities listed in Annex I, even if the contract covers the provision of other services necessary for the execution of such activities. Service contracts, in particular in the sphere of property management services, may, in certain circumstances, include works. However, in so far as such works are incidental to the principal subject-matter of the contract, and are a possible consequence thereof or a complement thereto, the fact that such works are included in the contract does not justify the qualification of the service contract as a works contract.
However, in view of the diversity of works contracts, contracting entities should be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. This Directive is not intended to prescribe either joint or separate contract awards.

(11) The realisation of a work corresponding to the requirements specified by a contracting entity requires that the entity in question must have taken measures to define the type of the work or, at the very least, have had a decisive influence on its design. Whether the contractor realises all or part of the work by his own means or ensures their realisation by other means should not change the classification of the contract as a works contract, as long as the contractor assumes a direct or indirect obligation that is legally enforceable to ensure that the works will be realised.

(12) The notion of ‘contracting authorities’ and in particular that of ‘bodies governed by public law’ have been examined repeatedly in the case-law of the Court of Justice of the European Union. To clarify that the scope of this Directive *ratione personae* should remain unaltered, it is appropriate to maintain the definitions on which the Court based itself and to incorporate a certain number of clarifications given by that case-law as a key to the understanding of the definitions themselves, without the intention of altering the understanding of the concept as elaborated by the case-law.
For that purpose, it should be clarified that a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity should not be considered as being a ‘body governed by public law’ since the needs in the general interest, that it has been set up to meet or been given the task of

meeting, can be deemed to have an industrial or commercial character. Similarly, the condition relating to the origin of the funding of the body considered, has also been examined in the case-law, which has clarified, inter alia, that being financed for 'the most part' means for more than half, and that such financing may include payments from users which are imposed, calculated and collected in accordance with rules of public law.

(13) In the case of mixed contracts, the applicable rules should be determined with respect to the main subject of the contract where the different parts which constitute the contract are objectively not separable. It should therefore be clarified how contracting entities should determine whether the different parts are separable or not. Such clarification should be based on the relevant case-law of the Court of Justice of the European Union. The determination should be carried out on a case-by-case basis, in which the expressed or presumed intentions of the contracting entity to regard the various aspects making up a mixed contract as indivisible should not be sufficient, but should be supported by objective evidence capable of justifying them and of establishing the need to conclude a single contract. Such a justified need to conclude a single contract could for instance be present in the case of the construction of one single building, a part of which is to be used directly by the contracting entity concerned and another part to be operated on a concessions basis, for instance to provide parking facilities to the public. It should be clarified that the need to conclude a single contract may be due to reasons both of a technical nature and of an economic nature.

(14) In the case of mixed contracts, which 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 exclusively with respect to the characteristics of that specific contract. On the other hand, where contracting entities choose to include other elements in the procurement, whatever their value and whatever the legal regime the added elements would otherwise have been subject to, the main principle should be that, where a contract should be awarded pursuant to the provisions of this Directive, if awarded on its own, then this Directive should continue to apply to the entire mixed contract.

(15) However, special provision should be made for mixed contracts involving defence or security aspects or parts not falling within the scope of the TFEU. In such cases, non-application of this Directive should be possible provided that the award of a single contract is justified for objective reasons and that the decision to award a single contract is not taken for the purpose of excluding contracts from the application of this Directive or of Directive 2009/81/EC of the European Parliament and of the Council[(8)]. It should be clarified that contracting entities should not be prevented from choosing to apply this Directive to certain mixed contracts instead of applying Directive 2009/81/EC.

(16) Furthermore, contracts might be awarded for the purpose of meeting the requirements of several activities, possibly subject to different legal regimes. It should be clarified that the legal regime applicable to a single contract intended to cover several activities should be subject to the rules applicable to the activity for which it is principally intended. Determination of the activity for which the contract is principally intended

can be based on an analysis of the requirements which the specific contract must meet, carried out by the contracting entity for the purposes of estimating the contract value and drawing up the procurement documents. In certain cases, such as the purchase of a single piece of equipment for the pursuit of activities for which information allowing an estimation of the respective rates of use would be unavailable, it might be objectively impossible to determine for which activity the contract is principally intended. The rules applicable to such cases should be indicated.

(17) It should be clarified that the notion of 'economic operators' should be interpreted in a broad manner so as to include any persons and/or entities which offer the execution of works, the supply of products or the provision of services on the market, irrespective of the legal form under which they have chosen to operate. Thus, firms, branches, subsidiaries, partnerships, cooperative societies, limited companies, universities, public or private, and other forms of entities than natural persons should all fall within the notion of economic operator, whether or not they are 'legal persons' in all circumstances.

(18) It should be clarified that groups of economic operators, including where they have come together in the form of a temporary association, may participate in award procedures without it being necessary for them to take on a specific legal form. To the extent this is necessary, for instance where joint and several liability is required, a specific form may be required when such groups are awarded the contract.
It should also be clarified that contracting entities should be able to set out explicitly how groups of economic operators are to meet the criteria and requirements for qualification and qualitative selection set out in this Directive, which are required of economic operators participating on their own.
The performance of contracts by groups of economic operators may necessitate setting conditions which are not imposed on individual participants. Such conditions, which should be justified by objective reasons and be proportionate, could for instance include requiring the appointment of a joint representation or a lead partner for the purposes of the procurement procedure or requiring information on their constitution.

(19) To ensure a real opening up of the market and a fair balance in the application of procurement rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 TFEU, that the rules governing the system of property ownership in Member States are not prejudiced.

(20) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting authorities nor public undertakings within the meaning of this Directive are subject to its provisions only to the extent that they exercise one of the activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, in particular pursuant to Union legislation, and

for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive.

That 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 of the European Parliament and of the Council[11], Directive 94/22/EC of the European Parliament and of the Council[12] and Regulation (EC) No 1370/2007 of the European Parliament and of the Council[13].

It should also be clarified that that listing of legislation is not exhaustive and that rights in any form, including by way of acts of concession, which have been granted by means of other procedures based on objective criteria and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of defining the scope of this Directive *ratione personae*. The concept of exclusive rights should also be used in the context of determining whether use of a negotiated procedure without prior call for competition would be justified because the works, supplies or services can be supplied only by a particular economic operator because of the protection of certain exclusive rights.

However, bearing in mind the different *ratio legis* behind these provisions, it should be clarified that the notion of exclusive rights does not need to have the same meaning in the two contexts. It should thus be clarified that an entity, which has won the exclusive right to provide a given service in a given geographic area following a procedure based on objective criteria for which adequate transparency has been ensured would not, if a private body, be a contracting entity itself, but would, nevertheless, be the only entity that could provide the service concerned in that area.

(21) Certain entities are active in the fields of production, transmission or distribution of both heat and cooling. There may be some uncertainty as to which rules apply to respectively heat and cooling related activities. It should therefore be clarified that contracting authorities, public undertakings and private companies, which are active in the heating sector are subject to this Directive, however, in the case of private undertakings, on the additional condition of operating on the basis of special or exclusive rights. On the other hand, contracting authorities operating in the cooling field are subject to the rules of Directive 2014/24/EU, whereas public undertakings and private undertakings, irrespectively of whether these latter operate on the basis of special or exclusive rights, are not subject to procurement rules. It should finally be clarified that contracts awarded for the pursuit of both heating and cooling contracts should be examined under the provisions on contracts for the pursuit of several activities to determine which procurement rules, if any, will govern their award.

(22) Before envisaging any change to the scope of this Directive and Directive 2014/24/EU for this sector, the situation of the cooling sector should be examined in order to obtain sufficient information, in particular in respect of the competitive situation, the degree of cross-border procurement and the views of stakeholders. Given that the application of Directive 2014/23/EU of the European Parliament and the Council[14] to this sector could have a substantial impact in terms of market-opening, it would be appropriate to conduct the examination when assessing the impact of Directive 2014/23/EU.

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

(24) Contracting entities that operate in the drinking water sector may also deal with other activities relating to water, such as projects in the field of hydraulic engineering, irrigation, land drainage or the disposal and treatment of sewage. In such case, contracting entities should be able to apply the procurement procedures provided for in this Directive in respect of all their activities relating to water, whichever part of the water cycle is concerned. However, procurement rules of the type proposed for supplies of products are inappropriate for purchases of water, given the need to procure water from sources near the area in which it will be used.

(25) It is appropriate to exclude procurement made for the purpose of exploring for oil and gas as that sector has consistently been found to be subject to such competitive pressure that the procurement discipline brought about by the Union procurement rules is no longer needed. As extraction of oil and gas continues to fall within the scope of this Directive, there might be a need to distinguish between exploration and extraction. In doing so, 'exploration' should be considered to include the activities that are undertaken in order to verify whether oil and gas is present in a given zone, and, if so, whether it is commercially exploitable, whereas 'extraction' should be considered as the 'production' of oil and gas. In line with established practice in merger cases, 'production' should be considered also to include 'development', i.e. the setting up of adequate infrastructure for future production (oil platforms, pipelines, terminals, etc.).

(26) Contracting authorities should make use of all possible means at their disposal under national law in order to prevent distortions in procurement procedures stemming from conflicts of interest. This could include procedures in order to identify, prevent and remedy conflicts of interests.

(27) Council Decision 94/800/EC[(15)], approved in particular the World Trade Organisation Agreement on Government Procurement, (the 'GPA'). The aim of the GPA is to establish a multilateral framework of balanced rights and obligations relating to public contracts with a view to achieving the liberalisation and expansion of world trade. For contracts covered by Annexes 3, 4 and 5 and the General Notes to the European Union's Appendix I to the GPA, as well as by other relevant international agreements by which the Union is bound, contracting entities should fulfil the obligations under those agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.

(28) The GPA applies to contracts above certain thresholds, set in the GPA and expressed as special drawing rights. The thresholds laid down by this Directive should be aligned to ensure that they correspond to the euro equivalents of the thresholds of the GPA. Provision should also be made for periodic reviews of the thresholds expressed in euro so as to adjust them, by means of a purely mathematical operation, to possible variations in the value of the euro in relation to those special drawing rights.
Apart from those periodic mathematical adjustments, an increase in the thresholds set in the GPA should be explored during the next round of negotiations thereof.

To avoid a multiplication of thresholds it is furthermore appropriate, without prejudice to the international commitments of the Union, to continue to apply the same thresholds to all contracting entities, regardless of the sector in which they operate.

(29) It should be clarified that, for the estimation of the value of a contract, all revenues have to be taken into account, whether received from the contracting entity or from third parties.
It should also be clarified that, for the purpose of estimating the thresholds, the notion of similar supplies should be understood as products which are intended for identical or similar uses, such as supplies of a range of foods or of various items of office furniture. Typically, an economic operator active in the field concerned would be likely to carry such supplies as part of his normal product range.

(30) For the purposes of estimating the value of a given procurement, it should be clarified that it should be allowed to base the estimation of the value on a subdivision of the procurement only where this is justified by objective reasons. For instance, it could be justified to estimate contract values at the level of a separate operational unit of the contracting entity provided that the unit in question is independently responsible for its procurement. This can be assumed where the separate operational unit independently runs the procurement procedures and makes the buying decisions, has a separate budget line at its disposal for the procurements concerned, concludes the contract independently and finances it from a budget which it has at its disposal. A subdivision is not justified where the contracting entity merely organises a procurement in a decentralised way.

(31) Being addressed to Member States, this Directive does not apply to procurement carried out by international organisations on their own behalf and for their own account. There is, however, a need to clarify to what extent this Directive should be applied to procurement governed by specific international rules.

(32) It should be recalled that arbitration and conciliation services and other similar forms of alternative dispute resolution are usually provided by bodies or individuals which are agreed on, or selected, in a manner which cannot be governed by procurement rules. It should be clarified that this Directive does not apply to service contracts for the provision of such services, whatever their denomination under national law.

(33) A certain number of legal services are rendered by service providers that are designated by a court or tribunal of a Member State, involve representation of clients in judicial proceedings by lawyers, must be provided by notaries or are connected with the exercise of official authority. Such legal services are usually provided by bodies or individuals designated or selected in a manner which cannot be governed by procurement rules, such as for instance the designation of State Attorneys in certain Member States. Those legal services should therefore be excluded from the scope of this Directive.

(34) It is appropriate to specify that the notion of financial instruments as referred to in this Directive is given the same meaning as in other internal market legislation and, in view of the recent creation of the European Financial Stability Facility and the European Stability Mechanism, it should be stipulated that operations conducted with that Facility and that Mechanism should be excluded from the scope of this Directive. It should

finally be clarified that loans, whether or not they are in connection with the issuing of securities or other financial instruments or other operations therewith, should be excluded from the scope of this Directive.

(35) It should be recalled that Article 5(1) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council[16] explicitly provides that Directives 2004/17/EC and 2004/18/EC apply, respectively, to service contracts and public service contracts for public passenger transport services by bus or tramway, whereas Regulation (EC) No 1370/2007 applies to service concessions for public passenger transport by bus or tramway. It should furthermore be recalled that that Regulation continues to apply to public service contracts as well as to service concessions for public passenger transport by rail or metro. To clarify the relationship between this Directive and Regulation (EC) No 1370/2007, it should be provided explicitly that this Directive should not be applicable to service contracts for the provision of public passenger transport services by rail or metro, the award of which should continue to be subject to that Regulation. In so far as Regulation (EC) No 1370/2007 leaves it to national law to depart from the rules laid down in that Regulation, Member States should be able to continue to provide in their national law that service contracts for public passenger transport services by rail or metro are to be awarded by a contract award procedure following their general public procurement rules.

(36) This Directive should not apply to certain emergency services where they are performed by non-profit organisations or associations, since the particular nature of those organisations would be difficult to preserve if the service providers had to be chosen in accordance with the procedures set out in this Directive. However, the exclusion should not be extended beyond that strictly necessary. It should therefore be set out explicitly that patient transport ambulance services should not be excluded. In that context it is furthermore necessary to clarify that CPV Group 601 ‘Land Transport Services’ does not cover ambulance services, to be found in CPV class 8514. It should therefore be clarified that services, which are covered by CPV code 85143000-3, consisting exclusively of patient transport ambulance services should be subject to the special regime set out for social and other specific services (the ‘light regime’); Consequently, mixed contracts for the provision of ambulance services in general would also be subject to the light regime if the value of the patient transport ambulance services were greater than the value of other ambulance services.

(37) In certain cases, a contracting authority or an association of contracting authorities may be the sole source for a particular service, in respect of the provision of which it enjoys an exclusive right pursuant to laws, regulations or published administrative provisions which are compatible with the TFEU. It should be clarified that this Directive need not apply to the award of service contracts to that contracting authority or association.

(38) There is considerable legal uncertainty as to how far contracts concluded between contracting authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted differently between Member States and even between contracting authorities. As that case-law would be equally applicable to public authorities when operating in the sectors covered by this

directive, it is appropriate to ensure that the same rules apply and are interpreted in the same way in both this Directive and Directive 2014/24/EU.

(39) Many contracting entities are organised as an economic group which may comprise a series of separate undertakings; often each of these undertakings has a specialised role in the overall context of the economic group. It is therefore appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity the provision of such services, supply or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.

(40) It is also appropriate to clarify interaction of the provisions on cooperation between public authorities and the provisions on the award of contracts to affiliated undertakings or in the context of joint ventures.

(41) Undertakings should be considered to be affiliated where a direct or indirect dominant influence exists between the contracting entity and the undertaking concerned or where both are subject to the dominant influence of another undertaking; in this context, private participation should, per se, not be relevant. The verification of whether an undertaking is affiliated to a given contracting entity should be as easy to perform as possible. Consequently, and given that the possible existence of such direct or indirect dominant influence would already have had to be verified for the purposes of deciding whether the annual accounts of the undertakings and entities concerned should be consolidated, undertakings should be considered to be affiliated where their annual accounts are consolidated, However, Union rules on consolidated accounts are not applicable in a certain number of cases, for instance because of the size of the undertakings involved or because certain conditions relating to 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 whether a direct or indirect dominant influence is present taking into account ownership, financial participation or the rules governing the undertakings.

(42) The co-financing of research and development (R & D) programmes by industry sources should be encouraged. It should consequently be clarified that this Directive applies only where there is no such co-financing and where the outcome of the R & D activities go to the contracting entity concerned. This should not exclude the possibility that the service provider, having carried out those activities, could publish an account thereof as long as the contracting entity retains the exclusive right to use the outcome of the R &

D in the conduct of its own affairs. However fictitious sharing of the results of the R & D or purely symbolic participation in the remuneration of the service provider should not prevent the application of this Directive.

(43) This Directive should apply neither to contracts intended to permit the performance of an activity that is subject to this Directive nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to maintain the procedure, applicable to all sectors, or parts thereof, covered by this Directive that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Union law in this area. For the sake of legal certainty it should be clarified that all Decisions adopted prior to the entry into force of this Directive concerning the applicability of the corresponding provisions set out in Article 30 of Directive 2004/17/EC continue to be applicable.

(44) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector of parts thereof concerned. This assessment is, however, limited by the short deadlines applicable and by the need to rely on the information available to the Commission – either from already available sources or from the information obtained in the context of the application pursuant to Article 35 — which can not be supplemented by more time consuming methods, including, in particular, public inquiries addressed to the economic operators concerned. The assessment of direct exposure to competition that can be carried out in the context of this Directive is consequently without prejudice to the full-fledged application of competition law.

(45) Assessing whether a given sector, or parts thereof, is directly exposed to competition should be examined in respect of the specific area in which the activity, or the parts thereof concerned, are carried out by the relevant economic operators, the so-called ‘relevant geographical market’. As that notion is crucial for the assessment, it should be given an appropriate definition, based on existing notions in Union law. It should also be clarified that the relevant geographical market might not coincide with the territory of the Member State concerned; consequently, it should be possible to limit decisions concerning the applicability of the exemption to parts of the territory of the Member State concerned.

(46) The implementation and application of appropriate Union legislation opening a given sector, or a part thereof, should be considered to provide sufficient grounds for assuming that there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. When updating that annex, the Commission should in particular take into account the possible adoption of measures entailing a genuine opening-up to competition of sectors other than those for which legislation is already referred to in that annex, such as that of national rail passenger transport.

(47) Where free access to a given market is not presumed on the basis of the implementation of appropriate Union legislation, it should be demonstrated that, de jure and de facto, such access is free. Where a Member State extends the application of a Union legal act opening up a given sector to competition to situations falling outside the scope of that legal act, for instance by applying Directive 94/22/EC to the coal sector or Directive 2012/34/EU of the European Parliament and of the Council[(18)] to passenger service at the national level, that circumstance should be taken into account when assessing whether access to the sector concerned is free.

(48) Independent national authorities, such as sectoral regulators or competition authorities, normally possess specialised know-how, information and knowledge that would be pertinent when assessing whether a given activity or parts thereof are directly exposed to competition on markets to which access is not limited. Requests for exemption should therefore where appropriate be accompanied by, or incorporate, a recent position on the competitive situation in the sector concerned, adopted by an independent national authority that is competent in relation to the activity concerned.
In the absence of a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned, more time would be needed for the assessment of a request for exemption. The periods within which the Commission must carry out its assessments of such requests should therefore be modified accordingly.

(49) The Commission should always be obliged to examine requests, which are in conformity with the detailed rules for the application of the procedures for establishing whether a given activity, or parts thereof, is directly exposed to competition on markets to which access is not restricted. It should, however, also be clarified that the complexity of such requests may be such that it might not always be possible to ensure the adoption, within the applicable deadlines, of implementing acts establishing whether a given activity or parts thereof is directly exposed to competition on markets to which access is not restricted.

(50) It should be clarified that the Commission should have the possibility to require Member States or contracting entities to provide or to supplement or clarify information. The Commission should set an appropriate time limit for so doing which, having due regard also to the need to meet the deadlines set for the Commission's adoption of its implementing act, should take into account factors such as the complexity of the information requested and whether the information is readily accessible.

(51) Employment and occupation contribute to integration in society and are key elements in guaranteeing equal opportunities for all. In this context, sheltered workshops can play a significant role. The same is true for other social businesses whose main aim is to support the social and professional integration or reintegration of disabled and disadvantaged persons, such as the unemployed, members of disadvantaged minorities or otherwise socially marginalised groups. However, such workshops or businesses might not be able to obtain contracts under normal conditions of competition. Consequently, it is appropriate to provide that Member States should be able to reserve the right to participate in award procedures for public contracts or for certain lots thereof

to such workshops or businesses or reserve performance of contracts to the context of sheltered employment programmes.

(52) With a view to an appropriate integration of environmental, social and labour requirements into public procurement procedures it is of particular importance that Member States and contracting entities take relevant measures to ensure compliance with obligations in the fields of environmental, social and labour law that apply at the place where the works are executed or the services provided and result from laws, regulations, decrees and decisions, at both national and Union level, as well as from collective agreements, provided that such rules, and their application, comply with Union law. Equally, obligations stemming from international agreements ratified by all Member States and listed in Annex XIV should apply during contract performance. However, this should in no way prevent the application of terms and conditions of employment which are more favourable to workers.
The relevant measures should be applied in conformity with the basic principles of Union law, in particular with a view to ensuring equal treatment. Such relevant measures should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council[(19)] and in a way that ensures equal treatment and does not discriminate directly or indirectly against economic operators and workers from other Member States.

(53) Services should be considered to be provided at the place at which the characteristic performances are executed. When services are provided at a distance, for example services provided by call centres, those services should be considered to be provided at the place where the services are executed, irrespective of the places and Member States to which the services are directed.

(54) The relevant obligations could be mirrored in contract clauses. It should also be possible to include clauses ensuring compliance with collective agreements in compliance with Union law in public contracts. Non-compliance with the relevant obligations could be considered to be grave misconduct on the part of the economic operator concerned, liable to exclusion of that economic operator from the procedure for the award of a public contract.

(55) Control of the observance of the environmental, social and labour law provisions should be performed at the relevant stages of the procurement procedure, when applying the general principles governing the choice of participants and the award of contracts, when applying the exclusion criteria and when applying the provisions concerning abnormally low tenders. The necessary verification for that purpose should be carried out in accordance with the relevant provisions of this Directive, in particular those governing means of proof and self-declarations.

(56) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public policy, public morality, public security, health, human and animal life, the preservation of plant life or other environmental measures, in particular with a view to sustainable development, provided that those measures are in conformity with the TFEU.

(57) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Contracting entities should make the best strategic use of public procurement to spur innovation. Buying innovative products, works and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth.
It should be recalled that a series of procurement models have been outlined in the Commission's communication of 14 December 2007 entitled 'Pre-commercial procurement: Driving innovation to ensure sustainable high quality public services in Europe', which deals with the procurement of those R & D services not falling within the scope of this Directive. Those models would continue to be available, but this Directive should also contribute to facilitating procurement of innovation and help Member States in achieving the Innovation Union targets.

(58) Because of the importance of innovation, contracting entities should be encouraged to allow variants as often as possible. The attention of those entities should consequently be drawn to the need of to define the minimum requirements to be met by variants before indicating that variants may be submitted.

(59) Where a need for the development of an innovative product or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be met by solutions already available on the market, contracting entities should have access to a specific procurement procedure in respect of contracts falling within the scope of this Directive. This specific procedure should allow contracting entities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided that such innovative product or service or innovative works can be delivered to agreed performance levels and costs, without the need for a separate procurement procedure for the purchase. The innovation partnership should be based on the procedural rules that apply to negotiated procedures with prior call for competition and contracts should be awarded on the sole basis of the best price-quality ratio, which is most suitable for comparing tenders for innovative solutions. Whether in respect of very large projects or smaller innovative projects, the innovation partnership should be structured in such a way that it can provide the necessary 'market-pull' incentivising the development of an innovative solution without foreclosing the market. Contracting entities should therefore not use innovation partnerships in such a way as to prevent, restrict or distort competition. In certain cases, setting up innovation partnerships with several partners could contribute to avoiding such effects.

(60) Experience has shown that the competitive dialogue, which is provided for under Directive 2014/24/EU, has been of use in cases where contracting authorities are unable to define the means of satisfying their needs or of assessing what the market can offer in terms of technical, financial or legal solutions. This situation may arise in

particular with innovative projects, the implementation of major integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing. Member States should therefore be allowed to place this tool at the disposal of contracting entities. Where relevant, contracting authorities should be encouraged to appoint a project leader to ensure good cooperation between the economic operators and the contracting authority during the award procedure.

(61) In view of the detrimental effects on competition, negotiated procedures without a prior call for competition should be used only in very exceptional circumstances. This exception should be limited to cases where publication is either not possible, for reasons of extreme urgency brought about by events unforeseeable for and not attributable to the contracting entity, or where it is clear from the outset that publication would not trigger more competition or better procurement outcomes, not least because there is objectively only one economic operator that can perform the contract. This is the case for works of art, where the identity of the artist intrinsically determines the unique character and value of the art object itself. Exclusivity can also arise from other reasons, but only situations of objective exclusivity can justify the use of the negotiated procedure without a prior call for competition, where the situation of exclusivity has not been created by the contracting entity itself with a view to the future procurement procedure.
Contracting entities relying on this exception should provide reasons why there are no reasonable alternatives or substitutes such as using alternative distribution channels including outside the Member State of the contracting entity or considering functionally comparable works, supplies and services.
Where the situation of exclusivity is due to technical reasons, they should be rigorously defined and justified on a case-by-case basis. They could include, for instance, near technical impossibility for another economic operator to achieve the required performance or the necessity to use specific know-how, tools or means which only one economic operator has at its disposal. Technical reasons may also derive from specific interoperability requirements which must be fulfilled in order to ensure the functioning of the works, supplies or services to be procured.
Finally, a procurement procedure is not useful where supplies are purchased directly on a commodity market, including trading platforms for commodities such as agricultural products, raw materials and energy exchanges, where the regulated and supervised multilateral trading structure naturally guarantees market prices.

(62) It should be clarified that the provisions concerning protection of confidential information do not in any way prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes.

(63) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures, as they greatly enhance the possibilities of economic operators to participate in procurement procedures across the internal market. For that purpose, transmission of notices in electronic form, electronic availability of the procurement documents and – after a transition period of 30 months – fully electronic communication, meaning communication by electronic means at all stages of

the procedure, including the transmission of requests for participation and, in particular, the transmission of the tenders (electronic submission) should be made mandatory. Member States and contracting entities should remain free to go further if they so wish. It should also be clarified that mandatory use of electronic means of communications pursuant to this Directive should not, however, oblige contracting entities to carry out electronic processing of tenders, nor should it mandate electronic evaluation or automatic processing. Furthermore, pursuant to this Directive, no elements of the public procurement process after the award of the contract should be covered by the obligation to use electronic means of communication, nor should internal communication within the contracting entity.

(64) Contracting entities should, except in certain specific situations, use electronic means of communication which are non-discriminatory, generally available and interoperable with the information and communication technology (ICT) products in general use and which do not restrict economic operators' access to the procurement procedure. The use of such means of communication should also take accessibility for persons with disabilities into due account. It should be clarified that the obligation to use electronic means at all stages of the procurement procedure would be appropriate neither where the use of electronic means would require specialised tools or file formats that are not generally available nor where the communications concerned could only be handled using specialised office equipment. Contracting entities should therefore not be obliged to require the use of electronic means of communication in the submission process in certain cases, which should be listed exhaustively. This Directive stipulates that such cases should include situations which would require the use of specialised office equipment not generally available to the contracting entities such as wide-format printers. In some procurement procedures the procurement documents might require the submission of a physical or scale model which cannot be submitted to the contracting entities using electronic means. In such situations, the model should be transmitted to the contracting entities by post or other suitable carrier.
It should however be clarified that the use of other means of communication should be limited to those elements of the tender for which electronic means of communications are not required.
It is appropriate to clarify that, where necessary for technical reasons, contracting entities should be able to set a maximum limit to the size of the files that may be submitted.

(65) There can be exceptional cases in which contracting entities should be allowed not to use electronic means of communication where not using such means of communication is necessary in order to protect the particularly sensitive nature of information. It should be clarified that, where the use of electronic tools which are not generally available can offer the necessary level of protection, such electronic tools should be used. Such might for instance be the case where contracting entities require the use of dedicated secure means of communication to which they offer access.

(66) Differing technical formats or processes and messaging standards could potentially create obstacles to interoperability, not only within each Member State but also and especially between the Member States. For example, in order to participate in a

procurement procedure in which use of electronic catalogues, which is a format for the presentation and organisation of information in a manner that is common to all the participating bidders and which lends itself to electronic treatment, is permitted or required, economic operators would, in the absence of standardisation, be required to customise their own catalogues to each procurement procedure, which would entail providing very similar information in different formats depending on the specifications of the contracting entities concerned. Standardising the catalogue formats would thus improve the level of interoperability, enhance efficiency and would also reduce the effort required of economic operators.

(67) When considering whether there is a need to ensure or enhance interoperability between differing technical formats or process and messaging standards by rendering the use of specific standards mandatory, and if so which standards to impose, the Commission should take the utmost account of the opinions of the stakeholders concerned. It should also consider the extent to which a given standard has already been used in practice by economic operators and contracting entities and how well it has worked. Before making the use of any particular standard mandatory, the Commission should also carefully consider the costs that this might entail, in particular in terms of adaptations to existing e-procurement solutions, including infrastructure, processes or software.
Where the standards concerned are not developed by an international, European or national standardisation organisation, they should meet the requirements applicable to ICT standards as set out in Regulation (EU) No 1025/2012 of the European Parliament and of the Council[(20)].

(68) Before specifying the level of security required for the electronic means of communications to be used at the various stages of the award procedure, Member States and contracting entities should evaluate the proportionality between on the one hand the requirements aimed at ensuring correct and reliable identification of the senders of the communication concerned as well as the integrity of its content and on the other hand the risk of problems such as in situations where messages are sent by a different sender than that indicated. All other things being equal, this would mean that the level of security required of, for instance, an e-mail requesting confirmation of the exact address at which an information meeting will be held would not need to be set at the same level as for the tender itself which constitutes a binding offer for the economic operator. Similarly, the evaluation of proportionality could result in lower levels of security being required in connection with the resubmission of electronic catalogues or the submission of tenders in the context of mini-competitions under a framework agreement or the access to procurement documents.

(69) While essential elements of a procurement procedure such as the procurement documents, requests for participation, confirmation of interest and tenders should always be made in writing, oral communication with economic operators should otherwise continue to be possible, provided that its content is documented to a sufficient degree. This is necessary to ensure an adequate level of transparency that allows for a verification of whether the principle of equal treatment has been adhered to. In particular, it is essential that oral communications with tenderers which could have an impact on the content and assessment of the tenders be documented to a sufficient extent

and by appropriate means, such as written or audio records or summaries of the main elements of the communication.

(70) There is a strong trend emerging across Union public procurement markets towards the aggregation of demand by public purchasers, with a view to obtaining economies of scale, including lower prices and transaction costs, and to improving and professionalising procurement management. This can be achieved by concentrating purchases either by the number of contracting entities involved or by volume and value over time. However, the aggregation and centralisation of purchases should be carefully monitored in order to avoid excessive concentration of purchasing power and collusion, and to preserve transparency and competition, as well as market access opportunities for SMEs.

(71) Recourse to framework agreements can be an efficient procurement technique throughout the Union; however, there is a need to enhance competition by improving the transparency of and access to procurement carried out by means of framework agreements. It is therefore appropriate to revise the provisions applicable to those agreements, in particular by providing that the award of specific contracts based on such agreements take place on the basis of objective rules and criteria, for instance following a mini-competition, and by limiting the duration of framework agreements.

(72) It should also be clarified, that while contracts based on a framework agreement are to be awarded before the end of the term of the framework agreement itself, the duration of the individual contracts based on a framework agreement does not need to coincide with the duration of that framework agreement, but might, as appropriate, be shorter or longer. In particular, it should be allowed to set the length of individual contracts based on a framework agreement taking account of factors such as the time needed for their performance; where maintenance of equipment with an expected useful life of more than eight years is included or where extensive training of staff to perform the contract is needed.

It should also be clarified that there might be cases in which the length of the framework agreements themselves should be allowed to be longer than eight years. Such cases, which should be duly justified, in particular by the subject of the framework agreement, might for instance arise where economic operators need to dispose of equipment the amortisation period of which is longer than eight years and which must be available at any time over the entire duration of the framework agreement. In the particular context of utilities providing essential services to the public there may be a need in certain cases for both longer framework agreements and a longer duration of individual contracts; for instance in the case of framework agreements aimed at ensuring ordinary and extraordinary maintenance of networks which may require expensive equipment to be operated by personnel having received highly specialised ad-hoc training aimed at ensuring continuation of the services and minimisation of possible disruptions.

(73) In view of the experience acquired, there is also a need to adjust the rules governing dynamic purchasing systems to enable contracting entities to take full advantage of the possibilities afforded by that instrument. The systems need to be simplified, in particular they should be operated in the form of a restricted procedure, hence eliminating the

need for indicative tenders, which have been identified as one of the major burdens associated with dynamic purchasing systems. Thus any economic operator who submits a request to participate and meets the selection criteria should be allowed to take part in procurement procedures carried out through the dynamic purchasing system over its period of validity.

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 in respect of commonly used or off-the-shelf products, works or services which are generally available on the market.

(74) The examination of those requests to participate should normally be performed within a maximum of 10 working days, given that the evaluation of the selection criteria will take place on the basis of the requirements for documentation set out by the contracting entities, where applicable in accordance with the simplified provisions of Directive 2014/24/EU. However, when a dynamic purchasing system is first set up, contracting entities might, in response to the first publication of the contract notice or the invitation to confirm interest, be faced with such a large number of requests for participation that they would need more time to examine the requests. That should be admissible, provided that no specific procurement is launched before all the requests have been examined.

Contracting entities should be free to organise the way in which they intend to examine the requests for participation, for instance by deciding to conduct such examinations only once a week, provided the deadlines for the examination of each request of admission are observed. Contracting entities using the exclusion or selection criteria provided for under Directive 2014/24/EU in the context of a dynamic purchasing system, should apply the relevant provisions of that Directive in the same way as contracting authorities operating a dynamic purchasing system pursuant to Directive 2014/24/EU.

(75) In order to further the possibilities of SMEs to participate in a large-scale dynamic purchasing system, for instance one that is operated by a central purchasing body, the contracting authority or entity concerned should be able to articulate the system in objectively defined categories of products, works or services. Such categories should be defined by reference to objective factors which might for instance include the maximum allowable size of specific contracts to be awarded within the category concerned or a specific geographic area in which subsequent specific contracts are to be performed. Where a dynamic purchasing system is divided into categories, the contracting authority or entity should apply selection criteria that are proportionate to the characteristics of the category concerned.

(76) It should be clarified that electronic auctions are typically not suitable for certain works contracts and certain service contracts having as their subject-matter intellectual performances, such as the design of works, because only the elements suitable for automatic evaluation by electronic means, without any intervention or appreciation by the contracting entity, namely elements which are quantifiable so that they can be expressed in figures or percentages, may be the object of electronic auctions.

It should, however, also be clarified that electronic auctions may be used in a procurement procedure for the purchase of a specific intellectual property right. It is also appropriate to recall that while contracting entities remain free to apply selection criteria enabling them to reduce the number of candidates or tenderers as long as the auction has not yet started, no further reduction of the number of tenderers participating in the electronic auction should be allowed after the auction has started.

(77) New electronic purchasing techniques are constantly being developed, such as electronic catalogues. Electronic catalogues are a format for the presentation and organisation of information in a manner that is common to all the participating bidders and which lends itself to electronic treatment. An example could be tenders presented in the form of a spreadsheet. Contracting entities should be able to require electronic catalogues in all available procedures where the use of electronic means of communication is required. Electronic catalogues help to increase competition and streamline public purchasing, particularly in terms of savings in time and money. Certain rules should however be laid down to ensure that such use complies with this Directive with and the principles of equal treatment, non-discrimination and transparency. Thus, the use of electronic catalogues for the presentation of tenders should not entail the possibility of economic operators limiting themselves to the transmission of their general catalogue. Economic operators should still have to adapt their general catalogues in view of the specific procurement procedure. Such adaptation ensures that the catalogue that is transmitted in response to a given procurement procedure contains only products, works or services that the economic operators estimated — after an active examination — correspond to the requirements of the contracting entity. In so doing, economic operators should be allowed to copy information contained in their general catalogue, but they should not be allowed to submit the general catalogue as such. Furthermore, where sufficient guarantees are offered in respect of ensuring traceability, equal treatment and predictability, contracting entities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues, in particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used.

Where tenders have been generated by the contracting entity, the economic operator concerned should be given the possibility to verify that the tender thus constituted by the contracting entity does not contain any material errors. Where material errors are present, the economic operator should not be bound by the tender generated by the contracting entity unless the error is corrected.

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

(78) Centralised purchasing techniques are increasingly used in most Member States. Central purchasing bodies are responsible for making acquisitions, managing dynamic purchasing systems or awarding contracts/framework agreements for other contracting

authorities or contracting entities, with or without remuneration. The contracting entities for whom a framework agreement is concluded should be able to use it for individual or repetitive purchases. In view of the large volumes purchased, such techniques may help increase competition and should help to professionalise public purchasing. Provision should therefore be made for a Union definition of central purchasing bodies dedicated to contracting entities and it should be clarified that central purchasing bodies operate in two different manners.

Firstly, they should be able to act as wholesalers by buying, stocking and reselling or, secondly, they should be able to act as intermediaries by awarding contracts, operating dynamic purchasing systems or concluding framework agreements to be used by contracting entities.

Such an intermediary role might in some cases be carried out by conducting the relevant award procedures autonomously, without detailed instructions from the contracting entities concerned; in other cases, by conducting the relevant award procedures under the instructions of the contracting entities concerned, on their behalf and for their account.

Furthermore, rules should be laid down for allocating responsibility for the observance of the obligations pursuant to this Directive, also in the case of remedies, as between the central purchasing body and the contracting entities procuring from or through it. Where the central purchasing body has sole responsibility for the conduct of the procurement procedures, it should also be solely and directly responsible for the legality of the procedures. Where a contracting entity conducts certain parts of the procedure, for instance the reopening of competition under a framework agreement or the award of individual contracts based on a dynamic purchasing system, it should continue to be responsible for the stages it conducts.

(79) Contracting entities should be allowed to award a service contract for the provision of centralised purchasing activities to a central purchasing body without applying the procedures provided for in this Directive. It should also be permitted for such service contracts to include the provision of ancillary purchasing activities. Such service contracts for the provision of ancillary purchasing activities should, when performed otherwise than by a central purchasing body in connection with its provision of central purchasing activities to the contracting entity concerned, be awarded in accordance with this Directive. It should also be recalled that this Directive should not apply where centralised or ancillary purchasing activities are provided other than through a contract for pecuniary interest which constitutes procurement within the meaning of this Directive.

(80) Strengthening the provisions concerning central purchasing bodies should in no way prevent the current practices of occasional joint procurement, i.e. less institutionalised and systematic common purchasing or the established practice of having recourse to service providers that prepare and manage procurement procedures on behalf and for the account of a contracting entity and under its instructions. On the contrary, certain features of joint procurement should be clarified because of the important role joint procurement may play, not least in connection with innovative projects.

Joint procurement can take many different forms, ranging from coordinated procurement through the preparation of common technical specifications for works, supplies or services that will be procured by a number of contracting entities, each conducting a separate procurement procedure, to situations where the contracting entities concerned jointly conduct one procurement procedure either by acting together or by entrusting one contracting entities with the management of the procurement procedure on behalf of all contracting entities.

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

(81) Electronic means of communication are particularly well suited to supporting centralised purchasing practices and tools because of the possibility they offer to re-use and automatically process data and to minimise information and transaction costs. The use of such electronic means of communication should therefore, as a first step, be rendered compulsory for central purchasing bodies, while also facilitating converging practices across the Union. This should be followed by a general obligation to use electronic means of communication in all procurement procedures after a transition period of 30 months.

(82) Joint awarding of contracts by contracting entities from different Member States currently encounters specific legal difficulties concerning conflicts of national laws. Despite the fact that Directive 2004/17/EC implicitly allowed for cross-border joint public procurement, contracting entities are still facing considerable legal and practical difficulties in purchasing from central purchasing bodies in other Member States or jointly awarding contracts. In order to allow contracting entities to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting entity, those difficulties should be remedied. Therefore new rules on cross-border joint procurement should be established in order to facilitate cooperation between contracting entities and enhancing the benefits of the internal market by creating cross-border business opportunities for suppliers and service providers. Those rules should determine the conditions for cross-border utilisation of central purchasing bodies and designate the applicable public procurement legislation, including the applicable legislation on remedies, in cases of cross-border joint procedures, complementing the conflict of law rules of Regulation (EC) No 593/2008 of the European Parliament and the Council[21]. In addition, contracting entities from different Member States should be able to set up joint legal entities established under national or Union law. Specific rules should be established for such form of joint procurement.

However, contracting entities should not make use of the possibilities for cross-border joint procurement for the purpose of circumventing mandatory public law rules, in conformity with Union law, which are applicable to them in the Member State where they are located. Such rules might 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 public procurement to be open to competition as well as to achieve objectives of sustainability. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions, standards and technical specifications in the marketplace, including those drawn up on the basis of performance criteria linked to the life cycle and the sustainability of the production process of the works, supplies and services.
Consequently, technical specifications should be drafted in such a way as to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows that objective to be achieved in the best way possible. Functional and performance-related requirements are also appropriate means to favour innovation in public procurement and should be used as widely as possible. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety should be considered by the contracting entities. It should be the responsibility of the economic operator to prove equivalence with the requested label.
To prove equivalence, it should be possible to require tenderers to provide third-party verified evidence. However, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits provided that the economic operator concerned thereby proves that the works, supplies or services meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

(84) For all procurement intended for use by persons, whether the general public or the staff of the contracting entity, it is necessary for contracting entities to lay down technical specifications so as to take into account accessibility criteria for people with disabilities, or design for all users, except in duly justified cases.

(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 labels, such as the European Eco-label, (multi-) national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and that the label is accessible and available to all interested parties. It should be clarified that stakeholders could be public or private

bodies, businesses or any sort of non-governmental organisations (an organisation that is not a part of a government and is not a conventional for-profit businesses).
It should equally be clarified that specific national or government bodies or organisations can be involved in setting up label requirements that may be used in connection with procurement by public authorities without those bodies or organisations losing their status as third parties. References to labels should not have the effect of restricting innovation.

(86) When drawing up technical specifications, contracting entities should take into account requirements ensuing from Union law in the field of data protection law, in particular in relation to the design of the processing of personal data (data protection by design).

(87) Public procurement should be adapted to the needs of SMEs. Contracting entities should be encouraged to make use of the Code of Best Practices set out in the Commission Staff Working Document of 25 June 2008 entitled 'European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts, providing guidance on how they may apply the public procurement framework in a way that facilitates SME participation. To that end, it should be provided explicitly that contracts may be divided into lots. Such division could be done on a quantitative basis, making the size of the individual contracts better correspond to the capacity of SMEs, or on a qualitative basis, in accordance with the different trades and specialisations involved, to adapt the content of the individual contracts more closely to the specialised sectors of SMEs or in accordance with different subsequent project phases. The size and subject-matter of the lots should be determined freely by the contracting entity, which, in accordance with the relevant rules on the calculation of the estimated value of procurement, should also be allowed to award some of the lots without applying the procedures of this Directive. Member States should remain free to go further in their efforts to facilitate the involvement of SMEs in the public procurement market, by introducing an obligation to consider the appropriateness of dividing contracts into lots to smaller contracts, by requiring contracting entities to provide a justification for a decision not to divide contracts into lots or by rendering a division into lots obligatory under certain conditions. With the same purpose, Member States should also be free to provide mechanisms for direct payments to subcontractors.

(88) Where contracts are divided into lots, contracting entities should, for instance in order to preserve competition or to ensure reliability of supply, be allowed to limit the number of lots for which an economic operator may tender; they should also be allowed to limit the number of lots that may be awarded to any one tenderer.
However, the objective of facilitating greater access to public procurement by SMEs might be hampered if contracting entities would be obliged to award the contract lot by lot even where this would entail having to accept substantially less advantageous solutions compared to an award grouping several or all of the lots. Where the possibility to apply such a method has been clearly indicated beforehand, it should therefore be possible for contracting entities to conduct a comparative assessment of the tenders in order to establish whether the tenders submitted by a particular tenderer for a specific combination of lots would, taken as whole, fulfil the award criteria laid down in accordance with this Directive with regard to those lots better than the tenders for the

individual lots concerned seen in isolation. If so, then the contracting entities should be allowed to award a contract combining the lots in question to the tenderer concerned. It should be clarified that contracting entities should conduct such a comparative assessment by first determining which tenders best fulfil the award criteria laid down for each individual lot and then comparing it with the tenders submitted by a particular tenderer for a specific combination of lots, taken as a whole.

(89) In order to make procedures faster and more efficient, time limits for participation in procurement procedures should be kept as short as possible without creating undue barriers to access for economic operators from across the internal market and in particular SMEs. It should therefore be kept in mind that, when fixing the time limits for the receipt of tenders and requests to participate, contracting entities should take account in particular of the complexity of the contract and the time required to draw up tenders, even if this entails setting time limits that are longer than the minima provided for under this Directive. The use of electronic means of information and communication, in particular full electronic availability to economic operators, tenderers and candidates of procurement documents and electronic transmission of communications leads, on the other hand, to increased transparency and time savings. Therefore, provision should be made for reducing the minimum time limits applicable to open procedures in line with the rules set by the GPA and subject to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Furthermore, contracting entities should have the opportunity to further shorten the time limits for receipt of tenders in open procedures in cases where a state of urgency renders the regular time limit in open procedures impracticable, but does not make an open procedure with shortened deadline impossible. Only in exceptional situations where extreme urgency brought about by events unforeseeable by the contracting entity concerned that are not attributable to that contracting entity makes it impossible to conduct a regular procedure even with shortened time limits, contracting entities should, insofar as strictly necessary, have the possibility to award contracts by negotiated procedure without prior call for competition. This might be case where natural catastrophes require immediate action.

(90) It should be clarified that the need to ensure that economic operators have sufficient time in which to draw up responsive tenders may entail that the time limits which were set initially may have to be extended. This would, in particular, be the case where significant changes are made to the procurement documents. It should also be specified that, in that case, significant changes should be understood as covering changes, in particular to the technical specifications, in respect of which economic operators would need additional time in order to understand and respond appropriately. It should, however, be clarified that such changes should not be so substantial that the admission of candidates other than those initially selected would have been allowed for or additional participants in the procurement procedure would have been attracted. That could, in particular, be the case where the changes render the contract or the framework agreement materially different in character from the one initially set out in the procurement documents.

(91) It should be clarified that the information concerning certain decisions taken during a procurement procedure, including the decision not to award a contract or not to conclude

a framework agreement, should be sent by the contracting entities, without candidates or tenderers having to request such information. It should also be recalled that Council Directive 92/13/EEC[(22)] provides for an obligation for contracting entities, again without candidates or tenderer having to request it, to provide the candidates and tenderers concerned with a summary of the relevant reasons for some of the central decisions that are taken in the course of a procurement procedure. It should finally be clarified that candidates and tenderers should be able to request more detailed information concerning those reasons, which contracting entities should be required to give except where there would be serious grounds for not doing so. Those grounds should be set out in this Directive. To ensure the necessary transparency in the context of procurement procedures involving negotiations and dialogues with tenderers, tenderers having made an admissible tender should, except where there would be serious grounds for not doing so, also be enabled to request information on the conduct and progress of the procedure.

(92) In so far as compatible with the need to ensure the objective of sound commercial practice while allowing for maximum flexibility, it is appropriate to provide for the application of Directive 2014/24/EU in respect of requirements concerning economic and financial capacity and documentary evidence. Contracting entities should therefore be allowed to apply the selection criteria provided for in that Directive and, where they do so, they should then be obliged to apply certain other provisions concerning, in particular, the ceiling to requirements on minimum turnover as well as on use of the European Single Procurement Document.

(93) Contracting entities should be able to require that environmental management measures or schemes are to be applied during the performance of a contract. Environmental management schemes, whether or not they are registered under Union instruments such as Regulation (EC) No 1221/2009 of the European Parliament and of the Council[(23)], can demonstrate that the economic operator has the technical capability to perform the contract. A description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence, where the economic operator concerned has no access to such environmental management registration schemes or no possibility of obtaining them within the relevant time limits.

(94) The notion of award criteria is central to this Directive, it is therefore important that the relevant provisions be presented in as simple and streamlined a way as possible. This can be obtained by using the terminology ‘most economically advantageous tender’ as the overriding concept, since all winning tenders should finally be chosen in accordance with what the individual contracting entity considers to be the economically best solution among those offered. In order to avoid confusion with the award criterion that is currently known as the ‘most economically advantageous tender’ in Directives 2004/17/EC and 2004/18/EC, a different terminology should be used to cover that concept, the ‘best price-quality ratio’. Consequently, it should be interpreted in accordance with the case-law relating to those Directives, except where there is a clearly materially different solution in this Directive.

(95) Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment, with a view to ensuring an objective comparison of the relative value of the tenders in order to determine, in conditions of effective competition, which tender is the most economically advantageous tender. It should be set out explicitly that the most economically advantageous tender should be assessed on the basis of the best price-quality ratio which should always include a price or cost element. It should equally be clarified that such assessment of the most economically advantageous tender could also be carried out on the basis of either price or cost effectiveness only. It is furthermore appropriate to recall that contracting entities are free to set adequate quality standards by using technical specifications or contract performance conditions.
In order to encourage a greater quality orientation of public procurement, Member States should be permitted to prohibit or restrict use of price only or cost only to assess the most economically advantageous tender where they deem this appropriate.
To ensure compliance with the principle of equal treatment in the award of contracts, contracting entities should be obliged to create the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied in the contract award decision. Contracting entities should therefore be obliged to indicate the contract award criteria and the relative weighting given to each of those criteria. Contracting entities should, however, be permitted to derogate from that obligation to indicate the weighting of the criteria in duly justified cases for which they must be able to give reasons, where the weighting cannot be established in advance, in particular because of the complexity of the contract. In such cases, they should indicate the criteria in decreasing order of importance.

(96) Article 11 TFEU requires that environmental protection requirements be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. This Directive clarifies how the contracting entities can contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts.

(97) When assessing the best price-quality ratio contracting entities should determine the economic and qualitative award criteria linked to the subject-matter of the contract on the basis of which they will assess tenders in order to identify the most economically advantageous tender from the view of the contracting entity. Those criteria should thus allow for a comparative assessment of the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications. In the context of the best price-quality ratio, a non-exhaustive list of possible award criteria is set out in this Directive. Contracting entities should be encouraged to choose award criteria that allow them to obtain high-quality works, supplies and services that are optimally suited to their needs.
The chosen award criteria should not confer an unrestricted freedom of choice on the contracting entity and they should ensure the possibility of effective and fair competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.

To identify the most economically advantageous tender, the contract award decision should not be based on non-cost criteria only. Qualitative criteria should therefore be accompanied by a cost criterion that could, at the choice of the contracting entity, be either the price or a cost-effectiveness approach such as life-cycle costing. However, the award criteria should not affect the application of national provisions determining the remuneration of certain services or setting out fixed prices for certain supplies.

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

(99) Wherever the quality of the staff employed is relevant to the level of performance of the contract, contracting entities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question, as this can affect the quality of contract performance and, as a result, the economic value of the tender. This might be the case, for example, in contracts for intellectual services such as consultancy or architectural services. Contracting entities which make use of this possibility should ensure, by appropriate contractual means, that the staff assigned to contract performance effectively fulfil the specified quality standards and that such staff can only be replaced with the consent of the contracting entity which verifies that the replacement staff affords an equivalent level of quality.

(100) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth. In this context, it should be recalled that public procurement is crucial to driving innovation, which is of great importance for future growth in Europe. In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement.

The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council[(24)]) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council[(25)]). In addition, the definition of common methodologies for life cycle costing has significantly advanced.

It therefore appears appropriate to continue on that path, leaving it to sector-specific legislation to set mandatory objectives and targets in function of the particular policies and conditions prevailing in the relevant sector and to promote the development and

use of European approaches to life-cycle costing as a further underpinning for the use of public procurement in support of sustainable growth.

(101) Those sector-specific measures should be complemented by an adaptation of Directives 2004/17/EC and 2004/18/EC empowering contracting entities to pursue the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth in their purchasing strategies. It should hence be made clear that, except where it is assessed on the basis of price only, contracting entities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach. The notion of life-cycle costing includes all costs over the life-cycle of a works, supplies or services. This means internal costs such as research to be carried out, development, production, transport, use, maintenance and end-of-life disposal costs, but can also include costs imputed to environmental externalities, such as pollution caused by extraction of the raw materials used in the product or caused by the product itself or its manufacturing, provided they can be monetised and monitored. The methods which contracting entities use for assessing costs imputed to environmental externalities should be established in advance in an objective and non-discriminatory manner and be accessible to all interested parties. Such methods can be established at national, regional or local level, but they should, to avoid distortions of competition through tailor-made methodologies, remain general in the sense that they should not be set up specifically for a particular public procurement procedure. Common methodologies should be developed at Union level for the calculation of life-cycle costs for specific categories of supplies or services. Where such common methodologies are developed, their use should be made compulsory.
Furthermore, the feasibility of establishing a common methodology on social life cycle costing should be examined, taking into account existing methodologies such as the Guidelines for Social Life Cycle Assessment of Products adopted within the framework of the United Nations Environment Programme.

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

might include, for example, the delivery, package and disposal of products, and in respect of works and services contracts, waste minimisation or resource efficiency.
However, the condition of a link with the subject-matter of the contract excludes criteria and conditions relating to general corporate policy, which cannot be considered as a factor characterising the specific process of production or provision of the purchased works, supplies or services. Contracting entities should hence not be allowed to require tenderers to have a certain corporate social or environmental responsibility policy in place.

(103) It is essential that award criteria or contract performance conditions concerning social aspects of the production process relate to the works, supplies or services to be provided under the contract. In addition, they should be applied in accordance with Directive 96/71/EC, as interpreted by the Court of Justice of the European Union, and should not be chosen or applied in a way that discriminates directly or indirectly against economic operators from other Member States or from third countries parties to the GPA or to Free Trade Agreements to which the Union is party. Thus, requirements concerning the basic working conditions regulated in Directive 96/71/EC, such as minimum rates of pay, should remain at the level set by national legislation or by collective agreements applied in accordance with Union law in the context of that Directive
Contract performance conditions might also be intended to favour the promotion of equality of women and men at work, the increased participation of women in the labour market and the reconciliation of work and private life, the protection of the environment or animal welfare and, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, and to recruit more disadvantaged persons than are required under national legislation.

(104) Measures aiming at the protection of health of the staff involved in the production process, the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract or training in the skills needed for the contract in question can also be the subject of award criteria or contract performance conditions provided that they relate to the works, supplies or services to be provided under the contract. For instance, such criteria or conditions might refer, amongst other things, to the employment of long-term job-seekers, the implementation of training measures for the unemployed or young persons in the course of the performance of the contract to be awarded. In technical specifications contracting entities can provide such social requirements which directly characterise the product or service in question, such as accessibility for persons with disabilities or design for all users.

(105) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests, terrorist offences, money laundering or terrorist financing. The non-payment of taxes or social security contributions should also lead to mandatory exclusion at the level of the Union. Member States should, however, be able to provide for a derogation from those mandatory exclusions in exceptional situations where overriding requirements in the general interest make a contract award indispensable. This might, for example, be the case where urgently needed vaccines

or emergency equipment can only be purchased from an economic operator to whom one of the mandatory grounds for exclusion otherwise applies. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether to apply the exclusion criteria listed in Directive 2014/24/EU to such contracting entities. The obligation to apply Article 57(1) and (2) of Directive 2014/24/EU should therefore be limited to contracting entities that are contracting authorities.

(106) Contracting entities should further be given the possibility to exclude economic operators which have proven unreliable, for instance because of violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights. It should be clarified that grave professional misconduct can render an economic operator's integrity questionable and thus render the economic operator unsuitable to receive the award of a public contract irrespective of whether the economic operator would otherwise have the technical and economical capacity to perform the contract.

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

In applying facultative grounds for exclusion, particular attention should be paid to the principle of proportionality. Minor irregularities should only in exceptional circumstances lead to the exclusion of an economic operator. However repeated cases of minor irregularities can give rise to doubts about the reliability of an economic operator which might justify its exclusion.

(107) Where contracting entities are obliged or choose to apply the such exclusion criteria, they should apply Directive 2014/24/EU concerning the possibility that economic operators adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour.

(108) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. Where the tenderer cannot provide a sufficient explanation, the contracting entity should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting entity has established that the abnormally low price or costs proposed results

from non-compliance with mandatory Union law or national law compatible with it in the fields of social, labour or environmental law or international labour law provisions.

(109) Contract performance conditions are for laying down specific requirements relating to the performance of the contract. Unlike contract award criteria which are the basis for a comparative assessment of the quality of tenders, contract performance conditions constitute fixed objective requirements that have no impact on the assessment of tenders. Contract performance conditions should be compatible with this Directive provided that they are not directly or indirectly discriminatory and are linked to the subject-matter of the contract, which comprises all factors involved in the specific process of production, provision or commercialisation. This includes conditions concerning the process of performance of the contract, but excludes requirements referring to a general corporate policy.

(110) It is important that observance by subcontractors of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in this Directive, provided that such rules, and their application, comply with Union law, be ensured through appropriate actions by the competent national authorities within the scope of their responsibilities and remit, such as labour inspection agencies or environmental protection agencies.

It is also necessary to ensure some transparency in the subcontracting chain, as this gives contracting entities information on who is present at building sites on which works are being performed for them, or on which undertakings are providing services in or at buildings, infrastructures or areas, such as town halls, municipal schools, sports facilities, ports or motorways, for which the contracting entities are responsible or over which they have a direct oversight. It should be clarified that the obligation to deliver the required information is in any case incumbent upon the main contractor, either on the basis of specific clauses, that each contracting entity would have to include in all procurement procedures, or on the basis of obligations which Member States would impose on main contractors by means of generally applicable provisions.

It should also be clarified that the conditions relating to the enforcement of observance of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in this Directive, provided that such rules, and their application, comply with Union law, should be applied whenever the national law of a Member State provides for a mechanism of joint liability between subcontractors and the main contractor. Furthermore, it should be stated explicitly that Member States should be able to go further, for instance by extending the transparency obligations, by enabling direct payment to subcontractors or by enabling or requiring contracting authorities to verify that subcontractors are not in any of the situations in which exclusion of economic operators would be warranted. Where such measures are applied to subcontractors, coherence with the provisions applicable to main contractors should be ensured so that the existence of compulsory exclusion grounds would be followed by a requirement that the main contractor replaces the subcontractor concerned. Where such verification shows the presence of non-compulsory grounds

for exclusion, it should be clarified that contracting authorities are able to require the replacement. It should, however, also be set out explicitly that contracting authorities may be obliged to require the replacement of the subcontractor concerned where exclusion of main contractors would be obligatory in such cases.
It should also be set out explicitly that Member States remain free to provide for more stringent liability rules under national law or to go further under national law on direct payments to subcontractors.

(111) Having regard to current discussions on horizontal provisions governing relations with third countries in the context of public procurement, it is appropriate to maintain for an interim period the status quo of the regime which applies to the utilities sector pursuant to Articles 58 and 59 of Directive 2004/17/EC. Consequently, those provisions should be kept unchanged, including the provision for the adoption of implementing acts where Union undertakings have difficulties in accessing third country markets. Under these circumstances, those implementing acts should continue to be adopted by the Council.

(112) It should be recalled that Council Regulation (EEC, Euratom) No 1182/71[(26)] applies to the calculation of the time limits contained in this Directive.

(113) It is necessary to clarify the conditions under which modifications to a contract during its performance require a new procurement procedure, taking into account the relevant case-law of the Court of Justice of the European Union. A new procurement procedure is required in case of material changes to the initial contract, in particular to the scope and content of the mutual rights and obligations of the parties, including the distribution of intellectual property rights. Such changes demonstrate the parties' intention to renegotiate essential terms or conditions of that contract. This is the case in particular if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure.
Modifications to the contract resulting in a minor change of the contract value up to a certain value should always be possible without the need to carry out a new procurement procedure. To this effect and in order to ensure legal certainty, this Directive should provide for *de minimis* thresholds, below which a new procurement procedure is not necessary. Modifications to the contract above those thresholds should be possible without the need to carry out a new procurement procedure to the extent they comply with the relevant conditions laid down in this Directive.

(114) Contracting entities may be faced with situations where additional works, supplies or services become necessary; in such cases a modification of the initial contract without a new procurement procedure may be justified, in particular where the additional deliveries are intended either as a partial replacements or as the extension of existing services, supplies or installations where a change of supplier would oblige the contracting entity to acquire material, works or services having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance

(115) Contracting entities can be faced with external circumstances that they could not foresee when they awarded the contract, in particular when the performance of the contract covers a long period. In this case, a certain degree of flexibility is needed to adapt the

contract to those circumstances without a new procurement procedure. The notion of unforeseeable circumstances refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting entity, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value.

However, this cannot apply in cases where a modification results in an alteration of the nature of the overall procurement, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement since, in such a situation, a hypothetical influence on the outcome may be assumed.

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

(117) Contracting entities should, in the individual contracts themselves, have the possibility to provide for modifications by way of review or option clauses, but such clauses should not give them unlimited discretion. This Directive should therefore set out to what extent modifications may be provided for in the initial contract. It should consequently be clarified that sufficiently clearly drafted review or option clauses may for instance provide for price indexations or ensure that, for example, communications equipment to be delivered over a given period continues to be suitable, also in the case of changing communications protocols or other technological changes. It should also be possible under sufficiently clear clauses to provide for adaptations of the contract which are rendered necessary by technical difficulties which have appeared during operation or maintenance. It should also be recalled that contracts could, for instance, include both ordinary maintenance as well as provide for extraordinary maintenance interventions that might become necessary in order to ensure continuation of a public service.

(118) Contracting entities are sometimes faced with circumstances that require the early termination of public contracts in order to comply with obligations under Union law in the field of public procurement. Member States should therefore ensure that contracting entities have the possibility, under the conditions determined by national law, to terminate a public contract during its term if so required by Union law.

(119) The results of the Commission staff working paper of 27 June 2011 entitled ‘Evaluation Report: Impact and Effectiveness of EU Public Procurement Legislation’ suggested that the exclusion of certain services from the full application of Directive 2004/17/EC

should be reviewed. As a result, the full application of this Directive should be extended to a number of services.

(120) Certain categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for contracts for those services, with a higher threshold than that which applies to other services.
In the particular context of procurement in those sectors, services to the person with values below that threshold will typically not be of interest to providers from other Member States unless there are concrete indications to the contrary, such as Union financing for cross-border projects.
Contracts for services to the person above that threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of those services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this Directive take account of that imperative, imposing only the observance of basic principles of transparency and equal treatment and making sure that contracting entities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services, published by the Social Protection Committee. When determining the procedures to be used for the award of contracts for services to the person, Member States should take Article 14 TFEU and Protocol No 26 into account. In so doing, Member States should also pursue the objectives of simplification and of alleviating the administrative burden for contracting entities and economic operators; it should be clarified that so doing might also entail relying on rules applicable to service contracts not subject to the specific regime.
Member States and contracting entities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, provided that such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

(121) Likewise, hotel and restaurant services are typically offered only by operators located in the specific place of delivery of those services and therefore also have a limited cross-border dimension. They should therefore only be covered by the light regime, as from a threshold of EUR 1 000 000. Large hotel and restaurant service contracts above that threshold can be of interest for various economic operators, such as travel agencies and other intermediaries, also on a cross-border basis.

(122) Similarly, certain legal services concern exclusively issues of purely national law and are therefore typically offered only by operators located in the Member State concerned and consequently also have a limited cross-border dimension. They should therefore only be covered by the light regime, as from a threshold of EUR 1 000 000. Large

legal service contracts above that threshold can be of interest for various economic operators, such as international law firms, also on a cross-border basis, in particular where they involve legal issues arising from or having as its background Union or other international law or involving more than one country.

(123) Experience has shown that a series of other services, such as rescue services, firefighting services and prison services are normally only of cross-border interest as of such time as they acquire sufficient critical mass through their relatively high value. In so far as they are not excluded from the scope of this Directive, they should be included under the light regime. To the extent that their provision is actually based on contracts, other categories of services, such as investigation and security services, they would normally only be likely to present a cross-border interest as from a threshold of EUR 1 000 000 and should consequently only then be subject to the light regime.

(124) In order to ensure the continuity of public services, this Directive should allow that participation in procurement procedures for certain services in the fields of health, social and cultural services could be reserved for organisations which are based on employee ownership or active employee participation in their governance, and for existing organisations such as cooperatives to participate in delivering these services to end users. This provision is limited in scope exclusively to certain health, social and related services, certain education and training services, library, archive, museum and other cultural services, sporting services, and services for private households, and is not intended to cover any of the exclusions otherwise provided for by this Directive. Those services should only be covered by the 'light regime'.

(125) It is appropriate to identify those services by reference to specific positions of the Common Procurement Vocabulary (CPV) as adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council[27], which is a hierarchically structured nomenclature, divided into divisions, groups, classes, categories and subcategories. In order to avoid legal uncertainty, it should be clarified that reference to a division does not implicitly entail a reference to subordinate subdivisions. Such comprehensive coverage should instead be set out explicitly by mentioning all the relevant positions, where appropriate as a range of codes.

(126) Design contests have traditionally mostly been used in the fields of town and country planning, architecture and engineering or data processing, It should, however, be recalled that these flexible instruments could be used also for other purposes and that it may be stipulated that the subsequent service contracts would be awarded to the winner or one of the winners of the design contest by a negotiated procedure without publication.

(127) The evaluation has shown that there is still considerable room for improvement in the application of the Union public procurement rules. With a view to a more efficient and consistent application of the rules, it is essential to get a good overview on possible structural problems and general patterns in national procurement policies, in order to address possible problems in a more targeted way. That overview should be gained through appropriate monitoring, the results of which should be regularly published, in order to allow an informed debate on possible improvements of procurement rules and

practice. Acquiring such a good overview could also allow insights on the application of public procurement rules in the context of the implementation of projects co-financed by the Union. Member States should remain free to decide how and by whom this monitoring should be carried out in practice; in so doing, they should also remain free to decide whether the monitoring should be based on a sample-based *ex-post* control or on a systematic, *ex-ante* control of public procurement procedures covered by this Directive. It should be possible to bring potential problems to the attention of the proper bodies; this should not necessarily require that those having performed the monitoring have standing before courts and tribunals.

Better guidance, information and support to contracting entities and economic operators could also greatly contribute to enhancing the efficiency of public procurement, through better knowledge, increased legal certainty and professionalisation of procurement practices. Such guidance should be made available to contracting entities and economic operators wherever it appears necessary to improve correct application of the rules. The guidance to be provided could cover all matters relevant to public procurement, such as acquisition planning, procedures, choice of techniques and instruments and good practices in the conduct of the procedures. With regard to legal questions, guidance should not necessarily amount to a complete legal analysis of the issues concerned; it could be limited to a general indication of the elements that should be taken into consideration for the subsequent detailed analysis of the questions, for instance by pointing to case-law that could be relevant or to guidance notes or other sources having examined the specific question concerned.

(128) Directive 92/13/EEC provides for certain review procedures to be available at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement of Union law in the field of public procurement or national rules transposing that law. Those review procedures should not be affected by this Directive. However, citizens, concerned stakeholders, organised or not, and other persons or bodies which do not have access to review procedures pursuant to Directive 92/13/EEC do nevertheless have a legitimate interest, as taxpayers, in sound procurement procedures. They should therefore be given a possibility, otherwise than through the review system pursuant to Directive 92/13/EEC and without it necessarily involving them being given standing before courts and tribunals, to indicate possible violations of this Directive to a competent authority or structure. So as not to duplicate existing authorities or structures, Member States should be able to provide for recourse to general monitoring authorities or structures, sectoral oversight bodies, municipal oversight authorities, competition authorities, the ombudsman or national auditing authorities.

(129) In order to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth, environmental, social and innovation procurement will also have to play its part. It is therefore important to obtain an overview of the developments in the field of strategic procurement so as to take an informed view on the general trends at the overall level in that area. Any already prepared, appropriate reports can of course be used in this context also.

(130) Given the potential of SMEs for job creation, growth and innovation it is important to encourage their participation in public procurement, both through appropriate provisions in this Directive as well as through initiatives at the national level. The new provisions provided for in this Directive should contribute towards an improvement of the level of success, by which is understood the share of SMEs in the total value of contracts awarded. It is not appropriate to impose obligatory shares of success, however, the national initiatives to enhance SME participation should be closely monitored given its importance.

(131) A series of procedures and working methods have already been established in respect of the Commission's communications and contacts with Member States, such as communications and contacts relating to the procedures provided for under Articles 258 and 260 TFEU, the Internal Market Problem Solving Network (SOLVIT) and EU Pilot, which are not modified by this Directive. They should, however, be complemented by the designation of one single point of reference in each Member States for the cooperation with the Commission, which would function as sole entry point for matters concerning public procurement in the Member State concerned. This function may be performed by persons or structures which are already regularly in contact with the Commission on issues relating to public procurement, such as national contact points, members of the Advisory Committee on Public Procurement, Members of the Procurement Network or national coordinating instances.

(132) The traceability and transparency of decision-making in procurement procedures is essential for ensuring sound procedures, including efficiently fighting corruption and fraud. Contracting authorities should therefore keep copies of concluded high-value contracts, in order to be able to provide access to those documents to interested parties in accordance with applicable rules on access to documents. Furthermore, the essential elements and decisions of individual procurement procedures should be documented by contracting entities in a procurement report. To avoid administrative burdens wherever possible, it should be permitted for the procurement report to refer to information already contained in the relevant contract award notice. The electronic systems for publication of those notices, managed by the Commission, should also be improved with a view to facilitating the entry of data while making it easier to extract global reports and exchange data between systems.

(133) In the interests of administrative simplification and in order to lessen the burden on Member States, the Commission should periodically examine whether the quality and completeness of the information contained in the notices which are published in connection with public procurement procedures is sufficient to allow the Commission to extract the statistical information that would otherwise have to be transmitted by the Member States.

(134) Effective administrative cooperation is necessary for the exchange of information needed for conducting award procedures in cross-border situations, in particular with regard to the verification of the grounds for exclusion and the selection criteria and the application of quality and environmental standards. The Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 of the European

Parliament and of the Council[28] could provide a useful electronic means to facilitate and enhance administrative cooperation managing the exchange of information on the basis of simple and unified procedures overcoming language barriers. A pilot project should consequently be launched as soon as possible to test the suitability of an expansion of IMI to cover the exchange of information under this Directive.

(135) In order to adapt to rapid technical, economic and regulatory developments, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of a number of non-essential elements of this Directive. Due to the need to comply with international agreements, the Commission should be empowered to modify the technical procedures for the calculation methods concerning thresholds as well as to periodically revise the thresholds themselves; references to the CPV nomenclature may undergo regulatory changes at Union level and it is necessary to reflect those changes into the text of this Directive; the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments; it is also necessary to empower the Commission to make mandatory certain technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in procurement procedures conducted using electronic means of communication taking into account technological developments; the Commission should also be empowered to adapt the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs; the list of International Social and Environmental Conventions and the list of Union legislation whose implementation creates a presumption of free access to a given market as well as Annex II,, setting out a list of legal acts to be taken into account when assessing the existence of special or exclusive rights, should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy that need, the Commission should be empowered to keep the lists up-to date. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(136) In the application of this Directive the Commission should consult appropriate groups of experts in the field of e-procurement ensuring a balanced composition of the main stakeholder groups.

(137) In order to ensure uniform conditions for the implementation of this Directive, as for the procedure for sending and publishing data referred to in Annex IX and the procedures for drawing up and transmitting notices, the standard forms for the publication of notices, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[29].

(138) The advisory procedure should be used for the adoption of the implementing acts concerning standard forms for the publication of notices, which do not have any impact either from the financial point of view or on the nature and scope of obligations

stemming from this Directive. On the contrary, those acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set out in this Directive.

Furthermore, decisions to establish whether a given activity is directly exposed to competition on markets to which access is free should be adopted under conditions ensuring uniform conditions for implementing that provision. Implementing powers should therefore be conferred on the Commission also in respect of the detailed provisions for the implementation of the procedure, provided for under Article 35, for establishing whether Article 34 is applicable as well as the implementing acts themselves. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. The advisory procedure should be used for the adoption of those implementing acts.

(139) The Commission should review the effects on the internal market resulting from the application of the thresholds and report thereon to the European Parliament and the Council. In so doing, it should take into account factors such as the level of cross-border procurement, SME participation, transaction costs and the cost-benefit trade-off.

In accordance with Article XXII(7) thereof, the GPA shall be the subject of further negotiations three years after its entry into force and periodically thereafter. In that context, the appropriateness of the level of thresholds should be examined, bearing in mind the impact of inflation in view of a long period without changes of the thresholds in the GPA; in the event that the level of thresholds should change as a consequence, the Commission should, where appropriate, adopt a proposal for a legal act amending the thresholds set out in this Directive.

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

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

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

HAVE ADOPTED THIS DIRECTIVE:

(**1**) OJ C 191, 29.6.2012, p. 84.

(**2**) OJ C 391, 18.12.2012, p. 49.

(**3**) Position of the European Parliament of 15 January 2014 (not yet published in the Official Journal), and decision of the Council of 11 February 2014.

(**4**) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1).

(**5**) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

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

(**7**) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (see page 65 of this Official Journal).

(**8**) Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).

(**9**) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

(**10**) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

(**11**) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).

(**12**) Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (OJ L 164, 30.6.1994, p. 3).

(**13**) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

(**14**) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (see page 1 of this Official Journal).

(**15**) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) (OJ L 336, 23.12.1994, p. 1).

(**16**) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

(**17**) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(**18**) Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).

(**19**) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

(**20**) Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and

Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

(**21**) Regulation (EC) No 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

(**22**) Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14).

(**23**) Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

(**24**) Directive 2009/33/EC of the European Parliament and the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (OJ L 120, 15.5.2009, p. 5).

(**25**) Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment (OJ L 39, 13.2.2008, p. 1).

(**26**) Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ — English special edition: Series V Volume 1952-1972 p. 88).

(**27**) Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L 340, 16.12.2002, p. 1).

(**28**) Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

(**29**) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).