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NOTE

from:	General Secretariat
to:	Delegations
on:	13 February 2013
No Cion prop.:	18960/11 MAP 8 MI 684 + ADD 1 + ADD 2
Subject:	Proposal for a Directive of the European Parliament and of the Council on award of concession contracts - Consideration of IMCO amendments

Delegations will find in Annex a four column document on the above proposal based on the general approach agreed by the Competitiveness Council on 10 December and showing the EP amendments as voted in IMCO Committee on 24 January in the second column.

To assist with identifying amendments, changes made by IMCO and Council to the original Commission proposal are highlighted in **bold**, deletions are marked [...].

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Note: Differences between the IMCO position and the Commission proposal are highlighted in ***Bold/italics***, deletions are in ~~strike through~~ in the IMCO column. **Bold** in the Council column indicates where the Council has amended the Commission proposal and deletions are indicated by the sign [...].

COMISSION PROPOSAL	EP IMCO AMENDMENTS ¹	COUNCIL GENERAL APPROACH ²	COMMENTS
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53 (1), Article 62 and Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular <i>Article 14</i> , Article 53(1), Article 62 and Article 114, <i>as well as Protocol No 26</i> thereof, [Am. 1]		
(1) The absence of clear rules at Union level governing the award of concession contracts gives rise to legal uncertainty and to obstacles to the free provision of services and causes distortions in the functioning of the Internal Market. As a result, economic operators, in particular Small and Medium Enterprises (SMEs), are being deprived of their rights within the Internal Market and miss out on important business opportunities, while public authorities may not find the best use of public money so that EU citizens benefit from quality services at best prices.	(1) The absence of clear rules at Union level governing the award of concession contracts gives rise to legal uncertainty and to obstacles to the free provision of services and causes distortions in the functioning of the Internal Market. As a result, economic operators, in particular <i>small and medium-sized enterprises</i> (SMEs), are being deprived of their rights within the Internal Market and miss out on important business opportunities, while public authorities may not find the best use of public money so that EU citizens benefit from quality services at best prices.	(1) The absence of clear rules at Union level governing the award of concession contracts gives rise to legal uncertainty and to obstacles to the free provision of services and causes distortions in the functioning of the Internal Market. As a result, economic operators, in particular Small and Medium Enterprises (SMEs), are being deprived of their rights within the Internal Market and miss out on important business opportunities, while public authorities may not find the best use of public money so that EU citizens benefit from quality services at best prices.	

¹ Based on final report adopted in IMCO Committee on 24 January 2013 (A7-0030/2013).

² Based on document 18007/12 with underlined modifications following the Legal Linguist revision

An adequate legal framework for the award of concessions would ensure effective and non-discriminatory access to the market to all Union economic operators and legal certainty, favouring public investments in infrastructures and strategic services to the citizen.	An adequate, <i>balanced and flexible</i> legal framework for the award of concessions would ensure effective and non-discriminatory access to the market to all Union economic operators and legal certainty, favouring public investments in infrastructures and strategic services to the citizen. <i>Such a legal framework would also afford greater legal certainty to economic operators and could be a basis for and means of further opening up international public procurement markets and boosting world trade. A general principle should be established at Union level whereby the award of concessions would be open to SMEs so as to improve their access opportunities on the concession market.</i> [Am. 2]	An adequate legal framework for the award of concessions would ensure effective and non-discriminatory access to the market to all Union economic operators and legal certainty, favouring public investments in infrastructures and strategic services to the citizen.	
	<i>(1a) The rules of the legislative framework applicable to the award of concessions should be clear and simple and should not create an excessive amount of bureaucracy.</i> [Am. 3]		
	<i>(1b) The nature of concessions is such that concession award provisions should not be simply equated with the rules for the awarding of public contracts.</i> [Am. 4]		

<p>(2) Public procurement plays a key role in the Europe 2020 strategy³ as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. The award of works concessions is presently subject to basic rules of 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 while the award of services concessions with a cross-border interest is subject to the principles of the Treaty, and in particular the principle of free movement of goods, freedom of establishment and freedom to provide services as well as to the principles deriving therefrom such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. There is a risk of legal uncertainty related to different interpretations of the principles of the Treaty by national legislators and of</p>	<p>(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. The award of works concessions is presently subject to basic rules of 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 while the award of services concessions with a cross-border interest is subject to the principles of the Treaty, and in particular the principle of free movement of goods, freedom of establishment and freedom to provide services as well as to the principles deriving therefrom such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. There is a risk of legal uncertainty related to different interpretations of the principles of the Treaty by national legislators and of wide disparities among the</p>	<p>(2) Public procurement plays a key role in the Europe 2020 strategy⁴ as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. The award of public works concessions is presently subject to basic rules of 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 while the award of services concessions with a cross-border interest is subject to the principles of the Treaty <u>on the functioning of the European Union (TFEU)</u>, and in particular the principle of free movement of goods, freedom of establishment and freedom to provide services as well as to the principles deriving therefrom such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. There is a risk of legal uncertainty related to different interpretations of</p>	
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³ COM(2010) 2020 final, 3.3-2010.

⁴ COM(2010) 2020 final, 3.3.2010.

<p>wide disparities among the legislations of different Member States. Such risk has been confirmed by the extensive case law of the Court of Justice of the European Union but which has only partially addressed certain aspects of the award of concession contracts. Hence, a uniform concretisation of the Treaty principles across all Member States and the elimination of discrepancies in their understanding following therefrom is necessary at the Union level in order to eliminate persisting distortions of the Internal Market.</p>	<p>legislations of different Member States. Such risk has been confirmed by the extensive case law of the Court of Justice of the European Union but which has only partially addressed certain aspects of the award of concession contracts. Hence, a uniform concretisation of the Treaty principles across all Member States and the elimination of discrepancies in their understanding following therefrom is necessary at the Union level in order to eliminate persisting distortions of the Internal Market. In <i>this context, concession contracts represent important instruments in the long-term structural development of infrastructure and strategic services. Accordingly, they smooth the progress of competition within the internal market, enhancing private sector expertise, achieving efficiency and delivering innovation.</i> [Am. 5]</p>	<p>the principles of the Treaty by national legislators and of wide disparities among the legislations of different Member States, <u>as indicated by the fact that there has been considerable litigation of these issues before</u> the Court of Justice of the European Union. <u>The Court of Justice</u> has only partially addressed certain aspects of the award of concession contracts. Hence, a uniform <u>application</u> of the Treaty principles across all Member States and the elimination of discrepancies in the understanding <u>of those principles</u> is necessary at the Union level in order to eliminate persisting distortions of the Internal Market.</p>	
	<p><i>(2a) The award of works concessions is currently subject to basic rules of 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 contracts¹ while the award of</i></p>		

	<p><i>services concessions with a cross-border interest has to comply with the principles of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), and in particular the principles of free movement of goods, freedom of establishment and freedom to provide services as well as to the principles deriving therefrom such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. There is a risk of legal uncertainty related to different interpretations of the principles of the TFEU by national legislators and of wide disparities between the legislation of different Member States. Such risk has been confirmed by the extensive case-law of the Court of Justice of the European Union which has, nevertheless, only partially addressed certain aspects of the award of concession contracts. [Am. 6]</i></p> <p>¹ <i>OJ L 134, 30.4.2004, p. 114.</i></p>		
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	<p><i>(2b) Hence, this Directive aims at achieving a uniform application of the principles of the Treaties across all Member States in order to ensure legal certainty, eliminate persisting distortions of the internal market, increase the efficiency of public spending, facilitate equal access and fair participation of SMEs in the award of concession contracts, both at local and Union level, and support the achievement of sustainable public policy objectives. [Am. 7]</i></p>		
	<p><i>(2c) Subject to the provisions on the exclusion of activities which are directly exposed to competition as laid down in Article 14 of this Directive, the provisions of Directive 2004/18/EC and of 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 sector¹ should not apply to concessions as defined in this Directive. However, rules set by this Directive should not be used to circumvent the award procedure laid down in those Directives. [Am. 8]</i></p> <p>¹ OJ L 134, 30.4.2004, p. 1.</p>		

<p>(3) This Directive should not in any way affect the freedom of Member States or public authorities to decide on the direct provision of works or services to the public or on the outsourcing of such provision to third parties. Member States or public authorities should remain free to define the characteristics of the service to be provided, including any conditions regarding the quality or price of the services, in order to pursue their public policy objectives</p>	<p>(3) This Directive <i>recognises and reaffirms the right of Member States or and public authorities to decide the means of administration they judge to be most appropriate for performing works and providing services.</i> This Directive should not in any way affect the freedom of Member States <i>and</i> public authorities decide on the direct provision of to perform works or <i>provide</i> services <i>directly</i> to the public or on the outsourcing of <i>to outsource</i> such provision <i>by delegating it</i> to third parties. Member States or public authorities should remain free <i>should retain the right</i> to define <i>and specify</i> the characteristics of the service <i>services</i> to be provided, including any conditions regarding the quality or price of the services, in order to pursue their public policy objectives. [Am. 9]</p>	<p>(3) This Directive should not in any way affect the freedom of Member States and public authorities to perform works or provide services directly to the public or to outsource such provision to third parties by means other than concessions within the meaning of Article 2(1). The provision of services based on law or regulations, or employment contracts, should not be covered. In some Member States, this might for example be the case for certain administrative and government services such as executive and legislative services or the provision of certain services to the community, such as foreign affairs services or justice services or compulsory social security services.</p>	
		<p>(3a) Member States and public authorities should remain free to define and specify the characteristics of the service to be provided, including any conditions regarding the quality or price of the services, in accordance with Union law, in order to pursue their public policy objectives. It should equally be recalled that Member States are</p>	<p>partially moved from (3)</p>

		free to decide, in compliance with the Treaty principles of equal treatment, non-discrimination, transparency and the free movement of persons, how to organize 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.[...]	
		(3aa) This Directive should not affect the freedom of Member States to choose, in accordance with Union law, methods for organising and controlling the operation of gambling and betting⁵.	
		(3b) It is also appropriate to recall that this Directive should not affect the social security legislation of the Member States nor should it entail the liberalisation of services of general economic interest, reserved to public or private entities, nor the privatisation of public entities providing services.	

⁵ To assure legal certainty, the wording of this recital has been amended, without changing the meaning of the recital.

		[Articles 1(2) and 1(6) of Directive 2006/123/EC]	
<p>(4) For concessions above a certain value, it is appropriate to provide for a minimum coordination of national procedures for the award of such contracts based on principles of the Treaty so as to guarantee the opening-up of concessions to competition and adequate legal certainty. Those coordinating provisions should not go beyond what is necessary in order to achieve the aforementioned objectives. However, Member States should be allowed to complete and develop further those provisions if they find it appropriate notably to better ensure compliance with the principles above.</p>	<p>(4) For concessions <i>equal to or</i> above a certain value, it is appropriate to provide for a minimum coordination of national procedures for the award of such contracts based on principles of the Treaty so as to guarantee the opening-up of concessions to competition and adequate legal certainty. Those coordinating provisions should not go beyond what is necessary in order to achieve the aforementioned objectives <i>and to ensure a certain degree of flexibility</i>. However <i>Accordingly</i>, Member States should be allowed to complete and develop further those provisions if they find it appropriate notably to better ensure compliance with the principles above. [Am. 10]</p>	<p>(4) For concessions above a certain value, it is appropriate to provide for a minimum coordination of national procedures for the award of such contracts based on principles of the Treaty so as to guarantee the opening-up of concessions to competition and adequate legal certainty. Those coordinating provisions should not go beyond what is necessary in order to achieve the aforementioned objectives. However, Member States should be allowed to complete and develop further those provisions if they find it appropriate notably to better ensure compliance with the principles above.</p>	
<p>(5) Certain coordination provisions should also be introduced for the award of works and services concessions awarded in the water, energy, transport and postal services sectors given that national authorities may influence the behaviour of entities operating in those sectors and taking into account the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the</p>	<p>(5) Certain coordination provisions should also be introduced for the award of works and services concessions awarded in the water, energy, transport and postal services sectors given that national authorities may influence the behaviour of entities operating in those sectors and taking into account the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the</p>	<p>(5) Certain coordination provisions should also be introduced for the award of works and services concessions [...] in the water, energy, transport and postal services sectors given that national authorities may influence the behaviour of entities operating in those sectors and taking into account the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States</p>	

Member States concerning the supply to, provision or operation of networks for providing the services concerned.	Member States concerning the supply to, provision or operation of networks for providing the services concerned.	concerning the supply to, provision or operation of networks for providing the services concerned.	
<p>(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.</p>	<p>(6) Concessions are contracts for pecuniary interest concluded between operators and one or more contracting authorities or entities and having as their object the acquisition through which one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition (‘grantors’) awards the performance of works or the management of services to one or more economic operators, and where the consideration for that award consists, normally, either in the right to exploit to execute and manage the works or provide the services that which are the subject of the contract, or in that right together with payment. The execution of these works or services are should be subject to specific binding obligations defined by the contracting authority or entity grantor which are legally enforceable. By contrast, certain State acts such as authorisations, permits or licences including those issued for limited periods, whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not be regarded as concessions. The same applies to certain agreements having as their</p>	<p>(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists[...] in the right to exploit the works or services that are the subject of the contract or in that right together with payment. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works or services in question, not necessarily requiring a transfer of ownership to contracting authorities or contracting entities. By contrast, the mere financing, in particular, through grants, of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not usually fall under this Directive.</p>	

	<p> object <i>through which the State or the contracting authority or entity awards an economic operator the right of an economic operator to exploit certain public domains or resources, such as public domain and private rental or land lease contracts, particularly in the maritime or inland ports sector, or grants rights of way whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring becoming a recipient of specific works or services provided by the economic operator. The general conditions contained in both, public domain and private rental or land lease contracts include especially rules concerning the transfer of the rented property to the tenant, the use thereof (for instance a description of the rented property, provisions on permissible uses of the rented property, provisions on the optimum use of the rented property such as performance indicators and environmental standards), the respective obligations of the landlord and the tenant with regard to the maintenance of the rented property, the duration of the lease and repossession by the landlord of the</i> </p>		
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	<i>rented property and the rent and other costs borne by the tenant, including penalties. [Am. 11]</i>		
		(6a) Arrangements where all operators fulfilling certain conditions are entitled to perform a given task, without any selectivity, such as customer choice and service voucher systems, should not qualify as concessions, also when based on legal agreements between the public authority and the economic operators. Such systems are typically based on a decision by a public authority defining the transparent and non-discriminatory conditions on the continuous access of economic operators to the provision of specific services, such as social services, allowing customers to choose between such operators	
		(6a) Concession contracts provide for mutually binding obligations where the execution of these works or services are subject to specific requirements defined by the contracting authority or <u>the contracting entity</u> which are legally enforceable. By contrast, certain State acts such as authorisations or licences, whereby the State or a public authority establishes the	

		<p>conditions for the exercise of an economic activity, including a condition to carry out a given operation, granted, normally, on request of the economic operator and not on the initiative of the contracting authority or <u>the contracting</u> entity and where the economic operator remains free to withdraw from the provision of works or services, should not qualify as concessions. In those cases the specific provisions of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market⁶ may apply.</p>	
		<p>(6b) Certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land or any public property notably in the maritime, inland port or airport sector, whereby the State or contracting authority or <u>contracting</u> entity establishes only general conditions for their use without acquiring specific works or services, should not qualify as concessions <u>within the meaning of this Directive</u>. This is normally the case</p>	partially moved from (6)

⁶ OJ L 376, 27.12.2006, p. 36.

		<p>of public domain or land lease contracts which generally contain terms concerning entry into possession by the tenant, the use to which the property is to be put, the obligations of the landlord and tenant regarding the maintenance of the property, the duration of the lease and the giving up of possession to the landlord, the rent and the incidental charges to be paid by the tenant.</p> <p><u>Agreements on the utilisation of public immovable property for the provision or operation of fixed lines or networks intended to provide a service to the public insofar as these agreements do not impose an obligation of supply or involve any acquisition of services by a contracting authority or <u>contracting</u> entity to itself or to end users, <u>should also not be considered as concessions within the meaning of this Directive.</u></u></p>	
		<p>(6c) Contracts not involving payments to the contractor and where <u>the contractor</u> is remunerated on the basis of the regulated tariffs, calculated so as to cover all costs and investments</p>	

		borne by the contractor for providing the service, shall not be covered by this directive.	
<p>(7) Difficulties related to the interpretation of the concepts of concession and public contract have been source of continued legal uncertainty among stakeholders and have given rise to numerous judgments of the Court of Justice of the European Union on this subject. Therefore, the definition of concession should be clarified, in particular by referring to the concept of substantial operating risk. The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of an economic risk involving the possibility that it will not recoup the investments made and the costs incurred in operating the works or services awarded. The application of specific rules governing the award of concessions would not be justified if the contracting authority or entity relieved the contractor of any potential loss, by guaranteeing a minimal revenue, equal or higher to the costs that the contractor has to incur in relation with the performance</p>	<p>(7) Difficulties related to the interpretation of the concepts concept of concession and public contract have been source of generated continued legal uncertainty among stakeholders and have given rise to numerous judgments of the Court of Justice of the European Union on this subject. Therefore, the definition of concession should be clarified, in particular by referring to the concept of substantial operating risk. The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of a substantial part of the economic risk involving the possibility that it will not recoup the investments made and the costs incurred in operating the works or services awarded under normal operating conditions. The fact that the risk is very limited from the outset, in particular because of the detailed rules of public law governing the works or services which are the object of the concession, should not preclude the qualification of the contract as a</p>	<p>(7) Difficulties related to the interpretation of the concepts of concession and public contract have been the source of continued legal uncertainty among stakeholders and have given rise to numerous judgments of the Court of Justice of the European Union[...]. Therefore, the definition of concession should be clarified, in particular by referring to the concept of [...] operating risk. The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of an operating risk of economic nature involving the possibility that it will not recoup all the investments made and the costs incurred in operating the works or services awarded.</p> <p>The application of specific rules governing the award of concessions would not be justified if the contracting authority or <u>contracting</u> entity relieved the contractor of any potential loss, by guaranteeing a[...] revenue, equal or higher to the investments made and the costs that</p>	

of the contract. At the same time it should be made clear that certain arrangements which are fully paid by a contracting authority or a contracting entity should qualify as concessions where the recoupement of the investments and costs incurred by the operator for execution the work or providing the service depends on the actual demand for or the availability of the service or asset.	concession. The application of specific rules governing the award of concessions would not be justified if the contracting authority or entity grantor relieved the contractor concessionaire of any potential loss, by guaranteeing a minimal revenue, equal or higher to the costs that the contractor has to incur in relation with the performance of the contract. At the same time it should be made clear that certain arrangements which are fully paid by a contracting authority or a contracting entity should qualify as concessions where the <i>recouping</i> of the <i>investments</i> and costs incurred by the operator for execution the work or <i>providing</i> the service depends on the actual demand for or the availability of the service or asset. [Am. 12]	the contractor has to incur in relation with the performance of the contract. At the same time it should be made clear that certain arrangements which are fully paid by a contracting authority or a contracting entity should qualify as concessions where the recoupment of the investments and costs incurred by the operator for executing the work or providing the service depends on the actual demand for or the supply of the service or asset.	
(8) Where sector specific regulation provides for a guarantee to the concessionaire on breaking even on investments and costs incurred for operating the contract, such contract should not qualify as a concession within the meaning of this Directive.	(8) Where sector specific regulation provides for a guarantee to the concessionaire on breaking even on investments and costs incurred for operating the contract, such contract should not qualify as a concession within the meaning of this Directive.	(8) Where sector specific regulation eliminates the risk by providing for a guarantee to the concessionaire on breaking even on investments and costs incurred for operating the contract, such contract should not <u>be regarded</u> as a concession within the meaning of this Directive. This does not exclude the award of concessions in sectors, such as those with regulated tariffs, to the extent that an operating risk,	

		<p>however limited, can still be transferred to the concessionaire. This is also the case where operating risk is limited by means of contractual arrangements providing for partial compensation including compensation in the event of early termination of the concession for reasons attributable to the contracting authority or for reasons of force majeure.</p>	
	<p><i>(8a) An operating risk should stem from the factors which are outside the control of the parties and thus can not result from inappropriate performance of the contract by any of the parties to the contract. It is defined as the risk of exposure to the vagaries of the market, which may consist of either a demand risk or a supply risk, or both a demand and supply risk. The operating risk may include for instance the risk that supply of the services will not match demand, the risk that those liable will be unable to pay for the services provided, or the risk that the costs of operating the services will not fully be met by revenue. [Am. 13]</i></p>		

<p>(9) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting entities pursuant to Article 4 (1) (1) nor public undertakings are subject to its provisions only to the extent that they exercise one of the activities covered on the basis of such rights. <i>It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive. This legislation should include Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community</i></p>	<p>(9) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting entities pursuant to Article 4 (1) (1) nor public undertakings 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, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive. This legislation should include Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services</p>	<p>(9) Operating risk must be understood as the risk of exposure to the vagaries of the market. It may consist in either a demand or a supply risk or in both a demand and a supply risk. Demand risk is to be understood as the risk on actual demand for the works or services which are the object of the contract. Supply risk is to be understood as the risk on the provision of the works or services which are the object of the contract, in particular the risk that the provision of the services will not match demand. Risks such as those linked to bad management, contractual defaults by the economic operator or to a force majeure event are not decisive for the purposes of classification as a concession, since those risks are inherent in every contract, whether it be a public procurement contract or a concession. For the purpose of assessment of the operating risk the net present value of all the investments, costs and revenues of the concessionaire can be taken into account in a consistent and uniform manner.</p>	
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<p><i>postal services and the improvement of quality of service, Directive 94/22/EC of the European Parliament and of the Council of 20 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70. The increasingly diverse forms of public action made it necessary to define more clearly the notion of procurement itself. The Union rules on concessions refer to the acquisition of works or services for a consideration consisting in exploitation of those works or services. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works or services in question not requiring in all cases a transfer of ownership to contracting authorities or contracting entities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts</i></p>	<p>and the improvement of quality of service, Directive 94/22/EC of the European Parliament and of the Council of 20 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70. The increasingly diverse forms of public action made it necessary to define more clearly the notion of procurement itself. The Union rules on concessions refer to the acquisition of works or services for a consideration consisting in exploitation of those works or services. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works or services in question not requiring in all cases a transfer of ownership to contracting authorities or contracting entities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for</p>		
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<i>received where they are not used for the purposes intended, does not usually fall under this Directive.</i>	the purposes intended, does not usually fall under this Directive. [Am. 14]		
		<p>(9a) It should be clarified that a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity should not be considered as being a "body governed by public law" since the needs in the general interest, that it has been set up to meet or been given the task of meeting, can be deemed to have an industrial or commercial character. Similarly, the condition relating to the origin of the funding of the body considered, has also been examined by jurisprudence, which has clarified i. a. that financed for "the most part" means for more than half and that such financing may include payments from users which are imposed, calculated and collected according to rules of public law.</p>	

		<p>(9b) Entities which are neither contracting entities pursuant to Article 4 paragraph 1 point (1) nor public undertakings are subject to the provisions of this Directive only to the extent that they exercise one of the activities covered on the basis of special or exclusive rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive. This legislation should include Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas⁷, Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity⁸, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for</p>	
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⁷ OJ L 204, 21.7.1998, p. 1

⁸ OJ L 27, 30.1.1997, p. 20.

		<p>the development of the internal market of Community postal services and the improvement of quality of service⁹, Directive 94/22/EC of the European Parliament and of the Council of 20 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons¹⁰ and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70¹¹.</p> <p>[...]</p> <p>It should also be clarified that this list of legislation is not exhaustive and that rights in any form, including by way of acts of concession, which have been granted by means of other procedures based on objective criteria and for which adequate publicity has been ensured do not constitute special or exclusive rights</p>	
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⁹ OJ L 15, 21.1.1998, p. 14.

¹⁰ OJ L 164, 30.6.1994, p. 3.

¹¹ OJ L 315, 3.12.2007, p. 1.

		for the purposes of defining the scope of this Directive <i>rationae personae</i> . The concept of exclusive rights is also used in Article 8 and Article 26 with a wider meaning, referring to a right to exclusively provide a given service in a given geographic area.	
(10) It has also proven necessary to clarify what should be understood as a single procurement, with the effect that the aggregate value of all concessions concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this Directive, and that the procurement should be advertised as a whole, possibly split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project. Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting authority, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked.	(10) It has also proven necessary to clarify what <i>This Directive</i> should be understood as a single procurement, with the effect that the aggregate <i>only apply to concession contracts whose value is equal to or greater than a certain threshold, which should reflect the clear cross-border interest of concessions to economic operators located in other Member States. Consequently, the method of calculating the estimated value of a concession needs to be defined, and should be identical for works and services concessions, as most contracts are mixed. It should include taking into account the cumulative turnover of the concession concerned, excluding tax, over the duration of the contract estimated by the grantor. The value of a concession should take into account the value of all concessions</i>	deleted	

	<p>concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this Directive, and that the procurement should be advertised as a whole, possibly split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular <i>the works and/or services covered by the contract and forming part of the same concession</i> project. Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting authority <i>grantor</i>, the fact that the different elements <i>purchased of the concession</i> fulfil a single economic and technical function, that they are otherwise logically interlinked, <i>or that they require the same types of investment by the concessionaire</i>.</p> <p>[Am. 15]</p>		
<p>(11) To ensure a real opening up of the market and a fair balance in the application of concession award 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</p>	<p>(11) To ensure a real opening up of access to the market and a fair balance in the application of concession award rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be <i>clearly</i> identified on a basis other than their legal status. It should be ensured, therefore, that The</p>	<p>(11) To ensure a real opening up of the market and a fair balance in the application of concession award 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</p>	

contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.	equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. should be ensured. It is also necessary to ensure, in <i>accordance</i> with Article 345 <i>TFEU</i> , that the rules governing the system of property ownership in Member States are not prejudiced. [Am. 16]	contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the <u>TFEU</u> , that the rules governing the system of property ownership in Member States are not prejudiced. For this reason, specific and uniform rules should apply to concessions awarded by entities exercising one of the abovementioned activities for purposes of pursuing such activities, independently of whether they are state, local or regional authorities, bodies governed by public law, public undertakings or other entities enjoying from special or exclusive rights. Entities which are responsible, under national law, for the provision of services related to one of the activities referred to in Annex III, should be presumed to pursue such activities.	
(12) Concessions may be awarded by contracting entities 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 concession intended to cover several activities should be subject to the rules	(12) Concessions may be awarded by contracting entities a grantor 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 concession intended to cover several activities should be subject to the rules		

<p>applicable to the activity for which it is principally intended. Determination of the activity for which the concession is principally intended may be based on an analysis of the requirements which the specific concession must meet, carried out by the contracting entity for the purposes of estimating the concession value and drawing up the concession award documents. In certain cases, it might be objectively impossible to determine for which activity the concession is principally intended. The rules applicable to such cases should be indicated.</p>	<p>applicable to the activity for which it is principally intended. Determination of the activity for which the concession is principally intended may be based on an analysis of the requirements which the specific concession must meet, carried out by the contracting entity grantor for the purposes of estimating the concession value and drawing up the concession award documents. In certain cases, it might be objectively impossible to determine for which activity the concession is principally intended. The rules applicable to such cases should be indicated. [Am. 17]</p>		
<p>(13) It is appropriate to exclude from the scope of this Directive certain services concessions awarded to an economic operator which is itself a contracting authority or a contracting entity on the basis of an exclusive right which that operator enjoys under published national law or administrative act and which has been granted in accordance with the Treaty and Union sectoral legislation concerning the management of networks infrastructure related to the activities set out in annex III, since such exclusive right makes it impossible to follow a competitive procedure for the award. By way of</p>	<p>(13) It is appropriate to exclude from the scope of this Directive certain services concessions <i>related to an activity set out in Annex III, including those services concessions concerning the management of network infrastructure related to such an activity, when those concessions are</i> awarded to an economic operator which is itself a contracting authority or a contracting entity on the basis of <i>enjoys</i> an exclusive right which that operator enjoys under published national law, <i>regulation</i> or administrative act and which has been granted in accordance with the Treaty and Union sectoral</p>	<p>(12) In certain cases, a given contracting authority or contracting entity which is State, regional or local authority or body governed by public law or a given association thereof may be the sole source for a given service, for the provision of which it enjoys an exclusive right pursuant to published laws, regulations or administrative provisions which are compatible with the <u>TFEU</u>. It should be clarified that in those situations a contracting authority or entity or association thereof may award concessions to such bodies</p>	

<p>derogation and without prejudice to the legal consequences of the general exclusion from the scope of this Directive, concessions as defined in article 8 (1) should be subject to the obligation to publish a concession award notice in view of ensuring basic transparency unless the conditions of such transparency are provided for in sectoral legislation.</p>	<p>legislation concerning the management of networks infrastructure related to the activities set out in annex III, since such exclusive right makes it impossible to follow a competitive procedure for the award. By way of derogation and without prejudice to the legal consequences of the general exclusion from the scope of this Directive, <i>such concessions as defined in article 8(1)</i> should be subject to the obligation to publish a concession award notice in view of ensuring basic transparency unless the conditions of such transparency are provided for in sectoral legislation. <i>In order to reinforce transparency, where a Member State grants an exclusive right to an economic operator for the exercise of one of the activities set out in Annex III, it should inform the Commission thereof. [Am. 18]</i></p>	<p>without the Directive being applied.</p> <p>It is also appropriate to exclude from the scope of this Directive certain services concessions awarded to other contracting entities where they are awarded on the basis of an exclusive right which that operator enjoys under published national law or administrative act and which has been granted in accordance with the Treaty and Union sectoral legislation concerning the management of networks infrastructure related to the activities set out in annex III, since such exclusive right makes it impossible to follow a competitive procedure for the award. By way of derogation and without prejudice to the legal consequences of the general exclusion from the scope of this Directive, concessions as referred to in article 8 paragraph 2 should be subject to the obligation to publish a concession award notice in view of ensuring basic transparency unless the conditions of such transparency are provided for in sectoral legislation.</p>	
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		(13) For the purposes of this Directive the notions of essential security interests, military equipment, sensitive equipment, sensitive works and sensitive services should be understood within the meaning of Directive 2009/81/EC ¹² .	
	<i>(13a) It is appropriate to exclude from the scope of this Directive concessions relating to gambling activities involving a financial risk through investing a sum of money in games of chance (that is to say lotteries or betting), awarded to one or more bodies by one or more Member States on the basis of exclusive rights granted pursuant to applicable national laws, regulations or administrative provisions in accordance with the Treaties. That exclusion is justified by the granting of exclusive rights to one or more bodies at national level, making a competitive procedure inapplicable, as well as by the need to retain the possibility for Member States to regulate the gambling sector at national level in view of their</i>		

¹² OJ L 217, 20.8.2009, p. 76.

	<i>obligations in terms of protecting public and social order. [Am. 19]</i>		
	<i>(13b) Service contracts in the fields of civil defence, civil protection, and hazard prevention should be excluded from the scope of this Directive. Those fields include, in particular, emergency ambulance services, which should be defined as separate from patient transport ambulance services. In order to ensure successful civil protection and emergency response in the interests of the general public, it should be sufficient to apply the principles of primary law. [Am. 20]</i>		
	<i>(13c) This Directive should be without prejudice to the Member States' power to award, define and organise the provision of a public service task in accordance with Protocol No 29 on the system of public broadcasting in the Member States annexed to the Treaties. [Am. 21]</i>		
(14) It is appropriate to exclude certain service and works concessions awarded to an undertakings affiliated to contracting entities, having as its principal activity the provision of such services or works to the group of which it is part, rather than offering them on the market. It is also	(14) It is appropriate to exclude certain service and works concessions awarded to an undertaking affiliated to contracting entities, with or without private participation, and having as its their principal activity the provision of such services or works to the group of which it is they	(14) It is appropriate to exclude certain service and works concessions awarded to an undertakings affiliated to contracting entities, having as its principal activity the provision of such services or works to the group of which it is part, rather than offering them on the market. It is also	

<p>appropriate to exclude certain service and works concessions 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 concessions without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.</p>	<p><i>are</i> part, rather than offering them on the market. It is also appropriate to exclude certain service and works concessions 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 concessions 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. [Am. 22]</p>	<p>appropriate to exclude certain service and works concessions 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 concessions without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.</p>	
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	<p><i>(14a) There might be in the water sector so-called multi-activities affiliated undertakings which operate in other sectors of activity with different market structures (for instance both liberalised and non-liberalised) and which may encounter structural problems in applying the requirements for exemption provided for in this Directive. Therefore, in order to enable those affiliated undertakings operating concessions for the purpose of pursuing activities in the water sector to effectively make use of this exemption, a transitional period may apply until 2020. During that period, existing concessions may be extended without this Directive being applied if certain conditions are fulfilled. Indeed, under Article 11, for an affiliated undertaking to be exempted, 80 % of its average total turnover has to derive from its activities with members of the economic group they belong to, directly to them or to citizens on behalf of them. However, for multi-activities affiliated undertakings operating in the water sector, this turnover requirement may be difficult to meet because the</i></p>		
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	<p><i>turnover of those undertakings encompasses activities both in the liberalised and non-liberalised sectors. The transitional period is intended to give the affiliated undertakings concerned a reasonable period of time to adapt their internal organisation, possibly by separating their accounting on their activities in the water sector from their other activities. In order to limit any potential distortion of competition, the contracts concerned should however end by July 2020. After the end of the transitional period, this adaptation of their internal organisation should enable them to meet the conditions for exemptions for affiliated undertakings provided for in this Directive. [Am. 23]</i></p>		
<p>(15) This Directive should not apply to concessions awarded by contracting entities and intended to permit the performance of an activity referred to in Annex III 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, as established following a procedure provided for to this purpose in accordance with Art. 27 and 28 of Directive [current</p>	<p>(15) This Directive should not apply to Concessions awarded by contracting entities and intended to permit the performance of an activity referred to in Annex III if, in the in a Member State in which this the activity is carried out, it is directly exposed to competition on markets to which access is not limited, as established following a procedure provided for to this purpose should not be considered concessions within</p>	<p>(15) This Directive should not apply to concessions awarded by contracting entities and intended to permit the performance of an activity referred to in Annex III 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, as established following a procedure provided for to this purpose in accordance with Art. 27 and 28 of Directive [current</p>	

2004/17/EC]. This 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.	<i>the meaning of this Directive, and should not therefore be subject to it. Direct exposure to competition should be analysed</i> in accordance with Articles 27 and 28 of Directive 2004/17/EC. This 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. [Am. 24]	2004/17/EC]. This 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.	
(16) This Directive does not apply to the concession award carried out by international organisations on their own behalf and for their own account. There is, however, a need to clarify to which extent it is appropriate to apply this Directive to concession award governed by specific international rules.	(16) This Directive does not apply to the concession award carried out by international organisations on their own behalf and for their own account. There is, however, a need to clarify <i>investigate</i> to which extent it is appropriate to apply this Directive to concession award <i>awards</i> governed by specific international rules <i>to allow greater legal certainty for economic operators. Given that the internal market and international markets are increasingly closely interlinked, public procurement policy should be used as a means of promoting Union principles such as transparency, an uncompromising stance on corruption, the reciprocity rule and progress on social and human rights.</i> [Am. 25]	(16) This Directive does not apply to the concession award carried out by international organisations on their own behalf and for their own account. There is, however, a need to clarify to which extent it is appropriate to apply this Directive to concession award governed by specific international rules.	

		<p>(16a) The awarding of concessions for certain audiovisual and radio media services by media providers should allow aspects of cultural or social significance to be taken into account which render application of rules on the award of concessions inappropriate. For these reasons, an exception must therefore be made for service concessions, awarded by the media service providers themselves, for the purchase, development, production or co-production of off-the-shelf programmes and other preparatory services, such as those relating to scripts or artistic performances necessary for the production of the programme. It should also be clarified that this exclusion should apply equally to broadcast media services as well as on-demand services (non-linear services).</p>	
		<p>(16b) This Directive is without prejudice to the Member States' competence to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as</p>	

		conferred, defined and organised by each Member State in accordance with the Protocol to the Treaty of Amsterdam on the system of public broadcasting in Member States.	
<p>(17) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by concession award 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 or certain contracting entities. It is therefore necessary to clarify in what cases concessions concluded between such authorities are not subject to the application of public concession award rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities or contracting entities under Art. 4 (1) (1) does not as such rule out the application of concession award rules. However, the application of concession award rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their</p>	<p>(17) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by concession award 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 or certain contracting entities. It is therefore necessary to clarify, <i>in line with that case-law, under what conditions the award of</i> concessions concluded between such public authorities are is not subject to the application of public concession award rules <i>laid down in this Directive</i>. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities or contracting entities under Art. 4 (1) (a) does not as such rule out the application of concession award rules. However, The application of concession award rules should must</p>	<p>(17) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by concession award 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 or certain contracting entities. It is therefore necessary to clarify in what cases concessions concluded between such authorities are not subject to the application of public concession award rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice.</p> <p>The sole fact that both parties to an agreement are themselves contracting authorities or contracting entities under Art. 4 (1) (1) does not as such rule out the application of concession award rules. However, the application of concession award rules should not interfere with the freedom of public</p>	

<p>public service tasks. Concessions awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities or entities should therefore be exempted from the application of the rules if the conditions set out in this Directive are fulfilled. This Directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.</p>	<p>not interfere with the freedom right of public authorities to decide freely how to organise the way they carry out their public service tasks. <i>The award of</i> concessions awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities or entities should therefore be exempted from the application of <i>this Directive</i> if the conditions are fulfilled. This Directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should The participation of a contracting authority as a tenderer in a procedure for the award of a public contract <i>concession should not</i> cause any distortion of competition. <i>To achieve this, the conditions for the exclusion of contracts from the scope of this Directive should be subject to strict interpretation. If any of the cumulative conditions for exclusion from the scope is no longer fulfilled during the term of a contract or cooperation that has been excluded from the scope of this Directive, that ongoing contract or cooperation must be opened to</i></p>	<p>authorities to decide how to organise the way they carry out their public service tasks. Concessions awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities or entities should therefore be exempted from the application of the rules if the conditions set out in this Directive are fulfilled. This Directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.</p>	
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	<p><i>competition through regular concession award procedures.</i></p> <p>[Am. 26]</p>		
	<p><i>(17a) One condition for determining whether a concession awarded by a contracting authority or a contracting entity as referred to in point 1 of Article 4(1) to another legal person should fall outside the scope of this Directive, is that such an authority or entity exercises over the legal person concerned control which is similar to that which it exercises over its own departments. This means that it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. With a view to determining whether such control is being exercised, account may also be taken of factors such as the level of representation on administrative, management or supervisory bodies, the relevant provisions of the articles of association or the ownership arrangements; it should not be required under this Directive that the controlled legal person be wholly owned by the contracting authority or entity. The above conditions should apply mutatis mutandis if a contracting authority awards a</i></p>		

	<i>public contract to a legal person it controls jointly with other contracting authorities. [Am. 27]</i>		
	<i>(17b) Cooperation between local public authorities, or between local public authorities and groups composed exclusively of local public authorities, with a view to jointly ensuring the organisation of the same public service mission for a public interest purpose as part of the internal institutional and administrative organisation of Member States, should be exempted from the scope of application of this Directive. Union law does not require public authorities to use a particular legal form in order to jointly undertake a public service task. Similarly, transfers of powers relating to public service missions involving a global transfer of responsibility between local public authorities, or between local public authorities and groups composed exclusively of local public authorities, as part of the internal institutional and administrative organisation of Member States and pursuant to applicable national law or regulation, should be exempted from the scope of application of this Directive. [Am. 28]</i>		

	<i>(17c) The duration of the concession should be limited in order to avoid market foreclosure and the prevention of competition. [Am. 29]</i>		
		<p>(17a) Certain cases exist where a legal entity acts, under the relevant provisions of national law, as an instrument or technical service to determined contracting authorities or entities, and is obliged to carry out orders given to it by these contracting authorities or entities and has no influence on the remuneration for its performance. In view of its non-contractual nature such a purely administrative relationship should not fall within the scope of concession award procedures.</p>	
		<p>(17b) Agreements, decisions or other legal instruments that organise the transfer of powers and responsibilities for the performance of public tasks between contracting authorities or contracting entities or groupings thereof and do not provide for an exchange of contractual performances against remuneration, should be considered as a matter of internal organisation of the Member State concerned and, as such, not affected in any</p>	

		way by the present Directive.	
		(17c) It should be clarified that the notion of "economic operators" should be interpreted in a broad manner so as to include any persons and/or entities which offers the execution of works and/or a work, the supply of products or the provision of services on the market, irrespective of the legal form they have chosen to operate under. Thus, natural persons, firms, branches, subsidiaries, partnerships, cooperative societies, limited companies, universities and other forms of entities should all fall within the notion of economic operator, whether or not they are "legal persons" and irrespective of their public or private nature.	
(18) In order to ensure adequate advertisement of works and services concessions above a certain value awarded by contracting entities and by the contracting authorities, the award of such contracts should be preceded by the compulsory publication of a concession notice in the Official Journal of the European Union. The thresholds should reflect the clear cross-border interest of concessions to economic operators located in other Member States. To	(18) In order to ensure adequate advertisement of works and services concessions <i>equal to or</i> above a certain value awarded by contracting entities and by the contracting authorities, <i>threshold</i> , the award of such contracts should be preceded by the compulsory publication of a concession notice in the Official Journal of the European Union. The thresholds should reflect the clear cross-border interest of concessions to economic operators located in other	(18) In order to ensure adequate advertisement of works and services concessions above a certain value awarded by contracting entities and by the contracting authorities, the award of such contracts should be preceded by the compulsory publication of a concession notice in the Official Journal of the European Union. The threshold should reflect the clear cross-border interest of concessions to economic operators	

calculate the value of a services concession, account must be taken of the estimated value of all services to be provided by the concessionaire from the point of view of a potential tenderer.	Member States. To calculate the value of a services concession, account must be taken of the estimated value of all services to be provided by the concessionaire from the point of view of a potential tenderer. [Am. 30]	located in other Member States. To calculate the value of a [...]concession, account must be taken of the estimated [...]total revenue of the concessionaire, net of VAT, to be received from third parties and from the contracting authority or entity, including options, in consideration for the works and services estimated from the point of view of a potential tenderer.	
(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in very exceptional circumstances. This exception should be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession. Only situations of objective exclusivity can justify the award of a concession without publication to an economic operator, where the situation of exclusivity has not been created by the contracting authority or contracting entity itself in view of the future award procedure, and where there are no adequate substitutes, the availability of which	(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in very exceptional circumstances. This exception should and be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession, Only situations of objective exclusivity can justify the award of a concession without publication to an economic operator, where the situation of exclusivity has not been created by the contracting authority or contracting entity itself in view of the future award procedure, and where there are no adequate substitutes, the availability of which	(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in very exceptional circumstances. This exception should be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession. Only situations of objective exclusivity can justify the award of a concession without publication to an economic operator, where the situation of exclusivity has not been created by the contracting authority or contracting entity itself in view of the future award procedure, and where there are no adequate	

should be assessed thoroughly.	should be assessed thoroughly. <i>or where the subject of the concession concerns social services or other specific services with a minimal cross-border impact.</i> [Am. 31]	substitutes, the availability of which should be assessed thoroughly.	
		<p>(19a) Concessions of a very long duration are likely to result in the foreclosure of the market, and may thereby hinder the free movement of services and the freedom of establishment. However, such a duration may be justified if it is indispensable to enable the concessionaire to recoup investments planned to perform the concession, as well as to obtain a return on the invested capital, which should correspond to a return expected under normal market</p> <p>conditions. The total value of investments should be valid at the moment of the award of the concession but may include prior investments deemed necessary for the operating of the concession. It can also include expenditure on infrastructure, copyrights, patents, equipment, logistics, hiring, training of personnel and initial expenses to operate a concession.</p>	

		<p>The maximum duration of the concession should be indicated in the concession documents unless duration is used as an award criterion of the contract. In exceptional circumstances, the concession may be of a longer duration than the one defined on the basis of the above criteria, if the contracting authority or entity demonstrates that, for example, this duration is required by sector specific legislation in accordance with the <u>TFEU</u> and pursuant to the Union's secondary law .</p>	
<p>(20) A review of so-called priority and non-priority services ('A' and 'B' services) by the Commission has shown that it is not justified to restrict the full application of procurement law to a limited group of services. As a result, this Directive should apply to a number of services (such as catering and water distribution services), which both showed a potential for cross-border trade.</p>	<p>(20) <i>In the context of the reform of public contract rules</i>, a review of so-called <i>priority</i> and <i>non-priority</i> services ('A' and 'B' services) by the Commission has shown that it is not justified to restrict the full application of procurement law to a limited group of services. As a result, this Directive should apply to a number of services (such as catering and water distribution services), which both showed a potential for cross-border trade. [Am. 32]</p>	<p>deleted</p>	

<p>(21) In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border dimension, namely the so-called services to the person such as certain social, health and educational services. These 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 concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a prior information notice and a concession award notice of any concession with a value equal to or greater than thresholds established in this Directive is an adequate way to provide information on business opportunities to potential tenderers as well as on the number and type of contracts awarded to all interested parties. Furthermore, Member States should put in place appropriate measures with reference to the award of concession contracts for these</p>	<p>(21) In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border dimension, namely the so-called services to the person such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific lighter regime should therefore be established for concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a prior information notice and a concession award notice for any concession with a value equal to or greater than thresholds the threshold established in this Directive is an adequate way to provide information on business opportunities to potential tenderers as well as on the number and type of contracts awarded to all interested parties. Furthermore, Member States should put in place appropriate measures with reference to the award of concession contracts</p>	<p>(21) In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border dimension, namely the so-called services to the person such as certain social, health, [...] educational services, rescue services, firefighting services and prison services. These 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 concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a prior information notice and a concession award notice of any concession with a value equal to or greater than thresholds established in this Directive is an adequate way to provide information on business opportunities to potential tenderers as well as on the number and type of contracts awarded to all interested parties.</p>	
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<p>services aimed at ensuring compliance with the principles of transparency and equal treatment of economic operators while allowing contracting authorities and contracting entities to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation.</p>	<p>for these services aimed at ensuring ensure compliance with the principles principle of transparency and equal treatment of economic operators while allowing contracting authorities and contracting entities the grantor to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities the grantor may take into account the need to ensure continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation. innovation and, in accordance with Article 14 TFEU and Protocol No 26 annexed to the Treaties, a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of users' rights. [Am. 33]</p>	<p>Furthermore, Member States should put in place appropriate measures with reference to the award of concession contracts for these services aimed at ensuring compliance with the principles of transparency and equal treatment of economic operators while allowing contracting authorities and contracting entities to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation.</p>	
	<p>(21a) This Directive should be 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</p>		

	<p><i>conditions regarding the quality of the service, in order to pursue its public policy objectives. It should also be without prejudice to the power of national, regional and local authorities to provide, commission and finance services of general economic interest in accordance with Article 14 TFEU and Protocol No 26 annexed to the Treaties. In addition, this Directive does not deal with the funding of services of general economic interest or with systems of aids granted by Member States, in particular in the social field, in accordance with Union rules on competition. [Am. 34]</i></p>		
<p>(22) Given the importance of the cultural context and the sensitivity of these 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 do not prevent Member States to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee . Member States and/or public authorities remain free to</p>	<p>(22) Given the importance of the cultural context and the sensitivity of these services, Member States should be given have wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this Directive do not prevent Member States to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee. Member States and/or public authorities remain free to</p>	<p>(22) Given the importance of the cultural context and the sensitivity of these 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 do not prevent Member States to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee . Member States and/or public authorities remain free to</p>	

provide these services themselves or to organise social services in a way that does not entail the conclusion of concessions, 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 authority or contracting entity, without any limits or quotas, provided such system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.	provide these services themselves or to organise social services them in a way that does not entail the conclusion of concessions, 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 authority or contracting entity, without any limits or quotas, provided such system ensures sufficient advertising and complies with the principles of transparency and non-discrimination. [Am. 35]	provide these services themselves or to organise social services in a way that does not entail the conclusion of concessions, 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 authority or contracting entity, without any limits or quotas, provided such system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.	
	<i>(22a) In order to ensure confidentiality during the procedure, grantors should not disclose information that the economic operators have forwarded to them and designated as confidential. Non-compliance with that obligation should render the grantor liable if harm can be clearly demonstrated by the economic operator. Similarly, economic operators should not disclose information that has been designated as confidential. Non-compliance with that obligation should make the economic operators liable. [Am. 36]</i>		

	<p><i>(22b) The procedure for awarding concession contracts should comprise several stages, including the publication of a concession notice allowing the grantor wishing to award a concession to make known its intention; the presentation by interested economic operators of their application in response to that notice; verification of the conditions of participation for candidates; the submission of a tender by the candidates; the grantor's right to negotiate with the tenderer on the basis of objective award criteria; the decision on the award by the grantor of the concession contract to the concessionaire and the publication of an award notice. Intermediate stages should be possible, including the selection of certain candidates authorised to submit a tender and the sending of an invitation to tender to the candidates thus selected. The grantor should also be able to approach economic operators who have not responded to the concession notice. In addition, and subject to compliance with the principles of transparency and non-discrimination, it should be possible to reverse the order of certain stages,</i></p>		
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	<p><i>including, for example, analysing submitted tenders before verifying compliance with the selection criteria. Subject to compliance with this Directive, the grantor should be allowed considerable flexibility to define the procedure leading to the choice of concessionaire, the only two mandatory stages being the publication of a concession notice at the beginning of the procedure, except where this is not required under this Directive, and the publication of an award notice at the end of the procedure. This freedom should be balanced against a requirement of transparency and equal treatment of candidates and tenderers. [Am. 37]</i></p>		
	<p><i>(22c) In order to combat fraud, favouritism and corruption and prevent conflicts of interest, Member States should adopt rules to ensure the transparency of the award procedure and the equal treatment of all candidates and tenderers. The measures adopted should establish and apply a comprehensive, actionable indicator and monitoring systems to prevent, detect and eliminate reported instances of concessions fraud, corruption, conflict of interest and other serious</i></p>		

	<i>irregularities. [Am. 38]</i>		
(23) In order to make it possible for all interested operators to submit applications and tenders, contracting authorities and contracting entities should be obliged to respect a minimum time limit for the receipt of such applications.	(23) In order to make it possible for all interested operators to submit applications and <i>or</i> tenders, contracting authorities and contracting entities <i>the grantor</i> should be obliged to respect a minimum time limit for the receipt of such applications <i>or tenders.</i> [Am. 39]	(23) In order to make it possible for all interested operators to submit applications and tenders, contracting authorities and contracting entities should be obliged to respect a minimum time limit for the receipt of such applications and tenders.	
(24) The choice and application of proportional, non-discriminatory and fair selection criteria to economic operators is crucial for their effective access to the economic opportunities related to concessions. In particular, the possibility for a candidate to rely on the capacities of other entities can be decisive to enable the participation of small and medium sized enterprises. Therefore, it is appropriate to provide that the selection criteria should relate exclusively to the technical, financial and economic capacity of operators, should be announced in the concession notice and cannot preclude an economic operator from relying on the capacities of other entities, regardless of the legal nature of its links with those entities, if the latter proves to the contracting authority or entity that it will have at	(24) The choice and application of proportional, non-discriminatory and fair selection criteria to economic operators is crucial for their effective access to the economic opportunities related to concessions. In particular, the possibility for a candidate to rely on the capacities of other entities can be decisive to enable the participation of small and medium sized enterprises. Therefore, it is appropriate to provide that the selection criteria should <i>be clearly defined, should</i> relate exclusively to the <i>professional, technical, and financial and economic capacity of operators capacities of candidates and be linked to the subject-matter of the contract,</i> should be announced in the concession notice and cannot preclude an economic operator a <i>candidate</i> from relying on the capacities of other entities, regardless	(24) The choice and application of proportional, non-discriminatory and fair selection criteria to economic operators is crucial for their effective access to the economic opportunities related to concessions. In particular, the possibility for a candidate to rely on the capacities of other entities can be decisive to enable the participation of small and medium sized enterprises. Therefore, it is appropriate to provide that the selection criteria should relate exclusively to the technical, financial and economic capacity of operators, should be announced in the concession notice and cannot preclude an economic operator, save in exceptional circumstances, from relying on the capacities of other entities, regardless of the legal nature of its links with those entities, if the	

its disposal the necessary resources.	of the legal nature of its links with those entities, if the latter proves to the contracting authority or entity grantor that it will have at its disposal the necessary resources. [Am. 40]	latter proves to the contracting authority or entity that it will have at its disposal the necessary resources.	
(25) In order to ensure transparency and equal treatment, criteria for the award of concessions should always comply with some general standards. These should be disclosed in advance to all potential tenderers, be related to the subject matter of the contract and should not offer to the contracting authority or contracting entity an unrestricted freedom of choice. They should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. In order to comply with these standards while improving legal certainty, Member States may provide for the use of the criterion of the most economically advantageous tender.	(25) In order to ensure transparency and equal treatment, criteria for the award of concessions should always comply with some general standards. These should be disclosed in advance to all potential candidates or tenderers, and be related linked to the subject matter of the contract and should not offer to the contracting authority or contracting entity an unrestricted freedom of choice. They should ensure the possibility of effective competition and be accompanied by minimum requirements that allow the information provided by the candidates or tenderers to be effectively verified by the grantor . In order to comply with these standards while improving legal certainty, Member States may provide for the use of the criterion of the most economically advantageous tender. [Am. 41]	deleted	

	<p><i>(25a) In order to better integrate social considerations in the award of concessions, the grantor should also be able to include characteristics relating to working conditions among the award criteria. Those characteristics should aim to protect the health of the staff involved in the production process or to promote the social integration of disadvantaged persons or members of vulnerable groups among the persons responsible for performing the contract, including accessibility for persons with disabilities. The grantor should also be allowed to use as award criteria the organisation, qualifications and experience of the staff assigned to the performance of the concession contract, as they may affect the quality of provision and, as a result, the economic value of the tender. In order to ensure that women and men have equal access to the labour market, the grantor should also be able to include characteristics relating to promoting gender equality among the award criteria. [Am. 42]</i></p>		
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	<p><i>(25b) Technical and functional requirements should define the characteristics required of works and/or services covered by the concession, including requirements concerning accessibility for people with disabilities or environmental performance levels. Those technical and functional requirements should be included in the concession documents and should comply with the principles of equal treatment and transparency. They should not be designed to artificially limit competition. [Am. 43]</i></p>		
<p>(26) Where contracting authorities and contracting entities choose to award a concession to the most economically advantageous tender, they should determine the economic and quality criteria on the basis of which they assess the tenders in order to identify which one offers the best value for money. The determination of those criteria depends on the object of the concession since they should allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the concession, as defined in the technical specifications and the value for money of each tender to be</p>	<p>(26) — Where contracting authorities and contracting entities choose to award a concession to the most economically advantageous tender, they should determine the economic and quality criteria on the basis of which they assess the tenders in order to identify which one offers the best value for money. The determination of those criteria depends on the object of the concession since they should allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the concession, as defined in the technical specifications and the value for money of each tender to be</p>	<p>deleted</p>	

measured.	measured. [Am. 44]		
(27) Concessions are usually long term, complex arrangements where the contractor assumes responsibilities and risks traditionally born by the contracting authorities and normally falling within their remit and contracting entities. For this reason, contracting authorities or entities should maintain a margin of flexibility in organising the awarding process, involving also a possibility to negotiate the content of the contract with the candidates. However, in order to ensure equal treatment and transparency throughout the awarding procedure, it is appropriate to provide for certain requirements as to the structure of the awarding process, including negotiations, the dissemination of information and the availability of written records. It is also necessary to provide that the initial terms of the concession notice should not be deviated from, in order to prevent unfair treatment of any potential candidates.	(27) Concessions are usually long term , long-term , complex arrangements where the contractor concessionaire assumes the responsibilities and risks traditionally born borne by the contracting authorities grantor and normally falling within their its remit and contracting entities . For this reason, contracting authorities or entities the grantor should maintain a real margin of flexibility in organising the awarding process involving also a possibility to negotiate and negotiating the content of the contract with the candidates. However in order to ensure and tenderers, while ensuring respect for the principles of equal treatment and transparency throughout the awarding procedure, it is appropriate to provide for certain requirements as to the structure of the awarding process, including negotiations, the dissemination of information and the availability of written records. It is also necessary to provide that the initial terms of the concession notice should not be deviated from, in order to prevent unfair treatment of any potential candidates. [Am. 45]	(27) Concessions are usually long term, complex arrangements where the contractor assumes responsibilities and risks traditionally borne by the contracting authorities and normally falling within their remit. For this reason, contracting authorities or entities should maintain a margin of flexibility in organising the awarding process, involving also the way the parties negotiate the content of the contract with the tenderers or candidates. However, in order to ensure equal treatment and transparency throughout the awarding process , it is appropriate to provide for basic guarantees as to the awarding process, including information on the nature and scope of the concession, limitation of the number of candidates, scope of negotiations, the dissemination of information to candidates and tenderers and the availability of appropriate records. It is also necessary to provide that the initial terms of the concession notice should not be deviated from, in order to prevent unfair treatment of any potential candidates. Furthermore, it should be clarified that the minimum requirements to be set by	

		the contracting authority or entities are those conditions and characteristics (particularly physical, functional and legal) that any tender should meet or possess.	
<p>(28) The technical specifications drawn up by contracting authorities and contracting entities need to allow concession award to be opened up to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements should be considered by contracting authorities or contracting entities. To</p>	<p>(28) The technical specifications drawn up by contracting authorities and contracting entities need to allow concession award to be opened up to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements should be considered by contracting authorities or contracting entities. To</p>	<p>(28) The technical specifications drawn up by contracting authorities and contracting entities need to allow concession award to be opened up to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. [...]</p>	

demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.	demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits. [Am. 46]		
		(28a) In any case, tenders including works and services or supplies complying in an equivalent manner with the requirements defined in the technical specifications should be considered by contracting authorities or contracting entities. In technical specifications and in award criteria, contracting authorities and contracting entities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the concession. In order to better integrate social considerations in the award of concessions, procurers may also be allowed to include, in the award criteria, characteristics related	Council: partially moved from 29

		to the working conditions.	
		<p>(28b) Concessions 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 and terrorist financing. Member States should, however, be able to provide for a derogation from these mandatory exclusions in exceptional situations where overriding requirements in the general interest make a contract award indispensable. This might, for example, be the case where urgently needed vaccines or emergency equipment can only be purchased from an economic operator to whom one of the mandatory grounds for exclusion applies. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union.</p>	partially moved from 33

		<p>(28c) Contracting authorities and 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 or other forms of grave professional misconduct, such as violation of competition rules or of intellectual property rights. Bearing in mind that the contracting authority or entity will be responsible for the consequences of its possible erroneous decision, contracting authorities and 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 means that the economic operator has violated its obligations, including obligations relating to the payment of taxes or social security contributions, unless otherwise provided by the applicable national law.</p> <p>They should also be able to exclude candidates or tenderers whose</p>	
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		<p>performance in earlier concessions or other contracts with contracting authorities or entities has shown major deficiencies with regard to substantive requirements, for instance failure to deliver or perform, significant shortcomings of the product or service delivered, making it unusable for the intended purpose, or misbehaviour that casts serious doubts as to the reliability of the economic operator. National law should provide for a maximum duration for such exclusions.</p>	
		<p>(28ca) Allowance should, however, be made for the possibility that economic operators may adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour. These measures may consist in particular in personnel and organisation measures such as the severance of all links with persons or organisations involved in the misbehaviour, appropriate staff reorganisation measures, the implementation of reporting and control systems, the creation of an internal audit structure to monitor compliance and the adoption of</p>	

		<p>internal liability and compensation rules. Where such measures offer sufficient guarantees, the economic operator in question should no longer be excluded on these grounds. Economic operators should have the possibility to request that compliance measures taken with a view to possible admission to the concession award procedure are examined. However, it should be left to Member States to determine the exact procedural and substantive conditions for the application of this possibility. They are, in particular, free to decide whether they want to leave it to the individual contracting authorities or contracting entities to do the relevant assessments or entrust other authorities on a central or subcentral level with this task.</p>	
		<p>(28d) The contracting authority or entity shall assess the tenders on the basis of one or several award criteria. In order to ensure transparency and equal treatment, criteria for the award of concessions should always comply with some general standards. These standards may refer to factors which are not purely economic, but influence the value of a tender from</p>	

		the point of view of the contracting authority. The criteria should be disclosed in advance to all potential candidates or tenderers, be related to the subject matter of the contract and should not offer to the contracting authority or contracting entity an unrestricted freedom of choice. They should permit effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.	
(29) In technical specifications and in award criteria, contracting authorities and contracting entities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the concession. In order to better integrate social considerations in the award of concessions, procurers may also be allowed to include, in the award criteria, characteristics related to the working conditions. However, where the contracting authorities or contracting entities use the most economically advantageous tender,	(29) In technical specifications and in award criteria, contracting authorities and contracting entities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the concession. In order to better integrate social considerations in the award of concessions, procurers may also be allowed to include, in the award criteria, characteristics related to the working conditions. However, where the contracting authorities or contracting entities use the most economically advantageous tender,	---	Council: partially moved to 28a

<p>such criteria may only relate to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. In this case, any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services¹³ and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade</p>	<p>such criteria may only relate to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. In this case, any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade</p>		
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¹³ OJ L 18, 21.1.1997, p.1.

<p>Agreements to which the Union is party. Contracting authorities and contracting entities should, also where they use the criterion of the most economically advantageous tender, be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the concession in question, as this may affect the quality of concession performance and, as a result, the economic value of the tender.</p>	<p>Agreements to which the Union is party. Contracting authorities and contracting entities should, also where they use the criterion of the most economically advantageous tender, be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the concession in question, as this may affect the quality of concession performance and, as a result, the economic value of the tender.</p> <p>[Am. 47]</p>		
<p>(30) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of concession award processes. They should become the standard means of communication and information exchange in concession award procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication</p>	<p>(30) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency, <i>speed</i> and transparency of concession award processes. They should become the standard means of communication and information exchange in concession award procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication</p>	<p>deleted</p>	

including adequate functionalities can enable contracting authorities and contracting entities to prevent, detect and correct errors that occur during procurement procedures.	including adequate functionalities can enable contracting authorities and contracting entities to prevent, detect and correct errors that occur during procurement procedures. <i>It should also be made obligatory to send a concession notice and an award notice and to make the concession documents available electronically.</i> [Am. 48]		
(31) Contracting authorities and contracting entities from different Member States may be interested in cooperating and in awarding jointly public concessions in order to take the best benefit of internal market potential in terms of economies of scale and risk-benefit sharing, notably for innovative projects involving a greater amount of risk than reasonably supportable by a single contracting authority or contracting entity. Therefore new rules on cross-border joint concession award designating the applicable law should be established in order to facilitate setting up cross-border joint public concession award. In addition, contracting authorities and contracting entities from different Member States may set up joint legal bodies established under national or Union law. Specific rules should be	(31) Contracting authorities and contracting entities from different Member States may be interested in cooperating and in awarding jointly public concessions in order to take the best benefit of internal market potential in terms of economies of scale and risk-benefit sharing, notably for innovative projects involving a greater amount of risk than reasonably supportable by a single contracting authority or contracting entity. Therefore new rules on cross-border joint concession award designating the applicable law should be established in order to facilitate setting up cross-border joint public concession award. In addition, contracting authorities and contracting entities from different Member States may set up joint legal bodies established under national or Union law. Specific rules should be	deleted	

established for such form of joint concession award.	established for such form of joint concession award. [Am. 49]		
(32) The laws, regulations and collective agreements, at both national and European Union level, which are in force in the areas of employment conditions and safety at work should apply during performance of a concession, providing that such rules, and their application, comply with Union law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a concession, 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 ¹⁴ lays down the minimum conditions which must be observed by the host country in respect of such posted workers.	(32) The laws, regulations and collective agreements, at both national and European Union level, which are in force in the areas of employment conditions and safety at work should apply during performance of a concession, providing that such rules, and their application, comply with Union law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a concession, 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 lays down the minimum conditions which must be observed by the host country in respect of such posted workers.	(32) The laws, regulations and collective agreements, at both national and European Union level, which are in force in the areas of employment conditions and safety at work should apply during performance of a concession, providing that such rules, and their application, comply with Union law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a concession, 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 ¹⁵ as interpreted by the European Court of Justice lays down the minimum conditions which must be observed by the host country in respect of such posted workers. The applicable laws, regulations, administrative provisions and collective agreements, at both national and Union level, that are	

¹⁴ OJ L 18, 21.1.1997, p. 1.

¹⁵ OJ L 18, 21.1.1997, p. 1.

		<p>in force in the areas of employment conditions and safety at work should apply during the performance of a public contract, provided that such rules, and their application, comply with Union law. These obligations could hence be mirrored in concession performance clauses. It should also be possible to include clauses ensuring compliance with collective agreements in compliance with Union law in concessions. Concession performance conditions may also be intended to favour the protection of the environment or animal welfare and, to comply in substance with fundamental ILO Conventions, and to recruit a higher number of disadvantaged persons than is required under national legislation. Non-compliance with obligations set by applicable national legislation or collective agreements may be considered to be grave misconduct on the part of the economic operator concerned, permitting the exclusion of that economic operator from the procedure for the award of a concession.</p>	
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<p>(33) Concessions should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities and contracting entities should be given the possibility to exclude candidates or tenderers for serious violations of Union or national law aimed at the protection of public interests compatible with the Treaty or where the economic operator has shown significant or persistent deficiencies in the performance of a prior concession or concessions of a similar nature with the same contracting authority or contracting entity.</p>	<p>(33) Concessions should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at Union <i>level</i>. Furthermore, contracting authorities and contracting entities <i>grantors</i> should be given the possibility to exclude candidates or tenderers for serious violations of Union or national law aimed at the protection of public interests compatible with the <i>Treaties</i> <i>or provided that it has been established by a competent body that the violation has taken place</i>, where the economic operator has shown significant or persistent deficiencies in the performance of a prior concession or concessions of a similar nature with the same contracting authority or contracting entity <i>grantor, for serious or repeated violations of social, environmental or labour law.</i> [Am. 50]</p>	<p>(33) Concessions contracts typically involve long term and complex technical and financial arrangements which are often subject to changing circumstances. Thus it is necessary to clarify the conditions under which modifications of a concession during its execution does not require a new award procedure. This will be notably the case where circumstances which a diligent contracting authority or entity could not foresee justify an adaptation of the original terms of the award. However, in other cases and taking into account the relevant case-law of the Court of Justice of the European Union, a new award procedure is required where material changes to the initial concession, demonstrate the intention of the parties to renegotiate essential terms or conditions of the concession.</p> <p>This concerns notably situations where the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure. An exceptional and temporary extension of the term of the concession strictly aimed at ensuring the continuity of</p>	<p>Council: partially moved from 34</p>
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		the provision of the service pending the award of a new concession should not normally qualify as a material change to the initial concession.	
<p>(34) It is necessary to clarify the conditions under which modifications of a concession during its execution require a new award procedure, taking into account the relevant case-law of the Court of Justice of the European Union. A new award procedure is required in case of material changes to the initial concession, demonstrating the intention of the parties to renegotiate essential terms or conditions of that concession. This is notably the case if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure. An exceptional and temporary extension of the term of the concession strictly aimed at ensuring the continuity of the provision of the service pending the award of a new concession should not normally qualify as a material change to the initial concession.</p>	<p>(34) It is necessary to clarify the conditions under which modifications of a concession during its execution require a new award procedure, taking into account the relevant case-law of the Court of Justice of the European Union. <i>Any concession in force may be modified by means of a supplementary agreement, subject to this Directive.</i> A new award procedure is required, <i>however, in the</i> case of material changes to the initial concession, demonstrating the intention of the parties to renegotiate essential terms or conditions of that concession. This is notably the case if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure. An exceptional and temporary extension of the term of the concession strictly aimed at ensuring the continuity of the provision of the service pending the award of a new concession should not normally qualify as a material change to the initial concession.</p> <p><i>Nevertheless, where a contract has reached its term the grantor and the</i></p>	<p>(34) Modifications of the concession, resulting in a minor change of the concession value up to a certain value should not qualify as substantial and therefore always be possible without the need to carry out a new concession award procedure. To this effect and in order to ensure legal certainty this directive should provide for “de minimis” thresholds, below which a new award procedure is not necessary. Modification of the concession above those thresholds should be possible to the extent they comply with conditions laid down in Article 42.</p>	

	<i>concessionaire should refrain from such extensions for purposes of investments not essential to the performance of the concession and which would be implemented solely with a view to extending the duration thereof. [Am. 51]</i>		
	<i>(34a) As concessions are often long-term contracts, in order to determine their value the relevant quantitative data need to be updated whenever the value of a concession is assessed. In this way the legal approach can be made consistent with the economic and financial reality of the concession contract. [Am. 52]</i>		
(35) Contracting authorities and contracting entities can be faced with external circumstances that they could not foresee when they awarded the concession. In this case, a certain degree of flexibility is needed to adapt the concession to these circumstances without a new award procedure. The notion of circumstances that a diligent contracting authority or contracting entity could not foresee refers to those circumstances which could not be predicted despite reasonably diligent preparation of the initial award by the contracting authority or contracting entity, taking into account its	(35) Contracting authorities and contracting entities Grantors can be faced with external circumstances that they could not foresee when they awarded the concession. In this case, a certain degree of flexibility is needed to adapt the concession to these circumstances without a new award procedure. The notion of circumstances that a diligent contracting authority or contracting entity grantor could not foresee refers to those circumstances which could not be predicted despite reasonably diligent preparation of the initial award by the contracting authority or contracting entity grantor , taking into	(35) [...] The notion of circumstances that a diligent contracting authority or contracting entity could not foresee refers to those circumstances which could not be predicted despite reasonably diligent preparation of the initial award by the contracting authority or 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	

<p>available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value. However, this cannot apply in cases where a modification results in an alteration of the nature of the overall procurement, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement since, in such a situation, a hypothetical influence on the outcome may be assumed.</p>	<p>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 concession, for instance by replacing the works, supplies or services to be procured for which the contract is to be awarded by something different or by fundamentally changing the type of procurement since, in such a situation, a hypothetical introducing conditions such that an influence on the outcome may be assumed. [Am. 53]</p>	<p>cannot apply in cases where a modification results in an alteration of the nature of the overall concession, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of concession since, in such a situation, a hypothetical influence on the outcome may be assumed. This would be notably the case where the modification substantially alters the initial sharing of the risk between the contracting authority or entity and the concessionaire.</p>	
<p>(36) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the concession to competition. However, the successful tenderer performing the concession may undergo certain structural changes during the performance of the concession, such as purely internal reorganisations, mergers and acquisitions or</p>	<p>(36) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the concession to competition. However, the successful tenderer performing the concession may undergo certain structural changes during the performance of the concession, such as purely internal reorganisations, mergers and acquisitions, transfer of</p>	<p>(36) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the concession to competition, notably where a concession is terminated because of deficiencies in the performance; However, the successful tenderer performing the concession may, in particular where the contract has been awarded to</p>	

<p>insolvency or be substituted on the basis of a contractual clause known to all tenderers and in line with the principles of equal treatment and transparency. Such structural changes should not automatically require new award procedures for all concessions performed by that undertaking.</p>	<p><i>property or assets between companies</i> or insolvency or be substituted on the basis of a contractual clause known to all tenderers and in line with the principles of equal treatment and transparency. Such structural changes should not automatically require new award procedures for all concessions performed by that undertaking. [Am. 54]</p>	<p>more than one undertaking, undergo certain structural changes during the performance of the concession, such as purely internal reorganisations, mergers and acquisitions or insolvency or be substituted on the basis of a contractual clause known to all tenderers and in line with the principles of equal treatment and transparency. Such structural changes should not automatically require new award procedures for all concessions performed by that concessionaire.</p> <p>However, in other cases and in line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the concession to competition.</p>	
<p>(37) Contracting authorities or contracting entities should have the possibility to provide for modifications to a concession in the concession contract itself, by way of review clauses which should not give them unlimited discretion. This Directive should therefore set out to what extent modifications may be provided for in the initial concession.</p>	<p>(37) Contracting authorities or contracting entities Grantors should have the possibility to provide for modifications to a concession in the concession contract itself, by way of review clauses which should not give them unlimited discretion. This Directive should therefore set out to what extent modifications may be provided for in the initial concession. [Am. 55]</p>	<p>(37) Contracting authorities or contracting entities should have the possibility to provide for modifications to a concession in the concession contract itself, by way of review clauses which should not give them unlimited discretion. This Directive should therefore set out to what extent modifications may be provided for in the initial concession.</p>	

<p>(38) In order to adapt to rapid technical and economic developments, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make mandatory technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in concession award procedures conducted using electronic means of communication taking into account technological developments and administrative needs. Furthermore, the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy these needs, the Commission should be empowered to keep the list of legislative acts including LCC</p>	<p>(38) In order to adapt to rapid technical and economic developments, the power to adopt acts in accordance with Article 290 of the Treaty <i>TFEU</i> should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make mandatory technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in concession award procedures conducted using electronic means of communication taking into account technological developments and administrative needs. Furthermore, the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy these needs, the Commission should be empowered to keep the list of legislative acts including LCC</p>	<p>deleted</p>	
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methodologies up-to date.	methodologies up-to date. <i>in order to update CPV reference numbers, including those in Annexes I and X, if this is necessitated by the changes in the CPV nomenclature. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission should, when preparing and drawing up delegated acts, ensure the simultaneous, timely and appropriate transmission of all relevant documents to the European Parliament and to the Council.</i> [Am. 56]		
(39) In order to ensure adequate judicial protection of candidates and tenderers in the concession award procedures, as well as to make effective the enforcement of the rules of this Directive and of the Treaty principles, Council Directive 89/665/EEC on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts ¹⁶ and Council Directive 92/13/EEC coordinating the	(39) In order to ensure adequate judicial protection of candidates and tenderers in the concession award procedures, as well as to make effective the enforcement of the rules of this Directive and of the Treaty principles, Council Directive 89/665/EEC on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts and Council Directive 92/13/EEC coordinating the	(39) In order to ensure adequate judicial protection of candidates and tenderers in the concession award procedures, as well as to make effective the enforcement of the rules of this Directive and of the Treaty principles, Council Directive 89/665/EEC on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts ¹⁸ and Council Directive 92/13/EEC coordinating the	

¹⁶ OJ L 395, 30.12.1989, p. 33.

¹⁸ OJ L 395, 30.12.1989, p. 33.

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 ¹⁷ should also apply to services concessions and to works concessions awarded by both contracting authorities and contracting entities. Directives 89/665/EEC and 92/13/EEC should, therefore, be amended accordingly.	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 should also apply to services concessions and to works concessions awarded by both contracting authorities and contracting entities. Directives 89/665/EEC and 92/13/EEC should, therefore, be amended accordingly.	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 ¹⁹ should also apply to services concessions and to works concessions awarded by both contracting authorities and contracting entities. Directives 89/665/EEC and 92/13/EEC should, therefore, be amended accordingly.	
		(39a) This Directive will not apply to concessions tendered or awarded before its entry into force.	
(40) The processing of personal data pursuant to this Directive should be governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ²⁰ .	(40) The processing of personal data pursuant to this Directive should be governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ²¹ .	(40) The processing of personal data pursuant to this Directive should be governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ²² .	

¹⁷ OJ L 76, 23.3.1992, p. 14.

¹⁹ OJ L 76, 23.3.1992, p. 14.

²⁰ OJ L 281, 23.11.1995, p. 31.

²¹ OJ L 281, 23.11.1995, p. 31.

²² OJ L 281, 23.11.1995, p. 31.

<p>(41) The law of the Union on public procurement requires Member States to consistently and systematically monitor the implementation and functioning of those rules in order to ensure the efficient and uniform application of Union law. Hence, where Member States designate a single national authority in charge of monitoring, implementation and control of public procurement, that authority may have the same responsibilities regarding concessions. A single body with overarching tasks should ensure an overview of main difficulties in implementation and suggest appropriate remedies to more structural problems. That body may also provide immediate feedback on the functioning of policy and potential weaknesses in national legislation and practice, thus contributing to the quick identification of solutions and the improvement of concession award procedures.</p>	<p>(41) The law of the Union on public procurement requires Member States to consistently and systematically monitor the implementation and functioning of those rules in order to ensure the efficient and uniform application of Union law. Hence, where Member States designate a single national authority in charge of monitoring, implementation and control of public procurement, that authority may have the same responsibilities regarding concessions. A single body with overarching tasks should ensure an overview of main difficulties in implementation and suggest appropriate remedies to more structural problems. That body may also provide immediate feedback on the functioning of policy and potential weaknesses in national legislation and practice, thus contributing to the quick identification of solutions and the improvement of concession award procedures. [Am. 57]</p>	<p>(41) The law of the Union on public procurement requires Member States to consistently and systematically monitor the implementation and functioning of those rules in order to ensure the efficient and uniform application of Union law. [...]</p>	
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<p>(42) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.</p>	<p>(42) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council. [Am. 58]</p>	<p>(42) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.</p>	
<p>(43) In order to ensure uniform conditions for the implementation of this Directive; the procedure for drawing up and transmission of notices and for sending and publishing data referred to in Annexes IV to VI, the amendment of the thresholds implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers²³. The advisory</p>	<p>(43) In order to ensure uniform conditions for the implementation of this Directive; the procedure for drawing up and transmission of notices and for sending and publishing data referred to in Annexes IV to VI, the amendment of the thresholds implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. The advisory</p>	<p>(43) The Commission should review the effects on the internal market resulting from the application of the thresholds and report thereon to the European Parliament and the Council at the latest three years after the entry into force of this Directive. In so doing, it should take into account factors such as the level of cross-border concessions, SME participation, transaction costs and the cost-benefit trade-off.</p> <p>According to Article XXIV(7) of the World Trade Organisation Agreement on Government Procurement it shall be the subject to further negotiations three years</p>	

²³ OJ L 55, 28.2.2011, p. 13.

procedure should be used for the adoption of implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, these acts characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive.	procedure should be used for the adoption of <i>those</i> implementing acts, which do not have any impact either from the financial point of <i>view</i> or on the nature and scope of obligations stemming from this Directive. On the contrary, these acts are characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive. [Am. 59]	after its entry into force and periodically thereafter. In that context, the appropriateness of the level of thresholds could also be examined, bearing in mind the impact of inflation and transaction costs; in case the level of thresholds should change as a consequence, the Commission should, where appropriate, adopt a legislative proposal amending the thresholds set out in this Directive.	
		(43a) In order to ensure uniform conditions for the implementation of this Directive; the procedure for drawing up and transmission of notices and for sending and publishing data referred to in Annexes IV to VI, should be exercised by the Commission. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers ²⁴ . The advisory procedure should be used for the adoption of	

²⁴ OJ L 55, 28.2.2011, p. 13.

		implementing acts, which do not have any impact either from the financial point of views or on the nature and scope of obligations stemming from this Directive. On the contrary, these acts characterised by a mere administrative purpose and serve to facilitate the application of the rules set by this Directive.	
(44) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], 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,	(44) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], 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,	(44) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], 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:	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	
TITLE I DEFINITIONS, GENERAL PRINCIPLES AND SCOPE	TITLE I DEFINITIONS, GENERAL PRINCIPLES AND SCOPE	TITLE I SUBJECT-MATTER , SCOPE, PRINCIPLES AND DEFINITIONS	
CHAPTER I Definitions, general principles and scope	CHAPTER I Definitions, general principles and scope	CHAPTER I Scope, general principles and definitions	
Section I Definitions and scope	Section I Definitions, and scope, thresholds and ways of calculating the value of a concession [Am. 60]	Section I Scope, General Principles, definitions and Thresholds	
<i>Article 1</i> <i>Subject-matter and scope</i>	<i>Article 1</i> <i>Subject-matter and scope</i>	<i>Article 1</i> <i>Subject-matter [...]</i>	
1. This Directive establishes rules on the procedures for procurement by contracting authorities and by contracting entities with respect to concessions whose value is estimated to be not less than the thresholds laid down in Article 5.	1. This Directive establishes rules on the procedures for procurement by contracting authorities and by contracting entities with respect to concessions which are applicable to the procedures for the award of works or services concession contracts whose value is estimated to be not less than the thresholds laid down in Article 5-6 and which are awarded to economic operators by one of the following actors: [Am. 61]	1. This Directive establishes rules on the procedures for procurement by contracting authorities and by contracting entities with respect to concessions whose value is equal to or greater than the threshold laid down in Article 5.	

2. This Directive applies to the acquisition of works or services, including supplies which are incidental to the subject matter of a concession, from economic operators chosen by either of the following:	2. This Directive applies to the acquisition of works or services, including supplies which are incidental to the subject matter of a concession, from economic operators chosen by either of the following: [Am. 61]	2. The application of this Directive is subject to Articles 36, 51, 52, 62 and 346 of the <u>TFEU</u>.	
a) Contracting authorities whether or not the works or services including the related supplies, are intended for a public purpose;	a) Contracting authorities whether or not the works or services including the related supplies, are intended for a public purpose; [Am. 61]	---	Council: moved to Article 1a
b) Contracting entities provided that the works or services including the related supplies, are intended for the pursuit of one of the activities referred to in Annex III.	b) Contracting entities provided that the works or services including the related supplies, are intended for the pursuit of one of the activities referred to in Annex III. [Am. 61]	---	
		3. This Directive does not affect the discretion of national, regional and local authorities to decide on the most appropriate means of performing the works and providing the services falling within their competences.	
		4. This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules,	

		and what specific obligations they should be subject to. Equally, this Directive does not affect the way in which the Member States organise their social security legislation.	
		5. The scope of this Directive shall not include non-economic services of general interest.	
		<i>Article 1a</i> <i>Scope</i>	
		This Directive applies to the acquisition of works or services, including supplies which are incidental to the subject matter of a concession, by means of a concession as defined in paragraphs 2 and 7 of Article 2 from economic operators chosen by either of the following:	
		a) Contracting authorities whether or not the works or services including the supplies, are intended for a public purpose;	

		b) Contracting entities provided that the works or services including the supplies, are intended for the pursuit of one of the activities referred to in Annex III.	
	<i>Article 1a</i> <i>Principle of free administration by public authorities</i>		
	<i>This Directive recognises the principle of free administration by public authorities in conformity with the applicable national law. The latter will be free to decide how best to manage the execution of works or the provision of services, in accordance with the legislative arrangements and the methods which they judge to be the most effective to ensure in particular a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights in public services.</i>		
	<i>Contracting authorities and contracting entities can therefore choose to perform their public interest tasks with their own resources or in cooperation with other contracting authorities or to delegate them to economic operators.</i> [Am. 62]		

		Article 1b General Principles	
		Contracting authorities and contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.	
		The design of the concession award procedure shall not be made with the intention of excluding it from the scope of this Directive or of unduly favouring or disadvantaging certain economic operators or certain works, supplies or services.	
	Article 1b Principles of transparency by public authorities		
	<i>The details of concession contracts, including regarding the transfer of the substantial part of the economic risk as defined in the third subparagraph of point 2 of Article 2(1), and payments, if any, from the grantor to the economic operator, shall be made public and open to scrutiny, subject to the provisions on confidentiality laid down in Article 24.</i>		

	<i>Any subsequent modifications to the contract shall also be made public.</i> [Am. 63]		
	Article 1c <i>Freedom to define services of general economic interest</i>		
	<i>This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to.</i> [Am. 64]		
Article 2 <i>Definitions</i>	Article 2 <i>Definitions</i>	Article 2 <i>Definitions</i>	
1. For the purposes of this Directive the following definitions shall apply:	1. For the purposes of this Directive the following definitions shall apply:	1. For the purposes of this Directive the following definitions shall apply:	
(1) 'concessions' means public works concessions, works concessions or services concessions.	(1) 'concessions' means public works concessions, works concessions or services concessions, <i>as defined in points (a) and (b):</i>	(1) 'concessions' means [...] works concessions or services concessions.	
	(a) a 'works concession' means a contract for pecuniary interest concluded in writing <i>by means of which one or more contracting authorities or contracting entities entrust</i> the execution of works <i>to one or more economic operators</i> the		

	consideration for <i>which</i> consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment;		
	<i>(b) a ‘services concession’ means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or entities entrust the management of a service to one or more economic operators, the consideration for which consists either solely of the right to exploit the service that is the subject of the contract or in that right together with payment.</i>		
	<i>The award of a works concession or services concession shall involve the transfer to the concessionaire of the substantial part of the economic risk in exploiting these works or services, defined as the risk of exposure to the vagaries of the market and encompassing both demand and supply risk. The concessionaire shall be deemed to assume the substantial part of the operating risk where, under normal conditions of exploitation and according to the provisions of the contract, it is not guaranteed to recoup the</i>		

	<i>investments made or the costs incurred in operating the works or the services which are the subject of the concession. [Am. 65]</i>		
(2) a 'public works concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, where the consideration for the the works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment.	(2) — a 'public works concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, where the consideration for the the works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment. [Am. 66]	(2) [...] 'works concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or entities and having as its object the execution of works, where the consideration for the works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment;	
	<i>(2a) 'economic operator' means any natural or legal person, or public entity, or a group of such persons or entities, including consortia of undertakings, which offers the execution of works and/or a work, supplies or services on the market. [Am. 67]</i>		
	<i>(2b) 'grantor' means a contracting authority or a contracting entity which awards a concession to an economic operator. [Am. 68]</i>		

	<i>(2c) ‘candidate’ means an economic operator that has sought an invitation or has been invited to take part in a concession award procedure. [Am. 69]</i>		
	<i>(2d) ‘tenderer’ means an economic operator which has submitted a tender. [Am. 70]</i>		
	<i>(2e) ‘concessionaire’ means an economic operator which has been awarded a concession. [Am. 71]</i>		
	<i>(2f) ‘concession documents’ means all documents provided by the grantor to which the grantor refers when describing or defining features of the concession contract and the concession contract award procedure. [Am. 72]</i>		
(3) ‘written’ or ‘in writing’ means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.	(3) ‘written’ or ‘in writing’ means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.	(3) "written’ or ‘in writing’ means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information which is transmitted and stored by electronic means.	
(4) 'works concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting entities and having as their object the execution of works, where the consideration for the the	(4) 'works concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting entities and having as their object the execution of works, where the consideration for the the	deleted (moved under Article 2, point 2)	

works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment;	works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment; [Am. 73]		
(5) 'execution of works' means the execution, or both the design and execution, of works related to one of the activities referred to in Annex I or of a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.	(5) 'execution of works' means the execution, or both the design and execution, of works related to one of the activities referred to in Annex I or of a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority grantor exercising a decisive influence on the type or design of the work. [Am. 74]	(5) 'execution of works' means the execution, or both the design and execution, of works related to one of the activities referred to in Annex I or of a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority or contracting entity exercising a decisive influence on the type or design of the work.	
(6) 'work' means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function.	(6) 'work' means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function.	(6) 'a work' means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function.	
(7) 'services concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or contracting entities and having as their object the provision of services other than those referred to in points 2 and 4 where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the	(7) 'services concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or contracting entities and having as their object the provision of services other than those referred to in points 2 and 4 where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the	(7) 'services concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or contracting entities and having as its object the provision of services other than the execution of works referred to in point 2 where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of	

contract or in that right together with payment.	contract or in that right together with payment. [Am. 75]	the contract or in that right together with payment.	
(8) 'candidate' means an economic operator that has sought an invitation or has been invited to take part in a concession award procedure ;	(8) 'candidate' means an economic operator that has sought an invitation or has been invited to take part in a concession award procedure ; [Am. 76]	(8) 'candidate' means an economic operator that has sought an invitation or has been invited to take part in a concession award procedure;	
(9) 'concessionaire' means an economic operator which has been awarded a concession.	(9) 'concessionaire' means an economic operator which has been awarded a concession. [Am. 77]	(9) 'concessionaire' means an economic operator which has been awarded a concession.	
(10) "economic operator" means any natural or legal person, or public entity, or a group of such persons and/or entities which offers the execution of works and/or a work, supplies or services on the market.	(10) "economic operator" means any natural or legal person, or public entity, or a group of such persons and/or entities which offers the execution of works and/or a work, supplies or services on the market. [Am. 78]	(10) "economic operator" means any natural or legal person, or public entity, or a group of such persons and/or entities which offers the execution of works and/or a work, the supply of products or the provision of services on the market.	
(11) 'tenderer' means an economic operator that has submitted a tender.	(11) 'tenderer' means an economic operator that has submitted a tender. [Am. 79]	(11) 'tenderer' means an economic operator that has submitted a tender	
(12) 'electronic means' means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.	(12) 'electronic means' means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means; <i>in the case of a works concession, 'electronic means' shall also refer to the use of interoperable three-dimensional representations covering the design, execution and operation of the building or</i>	(12) 'electronic means' means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.	

	<i>infrastructure; [Am. 80]</i>		
	<i>(12a) ‘special or exclusive rights’ means rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of an activity to one or more economic operators, and which substantially affects the ability of other economic operators to carry out such activity. [Am. 81]</i>		
(13) ‘concession documents’ means all documents produced or referred to by the contracting authority or contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the technical specifications, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.	(13) — ‘concession documents’ means all documents produced or referred to by the contracting authority or contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the technical specifications, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents. [Am. 82]	(13) ‘concession document ’ means any document produced or referred to by the contracting authority or contracting entity to describe or determine elements of the concession or the procedure, including the concession notice, the technical specifications, proposed conditions of concession , formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.	
(14) ‘life cycle’ means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of	(14) — ‘life cycle’ means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of	deleted	

resources to disposal, clearance and finalisation.	resources to disposal, clearance and finalisation. [Am. 83]		
<p>2. The right to exploit the works or services as referred to in points 2, 4 and 7 of the first paragraph shall imply the transfer to the concessionaire of the substantial operating risk. The concessionaire shall be deemed to assume the substantial operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession. That economic risk may consist in either of the following:</p> <p>(a) the risk related to the use of the works or the demand for the provision of the service; or</p> <p>(b) the risk related to the availability of the infrastructure provided by the concessionaire or used for the provision of services to users.</p>	<p>2. The right to exploit the works or services as referred to in points 2, 4 and 7 of the first paragraph shall imply the transfer to the concessionaire of the substantial operating risk. The concessionaire shall be deemed to assume the substantial operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession. That economic risk may consist in either of the following:</p> <p>(a) the risk related to the use of the works or the demand for the provision of the service; or</p> <p>(b) the risk related to the availability of the infrastructure provided by the concessionaire or used for the provision of services to users. [Am. 84]</p>	<p>2. The consideration, for the works or services to be provided as referred to in points 2[...] and 7 of the first paragraph shall imply the transfer to the concessionaire of [...]operating risk. The concessionaire shall be deemed to assume [...]operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession.</p> <p>[...]</p>	

<i>Article 3 Contracting authorities</i>	<i>Article 3 Contracting authorities</i>	<i>Article 3 Contracting authorities</i>	
1. For the purposes of this Directive ‘Contracting authorities’ are State, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law, other than those awarding a concession for the purpose of pursuing an activity as referred to in Annex III.	1. For the purposes of this Directive ‘Contracting authorities’ are State, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law, other than those awarding a concession for the purpose of pursuing an activity as referred to in Annex III. <i>(Am. 85 - Does not affect English version.)</i>	1. For the purposes of this Directive ‘Contracting authorities’ mean State, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law, other than those awarding a concession for the purpose of pursuing an activity as referred to in Annex III.	
2. ‘Regional authorities’ include all authorities of the administrative units falling under NUTS 1 and 2, as referred to by Regulation No. (EC) 1059/2003 of the European Parliament and of the Council ²⁵	2. ‘Regional authorities’ include all authorities of the administrative units falling under NUTS 1 and 2, as referred to by Regulation No. (EC) 1059/2003 of the European Parliament and of the Council. <i>(Am. 86 - Does not affect English version.)</i>	2. ‘Regional authorities’ include all authorities of the administrative units, listed non-exhaustively in NUTS 1 and 2, as referred to by Regulation No. (EC) 1059/2003 of the European Parliament and of the Council ²⁶ .	
3. ‘Local authorities’ include all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to by Regulation No. 1059/2003.	3. ‘Local authorities’ include all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to by Regulation No. 1059/2003. <i>(Am. 87- Does not affect English version.)</i>	3. ‘Local authorities’ include all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to by Regulation No. 1059/2003.	

²⁵ OJ L 154, 21.6.2003, p. 1

²⁶ OJ L 154, 21.6.2003, p. 1

4. 'Bodies governed by public law' means bodies that have all of the following characteristics:	4. 'Bodies governed by public law' means bodies that have all of the following characteristics: <i>(Am. 88 - Does not affect English version.)</i>	4. 'Bodies governed by public law' means bodies that have all of the following characteristics:	
(a) they are established for or have the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;	(a) they are established for or have the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;	(a) they are established for [...] the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;	
(b) they have legal personality;	(b) they have legal personality;	(b) they have legal personality, and ;	
(c) they are financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.	(c) they are financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.	(c) they are financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.	
For the purpose of point (a) of the first subparagraph, a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity, it does not have the purpose of meeting needs in the general interest, not having an industrial or commercial character.	For the purpose of point (a) of the first subparagraph, a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity, it does not have the purpose of meeting needs in the general interest, not having an industrial or commercial character.	[...]	Council; partially moved to Recital 9a

<i>Article 4</i> <i>Contracting entities</i>	<i>Article 4</i> <i>Contracting entities</i>	<i>Article 4</i> <i>Contracting entities</i>	
1. For the purposes of this Directive, "Contracting entities" are one of the following:	1. For the purposes of this Directive, 'contracting entities' are entities which award a concession for the pursuit of one of the activities referred to in Annex III and which are one of the following: [Am. 89]	1. For the purposes of this Directive, "Contracting entities" are one of the following:	
(1) state, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law as defined in paragraphs 2-4 of Article 3.	(a) state, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law as defined in Article 3(2), (3) and (4).	(1) state, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more such bodies governed by public law as referred to in Article 3.	
(2) public undertakings as defined in paragraph 2 of this Article;	(b) public undertakings as defined in paragraph 2 of this Article;	(2) public undertakings as defined in paragraph 2 of this Article	
(3) entities which are not contracting authorities or public undertakings, operating on the basis of special or exclusive rights granted by a competent authority of a Member State	(c) entities which are not contracting authorities or public undertakings but which operate on the basis of special or exclusive rights granted by a competent authority of a Member State for the exercise of one of the activities defined in Annex III. [Am. 89]	(3) entities other than those referred to in point (1) , which are not [...] public undertakings, operating on the basis of special or exclusive rights within the meaning of paragraph 3 of this Article granted by a competent authority of a Member State.	
when they award a concession for the purpose of pursuing one of the activities as referred to in Annex III.	when they award a concession for the purpose of pursuing one of the activities as referred to in Annex III. [Am. 89]	where they pursue one of the activities referred to in Annex III and award a concession for the purpose of pursuing such activity .	

2. A ‘public undertaking’ is any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the contracting authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:	2. A ‘public undertaking’ is any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the contracting authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:	2. A ‘public undertaking’ is any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the contracting authorities shall be presumed in any of the following cases , directly or indirectly:	
(a) hold the majority of the undertaking's subscribed capital, or	(a) hold the majority of the undertaking's subscribed capital, or	(a) hold the majority of the undertaking's subscribed capital;	
(b) control the majority of the votes attaching to shares issued by the undertaking, or	(b) control the majority of the votes attaching to shares issued by the undertaking, or	(b) control the majority of the votes attaching to shares issued by the undertaking;	
(c) can appoint more than half of the undertaking's administrative, management or supervisory body.	(c) can appoint more than half of the undertaking's administrative, management or supervisory body.	(c) can appoint more than half of the undertaking's administrative, management or supervisory body.	
3. ‘Special or exclusive rights’ mean rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Annex III to one or more entities, and which substantially affects the ability of other entities to carry out such activity.	3. ‘Special or exclusive rights’ mean rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Annex III to one or more entities, and which substantially affects the ability of other entities to carry out such activity. [Am. 90]	3. For the purposes of this Article ‘special or exclusive rights’ means rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Annex III to one or more entities, and which substantially affects the ability of other entities to carry out such activity.	

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute "special or exclusive rights" within the meaning of this Directive. Such procedure includes:	Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute "special or exclusive rights" within the meaning of this Directive. Such procedure includes: [Am. 90]	4. Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute "special or exclusive rights" within the meaning of paragraph 3 of this Article . Such procedures include:	
(a) procurement procedures with a prior call for competition in conformity with Directive [2004/18/EC or 2004/17/EC] or this Directive	(a) — procurement procedures with a prior call for competition in conformity with Directive [2004/18/EC or 2004/17/EC] or this Directive [Am. 90]	(a) procurement procedures with a prior call for competition in conformity with Directive [2004/18/EC or 2004/17/EC] Directive 2009/81/EC , or this Directive	
(b) procedures pursuant to other legislative acts of the Union, listed in Annex XI, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.	(b) — procedures pursuant to other legislative acts of the Union, listed in Annex XI, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria. [Am. 90]	(b) procedures pursuant to other legislative acts of the Union, listed in Annex XI, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.	
The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to modify the list of the Union legislative acts set out in Annex XI where, due to the adoption of new Union legislation or repeal of Union legislation, such modification proves necessary.	The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to modify the list of the Union legislative acts set out in Annex XI where, due to the adoption of new Union legislation or repeal of Union legislation, such modification proves necessary. [Am. 90]	The Commission shall be empowered to adopt delegated acts in accordance with Article 46 concerning the modification of the list of the Union legislative acts set out in Annex XI where, on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.	

<i>Article 5 Thresholds</i>	<i>Article 5 Thresholds</i>	<i>Article 5 Threshold</i>	
1. This Directive shall apply to the following concessions the value of which is equal to or greater than EUR 5 000 000:	1. This Directive shall apply to the following concessions the value of which is equal to or greater than EUR 5 000 000:	1. This Directive shall apply to the following concessions the value of which is equal to or greater than EUR 5 000 000:	
(a) concessions concluded by contracting entities for the pursuit of one of the activities referred to in Annex III;	(a) concessions concluded by contracting entities for the pursuit of one of the activities referred to in Annex III;	(a) concessions concluded by contracting entities for the pursuit of one of the activities referred to in Annex III;	
(b) concessions concluded by contracting authorities.	(b) concessions concluded by contracting authorities.	(b) concessions concluded by contracting authorities.	
2. Services concessions the value of which is equal to or greater than EUR 2 500 000 but lower than EUR 5 000 000 other than social services and other specific services shall be subject to the obligation to publish a concession award notice in accordance with Articles 27 and 28.	2. Services concessions the value of which is equal to or greater than EUR 2 500 000 but lower than EUR 5 000 000 other than social services and other specific services shall be subject to the obligation to publish a concession award notice in accordance with Articles 27 and 28. [Am. 91]	2. At the same time as the revision under Article 6 of Directive (replacing Directive 2004/18/EC), the Commission in accordance with the procedure under Article 48 shall align the threshold referred to in paragraph 1, on the revised thresholds applying to public works contracts under Directive (replacing Directive 2004/18/EC).	
<i>Article 6 Methods for calculating the estimated value of concessions</i>	<i>Article 6 Thresholds and methods for calculating the estimated value of concessions</i>	<i>Article 6 Methods for calculating the estimated value of concessions</i>	
	-1. This Directive shall apply to concessions the value of which is equal to or greater than EUR 8 000 000.		

1. The calculation of the estimated value of a concession shall be based on the total amount payable, net of VAT, as estimated by the contracting authority or the contracting entity, including any form of option and any extension of the duration of the concession.	1. The calculation of the estimated value of a concession shall be based on the total amount payable its turnover , net of VAT as estimated by the contracting authority or the contracting entity, including any form of option and any extension of the duration of the concession. taxes, accumulated over the duration of the contract, as estimated by the grantor, to which shall be added any public investment subsidies received by the concessionaire and provided for the purpose of the concession.	1. The [...] value of a concession shall be[...] the estimated total revenue of the concessionaire , net of VAT, to be received from third parties and from the contracting authority or the contracting entity, in consideration for the works and services, including supplies, to be provided in the execution of the concession.	
	<i>That estimate shall be valid at the moment at which the concession notice is sent or, in cases where such notice is not provided for, at the moment at which the grantor commences the concession award procedure.</i>		
	<i>If the value is changed as a result of negotiations during the award procedure, the valid estimate shall be the estimate indicated at the time of signature of the contract.</i>		

2. The estimated value of a concession shall be calculated as the value of an entirety of works or services, even if purchased through different contracts, where the contracts are part of one single project. Indications for the existence of one single project consist in overall prior planning and conception by the contracting authority or contracting entity, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked.	2. The estimated value of a concession shall be calculated as the value of an entirety of works or or and/or services even if purchased through different contracts, where the contracts which are part of one single concession project, including studies carried out by the economic operator for the purposes of the concession. Indications for the existence of one single project consist in overall prior The unique nature of the project can for instance be demonstrated by the existence of planning and conception by the contracting authority or contracting entity, grantor , the fact that the different elements purchased of the concession project fulfil a single economic and technical function or that they are otherwise logically interlinked.	2. The method for calculating the estimated value of a concession shall be specified in the concession documents. When estimating the value of the concession, contracting authorities and contracting entities shall take into account, in particular, the:	
Where the contracting authority or the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the concession.	Where the contracting authority or the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the concession. [Am. 92]		
		a) the value of any form of option and any extension of the duration of the concession;	

		b) <u>the</u> revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the contracting authority or entity;	
		c) <u>the</u> payments or any financial advantage in any form whatsoever made by the contracting authority or entity or any other public authority to the concessionaire including compensation for compliance with a public service obligation;	
		d) <u>the</u> value of grants or any other financial advantages in any form whatsoever from third parties for the performance of the concession;	
		e) <u>the</u> revenue from sales of any assets which are part of the concession;	
		f) <u>the</u> value of all the supplies and services that are made available to the concessionaire by the contracting authorities or entities provided that they are necessary for executing the works or services;	
		g) <u>the</u> prizes or payments to candidates or tenderers;	

		h) for insurance services: the premium payable and other forms of remuneration;	
		i) for banking and other financial services: fees, commissions, interest and other forms of remuneration;	
		j) for design services: fees, commission payable and other forms of remuneration.	
3. The choice of the method used to calculate the estimated value of a concession shall not be made with the intention of excluding it from the scope of this Directive. A works project or an entirety of services shall not be subdivided with the effect of preventing it from falling within the scope of this Directive, unless justified by objective reasons.	3. The choice of the method used to calculate the estimated value of a concession shall not be made with the intention of excluding it from the scope of this Directive. A works project or an entirety of services shall not be subdivided with the effect of preventing it from falling within the scope of this Directive, unless justified by objective reasons. <i>estimate of the</i> value of a concession shall not be made with the intention of excluding it from the scope of this Directive. A works project or an entirety of services shall not be subdivided with the effect of preventing it from falling within the scope of this Directive, unless justified by objective reasons. [Am. 92]	[...]	
	<i>3a. The estimated value of the concession shall be calculated using an objective method. [Am. 92]</i>		
4. This estimate shall be valid at the moment at which the concession notice is sent, or, in cases where such notice is not foreseen, at the moment at which the contracting authority or the contracting entity commences the concession award procedure, in particular by defining the essential	4. This estimate shall be valid at the moment at which the concession notice is sent, or, in cases where such notice is not foreseen, at the moment at which the contracting authority or the contracting entity commences the concession award procedure, in particular by defining the essential	3. The estimate shall be valid at the moment at which the concession notice is sent, or, in cases where a notice is not foreseen, at the moment at which the contracting authority or the contracting entity commences the concession award procedure. [...]	

characteristics of the intended concession.	characteristics of the intended concession. [Am. 92]		
5. With regard to public works concessions and works concessions, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authorities or entities provided that they are necessary for executing the works.	5. With regard to public works concessions and works concessions, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authorities or entities provided that they are necessary for executing the works. [Am. 92]	[...]	
6. Where a proposed work or purchase of services may result in concessions being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.	6. Where a proposed work or purchase of services may result in concessions being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots. [Am. 92]	4. Where a proposed work or service may result in concessions being awarded [...] in the form of separate lots account shall be taken of the total estimated value of all such lots.	
7. Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 5, this Directive shall apply to the awarding of each lot.	7. Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 5, this Directive shall apply to the awarding of each lot. [Am. 92]	5. Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 5, this Directive shall apply to the awarding of each lot.	
8. Contracting authorities or contracting entities may award concessions for individual lots without applying the provisions on the award provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR 1 million. However,	8. Contracting authorities or contracting entities may award concessions for individual lots without applying the provisions on the award provided for under this Directive, provided that the estimated value net of VAT of the lot concerned is less than EUR 1 million. However,	deleted	

the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20% of the aggregate value of all the lots into which the proposed work or the proposed purchase of services has been divided.	the aggregate value of the lots thus awarded without applying this Directive shall not exceed 20% of the aggregate value of all the lots into which the proposed work or the proposed purchase of services has been divided. [Am. 92]		
9. The value of services concessions shall be the estimated total value of services to be provided by the concessionaire during the whole duration of the concession, calculated in accordance with an objective methodology which shall be specified in the concession notice or in the concession documents.	9. The value of services concessions shall be the estimated total value of services to be provided by the concessionaire during the whole duration of the concession, calculated in accordance with an objective methodology which shall be specified in the concession notice or in the concession documents. [Am. 92]	deleted	
The basis for calculating the estimated concession value shall, where appropriate, be the following:	The basis for calculating the estimated concession value shall, where appropriate, be the following: [Am. 92]		
(a) for insurance services: the premium payable and other forms of remuneration;	a) for insurance services: the premium payable and other forms of remuneration; [Am. 92]	---	Council: moved to Article 6.2(h)
(b) for banking and other financial services: fees, commissions, interest and other forms of remuneration;	b) for banking and other financial services: fees, commissions, interest and other forms of remuneration; [Am. 92]	---	Council: moved to Article 6.2(i)
(c) for design services: fees, commission payable and other forms of remuneration;	c) for design services: fees, commission payable and other forms of remuneration; [Am. 92]	---	Council: moved to Article 6.2(j)

10. The value of concessions shall include both the estimated revenue to be received from third parties and the amounts to be paid by the contracting authority or the contracting entity.	10. The value of concessions shall include both the estimated revenue to be received from third parties and the amounts to be paid by the contracting authority or the contracting entity. [Am. 92]	deleted	
<i>Article 7</i> <i>General Principles</i>	<i>Article 7</i> <i>General Principles</i>	<i>moved to Article 1b</i>	
Contracting authorities and contracting entities shall treat economic operators equally and shall act in a transparent and proportionate way. The design of the concession award procedure shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.	Contracting authorities and contracting entities shall treat economic operators equally and shall act in a transparent and proportionate way. The design of the concession award procedure shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition. [Am. 93]	---	
Section II Exclusions	Section II Exclusions	Section II Exclusions	
<i>Article 8</i> <i>Exclusions applicable to concessions awarded by contracting authorities and contracting entities</i>	<i>Article 8</i> <i>Exclusions applicable to concessions awarded by contracting authorities and contracting entities</i>	<i>Article 8</i> <i>Exclusions applicable to concessions awarded by contracting authorities and contracting entities</i>	
1. This Directive shall not apply to services concessions awarded by a contracting authority or by a contracting entity to an economic operator which is a contracting entity or an association of thereof, on the basis of an exclusive right that economic operator enjoys pursuant to	1. This Directive shall not apply to services concessions <i>for an activity listed in Annex III, including those services concessions concerning the management of network infrastructure related to such an activity, where such concessions are</i> awarded by a contracting authority or	1. This Directive shall not apply to services concessions awarded to a contracting authority or to a contracting entity as referred to in paragraph 1 point (1) of Article 4 or to an association thereof on the basis of an exclusive right which they enjoy pursuant to a published	

<p>applicable and published national law, regulation or administrative provision, and which has been granted in accordance with the Treaty and Union sectoral legislation concerning the management of networks infrastructure related to the activities set out in annex III.</p>	<p>by a contracting entity to an economic operator which is a contracting entity or an association of thereof, on the basis of an exclusive right that economic operator <i>the latter</i> enjoys pursuant to applicable national law, regulation or administrative provision <i>provisions</i>, and which has been granted in accordance with the Treaty and Union sectoral legislation. concerning the management of networks infrastructure related to the activities set out in annex III. [Am. 94]</p>	<p>law, regulation or administrative provision which is compatible with the Treaty.</p>	
		<p>2. This Directive shall not apply to services concessions awarded to an economic operator which is a public undertaking as defined in paragraph 2 of Article 4 or an entity other than those as referred to in paragraph 1 point (1) of Article 4, operating on the basis of special or exclusive rights within the meaning of paragraph 3 of Article 4 granted by a competent authority of a Member State or an association thereof, if these concessions are awarded on the basis of an exclusive right that economic operator enjoys pursuant to applicable and published national law, regulation or administrative provision, and which has been</p>	

		granted in accordance with the Treaty and pursuant to Union sectoral legislation concerning the management of networks infrastructure related to the activities set out in annex III.	
	<i>By way of derogation from the first subparagraph, where sectoral legislation referred to in the first subparagraph does not provide for sector-specific transparency obligations, Article 27(1) and (3) shall apply.</i>		
	<i>Where a Member State grants an exclusive right to an economic operator for the exercise of one of the activities listed in Annex III, it shall inform the Commission thereof within one month after the award of that exclusive right. [Am. 94]</i>		
2. By way of derogation from paragraph 1 of this Article, where sectoral legislation referred to in paragraph 1 of this Article does not provide for sector specific transparency obligations, the requirements of Article 27 (1) and (3) shall apply	2. By way of derogation from paragraph 1 of this Article, where sectoral legislation referred to in paragraph 1 of this Article does not provide for sector specific transparency obligations, the requirements of Article 27 (1) and (3) shall apply [Am. 95]	3. By way of derogation from paragraph 2 of this Article, where <u>the Union</u> sectoral legislation referred to in paragraph 2 of this Article does not provide for sector specific transparency obligations, the requirements of Article 27[...] shall apply.	

	<p><i>2a. This Directive shall not apply to concessions for air transport services based on the granting of an operating licence within the meaning of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast)¹ or for public passenger transport services within the meaning of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road²</i></p> <p>[Am. 96]</p> <p><i>¹ OJ L 293, 31.10.2008, p. 3.</i></p> <p><i>² OJ L 315, 3.12.2007, p. 1.</i></p>		
<p>3. This Directive shall not apply to concessions which the contracting authority or a contracting entity is obliged to award or organise in accordance with procurement procedures set out in:</p>	<p>3. This Directive shall not apply to concessions which the contracting authority or a contracting entity grantor is obliged to award or organise in accordance with procurement procedures for the award of services concession contracts set out in: [Am. 97]</p>	<p>4. This Directive shall not apply to concessions which <u>a</u> contracting authority or a contracting entity is obliged to award or organise in accordance with procurement procedures different from those of this Directive established by any of the following:</p>	<p>moved from point 3</p>

(a) an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering works, supplies or services intended for the joint implementation or exploitation of a project by the signatory States;	a) an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering works, supplies or services intended for the joint implementation or exploitation of a project by the signatory States; [Am. 98]	(a) an international agreement or arrangement concluded in conformity with the <u>TFEU</u> between a Member State and one or more third countries or subdivisions thereof and covering works, supplies or services intended for the joint implementation or exploitation of a project by their signatories ;	
(b) a concluded international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;	(b) a concluded international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;	(b) an international agreement or arrangement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;	
(c) the particular procedure of an international organisation.	(c) the particular procedure of an international organisation.	(c) [...]an international organisation.	
(d) where the concessions are fully financed by an international organisation or international financing institution.	(d) where the concessions are fully financed by an international organisation or international financing institution.	(d) procurement rules provided by an international organisation or international financing institution, where the concessions are fully financed by this organisation or institution; in the case of concessions co-financed for the most part by an international organisation or international financing institution and where the parties agreed on their application.	

All agreements referred to in point (a) of the first subparagraph shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 48.	All agreements referred to in point (a) of the first subparagraph shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 48.	All agreements or arrangements referred to in point (a) of the first subparagraph shall be communicated to the Commission, which may consult the Advisory Committee on Public Procurement referred to in Article 48.	
For the purposes of point (d) of the first subparagraph, where a concession is co-financed for a considerable part by an international organisation or international financing institution the parties decide on applicable concession award procedures which shall be in conformity with the provisions of the Treaty on the Functioning of the European Union.	For the purposes of point (d) of the first subparagraph, where a concession is co-financed for a considerable part by an international organisation or international financing institution the parties decide on applicable concession award procedures which shall be in conformity with the provisions of the Treaty on the Functioning of the European Union. [Am. 99]	[...]	
4. Subject to Article 346 of the Treaty , this Directive shall not apply to the awarding of concessions in the fields of defence and security to the extent that the protection of the essential security interests of a Member State cannot be guaranteed by the rules provided for in this Directive.	4. Subject to Article 346 of the Treaty <i>on the Functioning of the European Union</i> , this Directive shall not apply to the awarding of concessions in the fields of defence and security to the extent that the protection of the essential security interests of a Member State cannot be guaranteed by the rules provided for in this Directive. <i>with the exception of the following:</i>	5. Subject to Article 346 of the <u>TFEU</u> , this Directive shall apply to the awarding of concessions, in the fields of defence and security as referred to in Directive 2009/81/EC²⁷, with the exception of the following contracts:	moved from point 4

²⁷ OJ L 217, 20.8.2009, p. 76.

	<p><i>(a) concessions for which the application of this Directive would oblige a Member State to supply information the disclosure of which it considers contrary to the essential interests of its security, or the procurement and performance of the concession must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in a Member State where the Member State has determined that the essential interests concerned cannot be guaranteed by less intrusive measures, for instance such as referred to in paragraph 4a;</i></p>	<p>(a) concessions for which the application of the rules of this Directive would oblige a Member State to supply information the disclosure of which it considers contrary to the essential interests of its security,</p>	
	<p><i>(b) concessions awarded in the framework of a cooperative programme referred to in point (c) of Article 13 of 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 security¹;</i></p> <p><i>¹ OJ L 216, 20.8.2009, p. 76.</i></p>	<p>(b) concessions awarded in the framework of a cooperative programme referred to in Article 13 (c) of Directive 2009/81/EC,</p>	

	<i>(c) contracts awarded by a government to another government relating to works and services directly linked to military equipment or sensitive equipment, or works and services specifically for military purposes, or sensitive works and sensitive services;</i>	(c) contracts awarded by a government to another government relating to works and services directly linked to military equipment or sensitive equipment, or works and services specifically for military purposes, or sensitive works and sensitive services;	
	<i>(d) concessions awarded in a third country, carried out when forces are deployed outside the territory of the Union where operational needs require them to be concluded with economic operators located in the area of operations. [Am. 100]</i>	(d) concessions awarded in a third country, carried out when forces are deployed outside the territory of the Union where operational needs require them to be concluded with economic operators located in the area of operations.	
		(e) concessions otherwise exempted under this Directive.	
	<i>4a. This Directive shall not apply to concessions not otherwise exempted under paragraph 4 to the extent that the protection of the essential security interests of a Member State cannot be guaranteed by less intrusive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the grantor makes available in a concession award procedure as provided for in this Directive. [Am. 101]</i>	6. This Directive shall not apply to concessions not otherwise exempted under paragraph 5 to the extent that the protection of the essential security interests of a Member State cannot be guaranteed by less intrusive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the contracting authority or the contracting entity makes available, in a concession award procedure as provided for in this	

		<p>Directive.</p> <p>It shall also not apply to the award and performance of a concession declared to be secret or which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in a Member State where the Member State has determined that the essential interests concerned cannot be guaranteed by less intrusive measures, for instance such as referred to in subparagraph (1).</p>	
5. This Directive shall not apply to service concessions for:	5. This Directive shall not apply to service concessions for:	7. This Directive shall not apply to [...]concessions for:	Council: moved from point 5
(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; however financial service concessions awarded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;	a) the acquisition, rental <i>or lease, by a contracting authority or contracting entity</i> , by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; however financial service concessions awarded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive; [Am. 102]	(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; [...]	

(b) the acquisition, development, production or co-production of programme material intended for broadcasting, defined as transmission and distribution using any form of electronic network, that are awarded by broadcasters, nor to concessions for broadcasting time, that are awarded to broadcasters;	b) the acquisition or , development, production or co-production of programme material intended and related preparatory services for media services that are provided by broadcasters, nor to concessions for broadcasting defined as time that are awarded to broadcasters; for the purposes of this Directive, media services means all forms of transmission and distribution using any form of electronic network; that are awarded by broadcasters, nor to concessions for broadcasting time, that are awarded to broadcasters; [Am. 103]	(b) the acquisition, development, production or co-production of programme material intended for [...] audiovisual media services or radio media services , that are awarded by audiovisual or radio media service providers, or concessions for broadcasting time or programme provision , that are awarded to audiovisual or radio media service providers ;	
(c) arbitration and conciliation services;	(c) arbitration and conciliation services;	(c) arbitration and conciliation services;	
(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council, central bank services and operations conducted with the European Financial Stability Facility (EFSF);	(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council <i>of 21 April 2004 on markets in financial instruments</i> ¹ , central bank services and operations transactions conducted with the European Financial Stability Facility (EFSF), as	(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council ²⁸ , central bank services and operations conducted with the European Financial Stability Facility (EFSF);	

²⁸ OJ L 145, 30.4.2004, p. 1.

	<i>well as operations to raise money or capital for the contracting authority;</i> [Am. 104] ¹ OJ L 145, 30.4.2004, p.1.		
		(da) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;	
(e) employment contracts;	(e) employment contracts; [Am. 105]	(e) employment contracts;	
(f) Air transport services based on the grant of an operating licence within the meaning of Regulation (EC) 1008/2008 ²⁹ of the European Parliament and of the Council ³⁰ ;	(f) Air transport services based on the grant of an operating licence within the meaning of Regulation (EC) 1008/2008 of the European Parliament and of the Council ; [Am. 106]	(f) air transport services based on the grant of an operating licence within the meaning of Regulation (EC) 1008/2008 ³¹ of the European Parliament and of the Council ³² ;	
(g) Public passenger transport services within the meaning of Regulation (EC) 1370/2007 of the European Parliament and of the Council. ³³	(g) Public passenger transport services within the meaning of Regulation (EC) 1370/2007 of the European Parliament and of the Council. [Am. 107]	(g) public passenger transport services within the meaning of Regulation (EC) 1370/2007 of the European Parliament and of the Council. ³⁴	

²⁹ Regulation of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community

³⁰ OJ L 293, 31.10.2008, p. 3.

³¹ Regulation of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community

³² OJ L 293, 31.10.2008, p. 3.

³³ OJ L 315, 3.12.2007,

³⁴ OJ L 315, 3.12.2007,

	<i>(ga) civil defence, civil protection, and hazard prevention; [Am. 108]</i>		
		(h) concessions for political campaign services, falling within CPV 79341400-0, 92111230-3 and 92111240-6, when awarded by a political party in the context of an election campaign;	
		(i) any of the following legal services:	
		(i) legal representation of a client in an arbitration or conciliation held in a Member State or in judicial proceedings before the national courts, tribunals or public authorities of a Member State by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;	
		(ia) legal representation of a client in an arbitration or conciliation held before an international arbitration or conciliation instance or in judicial proceedings before the international courts, tribunals or institutions by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;	

		(i aa) legal representation of a client in an arbitration or conciliation held in a third country or in judicial proceedings before the national courts, tribunals or public authorities of a third country by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;	
		(i b) legal advice given in anticipation or preparation of any of the proceedings referred to in points (i), (i aa) or (i a) or where there is a concrete likelihood that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;	
		(ii) document certification services which must be provided by notaries;	
		(iii) legal services provided by trustees, appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned;	

		(iv) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority;	
The broadcasting referred to in point (b) of the first paragraph shall include any transmission and distribution using any form of electronic network.	The broadcasting referred to in point (b) of the first paragraph shall include any transmission and distribution using any form of electronic network. [Am. 109]	8. For the purposes of this Article, "audiovisual media services" and "media service providers" shall, respectively, have the same meaning as pursuant to Articles 1(1)(a) and 1(1)(d) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)³⁵. "Programme" shall have the same meaning as pursuant to Article 1(1)(b) of Directive 2010/13/EU, but shall also include radio programmes and radio programme materials. Furthermore, for the purposes of this provision, "programme material" shall have the same meaning as "programme".	

³⁵ OJ L 95, 15.4.2010, p. 1.

	<p><i>5a. This Directive shall not apply to service concessions for gambling activities involving a financial risk through investing a sum of money in games of chance (that is to say lotteries or betting), awarded to one or more bodies by one or more Member States on the basis of exclusive rights granted pursuant to applicable national laws, regulations or administrative provisions in accordance with the Treaties.</i></p> <p>[Am. 110]</p>		
	<p><i>5b. This Directive shall not apply to concessions awarded by contracting entities for purposes other than the pursuit of their activities as described in Annex III or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union.</i></p> <p>[Am. 110]</p>		
<p><i>Article 9</i></p> <p><i>Specific exclusions in the field of electronic communications</i></p>	<p><i>Article 9</i></p> <p><i>Specific exclusions in the field of electronic communications</i></p>	<p><i>Article 9</i></p> <p><i>Specific exclusions in the field of electronic communications</i></p>	
<p>This Directive shall not apply to concessions for the principal purpose of permitting the contracting authorities to provide or exploit public communications networks or to provide to the public one or more electronic communications services.</p>	<p>This Directive shall not apply to concessions for the principal purpose of permitting the contracting authorities to provide or exploit public communications networks <i>as defined in point (d) of Article 2 of Directive 2002/21/EC of the</i></p>	<p>This Directive shall not apply to concessions for the principal purpose of permitting the contracting authorities to provide or exploit public communications networks or to provide to the public one or more electronic communications services.</p>	

	<p><i>European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services¹, or to provide to the public one or more electronic communications services as defined in point (c) of Article 2 of that Directive.</i></p> <p>[Am. 111]</p> <p>¹ OJ L 108, 24.4.2002, p. 33.</p>		
For the purposes of this Article:	For the purposes of this Article:	For the purposes of this Article:	
(a) 'public communications network' means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;	(a) 'public communications network' means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;	(a) 'public communications network' means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;	
(b) 'electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit and packet-switched, including Internet) and mobile terrestrial networks,	(b) 'electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit and packet-switched, including Internet) and mobile terrestrial networks;	(b) 'electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit and packet-switched, including Internet) and mobile terrestrial networks,	

electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed ;	electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed ;	electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed ;	
(c) a ‘network termination point’ (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;	(c) a ‘network termination point’ (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;	(c) a ‘network termination point’ (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;	
(d) ‘electronic communications services’ means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive	(d) ‘electronic communications services’ means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive	(d) ‘electronic communications services’ means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive	

98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.	98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks. [Am. 112]	98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.	
<i>Article 10</i> <i>Exclusions applicable to concessions awarded by contracting entities</i>	<i>Article 10</i> <i>Exclusions applicable to concessions awarded by contracting entities</i>	<i>Article 10</i> <i>Exclusions applicable to concessions awarded by contracting entities</i>	
1. This Directive shall not apply to concessions awarded by contracting entities for purposes other than the pursuit of their activities as described in Annex III or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union.	1. This Directive shall not apply to concessions awarded by contracting entities for purposes other than the pursuit of their activities as described in Annex III or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union.	This Directive shall not apply to concessions awarded by contracting entities for[...] the pursuit of their activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union.	
2. Contracting entities shall notify the Commission or the national oversight body at their request of any activities which they regard as excluded. The Commission may periodically publish in the <i>Official Journal of the European Union</i> for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.	2. Contracting entities shall notify the Commission or the national oversight body at their request of any activities which they regard as excluded. The Commission may periodically publish in the <i>Official Journal of the European Union</i> for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information. [Am. 113]	deleted	

<i>Article 11 Concessions awarded to an affiliated undertaking</i>	<i>Article 11 Concessions awarded to an affiliated undertaking</i>	<i>Article 11 Concessions awarded to an affiliated undertaking</i>	
1. For the purposes of this Article, "affiliated undertaking" means any undertaking the annual account of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC ³⁶ .	1. For the purposes of this Article, "affiliated undertaking" means:	1. For the purposes of this Article, "affiliated undertaking" means any undertaking the annual account of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC ³⁷ .	
	a) any undertaking the annual <i>accounts</i> of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC; or		
	b) <i>any undertaking finding itself to be in any of the following situations:</i>		
2. In the case of entities not subject to that Directive, "affiliated undertaking" shall mean any undertaking that :	2. In the case of entities not subject to that Directive, "affiliated undertaking" shall mean any undertaking that:	2. In the case of entities not subject to that Directive, "affiliated undertaking" shall mean any undertaking that :	

³⁶ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

³⁷ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

(a) may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of the second paragraph of Article 4 of this Directive;	(a) i it may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of the second paragraph of Article 4 of this Directive;	(a) may be, directly or indirectly, subject to a dominant influence by the contracting entity within the meaning of the second paragraph of Article 4 of this Directive;	
(b) may exercise a dominant influence over the contracting entity;	(b) ii it may exercise a dominant influence over the contracting entity;	(b) may exercise a dominant influence over the contracting entity;	
(c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.	(c) iii in common with the contracting entity, it is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.	(c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.	
	<i>The notion of dominant influence is defined in the second subparagraph of Article 4(2).</i>		
3. Article 15 notwithstanding and provided that the conditions in paragraph 4 are met, this Directive shall not apply to the following concessions:	3-2. Article 15 notwithstanding and provided that the conditions in paragraph 4 set out in paragraphs 1 and 3 are met, this Directive shall not apply to the following concessions:	3. Article 15 notwithstanding and provided that the conditions in paragraph 4 are met, this Directive shall not apply to [...]concessions awarded :	
(a) concessions awarded by a contracting entity to an affiliated undertaking;	(a) concessions awarded by a contracting entity to an affiliated undertaking; and	(a) [...]by a contracting entity to an affiliated undertaking, or	
(b) concessions awarded by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities described in Annex III, to an undertaking which is affiliated with one of those contracting entities	(b) concessions awarded by a joint venture, formed exclusively by <i>two or more</i> contracting entities for the purpose of carrying out activities described in Annex III, to an undertaking which is affiliated with one of those contracting entities. [Am. 114]	(b) [...]by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities described in Annex III, to an undertaking which is affiliated with one of those contracting entities.	

4. Paragraph 3 shall apply:	4. Paragraph 3 shall apply:	4. Paragraph 3 shall apply:	
(a) to service concessions provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to services in general for the preceding three years derives from the provision of services to undertakings with which it is affiliated;	a) to service concessions provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to services in general for , taking into account all services provided by that undertaking over the preceding three years, derives from the provision of services to undertakings with which it is affiliated the contracting entity to which the undertaking is affiliated, or to the contracting entity which is itself subject to the dominant influence of another undertaking to which the undertaking granted the concession is affiliated;	(a) to service concessions provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to services in general for the preceding three years derives from the provision of services to undertakings with which it is affiliated;	
(b) works concessions provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to works in general for the preceding three years derives from the provision of works to undertakings with which it is affiliated.	b) to works concessions provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to services in general, taking into account all works carried out by that undertaking over the preceding three years, derives from the provision of works to undertakings with which it is affiliated the contracting entity to which the undertaking is affiliated, or to the contracting entity which is itself subject to the dominant influence of another undertaking to which the undertaking granted the concession is affiliated. [Am. 115]	(b) works concessions provided that at least 80 % of the average total turnover of the affiliated undertaking with respect to works in general for the preceding three years derives from the provision of works to undertakings with which it is affiliated.	

5. Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it shall be sufficient for that undertaking to show that the turnover referred to in points (a) or (b) of paragraph 4 is credible, particularly by means of business projections.	5. Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it shall be sufficient for that undertaking to show that the proportion of the average total turnover referred to in points (a) or (b) of paragraph 4 is credible, particularly by means of business projections. [Am. 116]	5. Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it shall be sufficient for that undertaking to show that the turnover referred to in points (a) or (b) of paragraph 4 is credible, particularly by means of business projections.	
6. Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages referred to in paragraph 4 shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.	6. Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages referred to in paragraph 4 shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings. [Am. 117]	6. Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages referred to in paragraph 4 shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.	
	Article 11a Transitional provisions linked to Article 11		
	1. Service concessions for the purpose of pursuing the activity referred to in paragraph 3 of Annex III which, when this Directive enters into force, are operated by affiliated undertakings, as defined in Article 11, may be extended without the provisions of this Directive being		

	<i>applicable, provided that 100 % of the total turnover of the affiliated undertaking with respect to services that are the subject of the contract and concerning the activity referred to in paragraph 3 of Annex III for the preceding three years derives from the provision of services to contracting entities with which it is affiliated. Where such concessions cover limited areas of neighbouring municipalities the total turnover of the affiliated undertaking shall be 90 %.</i>		
	<i>2. For the purpose of this Article the notion of affiliated undertaking shall also refer to any undertaking that may be, directly or indirectly, subject to a dominant influence by contracting entities within the meaning of Article 4(2) of this Directive.</i>		
	<i>3. The extensions of service concessions as referred to in paragraph 1 may take place within three years from the date referred to in Article 49(1). The resulting contracts shall be valid as long as the conditions set out in paragraph 1 are met, and shall come to an end by 1 July 2020. [Am. 118]</i>		

<i>Article 12</i> <i>Concessions awarded to a joint venture or to a contracting entity forming part of a joint venture</i>	<i>Article 12</i> <i>Concessions awarded to a joint venture or to a contracting entity forming part of a joint venture</i>	<i>Article 12</i> <i>Concessions awarded to a joint venture or to a contracting entity forming part of a joint venture</i>	
Article 15 notwithstanding, and provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, this Directive shall not apply to concessions awarded by any of the following:	Article 15 notwithstanding, and provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, this Directive shall not apply to concessions awarded by any of the following:	Article 15 notwithstanding, and provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, this Directive shall not apply to concessions awarded by any of the following:	
(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Annex III, to one of these contracting entities, or	(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Annex III, to one of these contracting entities, or	(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Annex III, to one of these contracting entities, or	
(b) by a contracting entity to such a joint venture of which it forms part.	(b) by a contracting entity to such a joint venture of which it forms part.	(b) by a contracting entity to such a joint venture of which it forms part.	
<i>Article 13</i> <i>Notification of information by contracting entities</i>	<i>Article 13</i> <i>Notification of information by contracting entities</i>	<i>Article 13</i> <i>Notification of information [...]</i>	
	<i>1. The contracting entities shall notify the Commission or the competent national authorities, at their request, of any activities which they regard as excluded pursuant to Article 8(5b). The Commission may</i>		

	<i>periodically publish in the Official Journal of the European Union for information purposes, lists of the categories of activities which it deems to be covered by that exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding that information.</i> [Am. 119]		
Contracting entities shall notify to the Commission or the national oversight body, at their request, the following information regarding the application of paragraphs 2 and 3 of Article 11 and of Article 12.	2. Contracting entities shall notify to the Commission or the competent national oversight body, authorities , at their request, the following information regarding the application of paragraphs 2 and 3 of Article 11(2) and (3) and Article 12: [Am. 120]	Contracting entities shall notify to the Commission[...], at its request, the following information regarding the application of paragraphs 2 and 3 of Article 11 and of Article 12.	
(a) the names of the undertakings or joint ventures concerned,	(a) the names of the undertakings or joint ventures concerned,	(a) the names of the undertakings or joint ventures concerned,	
(b) the nature and value of the concessions involved,	(b) the nature and value of the concessions involved,	(b) the nature and value of the concessions involved,	
(c) proof deemed necessary by the Commission or the national oversight body that the relationship between the undertaking or joint venture to which the concessions are awarded and the contracting entity complies with the requirements of Articles 11 or 12.	c) proof deemed necessary by the Commission or the competent national oversight body, authorities that the relationship between the undertaking or joint venture to which the concessions are awarded and the contracting entity complies with the requirements of Articles 11 or 12. [Am. 121]	(c) proof deemed necessary by the Commission [...] that the relationship between the undertaking or joint venture to which the concessions are awarded and the contracting entity complies with the requirements of Articles 11 or 12.	

<i>Article 14</i> <i>Exclusion of activities which are directly exposed to competition</i>	<i>Article 14</i> <i>Exclusion of activities which are directly exposed to competition</i>	<i>Article 14</i> <i>Exclusion of activities which are directly exposed to competition</i>	
This Directive shall not apply to concessions awarded by contracting entities where, in the Member State in which such concessions are performed the activity is directly exposed to competition in accordance with Article 27 and 28 of Directive [replacing Directive 2004/17/EC].	This Directive shall not apply to concessions Concessions awarded by contracting entities where, in the Member State in which such concessions are performed and performed in a Member State in which the activity is directly exposed to competition in accordance with Article 27 and 28 of Directive .../.../EU* shall not be considered to be concessions within the meaning of this Directive. [Am. 122]	This Directive shall not apply to concessions awarded by contracting entities where, for the Member State in which such concessions are to be performed, it has been established pursuant to Article 28 of Directive [replacing Directive 2004/17/EC] that the activity is directly exposed to competition in accordance with Article 27 [...] of Directive [replacing Directive 2004/17/EC].	
<i>Article 15</i> <i>Relations between public authorities</i>	<i>Article 15</i> Cooperation between public authorities [Am. 123]	<i>Article 15</i> Concessions between entities within the public sector	
1. A concession awarded by a contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:	1. A concession awarded by a contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:	1. A concession awarded by a contracting authority or a contracting entity as referred to in paragraph 1, point (1) of Article 4 to another legal entity governed by private or public law shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:	

* OJ: please insert the number, the date and the publication reference of the directive replacing Directive 2004/17/EC

a) such an authority or entity exercises over the legal person concerned a control which is similar to that which it exercises over its own departments	a) <i>the contracting</i> authority or entity exercises over the legal person concerned a control which is similar to that which it exercises over its own departments; <i>that is to say it exerts a decisive influence over both strategic objectives and significant decisions of the controlled legal person;</i> [Am. 124]	a) the authority or entity exercises over the legal entity concerned a control which is similar to that which it exercises over its own departments	
b) at least 90% of the activities of that legal person are carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity	b) at least 90% 80 % of the activities average total turnover of that legal person are is carried out for the controlling contracting authority or entity or for other legal persons controlled by that contracting authority or entity; [Am. 125]	b) more than 80% of the activities of that legal entity are carried out in the performance of tasks entrusted to it by the controlling contracting authority or entity or by other legal entities controlled by that contracting authority or entity	
c) there is no private participation in the controlled legal person	c) there is no private participation in the controlled legal person <i>with the exception of forms of private participation enforced by law, in conformity with the Treaties, which do not exert any influence on the decisions of the controlling contracting authority or entity.</i> [Am. 126]	c) there is no private capital participation in the controlled legal entity	
A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 shall be deemed to exercise over a legal person a control similar to that which it exercises over its own	A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 shall be deemed to exercise over a legal person a control similar to that which it exercises over its own	A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 shall be deemed to exercise over a legal entity a control similar to that which it exercises over its own	

departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.	departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. [Am. 127]	departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal entity. The control may also be exercised by another entity, which is itself controlled in the same way by the contracting authority or entity.	
		For the determination of the percentage of activities referred to in point (b) of the first subparagraph the average total turnover of the controlled legal entity with respect to services, supplies and works for the three years preceding the concession award shall be taken into consideration. Where, because of the date that legal entity was created or commenced activities or because of a reorganisation of its activities, the turnover is either not available for the preceding three years or no longer relevant, it shall be sufficient to show that the turnover is credible, particularly by means of business projections.	

2. Paragraph 1 also applies where a controlled entity which is a contracting authority or contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4 awards a concession to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public concession.	2. Paragraph 1 also applies where a controlled entity, or entities , which is/ are (a) contracting authority/ authorities or contracting entity/ entities as referred to in <i>point 1</i> of Article 4(<i>1</i>) award(s) a concession to its controlling entity or entities , or to another legal person controlled by the same contracting authority or contracting entity , provided that there is no private participation in the legal person being awarded the public concession, <i>with the exception of forms of private participation enforced by law, in conformity with the Treaties, which do not exert any influence on the decisions of the controlling contracting authority or entity.</i> [Am. 128]	2. Paragraph 1 also applies where a controlled entity which is a contracting authority or contracting entity as referred to in paragraph 1, point (1) of Article 4 awards a concession to its controlling entity, or to another legal entity controlled by the same contracting authority, provided that there is no private capital participation in the legal entity being awarded the public concession.	
3. A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a concession without applying the provisions of the current Directive to a legal person which it controls jointly with other such contracting authorities or entities, where the following conditions are fulfilled:	3. A contracting authority or a contracting entity as referred to in <i>point 1</i> of Article 4(<i>1</i>), which does not exercise over a legal person control within the meaning of <i>point (a) of subparagraph 1 of paragraph 1 of this Article</i> , may nevertheless award a concession without applying the provisions of the current <i>outside the scope of this</i> Directive to a legal person which it controls jointly with other such contracting authorities or entities <i>as referred to in point 1 of</i>	3. A contracting authority or a contracting entity as referred to in paragraph 1 subparagraph 1 of Article 4, which does not exercise over a legal entity governed by private or public law control within the meaning of paragraph 1, may nevertheless award a concession without applying the provisions of <u>this</u> Directive to that legal entity where the following cumulative conditions are fulfilled:	

	<i>Article 4(1)</i> , where the following conditions are fulfilled: [Am. 129]		
a) the contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 exercise jointly over the legal person a control which is similar to that which it exercises over its own departments.	a) the contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 exercise jointly over the legal person a control which is similar to that which it exercises over its own departments.	a) the contracting authority or entity as referred to in paragraph 1, point (1) of Article 4 exercise jointly with other contracting authorities or entities over the legal entity a control which is similar to that which it exercises over its own departments;	
b) at least 90% of the activities of that legal person are carried out for the controlling contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 or other legal persons controlled by the same contracting authority or entity;	b) at least 90% 80 % of the activities average total turnover of that legal person are is carried out for the controlling contracting authorities authority or entities entity as referred to <i>point 1</i> of Article 4(1) or other legal persons controlled by <i>that</i> contracting authority or entity; [Am. 130]	b) more than 80% of the activities of that legal entity are carried in the performance of tasks entrusted to it by the controlling contracting authorities or entities as referred to in paragraph 1, point (1) of Article 4 or by other legal entities controlled by the same contracting authority or entity;	
c) there is no private participation in the controlled legal person.	c) there is no private participation in the controlled legal person <i>with the exception of forms of private participation enforced by law, in conformity with the Treaties, which do not exert any influence on the decisions of the controlling contracting authority or entity.</i> [Am. 131]	c) there is no private capital participation in the controlled legal entity .	
For the purposes of point (a), contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 shall be deemed to jointly control a legal person where the following	For the purposes of point (a), contracting authorities or entities as referred to in paragraph 1 subparagraph 1 of Article 4 point 1 of Article 4(1) shall be deemed to jointly control a legal person where the	For the purposes of point (a), contracting authorities or entities as referred to in paragraph 1, point (1) of Article 4 shall be deemed to exercise joint control over a legal entity where the following	

cumulative conditions are fulfilled:	following cumulative conditions are fulfilled: [Am. 132]	cumulative conditions are fulfilled:	
(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4;	(a) the decision-making bodies of the controlled legal person are composed of representatives of all the participating contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 point 1 of Article 4(1); while one representative may represent one or many participating contracting authorities; [Am. 132]	(a) the decision-making bodies of the controlled legal entity are composed of representatives of all participating contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4. Individual representatives may represent several or all of the participating contracting authorities;	
(b) those contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4 are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;	(b) those contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 point 1 of Article 4(1) are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person; [Am. 132]	(b) those contracting authorities or contracting entities as referred to in paragraph 1, point (1) of Article 4 are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal entity ;	
(c) the controlled legal person does not pursue any interests which are distinct from that of the public authorities affiliated to it;	(c) the controlled legal person does not pursue any interests which are distinct from in conflict with that of the public authorities affiliated to it; [Am. 132]	(c) the controlled legal entity does not pursue any interests which are distinct from those of the public authorities[...]	
(d) the controlled legal person does not draw any gains other than the reimbursement of actual costs from the public contracts with the contracting authorities.	(d) the controlled legal person does not draw any gains other than the reimbursement of actual costs from the public contracts with the contracting authorities. [Am. 132]	(d) the controlled legal entity does not receive from its activities for the controlling entities or for other legal entities controlled by the same contracting authorities or entities any revenues other than the reimbursement or reallocation of funds for the performance of the	

		activities concerned.	
		For the determination of the percentage of activities referred to in point (b) of the first subparagraph the average total turnover of the controlled legal entity with respect to services, supplies and works for the three years preceding the concession award shall be taken into consideration. Where, because of the date that legal entity was created or commenced activities or because of a reorganisation of its activities, the turnover is either not available for the preceding three years or no more relevant, it will be sufficient to show that the turnover is credible, particularly by means of business projections.	
4. An agreement concluded between two or more contracting authorities or contracting entities as referred to in paragraph 1 subparagraph 1 of Article 4 shall not be deemed to be a concession within the meaning of point 1 of paragraph 1 of Article 2 of this Directive, where the following cumulative conditions are fulfilled:	4. An agreement concluded between two or more contracting authorities or contracting entities as referred to paragraph 1 subparagraph 1 of Article 4 in <i>point 1</i> of Article 4(1) shall not be deemed to be a concession within the meaning of point 1 of paragraph 1 of Article 2 fall outside the scope of this Directive, where the following cumulative conditions are fulfilled: [Am. 133]	4. A contract concluded between two or more contracting authorities or contracting entities as referred to in paragraph 1, point (1) of Article 4 shall not be deemed to be a concession within the meaning of point 1 of paragraph 1 of Article 2[...], where the following cumulative conditions are fulfilled:	

(a) the agreement establishes a genuine co-operation between the participating contracting authorities or entities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;	(a) the agreement establishes a genuine co-operation between the participating contracting authorities or entities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties <i>for the purpose of the performance of a shared public service task</i> ; [Am. 135]	(a) the contract is concluded in a framework of genuine co-operation between the participating contracting authorities or entities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;	
(b) the agreement is governed only by considerations relating to the public interest;	(b) the agreement is governed only by considerations relating to the public interest;	(b) the implementation of that cooperation is governed solely by considerations relating to the public interest;	
(c) the participating contracting authorities or entities shall do not perform on the open market more than 10% in terms of turnover of the activities which are relevant in the context of the agreement;	(c) the participating contracting authorities or entities shall do not perform on the open market more than 10% 20 % in terms of turnover of the activities which are relevant in the context of the agreement; [Am. 136]	(c) the participating contracting authorities or entities do not perform on the market less than 20% in terms of turnover of the activities concerned by the cooperation on the market ;	
(d) the agreement does not involve financial transfers between the participating contracting authorities or entities, other than those corresponding to the reimbursement of actual costs of the works, services or supplies;	(d) the agreement does not involve financial transfers between the participating contracting authorities or entities, other than those corresponding to the reimbursement of actual costs of the works, services or supplies; [Am. 137]	(d) the contract does not involve financial transfers between the participating contracting authorities or entities, other than those corresponding to the reimbursement or reallocation of funds for the works, services or supplies concerned ;	

(e) there is no private participation in any of the contracting authorities or entities involved.	(e) there is no private participation in any of the contracting authorities or entities involved, <i>with the exception of forms of private participation enforced by law, in conformity with the Treaties, which do not exert any influence on the decisions of the controlling contracting authority or entity.</i> [Am. 138]	(e) there is no private capital participation in any of the contracting authorities or entities involved.	
	<i>4a. This Directive shall not apply to agreements, decisions or other legal instruments, concluded between several contracting authorities or contracting entities referred to in point (1) of Article 4(1), or groupings of contracting authorities or contracting entities referred to in point (1) of Article 4(1) which make provision, in the context of the internal institutional and administrative organisation of a Member State and pursuant to applicable national law or regulation, for the transfer of powers between the parties with a view to the performance of a public service task.</i> [Am. 139]		

		<p>For the determination of the percentage of activities referred to in point (c) of the first subparagraph the average total turnover of the contracting authority or contracting entity as referred to in paragraph 1, point (1) of Article 4 concerned with respect to services, supplies and works for the three years preceding the conclusion of the contract shall be taken into consideration. When, because of the date that contracting authority or contracting entity as referred to in paragraph 1, point (1) of Article 4 was created or commenced activities or because of a reorganisation of its activities, the turnover is either not available for the preceding three years or no more relevant, it will be sufficient to show that the turnover is credible, particularly by means of business projections.</p>	
<p>5. The absence of private participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the concession or of the conclusion of the agreement.</p>	<p>5. The absence of private participation referred to in paragraphs 1 to 4a shall be verified at the time of the award of the concession or of the conclusion of the agreement.</p>	<p>5. The absence of private capital participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the concession or of the conclusion of the agreement.</p>	

The exceptions provided for in this Article shall cease to apply from the moment any private participation takes place, with the effect that ongoing concessions need to be opened to competition through regular concession award procedures.	The exceptions provided for in this Article shall cease to apply from the moment any private participation takes place, with the effect that ongoing concessions need to be opened to competition through regular concession award procedures. [Am. 140]	The exceptions provided for in this Article shall cease to apply from the moment any private participation takes place, with the effect that ongoing concessions need to be opened to competition through regular concession award procedures.	
Section III General provisions	Section III General provisions	Section III General provisions	
<i>Article 16</i> <i>Duration of the concession</i>	<i>Article 16</i> <i>Duration of the concession</i>	<i>Article 16</i> <i>Duration of the concession</i>	
The duration of the concession shall be limited to the time estimated to be necessary for the concessionaire to recoup the investments made in operating the works or services together with a reasonable return on invested capital.	1. The duration of the concession shall be limited to the time estimated to be necessary for the concessionaire to recoup the investments made in operating the works or services together with a reasonable return on invested capital. <i>grantor shall estimate the duration on the basis of</i> the works or services together with a reasonable return on invested capital. <i>requested.</i>	For concessions lasting more than 5 years, the maximum duration of the concession shall not, in principle, exceed the time estimated to be necessary for the concessionaire to recoup the investments made for operating the works or services together with a [...]return on invested capital.	
	<i>When the cost of investments must be met by the concessionaire, the duration of a concession shall reflect the nature and amount of the investments involved, both initial and further investments during the life of a concession, and shall not, under those circumstances, exceed the normal amortisation period.</i>		

	<i>The duration of the concession, whether or not the concessionaire is required to make investments, shall also reflect the amount of time deemed necessary to meet the objectives set in the contract, in particular as regards the provision of the service in question.</i>		
	<i>2. The normal amortisation period shall correspond to the time that concessionaires could reasonably be expected to take to recoup their investment costs and secure a reasonable return on invested capital. [Am. 141]</i>		
<i>Article 17 Social and other specific services</i>	<i>Article 17 Social and other specific services</i>	<i>Article 17 Social and other specific services</i>	
Concessions for social and other specific services listed in Annex X falling within the scope of this Directive shall be subject to the obligation of paragraph 3 of Art. 26 and of paragraph 1 of Article 27.	Concessions for social and other specific services listed in Annex X falling within the scope of this Directive shall be subject to the obligation of paragraph 3 of Art. 26 and of paragraph 1 of Article 27. Article 27(1) and (3). [Am. 142]	Concessions for social and other specific services, such as hotel and restaurant services or certain legal, rescue, administrative services, listed in Annex X falling within the scope of this Directive shall <u>be awarded in accordance with</u> paragraph 3 of Art. 26 Article 27, and shall be subject to the obligation of Articles 44 and 45.	

Article 18 <i>Mixed concessions</i>	Article 18 <i>Mixed concessions contracts</i> [Am. 143]	Article 18 <i>Mixed contracts</i>	
1. Contracts which have as their object both services and supplies shall be awarded in accordance with this Directive where the main object of the contract in question are services and where they are concessions within the meaning of point (1) of the first paragraph of Article 2	1. Contracts which have as their object both services and supplies shall be awarded in accordance with this Directive where the main object of the contract in question are services and where they are concessions within the meaning of point (1) of the first paragraph of Article 2. Where contracts have as their object concessions covered by this Directive as well as procurement or other elements not covered by it, the part of the contract which constitutes a concession covered by this Directive shall be awarded in accordance with the provisions thereof.	1. Contracts which have as their object both services and supplies shall be awarded in accordance with this Directive where the main object of the contract in question is services and where they are concessions within the meaning of point (1) of the first paragraph of Article 2	
	Where the different parts of the contract in question are not separable, the application of this Directive shall be determined by the main subject of that contract, established on the basis of the respective values of the concession, the items to be procured or other elements not covered by the Directive. [Am. 144]		

2. Concessions which have as their object both services within the meaning of Article 17 and other services shall be awarded in accordance with the provisions applicable to the type of service that characterises the main object of the contract in question.	2. Concessions which have Where a services concession contract falling within the scope of this Directive has as its object both services within the meaning of Article 17 and other services, shall be awarded in accordance with, the provisions applicable to of this Directive shall apply on the basis of the type of service that characterises the main object of the contract in question, determined by reference to the respective costs of the services concerned. [Am. 145]	2. Concessions which have as their object both services within the meaning of Article 17 and other services shall be awarded in accordance with the provisions applicable to the type of service that characterises the main object of the contract in question.	
3. In the case of mixed contracts referred to in paragraphs 1 and 2, the main object shall be determined by a comparison of the values of the respective services or supplies.	3. In the case of mixed contracts referred to in paragraphs 1 and 2, the main object shall be determined by a comparison of the values of the respective services or supplies. [Am. 146]	3. In the case of mixed contracts referred to in paragraphs 1 and 2, the main object shall be determined by a comparison of the values of the respective services or supplies.	
		4. Concessions which have as their object both services and works shall be awarded in accordance with the provisions of this Directive applicable to works concessions where the main object of the contract in question is the execution of works, as defined in Article 2(1)(4).	

<p>4. Where contracts have as their object concessions covered by this Directive as well as procurement or other elements not covered by it nor by Directives [replacing 2004/17/EC and Directive 2004/18] or 2009/81/EC, the part of the contract which constitutes a concession covered by this Directive shall be awarded in accordance with this Directive. However, when the different parts of the contract are objectively not separable, the application of this Directive shall be determined on the basis of the main subject of that contract.</p>	<p>4. Where contracts have as their object concessions covered by this Directive as well as procurement or other elements not covered by it nor by Directives [replacing 2004/17/EC and Directive 2004/18] or 2009/81/EC, the part of the contract which constitutes a concession covered by this Directive shall be awarded in accordance with this Directive. However, when the different parts of the contract are objectively not separable, the application of this Directive shall be determined on the basis of the main subject of that contract. [Am. 147]</p>	<p>5. Unless otherwise provided for in this Directive, in case of contracts having as their object concessions covered by this Directive as well as procurement or other elements not covered by it nor by Directives [replacing 2004/17/EC and Directive 2004/18] or 2009/81/EC, where a contract must be awarded pursuant to the provisions of this Directive, if awarded on its own, then this Directive shall apply also to the award of a mixed contract where contracting authorities or contracting entities choose to include other elements in the procurement, irrespective of their value and irrespective of the legal regime these added elements would otherwise have been subject to.</p> <p>However, when the different parts of the contract are objectively not separable, the application of this Directive shall be determined on the basis of the main subject of that contract.</p>	
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<p>5. In the case of concessions subject to this Directive and contracts subject to [Directive 2004/18/EC or 2004/17/EC] or 2009/81/EC³⁸, the part of the contract which constitutes a concession covered by this Directive shall be awarded in accordance with the provisions thereof.</p> <p>Where the different parts of such contracts are not objectively separable, the application of this Directive shall be determined on the basis of the main subject of that contract.</p>	<p>5. In the case of concessions subject to this Directive and contracts subject to [Directive 2004/18/EC or 2004/17/EC] or 2009/81/EC, the part of the contract which constitutes a concession covered by this Directive shall be awarded in accordance with the provisions thereof.</p> <p>Where the different parts of such contracts are not objectively separable, the application of this Directive shall be determined on the basis of the main subject of that contract. [Am. 148]</p>	<p>6. In the case of concessions subject to this Directive and contracts subject to [Directive 2004/18/EC or 2004/17/EC] [...] contracting authorities and contracting entities may choose to award separate contracts for the separate parts. If so, the decision of which rules apply to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned. However, if they chose to award a single contract or if the different parts of the contract are objectively not separable, the mixed contract shall be awarded in accordance with the provisions of [Directive 2004/18/EC or 2004/17/EC], provided that the estimated value of the part of the contract which constitutes a public contract covered by [Directive 2004/18/EC or 2004/17/EC], calculated in accordance with the provisions of these Directives, is equal to or greater than the relevant threshold set out in these Directives.</p>	
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³⁸ OJ L 217, 20.8.2009, p. 76.

		<p>6a. Where contracts have as their object concessions covered by this Directive as well as procurement or other elements covered by Directive 2009/81/EC³⁹ the contract shall be awarded in accordance with the provisions of this Directive, provided that the award of a single contract is justified for objective reasons.</p>	
		<p>The decision to award a single contract may not, however, be taken for the purpose of excluding contracts from the application of this Directive or Directive 2009/81/EC.</p>	
		<p>6b. Where contracts have as their object both concessions covered by this Directive and procurement or other elements covered by Directive 2009/81/EC, as well as procurement or other elements not being subject to either Directive and not being subject to Article 346 of the <u>TFEU</u>, the contract shall be subject to this Directive provided that the award of a single contract is justified for objective reasons.</p>	

³⁹ OJ L 217, 20.8.2009, p. 76.

		The decision to award a single contract may not, however, be taken for the purpose of excluding contracts from the application of this Directive or Directive 2009/81/EC.	
		6c. In the case of concessions which have as their subject procurement covered by this Directive, or this directive together with elements covered by Directive 2009/81/EC or by [Directive 2004/18/EC or 2004/17/EC], as well as procurement or other elements which are covered by Article 346 of the <u>TFEU</u> , the concession shall not be subject to this Directive provided that the award of a single contract is justified for objective reasons.	
		The decision to award a single contract may not, however, be taken for the purpose of excluding contracts from the application of this Directive.	
<i>Article 19 Concessions covering several activities</i>	<i>Article 19 Concessions covering several activities</i>	<i>Article 19 Concessions covering activities listed in Annex III and other activities</i>	
		1. In the case of contracts intended to cover several activities, contracting entities and contracting authorities may choose to award separate contracts for the purposes	

		of each separate activity. If so, the decision of which rules apply to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.	
		Where contracting entities or contracting authorities decide not to award separate contracts, paragraphs 1a and 2 shall apply, Article 18 notwithstanding.	
		The choice between awarding a single contract and awarding a number of separate contracts shall not be made with the objective of excluding it from the scope of the rules of this Directive applicable to concessions awarded by contracting entities or, where applicable, the rules of this Directive applicable to concessions awarded by contracting authorities, Directive [2004/18/EC], Directive [2004/17/EC] or Directive 2009/81/EC of the European Parliament and of the Council.	
1. A concession which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.	1. A concession which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.	1a. A concession which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.	

However, the choice between awarding a single concession and awarding a number of separate concessions may not be made with the objective of excluding it from the scope of this Directive.	However, the The choice between awarding a single concession and awarding a number of separate concessions may shall not be made with the objective of excluding it the concession from the scope of this Directive. [Am. 149]	[...]	
2. Where one of the activities for which the concession subject to the provisions of this Directive is intended is listed in Annex III and the other is not listed therein and where it is objectively impossible to determine for which activity the concession is principally intended, the concession shall be awarded in accordance with the provisions applicable to concessions awarded by contracting authorities.	2. Where one of the activities for which the concession subject to the provisions of falling within the scope of this this Directive is intended is listed in Annex III and the other is not listed therein and where it is objectively impossible to determine for which activity the concession is principally intended, the concession shall be awarded in accordance with the provisions applicable to concessions awarded by contracting authorities, without prejudice to Union law. [Am. 150]	2. In the case of contracts for which it is objectively impossible to determine for which activity the contract is principally intended, the applicable rules shall be determined in accordance with points a to d:	
		(a) the concession shall be awarded in accordance with the rules applicable to concessions awarded by contracting authorities, if one of the activities for which the concession is intended is subject to these rules and the other to rules applicable to concessions awarded by contracting entities;	

		(b) the contract shall be awarded in accordance with [Directive 2004/17/EC], if one of the activities for which the contract is intended is subject to this Directive and the other to the [Directive 2004/17/EC];	
3. If one of the activities for which the contract or the concession is intended is subject to this Directive and the other is not subject to either this Directive or [Directive 2004/18/EC or 2004/17/EC] or 2009/81/EC ⁴⁰ and if it is objectively impossible to determine for which activity the contract or the concession is principally intended, the contract or the concession shall be awarded in accordance with this Directive.	3. If one of the activities for which the contract or the concession is intended is subject to this Directive and the other is not subject to either this Directive or [Directive 2004/18/EC or 2004/17/EC] or 2009/81/EC and if it is objectively impossible to determine for which activity the contract or the concession is principally intended, the contract or the concession shall be awarded in accordance with this Directive. [Am. 151]	d) the contract or the concession shall be awarded in accordance with this Directive, if one of the activities for which the contract or the concession is intended is subject to this Directive and the other is not subject to either this Directive or [Directive 2004/18/EC or 2004/17/EC] or 2009/81/EC⁴¹. [...]	
		3. In the case of concessions intended to cover an activity which is subject to this Directive and another which is subject to Directive 2009/81/EC, which in addition include procurement or other elements which are covered by Article 346 of the TFEU the concession shall not be subject to	

⁴⁰ OJ L 217, 20.8.2009, p. 76.

⁴¹ OJ L 217, 20.8.2009, p. 76.

		this Directive provided that the award of a single contract is justified for objective reasons. The decision to award a single contract may not, however, be taken for the purpose of excluding contracts from the application of this Directive or Directive 2009/81/EC.	
Section IV Specific situations	Section IV Specific situations	Section IV Specific situations	
<i>Article 20</i> <i>Reserved concessions</i>	<i>Article 20</i> <i>Reserved concessions</i>	<i>Article 20</i> <i>Reserved concessions</i>	
Member States may reserve the right to participate in concession award procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such concessions to be performed in the context of sheltered employment programmes provided that more than 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers. The concession notice shall make reference to this provision.	Member States may reserve the right to participate in concession award procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such concessions to be performed in the context of sheltered employment programmes provided that more than 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers. The concession notice shall make reference to this provision.	1. Member States may reserve the right to participate in concession award procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged persons or provide for such concessions to be performed in the context of sheltered employment programmes, provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers. The concession notice shall make reference to this provision.	

		<p>2. Member States may also reserve the right to participate in procedures for the award of services concessions to organisations whose main aim is the integration of former employees of public authorities into the private sector, provided that the following cumulative conditions are fulfilled:</p>	
		<p>(a) at least 75% of the employees of these organisations are, or will be at the relevant time, individuals who have left their position of employment within a contracting authority or contracting entity in order to deliver public services by way of that organisation;</p>	
		<p>(b) the organisation provides its services exclusively for contracting authorities or contracting entities;</p>	
		<p>(c) employee ownership or engagement has, or will have at the relevant time, a significant impact on the governance of the organisation.</p>	
		<p>This provision only applies where the concession awarded is fully performed within the period of three years beginning from the date on which the organisation first</p>	

		begins to supply any services. For the purposes of this paragraph, “relevant time” means the date on which the organisation would be required to begin the supply of services under a concession awarded pursuant to this provision.	
		3. The concession notice shall make reference to this provision.	
<i>Article 21</i> <i>Research and development services</i>	<i>Article 21</i> <i>Research and development services</i>	<i>Article 21</i> <i>Research and development services</i>	
1. This Directive shall apply to service concessions for research and development services with CPV reference numbers 73000000-2 to 73436000-7, except 73200000-4, 73210000-7 or 73220000-0, provided that the following conditions are both fulfilled:	1. This Directive shall apply to service concessions for research and development services with CPV reference numbers 73000000-2 to 73436000-7, except 73200000-4, 73210000-7 or 73220000-0, provided that the following conditions are both fulfilled:	1. This Directive shall apply to service concessions for research and development services with CPV reference numbers 73000000-2 to 73436000-7, except 73200000-4, 73210000-7, 73220000-0, 73400000-6, [R&D services on security and defence materials], 73410000-9[Military research and technology], 73421000-9[Development of security equipment], 73422000-6[Development of firearms and ammunition], 73423000-3[Development of military vehicles], 73424000-0, 73425000-7, 73426000-4[Development of military electronic systems], 73431000-2 [Test and evaluation of security equipment], 73432000-9[Test and evaluation of firearms and ammunition], 73433000-6[Test	

		and evaluation of military vehicles], 73434000-3, 73435000-0 or 73436000-7[Test and evaluation of military electronic systems] provided that the following conditions are both fulfilled:	
(a) the benefits accrue exclusively to the contracting authority or contracting entity for use in the conduct of its own affairs,	(a) the benefits accrue exclusively to the contracting authority or contracting entity for use in the conduct of its own affairs,	(a) the benefits accrue exclusively to the contracting authority or contracting entity for its use in the conduct of its own affairs,	
(b) the service provided is wholly remunerated by the contracting authority or contracting entity	(b) the service provided is wholly remunerated by the contracting authority or contracting entity	(b) the service provided is wholly remunerated by the contracting authority or contracting entity	
2. This Directive shall not apply to public service concessions for research and development services with CPV reference numbers 73000000-2 to 73436000-7, except 73200000-4, 73210000-7 or 73220000-0 where one of the above conditions is not met.	2. This Directive shall not apply to public service concessions for research and development services with CPV reference numbers 73000000-2 to 73436000-7, except 73200000-4, 73210000-7 or 73220000-0 where one of the above conditions is not met.	[...]	
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 46 concerning the reference numbers of this Article, whenever changes in the CPV nomenclature must be reflected in this Directive and they do not imply a modification of the scope of this Directive.	3. The Commission shall be empowered to adopt delegated acts in accordance with Article 46 concerning the reference numbers of this Article, whenever changes in the CPV nomenclature must be reflected in this Directive and they do not imply a modification of the scope of this Directive.	3. The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to amend the CPV reference numbers referred to in paragraph 1 to reflect changes in the CPV nomenclature provided that such amendments do not imply a modification of the scope of this Directive.	

CHAPTER II Principles	CHAPTER II Principles	CHAPTER II	II
<i>Article 22</i> <i>Economic operators</i>	<i>Article 22</i> <i>Economic operators</i>	<i>Article 22</i> <i>Economic operators</i>	
	<i>-1. The legal personality of the economic operators shall not constitute a valid ground for rejection in the framework of a concession contract award procedure. [Am. 152]</i>		
1. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the concession is awarded, they would be required to be either natural or legal persons.	1. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the concession is awarded, they would be required to be either natural or legal persons. [Am. 153]	1. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Member State in which the concession is awarded, they would be required to be either natural or legal persons.	
2. However, legal persons may be required to indicate in the tender or the application, the names and relevant professional qualifications of the staff to be responsible for the performance of the concession in question.	2. However, legal persons may be required to indicate in the tender or the application <i>application or the tender</i> , the names and relevant professional qualifications of the staff to be responsible for the performance of the concession in question. [Am. 154]	2. However, legal persons may be required to indicate in the tender or the application, the names and relevant professional qualifications of the staff to be responsible for the performance of the concession in question.	

3. Groups of economic operators may submit tenders or put themselves forward as candidates.	3. Groups of economic operators, <i>including consortia of undertakings,</i> may submit tenders or put themselves forward as candidates <i>or submit tenders. Their participation in a concession award procedure may not be subject to additional conditions that are not imposed on individual candidates. [Am. 155]</i>	3. Groups of economic operators may participate in concession award procedure.	
	<i>3a. Grantors may establish specific conditions for the performance of the concession by a group of economic operators, provided that those conditions are justified by objective reasons and are proportionate. [Am. 156]</i>		
4. Contracting authorities and contracting entities shall not establish specific conditions for participation of such groups in concession award procedures which are not imposed on individual candidates. In order to submit an application or a tender, these groups shall not be required by the contracting authorities or contracting entities to assume a specific legal form.	4. Contracting authorities and contracting entities shall not establish specific conditions for participation of such groups in concession award procedures which are not imposed on individual candidates. In order to submit an application or a tender, these groups shall not be required by the contracting authorities or contracting entities to assume a specific legal form. [Am. 157]	4. Specific conditions relating to economic and financial standing or to criteria relating to technical and professional ability which contracting authority or entity establish for the participation of such groups which are not imposed on individual participants shall be justified by objective reasons and proportionate.	

Contracting authorities and contracting entities may establish specific conditions for the performance of the concession by a group, provided that those conditions are justified by objective reasons and proportionate. Those conditions may require a group to assume a specific legal form once it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the concession.	Contracting authorities and contracting entities may establish specific conditions for the performance of the concession by a group, provided that those conditions are justified by objective reasons and proportionate. Those conditions may require a group to assume a specific legal form once it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the concession. [Am. 157]	Conditions for the performance of a concession by such groups, which are not imposed on individual participants, shall also be justified by objective reasons and proportionate. Requiring those groups to appoint a joint representation or a lead partner for the purposes of the concession award procedure or to require information on their constitution shall be deemed to be justified and proportionate.	
		In order to submit a tender or a request to participate, groups of economic operators shall not be required by the contracting authority or entity to have a specific legal form. They may, however, be required to assume a specific legal form once they have been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the concession.	

<i>Article 23 Nomenclatures</i>	<i>Article 23 Nomenclatures</i>	<i>Article 23 Nomenclatures</i>	
1. Any references to nomenclatures in the context of the award of concessions shall be made using the ‘Common Procurement Vocabulary (CPV)’ as adopted by Regulation (EC) No 2195/2002 ⁴² .	1. Any references to nomenclatures in the context of the award of concessions shall be made using the ‘Common Procurement Vocabulary (CPV)’ as adopted by Regulation (EC) No 2195/2002.	1. Any references to nomenclatures in the context of the award of concessions shall be made using the ‘Common Procurement Vocabulary (CPV)’ as adopted by Regulation (EC) No 2195/2002 ⁴³ .	
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to adapt the reference numbers used in Annex I and X, whenever changes in the CPV nomenclature must be reflected in this Directive and they do not imply a modification of the scope of this Directive.	2. The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to adapt the reference numbers used in Annex I and X, whenever changes in the CPV nomenclature must be reflected in this Directive and they do not imply a modification of the scope of this Directive.	2. The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to adapt the reference numbers used in Annex I and X, to reflect changes in the CPV nomenclature provided that such amendments do not imply a modification of the scope of this Directive.	
<i>Article 24 Confidentiality</i>	<i>Article 24 Confidentiality</i>	<i>deleted</i>	
1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 27 and 35 of this Directive, the contracting authority shall not disclose information forwarded to it	1. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded concession contracts and to the information to candidates and tenderers set out in Articles 27 and 35 of this Directive, the contracting authority grantor shall not disclose	deleted	

⁴² OJ L 340, 16.12.2002, p. 1.

⁴³ OJ L 340, 16.12.2002, p. 1.

by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.	information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, in particular technical or trade secrets and the confidential aspects of tenders. [Am. 158]		
	<i>This Article shall not prevent public disclosure of non-confidential parts of concluded contracts, including any subsequent changes. [Am. 158]</i>		
2. Contracting authorities or contracting entities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authorities or contracting entities make available throughout the concession award procedure.	2. Contracting authorities or contracting entities The grantor may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authorities or contracting entities make it makes available throughout the concession award procedure. [Am. 159]	deleted	
Article 25 <i>Rules applicable to communication</i>	Article 25 <i>Rules applicable to communication</i>	Article 25 <i>Rules applicable to communication</i>	
1. Except where use of electronic means is mandatory pursuant to Articles 28 (2) and 30 of this Directive contracting authorities and contracting entities may choose between the following means of communication for all communication and information exchange:	1. Except where use of electronic means is mandatory pursuant to Articles 28 (2) and 30 of this Directive contracting authorities and contracting entities the grantor may choose between the following means of communication for all communication and information exchange: [Am. 160]	1. Except where use of electronic means is mandatory pursuant to Articles 28 (2) and 30 of this Directive, Member States or contracting authorities and contracting entities may choose between the following means of communication for all communication and information exchange:	

(a) electronic means in accordance with paragraphs 3, 4 and 5;	(a) electronic means in accordance with paragraphs 3, 4 and 5; [Am. 161]	(a) electronic means; [...]	
(b) post or fax;	(b) post or fax;	(b) post or fax;	
(c) telephone in the cases and circumstances referred to in paragraph 6, or	c) telephone in the cases and circumstances referred to in paragraph 6, or, subject to transmission of written confirmation; [Am. 162]	(c) oral communication, including telephone, in respect of communications other than the essential elements of a concession award procedure and provided that the content of the oral communication be documented to a sufficient degree.	
	(ca) hand delivery certified by an acknowledgement of receipt; [Am. 163]		
(d) a combination of those means.	(d) a combination of those means.		
Member States may make mandatory the use of electronic means of communication for concessions, going beyond the obligations established in Articles 28 (2) and 30 of this Directive.	Member States may make mandatory the use of electronic means of communication for concessions, going beyond the obligations established in Articles 28 (2) and 30 of this Directive.		
2. The means of communication chosen must be generally available and not restrict economic operators' access to the concession award procedure.	2. The means of communication chosen must be generally available and non-discriminatory , and not restrict economic operators' access to the concession award procedure. <i>In the case of electronic means, they must also be interoperable with the information and communication technology products in general use.</i> [Am. 164]	2. The means of communication chosen must be generally available and not restrict economic operators' access to the concession award procedure.	

In all communication, exchange and storage of information, contracting authorities and contracting entities shall ensure that the integrity of data and the confidentiality of tenders and applications are preserved. They shall examine the content of tenders and applications only after the time limit set for submitting them has expired.	In all communication, exchange and storage of information, contracting authorities and contracting entities the grantor shall ensure that the integrity of data and the confidentiality of tenders and applications and tenders are preserved. They shall examine the content of tenders and applications and tenders only after the time limit set for submitting them has expired. [Am. 164]	In all communication, exchange and storage of information, contracting authorities and contracting entities shall ensure that the integrity of data and the confidentiality of tenders and applications are preserved. They shall examine the content of tenders and applications only after the time limit set for submitting them has expired.	
3. The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the concession award procedure. The technical details and characteristics of the devices for the electronic receipts to be deemed in compliance with the first subparagraph of this paragraph are set out in Annex XII	3. The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the concession award procedure. The technical details and characteristics of the devices for the electronic receipts to be deemed in compliance with the first subparagraph of this paragraph are set out in Annex XII [Am. 165]	deleted	
The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to amend the technical details and characteristics set out in Annex XII due to technical developments or administrative	The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to amend the technical details and characteristics set out in Annex XII due to technical developments or administrative	deleted	

reasons.	reasons.		
To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission shall be empowered to adopt delegated acts in accordance with Article 46 to establish the mandatory use of specific technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.	To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission shall be empowered to adopt delegated acts in accordance with Article 46 to establish the mandatory use of specific technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication. [Am. 165]	deleted	
4. Contracting authorities and contracting entities may, where necessary, require the use of tools which are not generally available, provided that they offer alternative means of access. Contracting authorities and contracting entities shall be deemed to offer suitable alternative means of access in any of the following situations:	4. Contracting authorities and contracting entities may, where necessary, require the use of tools which are not generally available, provided that they offer alternative means of access. Contracting authorities and contracting entities shall be deemed to offer suitable alternative means of access in any of the following situations:	deleted	
(a) They offer unrestricted and full direct access by electronic means to these tools from the date of publication of the notice in accordance with Annex IX or from the date when the invitation to confirm interest is sent; the text of the notice or the invitation to confirm interest shall specify the internet	(a) They offer unrestricted and full direct access by electronic means to these tools from the date of publication of the notice in accordance with Annex IX or from the date when the invitation to confirm interest is sent; the text of the notice or the invitation to confirm interest shall specify the internet	deleted	

address at which these tools are accessible;	address at which these tools are accessible;		
(b) ensure that tenderers established in other Member States than the contracting authority's may access the concession award procedure through the use of provisional tokens made available online at no extra cost;	(b) ensure that tenderers established in other Member States than the contracting authority's may access the concession award procedure through the use of provisional tokens made available online at no extra cost;	deleted	
(c) support an alternative channel for electronic submission of tenders.	(c) support an alternative channel for electronic submission of tenders. [Am. 166]	deleted	
5. The following rules shall apply to devices for the electronic transmission and receipt of tenders and for the electronic transmission and receipt of applications:	5. The following rules shall apply to devices for the electronic transmission and receipt of tenders and for the electronic transmission and receipt of applications:	deleted	
a) information on specifications for the electronic submission of tenders and requests to participate, including encryption and time-stamping, shall be available to interested parties;	a) information on specifications for the electronic submission of tenders and requests to participate, including encryption and time-stamping, shall be available to interested parties;	deleted	
b) devices, methods for authentication and electronic signatures shall comply with the requirements of Annex XII;	b) devices, methods for authentication and electronic signatures shall comply with the requirements of Annex XII;	deleted	
c) contracting authorities and contracting entities shall specify the level of security required for the electronic means of communication in the various stages of the concession award procedure followed. The level	c) contracting authorities and contracting entities shall specify the level of security required for the electronic means of communication in the various stages of the concession award procedure followed. The level	deleted	

shall be proportionate to the risks attached.	shall be proportionate to the risks attached.		
d) where advanced Electronic Signatures as defined by Directive 1999/93/EC ⁴⁴ of the European Parliament and of the Council are required, contracting authorities and contracting entities shall accept signatures supported by a qualified electronic certificate referred to in the Trusted List provided for in the European Commission Decision 2009/767/EC ⁴⁵ , created with or without a secure signature creation device, subject to compliance with the following conditions:	d) — where advanced Electronic Signatures as defined by Directive 1999/93/EC⁴⁶ of the European Parliament and of the Council are required, contracting authorities and contracting entities shall accept signatures supported by a qualified electronic certificate referred to in the Trusted List provided for in the European Commission Decision 2009/767/EC⁴⁷, created with or without a secure signature creation device, subject to compliance with the following conditions:	deleted	
(i) they must establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU ⁴⁸ and put in place necessary measures to be able to process these formats technically;	(i) — they must establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU⁴⁹ and put in place necessary measures to be able to process these formats technically;	deleted	

⁴⁴ OJ L 13, 19.1.2000, p. 12.

⁴⁵ OJ L 274, 20.10.2009, p. 36.

⁴⁶ OJ L 13, 19.1.2000, p. 12.

⁴⁷ OJ L 274, 20.10.2009, p. 36.

⁴⁸ OJ L 53, 26.2.2011, p. 66.

⁴⁹ OJ L 53, 26.2.2011, p. 66.

(ii) where a tender is signed with the support of a qualified certificate that is included in the Trusted list, they must not apply additional requirements that may hinder the use of those signatures by tenderers.	(ii) — where a tender is signed with the support of a qualified certificate that is included in the Trusted list, they must not apply additional requirements that may hinder the use of those signatures by tenderers. [Am. 167]	deleted	
6. The following rules shall apply to the transmission of applications to participate:	6. — The following rules shall apply to the transmission of applications to participate:	deleted	
(a) applications to participate in a procedure for the award of a concession may be made in writing or by telephone; in the latter case, a written confirmation must be sent before expiry of the time limit set for their receipt;	(a) — applications to participate in a procedure for the award of a concession may be made in writing or by telephone; in the latter case, a written confirmation must be sent before expiry of the time limit set for their receipt;	deleted	
(b) contracting authorities or contracting entities may require that applications for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof.	(b) — contracting authorities or contracting entities may require that applications for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof.	deleted	
For the purposes of point (b), the contracting authority or entity shall indicate in the concession notice or in the invitation to confirm interest that it requires applications to participate made by fax to be confirmed by post or by electronic means and the time limit for sending such confirmation	For the purposes of point (b), the contracting authority or entity shall indicate in the concession notice or in the invitation to confirm interest that it requires applications to participate made by fax to be confirmed by post or by electronic means and the time limit for sending such confirmation	deleted	

	[Am. 168]		
<p>7. Member States shall ensure that, at the latest 5 years after the date provided for in Article 49 (1), all procedures for the award of concessions under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article. This obligation shall not apply where the use of electronic means would require specialised tools or file formats that are not generally available in all the Member States within the meaning of paragraph 3. It is the responsibility of the contracting authorities or contracting entities using other means of communication for submission of tenders to demonstrate in the concession documents that the use of electronic means, due to the particular nature of the information to be exchanged with the economic operators, would require specialised tools or file formats that are not generally available in all the Member States. Contracting authorities and contracting entities shall be deemed to have legitimate reasons not to request electronic means of communication in the submission</p>	<p>7. Member States shall ensure that, at the latest 5 years after the date provided for in Article 49 (1), all procedures for the award of concessions under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article. This obligation shall not apply where the use of electronic means would require specialised tools or file formats that are not generally available in all the Member States within the meaning of paragraph 3. It is the responsibility of the contracting authorities or contracting entities using other means of communication for submission of tenders to demonstrate in the concession documents that the use of electronic means, due to the particular nature of the information to be exchanged with the economic operators, would require specialised tools or file formats that are not generally available in all the Member States. Contracting authorities and contracting entities shall be deemed to have legitimate reasons not to request electronic means of communication in the submission</p>	deleted	

process in the following cases:	process in the following cases:		
(a) the description of the technical specifications, due to the specialised nature of the concession award, cannot be rendered using file formats that are generally supported by commonly used applications;	(a) — the description of the technical specifications, due to the specialised nature of the concession award, cannot be rendered using file formats that are generally supported by commonly used applications;	deleted	
(b) the applications supporting file formats that are suitable for the description of the technical specifications are under a proprietary licensing schema and cannot be made available for downloading or remote use by the contracting authority;	(b) — the applications supporting file formats that are suitable for the description of the technical specifications are under a proprietary licensing schema and cannot be made available for downloading or remote use by the contracting authority;	deleted	
(c) the applications supporting file formats that are suitable for the description of the technical specifications use file formats that cannot be handled by any other open or downloadable applications.	(c) — the applications supporting file formats that are suitable for the description of the technical specifications use file formats that cannot be handled by any other open or downloadable applications. [Am. 169]	deleted	
8. Contracting authorities may use the data processed electronically for public procurement procedures in order to prevent, detect and correct errors occurring at each stage by developing appropriate tools.	8. — Contracting authorities may use the data processed electronically for public procurement procedures in order to prevent, detect and correct errors occurring at each stage by developing appropriate tools. [Am. 170]	deleted	

TITLE II RULES ON THE AWARD OF CONCESSIONS	RULES ON THE AWARD OF CONCESSIONS: GENERAL PRINCIPLES, TRANSPARENCY AND PROCEDURAL GUARANTEES [Am. 171]	TITLE II RULES ON THE AWARD OF CONCESSIONS	
CHAPTER I Publication and Transparency		CHAPTER I Publication and Transparency	
	<i>Chapter -I General principles</i>		
	<i>Article -26 Freedom of the grantor to organise the procedure</i>		
	<i>The grantor shall have the freedom to organise the procedure leading to the choice of concessionaire subject to compliance with this Directive, the only two mandatory stages being the publication of a concession notice at the beginning of the procedure, except in the cases provided for in Article 17 and Article 26(5), and the publication of an award notice at the end of the procedure.</i>		
	<i>Intermediate stages may be provided for during the award procedure by the grantor, such as the sending of an invitation to submit an offer to the candidates who have responded where appropriate to the concession notice. [Am. 172]</i>		

	<i>Article -26 a</i>		
	<i>General principles</i>		
	<i>1. Concessions shall be awarded on the basis of the criteria set out by the grantor, in accordance with Article 38b, provided that the following cumulative conditions are fulfilled:</i>		
	<i>(a) the tender complies with the requirements, conditions and criteria set out in the concession notice or in the invitation to submit a tender and in the concession documents;</i>		
	<i>(b) the tender comes from a tenderer who</i>		
	<i>(i) is not excluded from participating in the award procedure in accordance with Article 36(5) and (7), and subject to Article 36(8), and</i>		
	<i>(ii) meets the selection criteria set out by the grantor in accordance with Article 36(2) and (3).</i>		
	<i>2. During the concession award procedure, the grantor shall treat economic operators equally and shall act in a transparent and proportionate way. In particular, it shall not provide information in a discriminatory manner which may give some candidates or tenderers an advantage over others. The design of the concession award procedure shall not be made with the objective</i>		

	<i>of excluding it from the scope of this Directive or of artificially narrowing competition.</i>		
	<i>3. Member States shall ensure that economic operators comply with the environmental, social and labour law provisions which apply at the place where the works are executed or services provided, as set out in international conventions listed in Annex Xa, Union and national law as well as collective agreements concluded in accordance with national law and practices which respect Union law.</i>		
	<i>4. The grantor shall not award a concession contract to the tenderer submitting the best tender where it has been established, based on clear and sufficient evidence, that the tenderer does not comply with the environmental, social and labour law provisions referred to in paragraph 3 of this Article.</i>		
	<i>5. The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to amend the list in Annex Xa, where necessary due to the conclusion of new international agreements or modification of existing international agreements. [Am. 172]</i>		

<i>Article 26</i> <i>Concession notices</i>	<i>Article 26</i> <i>Concession notices</i>	<i>Article 26</i> <i>Concession notices</i>	
1. Contracting authorities and contracting entities wishing to award a concession shall make known their intention by means of a concession notice.	1. Contracting authorities and contracting entities A grantor wishing to award a concession shall make known their its intention by means of a concession notice in accordance with the procedures laid down in Article 28. The concession notice shall contain the information referred to in Annex IV and, where appropriate, any other information deemed useful by the grantor. [Am. 173]	1. Contracting authorities and contracting entities wishing to award a concession shall make known their intention by means of a concession notice.	
2. Concession notices shall contain the information referred to in part of Annex IV and, where appropriate, any other information deemed useful by the contracting authority or entity, in accordance with the format of standard forms.	2. Concession notices shall contain the information referred to in part of Annex IV and, where appropriate, any other information deemed useful by the contracting authority or entity, in accordance with the format of standard forms. [Am. 174]	2. Concession notices shall contain the information referred to in <u>part of</u> Annex IV and, where appropriate, any other information deemed useful by the contracting authority or entity, in accordance with the format of standard forms.	
3. Contracting authorities and contracting entities wishing to award a concession for social and other specific services shall make known their intention of planned concession award through the publication of a prior information notice as soon as possible after the beginning of the budgetary year. Those notices shall contain the information set out in	3. Contracting authorities and contracting entities wishing to award a concession for social and other specific services shall make known their intention of planned concession award through the publication of a prior information notice as soon as possible after the beginning of the budgetary year. Those notices shall contain the information set out in	3. Contracting authorities and contracting entities wishing to award a concession for social and other specific services listed in Annex X shall make known their intention of planned concession award through the publication of a prior information notice -[...]. Those notices shall contain the information set out in Annex XIII.	

Annex XIII.	Annex XIII. [Am. 175]		
4. The Commission shall establish those standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 48.	4. The Commission shall establish those standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 48. [Am. 176]	deleted	
5. By way of derogation from paragraph 1, the contracting authorities and entities shall not be required to publish a concession notice in any of the following cases:	5. By way of derogation from paragraph 1, the contracting authorities and entities grantor shall not be required to publish a concession notice where the works or services can be supplied only by a particular economic operator, due to <i>the existence of a special or exclusive right</i> , the absence of competition for technical reasons, or the protection of patents, copyrights or other intellectual property rights and where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the concession award. [Am. 177]	4. By way of derogation from paragraph 1, the contracting authorities and entities shall not be required to publish a concession notice in any of the following cases:	
(a) where no tenders or no suitable tenders or no applications have been submitted in response to a concession procedure, provided that the initial conditions of the concession contract are not substantially altered and on condition that a report is sent to the	(a) where no tenders or no suitable tenders or no applications have been submitted in response to a concession procedure, provided that the initial conditions of the concession contract are not substantially altered and on condition that a report is sent to the	(a) where no tenders or no suitable tenders or no applications have been submitted in response to a prior concession procedure, provided that the initial conditions of the concession contract are not substantially altered and on condition that a report is sent to the	

Commission or to the national oversight body designated pursuant to Article 84 of Directive [replacing Directive 2004/18/EC] where they so request;	Commission or to the national oversight body designated pursuant to Article 84 of Directive [replacing Directive 2004/18/EC] where they so request; [Am. 177]	Commission where it so requests;	
(b) where the works or services can be supplied only by a particular economic operator due to the absence of competition for technical reasons, the protection of patents, copyrights or other intellectual property rights or the protection of other exclusive rights and where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the concession award;		(b) where the works or services can be supplied only by a particular economic operator for any of the following reasons:	
(c) for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities or contracting entities awarded an original concession subject to the obligation referred to in paragraph 1, provided that such works or services are in conformity with a basic project for which the original concession was awarded. The basic project shall mention the extent of possible additional works or services and the conditions under which they will be awarded.	(c) — for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities or contracting entities awarded an original concession subject to the obligation referred to in paragraph 1, provided that such works or services are in conformity with a basic project for which the original concession was awarded. The basic project shall mention the extent of possible additional works or services and the conditions under which they will be awarded.		

As soon as the first project is put up for tender the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities or contracting entities when they apply the provisions of Article 5	As soon as the first project is put up for tender the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities or contracting entities when they apply the provisions of Article 5 [Am. 177]		
		(i) the aim of the concession is the creation or acquisition of a unique work of art or artistic performance;	
		(ii) competition is absent for technical reasons;	
		(iii) the protection of exclusive rights, including intellectual property rights. [...]	
		<p>The exceptions set out in points (ii) and (iii) only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the concession award;</p> <p>For the purposes of point (a) of the first subparagraph of paragraph 4 (a), a tender shall be considered not to be suitable where it is irrelevant to the concession, being incapable, without substantial changes, of meeting the contracting authority or contracting entity's needs and requirements as specified in the concession</p>	

		documents. An application shall be considered not to be suitable where the economic operator concerned shall or may be excluded pursuant to paragraphs 5-7 of Article 36 or does not meet the selection criteria set out by the contracting authority or the contracting entity pursuant to paragraph 1 of Article 36. In cases where applications are to include tenders, it shall be considered not to be suitable where the tender is irrelevant to the concession as referred to above.	
	<i>5a. By way of derogation from paragraph 1, the grantor shall not be required to publish a new concession notice in either of the following cases:</i>		
	<i>(a) where no applications or no tenders or no suitable tenders have been submitted in response to an initial concession procedure, provided that the initial conditions of the concession contract are not substantially altered and that a report is sent to the Commission or the competent national authorities where they so request;</i>		

	<i>(b) for new works or services consisting of the repetition of similar works or services entrusted to the original concessionaire to which the same grantor awarded an original concession subject to the obligation referred to in paragraph 1, provided that such works or services are in conformity with a basic project for which the original concession was awarded. The basic project shall mention the extent of possible additional works or services and the conditions under which they will be awarded.</i>		
	<i>As soon as the first project is put out to tender the total estimated cost of subsequent works or services shall be taken into consideration by the grantor when it applies Article 6. [Am. 178]</i>		
6. For the purposes of point (a) of the first subparagraph, a tender shall be considered not to be suitable where:	6. For the purposes of point (a) of the first subparagraph <i>of paragraph 5a</i> , a tender shall be considered not to be suitable where <i>it is completely irrelevant to the concession, being incapable of meeting the grantor's needs as specified in the concession documents.</i>		
- it is irregular or unacceptable, and	it is irregular or unacceptable, and		

- it is completely irrelevant to the concession, being incapable of meeting the contracting authority or contracting entity's needs as specified in the concession documents.	- it is completely irrelevant to the concession, being incapable of meeting the contracting authority or contracting entity's needs as specified in the concession documents.		
Tenders shall be considered to be irregular, where they do not comply with the concession documents or where the prices offered are sheltered from normal competitive forces. Tenders shall be considered to be unacceptable in any of the following cases:	Tenders shall be considered to be irregular, where they do not comply with the concession documents or where the prices offered are sheltered from normal competitive forces. Tenders shall be considered to be unacceptable in any of the following cases:		
(a) where they have been received late;	(a) — where they have been received late;		
(b) they have been submitted by tenderers who do not have the requisite qualifications;	(b) — they have been submitted by tenderers who do not have the requisite qualifications;		
(c) their price exceeds the contracting authority or contracting entity's budget as determined prior to the launching of the concession award procedure and documented in writing;	(c) — their price exceeds the contracting authority or contracting entity's budget as determined prior to the launching of the concession award procedure and documented in writing;		
(d) they have been found to be abnormally low	(d) — they have been found to be abnormally low [Am. 179]		
<i>Article 27</i> <i>Concession award notices</i>	<i>Article 27</i> <i>Concession award notices</i>	<i>Article 27</i> <i>Concession award notices</i>	
1. Not later than 48 days after the award of a concession, contracting authorities and contracting entities shall send a concession award notice on the results of the concession award	1. Not later than 48 days after the award of a concession, the contracting authorities and contracting entities grantor shall <i>in accordance with the procedures laid down in Article 28</i>	1. Not later than 48 days after the award of a concession, contracting authorities and contracting entities shall send a concession award notice on the results of the concession award	

procedure.	send a concession award notice on the results of the concession award procedure. [Am. 180]	procedure. For services referred to in Article 17 such notices may however be grouped on a quarterly basis. In that case they shall send the grouped notices within 48 days of the end of each quarter.	
2. The obligation referred to in paragraph 1 shall also apply to those services concessions the estimated value of which, as calculated according to the method referred to in Article 6 (5), is equal to or higher than 2 500 000 EUR with the sole exception of social services and other specific services as referred to in Article 17.	2. The obligation referred to in paragraph 1 shall also apply to those services concessions the estimated value of which, as calculated according to the method referred to in Article 6 (5), is equal to or higher than 2 500 000 EUR with the sole exception of social services and other specific services as referred to in Article 17. [Am. 181]	2. Such notices shall contain the information set out in Annex V or in relation to concessions for social[...] and other specific services listed in Annex X the information set out in Annex VI and be published in accordance with the provisions of Article 28.	
3. Such notices shall contain the information set out in Annex V or in relation to concessions for social services and other specific services the information set out in VI and be published in accordance with the provisions of Article 28	3. Such Concession award notices shall contain the information set out in Annex V or in relation to concessions for social services and other specific services the information set out in VI and be published in accordance with the provisions of Article 28. [Am. 182]		
<i>Article 28</i> <i>Form and manner of publication of notices</i>	<i>Article 28</i> <i>Form and manner of publication of notices</i>	<i>Article 28</i> <i>Form and manner of publication of notices</i>	
1. The notices referred to in Articles 26 and 27 and the second subparagraph of Article 43(6) shall include the information set out Annexes IV to VI and in the format of standard forms, including standard	1. The Concession notices, concession award notices and the notice referred to in Articles 26 and 27 and the second subparagraph of Article 43(6) Article 42(6) shall include the information set out	1. Notices referred to in Articles 26 and 27 and Article 42 (6) shall include the information set out Annexes IV to VI and XII in the format of standard forms, including standard forms for corrigenda.	

forms for corrigenda. The Commission shall establish those standard forms by implementing acts to be adopted in accordance with the advisory procedure referred to in Article 48.	Annexes IV to VI and in the format of standard forms, including standard forms for corrigenda. [Am. 183]	The Commission shall establish those standard forms by implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 48.	
2. The notices shall be drawn up, transmitted by electronic means to the Commission and published in accordance with Annex IX. Notices shall be published not later than five days after they are sent. The costs of publication of the notices by the Commission shall be borne by the Union.	2. The notices <i>referred to in paragraph 1</i> shall be drawn up, transmitted by electronic means to the Commission and published in accordance with Annex IX. <i>The Commission shall give the grantor confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of publication which shall constitute proof of publication.</i> Notices shall be published not later than five days after they are sent. The costs of publication of the notices by the Commission shall be borne by the Union. [Am. 184]	2. Notices referred to in Article 26 and 27 shall be drawn up, transmitted by electronic means to the Commission and published in accordance with Annex IX. Notices shall be published not later than five days after they are sent. The costs of publication of the notices by the Commission shall be borne by the Union.	
3. The notices referred to in Article 26 shall be published in full in an official language of the Union as chosen by the contracting authority or contracting entity. That language version shall constitute the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages.	3. The Concession notices referred to in Article 26 shall be published in full in an official language of the Union as chosen by the contracting authority or contracting entity grantor . That language version shall constitute the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages. [Am. 185]	3. Notices referred to in Article 26 shall be published in full in an official language(s) of the Union as chosen by the contracting authority or contracting entity. That language version or those language versions shall constitute the sole authentic text(s). A summary of the important elements of each notice shall be published in the other official languages.	

	<p><i>3a. Concession notices and concession award notices shall not be sent for publication at national level before the date on which they are dispatched to the Commission. Concession notices and concession award notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission but shall indicate the date of dispatch of the notice to the Commission. [Am. 186]</i></p>		
<p>4. Contracting authorities and contracting entities shall be able to supply proof of the dates on which notices are dispatched. The Commission shall give the contracting authority or contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication.</p>	<p>4. Contracting authorities and contracting entities shall be able to supply proof of the dates on which notices are dispatched. The Commission shall give the contracting authority or contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication. [Am. 187]</p>	<p>4. Contracting authorities and contracting entities must be able to supply proof of the dates on which notices are dispatched. The Commission shall give the contracting authority or contracting entity confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication.</p>	
<p>5. Contracting authorities and contracting entities may publish notices for concessions that are not subject to the publication requirements laid down in this Directive provided those notices are sent to the Commission by electronic means in accordance with the format</p>	<p>5. Contracting authorities and contracting entities may publish notices for concessions that are not subject to the publication requirements laid down in this Directive provided those notices are sent to the Commission by electronic means in accordance with the format</p>	<p>5. Contracting authorities and contracting entities may publish notices for concessions that are not subject to the publication requirements laid down in this Directive provided those notices are sent to the Commission by electronic means in accordance with the format</p>	

and procedures for transmission indicated in Annex IX.	and procedures for transmission indicated in Annex IX. [Am. 188]	and procedures for transmission indicated in Annex IX.	
<i>Article 29</i> <i>Publication at national level</i>	<i>Article 29</i> <i>Publication at national level</i>	<i>Article 29</i> <i>Publication at national level</i>	
1. Notices referred to in Articles 26 and 27 and the information contained therein shall not be published at national level before the publication pursuant to Article 28.	1. Notices referred to in Articles 26 and 27 and the information contained therein shall not be published at national level before the publication pursuant to Article 28.	1. Notices referred to in Articles 26 and 27 and the information contained therein shall not be published at national level before the date on which they are sent to the Commission pursuant to Article 28.	
2. Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission but shall indicate the date of dispatch of the notice to the Commission.	2. Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission but shall indicate the date of dispatch of the notice to the Commission. [Am. 189]	2. Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission but shall indicate the date of dispatch of the notice to the Commission.	
<i>Article 30</i> <i>Electronic availability of concession documents</i>	<i>Article 30</i> <i>Electronic availability of concession documents</i>	<i>Article 30</i> <i>Electronic availability of concession documents</i>	
1. Contracting authorities and contracting entities shall offer unrestricted and full direct access free of charge by electronic means to the concession documents from the date of publication of the notice in accordance with Article 28 or the date on which the invitation to submit tenders is sent. The text of the notice or of these invitations shall specify the internet address at which this documentation is accessible.	1. Contracting authorities and contracting entities The grantor shall offer unrestricted and full direct access free of charge by electronic means to the concession documents from the date of publication of the concession notice in accordance with Article 28 or the date on which the invitation to submit tenders is sent. The text of the concession notice or of these invitations shall specify the internet address at which this documentation is	1. Contracting authorities and contracting entities shall by electronic means offer unrestricted and full direct access free of charge by electronic means to the concession documents from the date of publication of the notice in accordance with Article 28 or, where the contract notice does not include the invitation to submit tenders, from the date on which the invitation to submit tenders is sent. The text of	

	accessible.[Am. 190]	the notice or of these invitations shall specify the internet address at which this documentation is accessible. Where, in duly justified circumstances, unrestricted and full direct access free of charge by electronic means to certain concession documents cannot be offered, contracting authorities or contracting entities shall indicate in the notice or the invitation to confirm interest that the concession documents concerned will be transmitted by other means and the time limit for the submission of tenders shall be prolonged.	
2. Provided that it has been requested in good time, the contracting authorities and contracting entities or competent departments shall supply additional information relating to the concession documents not later than six days before the deadline fixed for the receipt of tenders.	2. Provided that it has been requested in good time, the contracting authorities and contracting entities or competent departments grantor shall supply additional information relating to the concession documents not later than six days before the deadline fixed for the receipt of tenders. [Am. 191]	2. Provided that it has been requested in good time, the contracting authorities and contracting entities[...] shall supply additional information relating to the concession documents not later than six days before the deadline fixed for the receipt of tenders.	
	<i>Article 30a</i>		
	<i>Combating corruption and preventing conflicts of interest</i>		
	<i>Member States shall adopt rules combating fraud, favouritism and corruption and preventing conflicts of interest, aimed at ensuring the</i>		

	<i>transparency of the award procedure and the equal treatment of all candidates and tenderers.</i>		
	<i>With regard to conflicts of interest, the measures adopted shall not go beyond what is strictly necessary to prevent a potential conflict of interest or eliminate a conflict of interest that has been identified. In particular, those measures shall allow for the exclusion of a tenderer or candidate from the procedure only where the conflict of interests cannot be effectively remedied by other means. [Am. 192]</i>		
CHAPTER II	CHAPTER II	CHAPTER II	
Conduct of the procedure	Conduct of the procedure Procedural guarantees	Conduct of the procedure	
Section I Joint concessions, time limits and technical specifications	Section I Joint concessions, time limits and technical specifications [Am. 193]	Section I	
Article 31 Joint concessions between contracting authorities or contracting entities from different Member States	Article 31 Joint concessions between contracting authorities or contracting entities from different Member States	deleted	
1. Without prejudice to Article 15, contracting authorities or contracting entities from different Member States may jointly award public concessions by using one of the means described in this Article.	1. Without prejudice to Article 15, contracting authorities or contracting entities from different Member States may jointly award public concessions by using one of the means described in this Article.	deleted	

2. Several contracting authorities or contracting entities from different Member States may jointly award a concession. In that case, the participating contracting authorities or contracting entities shall conclude an agreement that determines	2. — Several contracting authorities or contracting entities from different Member States may jointly award a concession. In that case, the participating contracting authorities or contracting entities shall conclude an agreement that determines	deleted	
(a) which national provisions shall apply to the concession concession award procedure.	(a) — which national provisions shall apply to the concession concession award procedure.	deleted	
(b) the internal organisation of the concession award procedure, including the management of the procedure, the sharing of responsibilities, the distribution of the works, supplies or services to be procured and the conclusion of concessions.	(b) — the internal organisation of the concession award procedure, including the management of the procedure, the sharing of responsibilities, the distribution of the works, supplies or services to be procured and the conclusion of concessions.	deleted	
When determining the applicable national law in accordance with point (a), contracting authorities or contracting entities may choose the national provisions of any Member State in which at least one of the participating authorities is located.	When determining the applicable national law in accordance with point (a), contracting authorities or contracting entities may choose the national provisions of any Member State in which at least one of the participating authorities is located.	deleted	
3. Where several contracting authorities or contracting entities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) N° 1082/2006 of the European	3. — Where several contracting authorities or contracting entities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) N° 1082/2006 of the European	deleted	

Parliament and of the Council ⁵⁰ , the participating contracting authorities or participating contracting entities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national concession award rules of one of the following Member States:	Parliament and of the Council⁵¹, the participating contracting authorities or participating contracting entities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national concession award rules of one of the following Member States:		
(a) the national provisions of the Member State where the legal body has its registered office;	(a) the national provisions of the Member State where the legal body has its registered office;	deleted	
(b) the national provisions of the Member State where the legal body is carrying out its activities.	(b) the national provisions of the Member State where the legal body is carrying out its activities.	deleted	
This agreement may either apply for an undetermined period, when fixed in the constitutive act of the joint legal body, or may be limited to a certain period of time, certain types of concessions or to one or more individual concession awards.	This agreement may either apply for an undetermined period, when fixed in the constitutive act of the joint legal body, or may be limited to a certain period of time, certain types of concessions or to one or more individual concession awards.	deleted	
4. In the absence of an agreement determining the applicable concession rules, the national legislation governing the concession award shall be determined following the rules set out below:	4. In the absence of an agreement determining the applicable concession rules, the national legislation governing the concession award shall be determined following the rules set out below:	deleted	

⁵⁰ OJ L 210 of 31.7.2006, p. 19

⁵¹ OJ L 210 of 31.7.2006, p. 19

(a) where the procedure is conducted or managed by one participating contracting authority or participating contracting entity on behalf of the others, the national provisions of the Member State of that contracting authority or entity shall apply;.	(a) — where the procedure is conducted or managed by one participating contracting authority or participating contracting entity on behalf of the others, the national provisions of the Member State of that contracting authority or entity shall apply;.	deleted	
(b) where the procedure is not conducted or managed by one participating contracting authority or participating contracting entity on behalf of the others, and	(b) — where the procedure is not conducted or managed by one participating contracting authority or participating contracting entity on behalf of the others, and	deleted	
(i) concerns a public works or works concession, contracting authorities or entities shall apply the national provisions of the Member State where most of the works are located;	(i) — concerns a public works or works concession, contracting authorities or entities shall apply the national provisions of the Member State where most of the works are located;	deleted	
(ii) concerns a service concession, contracting authorities or entities shall apply the national provisions of the Member State where the major part of the services is provided.;	(ii) — concerns a service concession, contracting authorities or entities shall apply the national provisions of the Member State where the major part of the services is provided.;	deleted	
(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities or entities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.	(c) — where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities or entities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.	deleted	

5. In the absence of an agreement determining the applicable concession award law under paragraph 3, the national legislation governing concession award procedures conducted by joint legal bodies set up by several contracting authorities or contracting entities from different Member States shall be determined following the following rules:	5. — In the absence of an agreement determining the applicable concession award law under paragraph 3, the national legislation governing concession award procedures conducted by joint legal bodies set up by several contracting authorities or contracting entities from different Member States shall be determined following the following rules:	deleted	
(a) where the procedure is conducted or managed by the competent organ of the joint legal body, the national provisions of the Member State where the legal body has its registered office shall apply.	(a) — where the procedure is conducted or managed by the competent organ of the joint legal body, the national provisions of the Member State where the legal body has its registered office shall apply.	deleted	
(b) where the procedure is conducted or managed by a member of the legal body on behalf of that legal body, the rules set out in points (a) and (b) of paragraph 4 shall apply.	(b) — where the procedure is conducted or managed by a member of the legal body on behalf of that legal body, the rules set out in points (a) and (b) of paragraph 4 shall apply.	deleted	
(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 4, the contracting authorities or contracting entities shall apply the national provisions of the Member State where the legal body has its registered office.	(c) — where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 4, the contracting authorities or contracting entities shall apply the national provisions of the Member State where the legal body has its registered office.	deleted	

6. One or more contracting authorities or one or more contracting entities may award individual concessions under a framework agreement concluded by or jointly with a contracting authority located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities or to award contracting entity or contracting entities the individual concessions.	6. One or more contracting authorities or one or more contracting entities may award individual concessions under a framework agreement concluded by or jointly with a contracting authority located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities or to award contracting entity or contracting entities the individual concessions.	deleted	
7. Decisions on the award of concessions in cross-border concession award shall be subject to the ordinary review mechanisms available under the national law applicable.	7. Decisions on the award of concessions in cross-border concession award shall be subject to the ordinary review mechanisms available under the national law applicable.	deleted	
8. In order to enable the effective operation of review mechanisms, Member States shall allow the decisions of review bodies within the meaning of Council Directive 89/665/EEC ⁵² and of Council Directive 92/13/EEC located in other Member States to be fully executed in their domestic legal order, where such decisions involve contracting	8. In order to enable the effective operation of review mechanisms, Member States shall allow the decisions of review bodies within the meaning of Council Directive 89/665/EEC⁵³ and of Council Directive 92/13/EEC located in other Member States to be fully executed in their domestic legal order, where such decisions involve contracting	deleted	

⁵² OJ L 395, 30.12. 1989, p. 33.

⁵³ OJ L 395, 30.12. 1989, p. 33.

authorities or contracting entities established on their territory participating in the relevant cross-border concession award procedure.	authorities or contracting entities established on their territory participating in the relevant cross-border concession award procedure. [Am. 194]		
<i>Article 32</i> <i>Technical specifications</i>	<i>Article 32</i> <i>Technical specifications</i>	<i>Article 32</i> <i>Technical specifications</i>	
<p>1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the concession documents. They shall define the characteristics required of a works, service or supply..</p> <p>These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (14) of Article 2.</p> <p>The technical specifications shall also specify whether the transfer of intellectual property rights will be required.</p> <p>For all concession awards the subject of which is intended for use by persons, whether general public or staff of the contracting authority or contracting entity, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.</p>	<p>1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the concession documents. They shall define the characteristics required of a works, service or supply..</p> <p>These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (14) of Article 2.</p> <p>The technical specifications shall also specify whether the transfer of intellectual property rights will be required.</p> <p>For all concession awards the subject of which is intended for use by persons, whether general public or staff of the contracting authority or contracting entity, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.</p>	<p>1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the concession documents. They shall define the characteristics required of a works, service or supply.</p> <p>These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance.</p>	

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.	Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.		
2. Technical specifications shall guarantee equal access of economic operators to the concession award procedure and not have the effect of creating unjustified obstacles to the opening up of concession award to competition.	2. Technical specifications shall guarantee equal access of economic operators to the concession award procedure and not have the effect of creating unjustified obstacles to the opening up of concession award to competition.	2. Technical specifications shall afford equal access of economic operators to the concession award procedure and not have the effect of creating unjustified obstacles to the opening up of concession to[....] competition.	
3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:	3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:		
(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities or contracting entities to award the contract;	(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities or contracting entities to award the contract;		
(b) by reference to technical specifications defined in Annex VIII and, in order of preference, to national standards transposing European standards, European	(b) by reference to technical specifications defined in Annex VIII and, in order of preference, to national standards transposing European standards, European		

technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when those do not exist — national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;	technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when those do not exist — national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;		
(c) in terms of performance or functional requirements as referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;	(c) — in terms of performance or functional requirements as referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;		
(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.	(d) — by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.		
4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of	4. — Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of	3. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific	

<p>favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible; such reference shall be accompanied by the words "or equivalent".</p>	<p>favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible; such reference shall be accompanied by the words "or equivalent".</p>	<p>economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words "or equivalent".</p>	
<p>5. Where a contracting authority or contracting entity uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by whatever appropriate means including the means of proof referred to in Article 33 that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.</p>	<p>5. — Where a contracting authority or contracting entity uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by whatever appropriate means including the means of proof referred to in Article 33 that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.</p>	<p>4. A contracting authority or contracting entity shall not reject a tender on the grounds that the works, supplies and services tendered for, do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender by any appropriate means [...] that the solutions it proposed satisfy in an equivalent manner the requirements defined by the technical specifications.</p>	

<p>6. Where a contracting authority or contracting entity uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where these specifications address the performance or functional requirements which it has laid down. In its tender, the tenderer must prove by any appropriate means including the means of proof referred to in Article 33 that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority or contracting entity.</p>	<p>6. — Where a contracting authority or contracting entity uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where these specifications address the performance or functional requirements which it has laid down. In its tender, the tenderer must prove by any appropriate means including the means of proof referred to in Article 33 that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority or contracting entity. [Am. 195]</p>	<p>deleted</p>	
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<i>Article 33</i> <i>Test reports, certification and other means of proof</i>	<i>Article 33</i> <i>Test reports, certification and other means of proof</i>	<i>deleted</i>	
1. Contracting authorities or contracting entities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with the technical specifications. Where contracting authorities require the production of certificates drawn up by recognised bodies attesting conformity with a particular technical specification, certificates from equivalent other recognised bodies shall also be accepted by the contracting authorities.	1. Contracting authorities or contracting entities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with the technical specifications. Where contracting authorities require the production of certificates drawn up by recognised bodies attesting conformity with a particular technical specification, certificates from equivalent other recognised bodies shall also be accepted by the contracting authorities.	deleted	
2. Contracting authorities or contracting entities shall also accept other appropriate means of proof such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test rapports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.	2. Contracting authorities or contracting entities shall also accept other appropriate means of proof such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test rapports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.	deleted	

3. Recognised bodies, within the meaning of this Article, are test and calibration laboratories and any certification and inspection bodies accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council ⁵⁴ .	3. — Recognised bodies, within the meaning of this Article, are test and calibration laboratories and any certification and inspection bodies accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council.	deleted	
4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents produced to prove compliance with the technical requirements referred to in Article 32 and this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with provisions on governance as referred to in Article 88 of (Directive replacing Directive 2004/18/EC).	4. — Member States shall make available to other Member States, upon request, any information related to the evidence and documents produced to prove compliance with the technical requirements referred to in Article 32 and this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with provisions on governance as referred to in Article 88 of (Directive replacing Directive 2004/18/EC). [Am. 196]	deleted	
Section II	Section II	deleted	
Choice of participants and award of concessions	Choice of participants and award of concessions [Am. 197]		
<i>Article 34</i> <i>General principles</i>	<i>Article 34</i> <i>General principles</i>	<i>deleted</i>	

⁵⁴ OJ L 218, 13.8.2008, p. 30.

Concessions shall be awarded on the basis of the criteria set out by the contracting authority or contracting entity in accordance with Article 39 provided that the following cumulative conditions are fulfilled:	Concessions shall be awarded on the basis of the criteria set out by the contracting authority or contracting entity in accordance with Article 39 provided that the following cumulative conditions are fulfilled:	deleted	
(a) the tender complies with the requirements, conditions and criteria set out in the concession notice or in the invitation to confirm interest and in the concession award documents;	(a) — the tender complies with the requirements, conditions and criteria set out in the concession notice or in the invitation to confirm interest and in the concession award documents;	deleted	
(b) the tender comes from a tenderer who (i) is not excluded from participating in the award procedure in accordance with paragraphs 4 to 8 of Article 36 and	(b) — the tender comes from a tenderer who (i) — is not excluded from participating in the award procedure in accordance with paragraphs 4 to 8 of Article 36 and	deleted	
(ii) meets the selection criteria set out by the contracting authority or contracting entity in accordance with paragraphs 1 to 3 of Article 36.	(ii) — meets the selection criteria set out by the contracting authority or contracting entity in accordance with paragraphs 1 to 3 of Article 36. [Am. 198]	deleted	
<i>Article 35</i> <i>Procedural guarantees</i>	<i>Article 35</i> <i>Procedural guarantees</i>	<i>Article 35</i> <i>Procedural guarantees</i>	
		1. Member States, contracting authorities and contracting entities may decide on the most appropriate procedure to award a concession in compliance with the procedural guarantees provided for in this Article.	

1. Contracting authorities and contracting entities shall indicate in the contract notice, in the invitation to submit tenders or in the concession documents a description of the concession, the award criteria and the minimum requirements to be met. This information must allow to identify the nature and scope of the concession, enabling economic operators to decide whether they request to participate in the concession award procedure. The description, award criteria and minimum requirements shall not be changed in the course of the negotiations.	1. Contracting authorities and contracting entities shall indicate in the contract notice, in the invitation to submit tenders or in the concession documents a description of the concession, the award criteria and the minimum requirements to be met. This information must allow to identify the nature and scope of the concession, enabling economic operators to decide whether they request to participate in the concession award procedure. The description, award criteria and minimum requirements shall not be changed in the course of the negotiations.	2. Contracting authorities and contracting entities shall indicate in the [...]concession documents a description of the concession, the award criteria and, where appropriate , the minimum requirements to be met. This information must allow economic operators to identify the nature and scope of the concession, enabling economic operators to decide whether they request to participate in the concession award procedure. [...] Where the contracting authority or contracting entity limits the number of candidates to an appropriate level, this shall be done in a transparent manner and on the basis of objective criteria which are available to all interested economic operators. The number of candidates invited shall be sufficient to ensure genuine competition.	Council: party moved from point 3
2. During the concession award, contracting authorities and contracting entities shall ensure the equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.	2. During the concession award, contracting authorities and contracting entities shall ensure the equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.		

3. Whenever the contracting authority or contracting entity limits the number of applicants to an appropriate level, this shall be done in a transparent manner and on the basis of objective criteria which are available to all interested economic operators.	3. Whenever the contracting authority or contracting entity limits the number of applicants to an appropriate level, this shall be done in a transparent manner and on the basis of objective criteria which are available to all interested economic operators.		
4. The rules on the organisation of the concession award procedure, including rules on communication, on the stages of the procedure and on timing, shall be established in advance and communicated to all participants	4. The rules on the organisation of the concession award procedure, including rules on communication, on the stages of the procedure and on timing, shall be established in advance and communicated to all participants	5. The description of the organisation of the concession award procedure, including rules on communication, on the planned stages of the procedure and on planned timing, shall be established in advance and communicated to all interested economic operators. Any modification shall be communicated to all interested economic operators.	
		5a. Contracting authorities and contracting entities shall establish a record which ensures, by all appropriate means, the traceability of the procedure, including negotiations, where applicable.	
5. Where the concession award involves negotiation, contracting authorities or contracting entities shall comply with the following rules:	5. Where the concession award involves negotiation, contracting authorities or contracting entities shall comply with the following rules:	6. Where the concession award involves negotiation, contracting authorities or contracting entities shall comply with the following rules:	

(a) where the negotiation takes place after the submission of tenders they shall negotiate with tenderers the tenders submitted by them in order to adapt them to the criteria and requirements indicated in accordance with paragraph 1.	(a) — where the negotiation takes place after the submission of tenders they shall negotiate with tenderers the tenders submitted by them in order to adapt them to the criteria and requirements indicated in accordance with paragraph 1.	(a) wherever the contracting authority or entity indicates in the concession documents the minimum requirements as referred to in paragraph 2 these requirements shall not be subject to negotiation.	
		(b) where the negotiation takes place after the submission of tenders they shall negotiate with tenderers any elements of the tenders submitted by them not subject to minimum requirements. The negotiation shall be aimed at delivering best value for money for the contracting authority or contracting entity.	
(b) they shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the negotiations without its agreement. This agreement shall not take the form of a general waiver but must be given with reference to the intended communication of specific solutions or other confidential information;	(b) — they shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the negotiations without its agreement. This agreement shall not take the form of a general waiver but must be given with reference to the intended communication of specific solutions or other confidential information;	(c) they shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate or a tenderer participating in the negotiations without its agreement. This agreement shall not take the form of a general waiver but must be given with reference to the intended communication of specific solutions or other confidential information;	

(c) they may conduct the negotiation in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice, in the invitation to submit tenders or in the concession documents. In the contract notice, the invitation to submit tenders or the concession documents, the contracting authority shall indicate whether it has had recourse to this option.	(c) — they may conduct the negotiation in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice, in the invitation to submit tenders or in the concession documents. In the contract notice, the invitation to submit tenders or the concession documents, the contracting authority shall indicate whether it has had recourse to this option.	(d) when they [...] reduce the number of tenders, [...] they shall assess the tenders as negotiated on the basis of the [...] award criteria indicated in the concession documents.	
(d) they shall assess the tenders as negotiated on the basis of the initially indicated award criteria;	(d) — they shall assess the tenders as negotiated on the basis of the initially indicated award criteria;		
(e) they shall establish a written record of formal deliberations and any other steps and events relevant for the concession award procedure. In particular, it shall ensure, by all appropriate means, the traceability of the negotiations.	(e) — they shall establish a written record of formal deliberations and any other steps and events relevant for the concession award procedure. In particular, it shall ensure, by all appropriate means, the traceability of the negotiations.		
6. Contracting authorities and contracting entities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the award of a concession including the grounds for any decision not to award a contract for which there has been publication of a concession notice or to recommence the procedure.	6. — Contracting authorities and contracting entities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the award of a concession including the grounds for any decision not to award a contract for which there has been publication of a concession notice or to recommence the procedure.	7. Contracting authorities and contracting entities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the award of a concession including the grounds for any decision not to award a contract for which there has been publication of a concession notice or to recommence the procedure.	

7. On request from the party concerned, the contracting authority shall as quickly as possible, and in any case within 15 days from receipt of a written request, inform:	7. On request from the party concerned, the contracting authority shall as quickly as possible, and in any case within 15 days from receipt of a written request, inform:	8. On request from the party concerned, the contracting authority or entity shall as quickly as possible, and in any case within 15 days from receipt of a written request inform:	
(a) any unsuccessful candidates of the reasons for the rejection of their application,	(a) any unsuccessful candidates of the reasons for the rejection of their application,	(a) any unsuccessful candidates[....] and tenderers of the reasons for the rejection of, respectively, their applications and tenders , including, for the cases referred to in Article 32(4), the reasons for its decision of non-equivalence; [....]	
(b) any unsuccessful tenderers of the reasons for the rejection of their tender, including, for the cases referred to in Article 32 (5) and (6), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements,	(b) any unsuccessful tenderers of the reasons for the rejection of their tender, including, for the cases referred to in Article 32 (5) and (6), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements,	deleted	
(c) any tenderers that have made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement,	(c) any tenderers that have made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement,	(b) any tenderers that have made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer[....]	
(d) any tenderers that have made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.	(d) any tenderers that have made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.	deleted	

8. However, contracting authorities may decide to withhold certain information referred to in paragraph 6, regarding the contract where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.	8. — However, contracting authorities may decide to withhold certain information referred to in paragraph 6, regarding the contract where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them. [Am. 199]	However, Member States may choose to allow contracting authorities and contracting entities to withhold certain information referred to in paragraph 7 , regarding the contract where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.	
<i>Article 36</i>	<i>Article 36</i>	<i>Article 36</i>	
<i>Selection of and qualitative assessment of candidates</i>	<i>Selection of and qualitative assessment of candidates and tenderers and grounds for exclusion [Am. 200]</i>	<i>Selection of and qualitative assessment of candidates</i>	
	-1. The grantor shall provide:		
	(a) in the concession notice, a description of the concession and of the conditions of participation;		
	(b) in the concession notice, in the invitation to submit a tender or in the concession documents, a description of the award criteria. [Am. 201]		

1. Contracting authorities shall specify, in the concession notice the conditions for participation relating to:	1. Contracting authorities The grantor shall specify, in the concession notice verify the conditions for participation relating to <i>the professional and technical ability of the candidates or tenderers, the financial standing of the candidates or tenderers and the reference or references to be submitted as proof in accordance with the requirements specified in the concession notice. Those conditions shall be linked to the subject-matter of the contract and non-discriminatory and may be accompanied by minimum requirements, wherever necessary.</i>	1. The conditions for participation shall be specified, in the concession notice and shall be limited to those relating to: [...] - economic and financial standing; - technical and professional ability.	
(a) suitability to pursue the professional activity;	(a) — suitability to pursue the professional activity;	[...]	
(b) economic and financial standing;	(b) — economic and financial standing;	[...]	
(c) technical and professional ability.	(c) — technical and professional ability.	[...]	
Contracting authorities shall limit any conditions for participation to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the commercial and technical abilities to perform the concession to be awarded. All requirements shall be related and strictly proportionate to the subject-matter of the contract,	Contracting authorities shall limit any conditions for participation to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the commercial and technical abilities to perform the concession to be awarded. All requirements shall be related and strictly proportionate to the subject-matter of the contract,	[...]All requirements shall be related and proportionate to the need to ensure the ability of the concessionaire to perform the concession, taking into account the subject-matter of the contract and the purpose of guaranteeing genuine competition.	

taking into account the need to ensure genuine competition.	taking into account the need to ensure genuine competition.		
Contracting authorities and contracting entities shall also indicate in the concession notice the reference or references to be submitted as proof of the economic operator's capacities. The requirements in respect of those references shall be non-discriminatory and proportionate to the subject-matter of the concession.	Contracting authorities and contracting entities shall also indicate in the concession notice the reference or references to be submitted as proof of the economic operator's capacities. The requirements in respect of those references shall be non-discriminatory and proportionate to the subject-matter of the concession. [Am. 202]	Contracting authorities and contracting entities shall also indicate in the concession notice the required information to be submitted as proof of the economic operator's capacities. The requirements in respect of those references shall be non-discriminatory and proportionate to the subject-matter of the concession.	
2. With regard to the criteria referred to in paragraph 1, an economic operator may, where appropriate and for a particular concession, rely on the capacities of other entities, regardless of the legal nature of its links with them. It shall, in that case, prove to the contracting authority or the contracting entity that it will have at its disposal, throughout the period of the concession, the necessary resources, for example, by producing an undertaking by those entities to that effect. With regard to economic and financial standing, contracting authorities and contracting entities may require that the economic operator and those entities are jointly liable for the	2. With regard to the criteria referred to a view to meeting the conditions for participation laid down in paragraph 1, an economic operator may, where appropriate and for a particular concession, rely on the capacities of other entities, regardless of the legal nature of its links with them. It shall, in that case, prove to the contracting authority or the contracting entity grantor that it will have at its disposal, throughout the period of the concession, the necessary resources, for example, by producing an undertaking by those entities to that effect. With regard to economic and financial standing, contracting authorities and contracting entities the grantor may	2. With regard to the criteria referred to in paragraph 1, an economic operator may, where appropriate, [...] rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. [...] Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority or the contracting entity that it will have at its disposal, throughout the period of the concession, the resources necessary , for example, by producing a commitment by those entities to that effect. Member States may provide that, in duly justified cases, contracting authorities and contracting entities may require that	

execution of the contract.	require that the economic operator and those entities are jointly liable for the execution of the contract. [Am. 203]	certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in Article 22, by a participant in that group. The contracting authority or contracting entity as referred to in point (1) of paragraph 1 of Article 4 shall verify whether there are grounds for exclusion pursuant to paragraphs 5 and 6 with regard to entities on whose capacity the economic operator intends to rely. An entity in respect of which there are grounds for exclusion may be excluded.	
3. Under the same conditions, a group of economic operators as referred to in Article 22 may rely on the capacities of participants in the group or of other entities.	3. Under the same conditions, a group of economic operators as referred to in Article 22 may rely on the capacities of participants in the group or of other entities. [Am. 204]	3. Under the same conditions, a group of economic operators as referred to in Article 22 may rely on the capacities of participants in the group or of other entities.	
	<i>3a. The grantor may limit the number of candidates or tenderers to an appropriate level, on condition that this is done in a transparent manner and on the basis of objective criteria. The number of candidates or tenderers invited shall be sufficient to ensure genuine competition. [Am. 205]</i>		

4. Member States shall adopt rules combating favouritism, corruption and preventing conflicts of interest, aimed at ensuring the transparency of the award procedure and the equal treatment of all tenderers.	4. Member States shall adopt rules combating favouritism, corruption and preventing conflicts of interest, aimed at ensuring the transparency of the award procedure and the equal treatment of all tenderers.	4. Member States shall require contracting authorities and contracting entities to take appropriate measures to effectively prevent, identify and remedy conflicts of interests arising in the conduct of concession award procedures so as to avoid any distortion of competition and ensure equal treatment of all economic operators.	
		The concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or entity who are involved in the conduct of the concession award procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the concession award procedure.	

With regard to conflicts of interest the measures adopted shall not go beyond what is strictly necessary to prevent or eliminate the conflict identified. In particular, they shall allow for the exclusion of a tenderer or candidate from the procedure only where the conflict of interests cannot be effectively remedied by other means.	With regard to conflicts of interest the measures adopted shall not go beyond what is strictly necessary to prevent or eliminate the conflict identified. In particular, they shall allow for the exclusion of a tenderer or candidate from the procedure only where the conflict of interests cannot be effectively remedied by other means. [Am. 206]	With regard to conflicts of interest the measures adopted shall not go beyond what is strictly necessary to prevent or eliminate the conflict identified. In particular, they shall allow for the exclusion of a tenderer or candidate from the procedure only where the conflict of interests cannot be effectively remedied by other means.	
5. Any candidate or tenderer that has been the subject of a conviction by a final judgment for one of the reasons listed below shall be excluded from participation in a concession:	5. Any candidate or tenderer that has been the subject of a conviction by a final judgment for one of the reasons listed below shall be excluded from participation in a concession:	5. Contracting authorities and contacting entities as referred to in point (1) of paragraph 1 of Article 4 shall exclude an economic operator from participation in a concession award procedure where they are aware that that economic operator has been the subject of a conviction by a final judgment for one of the following reasons[....]:	
(a) participation in a criminal organisation, as defined in Article 2(1) of Council Framework Decision 2008/841/JHA ⁵⁵ ;	(a) participation in a criminal organisation, as defined in Article 2(1) of Council Framework Decision 2008/841/JHA;	(a) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;	
(b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and	(b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and	(b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and	

⁵⁵ OJ L 300, 11.11.2008, p. 42.

Article 2 of Council Framework Decision 2003/568/JHA ⁵⁶ as well as corruption as defined in the national law of the contracting authority or the economic operator;	Article 2 of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the contracting authority or the economic operator;	Article 2 (1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the contracting authority or entity or the economic operator;	
(c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European Communities ⁵⁷ ;	(c) fraud within the meaning of Article 1 of the Convention on the protection of the financial interests of the European Communities;	(c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests ;	
(d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA ⁵⁸ respectively, or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;	(d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA respectively, or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;	(d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA respectively, or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;	
(e) money laundering, as defined in Article 1 of Council Directive 91/308/EEC ⁵⁹ .	(e) money laundering, as defined in Article 1 of Council Directive 91/308/EEC.	(e) money laundering or terrorist financing , as defined in Article 1 of Directive 2005/60/EC .	
	<i>(ea) participation in exploitation of human trafficking and child labour covered by Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating</i>		

⁵⁶ OJ L 192, 31.7.2003, p. 54.

⁵⁷ OJ C 316, 27.11.1995, p. 48.

⁵⁸ OJ L 164, 22.6.2002, p. 3.

⁵⁹ OJ L 166, 28.6.1991, p. 77.

	<i>trafficking in human beings and protecting its victims</i> ⁶⁰ . [Am. 207]		
The obligation to exclude a candidate or a tenderer from participation in a concession shall also apply where the conviction by final judgment has condemned company directors or any other any person having powers of representation, decision or control in respect of the candidate or tenderer.	The obligation to exclude a candidate or a tenderer from participation in a concession shall also apply where the conviction by final judgment has condemned company directors or any other any person having powers of representation, decision or control in respect of the candidate or tenderer. [Am. 208]	The obligation to exclude an economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.	
6. Any economic operator shall be excluded from participation in a concession where the contracting authority or contracting entity is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority or entity.	6. Any economic operator shall be excluded from participation in a concession where the contracting authority or contracting entity is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority or entity.	6. Contracting authorities and contracting entities as referred to in paragraph 1 point 1 of Article 4 shall exclude the economic operator from participation in a concession award procedure where it is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a jurisdictional or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority or entity. Furthermore, contracting	

⁶⁰ *OJ L 101, 15.4.2011, p. 1.*

		<p>authorities and contacting entities as referred to in point (1) of paragraph 1 of Article 4 may exclude or may be required by Member States to exclude from participation in a concession award procedure an economic operator where the contracting authority or entity is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.</p> <p>This paragraph shall no longer apply when the economic operator has fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the due taxes or social security contributions, including, where applicable, any interest accrued or fines.</p>	
<p>7. Member States may provide that contracting authorities or contracting entities exclude from participation in a concession award any economic operator if one of the following conditions is fulfilled:</p>	<p>7. Member States may provide that contracting authorities or contracting entities exclude from participation in a concession award any economic operator if one of the following conditions is fulfilled:</p>	<p>7. Contracting authorities or contracting entities may exclude or may be required by Member States to exclude from participation in a concession award procedure any economic operator in any of the following situations:</p>	

(a) where it is aware of any other serious violation of provisions of European Union or of national law aimed at the protection of public interests compatible with the Treaty;	(a) where it is aware of any other serious violation of provisions of European Union or of national law aimed at the protection of public interests compatible with the Treaty <i>Treaties, provided that it has been established by a competent body that the violation has taken place;</i> [Am. 209]	(a) where it is aware of any[....] violation of [...] applicable obligations established by Union law or national law compatible with it in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex II.	
(b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it has entered into an arrangement with creditors, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;	(b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it has entered into an arrangement with creditors, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;	(b) where the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws and regulations;	
		(c) where the contracting authority or contracting entity can demonstrate by any means that the economic operator is guilty of a grave professional misconduct;	
		(d) where the contracting authority or contracting entity can demonstrate the presence of plausible indicators showing that the economic operator has entered into agreements with other economic operators aimed at	

		distorting competition;	
(c) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior concession or concessions of a similar nature with the same contracting authority or contracting entity.	(c) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior concession or concessions of a similar nature with the same contracting authority or contracting entity. [Am. 210]	(e) where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior concession or a prior contract with a contracting authority or with an entity as defined in this Directive or in [replacing Directive 2004/17/EC] which led to early termination of that prior contract, damages or other comparable sanctions.	
	<i>(ca) where it is aware of any serious or repeated violation of social, environmental, or labour law provisions, as referred to in Article - 26a(3). [Am. 211]</i>		
		(f) where the economic operator has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, has withheld such information or is not able to submit the supporting documents required pursuant to paragraphs 1 and 5 of Article 36;	
		(g) where the economic operator has undertaken to unduly influence the decision-making process of the contracting authority or contracting entity, to obtain	

		confidential information that may confer upon it undue advantages in the concession award procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.	
		(h) in case of concessions, in the fields of defence and security as referred to in Directive 2009/81/EC, where the economic operator has been found, on the basis of any means of evidence, including protected data sources, not to possess the reliability necessary to exclude risks to the security of the Member State.	
In order to apply the ground for exclusion referred to in point (c) of the first subparagraph, contracting authorities and contracting entities shall provide a method for the assessment of contractual performance that is based on objective and measurable criteria and applied in a systematic, consistent and transparent way. Any performance assessment has to be communicated to the economic operator in question, which must be given the opportunity to object to the findings and to obtain judicial protection.	In order to apply the ground for exclusion referred to in point (c) of the first subparagraph, contracting authorities and contracting entities shall provide a method for the assessment of contractual performance that is based on objective and measurable criteria and applied in a systematic, consistent and transparent way. Any performance assessment has to be communicated to the economic operator in question, which must be given the opportunity to object to the findings and to obtain judicial protection. [Am. 212]	deleted	

<p>8. Any candidate or tenderer that is in one of the situations referred to in paragraphs 5 to 7 may provide the contracting authority or contracting entity with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion.</p>	<p>8. Any candidate or tenderer that is in one of the situations referred to in paragraphs 5 to 7 may provide the contracting authority or contracting entity with evidence demonstrating its reliability despite the existence of the relevant ground for exclusion.</p>	<p>8. Any economic operator that is in one of the situations referred to in paragraphs 5 and 7 may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of the relevant ground for exclusion. If such evidence is considered as sufficient, the economic operator concerned shall not be excluded from the procedure.</p> <p>For this purpose, the economic operator shall prove that it has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct. The measures taken by the economic operators shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered to be</p>	
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		<p>insufficient, the economic operator concerned shall receive a statement of the reasons for that decision.</p> <p>An economic operator which has been excluded by a final judgement from participating in procurement or concession award procedures shall not be entitled to make use of the faculty provided under the present paragraph during the period of exclusion resulting from that judgement.</p>	
<p>9. Member States shall specify the implementing conditions for this article. They shall make available to other Member States, upon request, any information related to the exclusion grounds listed in this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with the provisions of Article 88 of Directive [replacing Directive 2004/18/EC].</p>	<p>9. Member States shall specify the implementing conditions for this article. They shall make available to other Member States, upon request, any information related to the exclusion grounds listed in this Article. The competent authorities of the Member State of establishment shall provide this information in accordance with the provisions of Article 88 of Directive [replacing Directive 2004/18/EC]. [Am. 213]</p>	<p>9. By law, regulation or administrative provision and having regard for Union law, Member States shall specify, the implementing conditions for this article. They shall in particular, determine the maximum period of exclusion if no measures as specified in paragraph 8 are taken by the economic operator to demonstrate its reliability. They shall also make available to other Member States, upon request, any information related to the exclusion grounds listed in this Article. [...]</p>	
<p><i>Article 37</i> <i>Setting time limits</i></p>	<p><i>Article 37</i> <i>Setting time limits</i></p>	<p><i>Article 37</i> <i>Time limits for submission of applications and tenders for the concession</i></p>	

1. When fixing the time limits for the submission of applications for the concession and submission of tenders, contracting authorities or contracting entities shall take account in particular of the complexity of the concession and the time required for drawing up tenders, without prejudice to the minimum time limits set out in Article 37.	1. When fixing the time limits for the submission of applications for the concession and submission of tenders, contracting authorities or contracting entities the grantor shall take account in particular of the complexity of the concession and the time required for drawing up tenders or applications without prejudice to the minimum time limits set out in Article 37. [Am. 214]	1. When fixing the time limits for the submission of applications for the concession and submission of tenders, contracting authorities or contracting entities shall take account in particular of the complexity of the concession and the time required for drawing up tenders, without prejudice to the minimum time limits set out in paragraphs 3 to 5.	
2. Where applications or tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the concession award documents, the time limits for the submission of applications for the concession shall be extended so that all economic operators concerned may be aware of all the information needed to produce applications or tenders.	2. Where applications or tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the concession award documents, the time limits for the submission of applications for the concession shall be extended so that all economic operators concerned may be aware of all the information needed to produce applications or tenders. [Am. 215]	2. Where applications or tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the concession award documents, the time limits for the submission of applications for the concession or for the receipt of tenders , shall be fixed so that all economic operators concerned may be aware of all the information needed to produce applications or tenders and, in any case shall be longer than the minimum time limits set out in paragraphs 3 or 4.	
	2a. The time limit for the submission of applications or for the submission of tenders shall be not less than 30 working days from the date on which the concession notice was sent or the date on which candidates received		

	<i>notification of the invitation to submit a tender, respectively.</i>		
	<i>2b. The time limit for receipt of tenders may be reduced by five working days where the contracting entity accepts that tenders may be submitted by electronic means.</i> [Am. 216]		
		3. Where contracting authorities and contracting entities resort to a concession, the minimum time limit for the receipt of applications for the concession shall be 30 days from the date on which the concession notice was sent.	Council: moved from Article 38
		4. Where the procedure takes place in successive stages the minimum time limit for the receipt of initial tenders shall be 22 days from the date on which the invitation to tender is sent.	
		5. The minimum time limit for receipt of applications and of tenders may be reduced by five days where the contracting authority or contracting entity accepts that tenders may be submitted by electronic means in conformity with Article 25.	

		<p>6. Where, for whatever reason, additional information, although requested in good time, is not supplied within the time limits set out in Article 30 or where significant changes are made to the concession documents, the contracting authority or entity shall extend the time limits for the receipt of tenders so that all economic operators concerned may be aware of all the information needed to produce tenders. The length of the extension shall be proportionate to the importance of the information or change.</p>	
<p><i>Article 38</i> <i>Time limits for submission of applications for the concession</i></p>	<p><i>Article 38</i> <i>Time limits for submission of applications for the concession</i></p>	[...] deleted	
<p>1. Where contracting authorities and contracting entities resort to a concession, the time limit for the submission of applications for the concession shall be not less than 52 days from the date on which the concession notice was sent.</p>	<p>1. Where contracting authorities and contracting entities resort to a concession, the time limit for the submission of applications for the concession shall be not less than 52 days from the date on which the concession notice was sent.</p>	[...] deleted	
<p>2. The time limit for receipt of tenders may be reduced by five days where the contracting entity accepts that tenders may be submitted by electronic means in conformity with Article 25.</p>	<p>2. The time limit for receipt of tenders may be reduced by five days where the contracting entity accepts that tenders may be submitted by electronic means in conformity with Article 25. [Am. 217]</p>	[...] deleted	

	<i>Article 38a</i>		
	<i>Technical and functional requirements</i>		
	<i>1. Technical and functional requirements shall define the characteristics required of the works or services that are the subject matter of the concession. They shall be set out in the concession documents.</i>		
	<i>2. Those requirements shall comply with the principle of equal access of economic operators to the concession award procedure and shall not have the effect of creating unjustified obstacles to the opening up of concessions to competition.</i>		
	<i>In particular, unless justified by the subject-matter of the contract, technical and functional requirements shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific production with the effect of favouring or eliminating certain undertakings or certain products. Such a reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject matter of</i>		

	<i>the contract is not possible. The reference shall be accompanied by the words "or equivalent".</i> [Am. 218]		
	<i>Article 38b</i>		
	<i>Award criteria</i>		
	<i>1. The grantor may hold negotiations with candidates and tenderers. It shall provide for appropriate recording of the main stages of the procedure using the means it judges appropriate, subject to compliance with Article 24(1) of this Directive. Concessions shall be awarded by the grantor on the basis of objective award criteria which comply with the principles set out in Article -26a(2).</i>		
	<i>2. The subject matter of the concession, the award criteria and the minimum requirements shall not be changed in an arbitrary or discriminatory manner during the course of the negotiations. Any changes shall be immediately brought to the attention of the candidates and tenderers concerned.</i>		
	<i>3. The award criteria shall be linked to the subject matter of the concession. They may include, inter alia, environmental, social or innovation-related criteria. The</i>		

	<i>grantor shall verify whether tenders properly meet the award criteria.</i>		
	<i>4. The grantor shall indicate in the concession notice or the invitation to submit a tender his ranking order, if any, for the criteria referred to in paragraph 1. [Am. 219]</i>		
	<i>Article 38c</i>		
	<i>Provision of information to candidates and tenderers</i>		
	<i>1. The grantor shall as soon as possible inform each candidate and tenderer of decisions reached concerning the award of a concession, including the grounds for any decision to reject his application or tender and the grounds for any decision not to award a contract for which there has been publication of a concession notice or to recommence the procedure.</i>		
	<i>2. The grantor may decide to withhold certain information referred to in paragraph 1, regarding the contract, where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between</i>		

	<i>such operators. [Am. 220]</i>		
<i>Article 39</i> <i>Concession award criteria</i>	<i>Article 39</i> <i>Concession award criteria</i>	<i>Article 39</i> <i>Concession award criteria</i>	
1. Concessions shall be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which ensure that tenders are assessed in conditions of effective competition permitting to identify an overall economic advantage for the contracting authority or the contracting entity.	1. Concessions shall be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which ensure that tenders are assessed in conditions of effective competition permitting to identify an overall economic advantage for the contracting authority or the contracting entity.	1. Concessions shall be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which ensure that tenders are assessed in conditions of effective competition so as to identify an overall economic advantage for the contracting authority or the contracting entity.	
2. The award criteria shall be linked to the subject matter of the concession, and shall not confer an unrestricted freedom of choice on the contracting authority or the contracting entity. Those criteria shall ensure effective competition and shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified. Contracting authorities and contracting entities shall verify effectively on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.	2. The award criteria shall be linked to the subject matter of the concession, and shall not confer an unrestricted freedom of choice on the contracting authority or the contracting entity. Those criteria shall ensure effective competition and shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified. Contracting authorities and contracting entities shall verify effectively on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.	2. The award criteria shall be linked to the subject matter of the concession, and shall not confer an unrestricted freedom of choice on the contracting authority or the contracting entity. Those criteria shall permit effective competition and shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified. [...]	

3. The contracting authority or the contracting entity shall indicate in the concession notice or documents the relative weighting which it gives to each of the criteria set out in paragraph 1 or list those criteria in descending order of importance.	3. — The contracting authority or the contracting entity shall indicate in the concession notice or documents the relative weighting which it gives to each of the criteria set out in paragraph 1 or list those criteria in descending order of importance.	3. The contracting authority or the contracting entity shall[....] list the criteria set out in paragraph 1 in descending order of importance.	
4. Member States may provide that contracting authorities and contracting entites shall base the award of concessions on the criterion of the most economically advantageous tender, in compliance with paragraph 2. Those criteria may include, in addition to price or costs, any of the following criteria	4. — Member States may provide that contracting authorities and contracting entites shall base the award of concessions on the criterion of the most economically advantageous tender, in compliance with paragraph 2. Those criteria may include, in addition to price or costs, any of the following criteria	deleted	
(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character.	(a) — quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character.	deleted	
(b) for service concessions and concessions involving the design of works, the organisation, qualification and experience of the staff assigned to performing the concession in question may be taken into consideration, with the consequence that, following the award of the concession, such staff may only be replaced with the consent of the contracting authority or	(b) — for service concessions and concessions involving the design of works, the organisation, qualification and experience of the staff assigned to performing the concession in question may be taken into consideration, with the consequence that, following the award of the concession, such staff may only be replaced with the eonsent of the contracting authority or	deleted	

the contracting entity, which must verify that replacements ensure equivalent organisation and quality;	the contracting entity, which must verify that replacements ensure equivalent organisation and quality;		
(c) after-sales service and technical assistance, delivery date and delivery period or period of completion;	(c) — after-sales service and technical assistance, delivery date and delivery period or period of completion;	deleted	
(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point 14 of paragraph 1 of Article 2, to the extent that those criteria concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.	(d) — the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point 14 of paragraph 1 of Article 2, to the extent that those criteria concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.	deleted	
5. In the case referred to in paragraph 4, the contracting authority or entity shall specify in the contract notice, in the invitation to submit a tender, or in the concession documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender. Those weightings may be expressed by providing for a range with an appropriate maximum spread. Where weighting is not possible for objective reasons, the contracting authority or entity shall indicate the	5. — In the case referred to in paragraph 4, the contracting authority or entity shall specify in the contract notice, in the invitation to submit a tender, or in the concession documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender. Those weightings may be expressed by providing for a range with an appropriate maximum spread. Where weighting is not possible for objective reasons, the contracting authority or entity shall indicate the	deleted	

criteria in decreasing order of importance.	criteria in decreasing order of importance. [Am. 221]		
Article 40 Life-cycle costing	Article 40 Life-cycle costing	deleted	
1. Life-cycle costing shall to the extent relevant cover all of the following costs over the life cycle of a product, service or works as defined in point 14 of paragraph 1 of Article 2:	1. Life-cycle costing shall to the extent relevant cover all of the following costs over the life cycle of a product, service or works as defined in point 14 of paragraph 1 of Article 2:	deleted	
(a) internal costs, including costs relating to acquisition (such as production costs), use (such as energy consumption, maintenance costs) and end of life (such as collection and recycling costs)	(a) internal costs, including costs relating to acquisition (such as production costs), use (such as energy consumption, maintenance costs) and end of life (such as collection and recycling costs)	deleted	
(b) external environmental costs directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.	(b) external environmental costs directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.	deleted	
2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the concession award documents the methodology used for the calculation of the life-cycle costs. The methodology used must fulfil all of the following conditions:	2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the concession award documents the methodology used for the calculation of the life-cycle costs. The methodology used must fulfil all of the following conditions:	deleted	

(a) It has been drawn up on the basis of scientific information or is based on other objectively verifiable and non-discriminatory criteria;	(a) It has been drawn up on the basis of scientific information or is based on other objectively verifiable and non-discriminatory criteria;	deleted	
(b) It has been established for repeated or continuous application;	(b) It has been established for repeated or continuous application;	deleted	
(c) It is accessible to all interested parties.	(c) It is accessible to all interested parties.	deleted	
Contracting authorities and contracting entities shall allow economic operators to apply a different methodology for establishing the life-cycle costs of their offer, provided that they prove that this methodology complies with the requirements set out in points a, b and c and is equivalent to the methodology indicated by the contracting authority or contracting entity.	Contracting authorities and contracting entities shall allow economic operators to apply a different methodology for establishing the life-cycle costs of their offer, provided that they prove that this methodology complies with the requirements set out in points a, b and c and is equivalent to the methodology indicated by the contracting authority or contracting entity.	deleted	
3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 39 paragraph (4). A list of such legislative and delegated acts is set out in Annex II. The Commission shall be empowered	3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 39 paragraph (4). A list of such legislative and delegated acts is set out in Annex II. The Commission shall be empowered	deleted	

to adopt delegated acts in accordance with Article 46 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.	to adopt delegated acts in accordance with Article 46 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary. [Am. 222]		
TITLE III Rules on performance of concessions	TITLE III Rules on performance of concessions	TITLE III Rules on performance of concessions	
<i>Article 41</i> <i>Subcontracting</i>	<i>Article 41</i> <i>Subcontracting</i>	<i>deleted</i>	
1. In the concession documents, the contracting authority or contracting entity may ask or may be required by a Member State to ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.	1. In the concession documents, the contracting authority or contracting entity may ask or may be required by a Member State to grantor shall ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.	deleted	
	<i>1a. After the tenderer has been selected, it shall indicate to the contracting authorities the name, contact details and legal representatives of the subcontractors and any changes related to that information during the course of the contract. The information shall be provided to the tenderer by each subcontractor in the subcontracting chain through the subcontractor's direct contractor. Each subcontractor shall keep the information up-to-date during the</i>		

	<i>course of the contract.</i>		
2. Paragraph 1 shall be without prejudice to the question of the principal economic operator's liability.	2. Paragraph 1 shall be without prejudice to the question of the principal economic operator's liability.	deleted	
	<i>2a. Member States shall ensure that subcontractors also respect all mandatory legal, regulatory and administrative provisions in force in the Member State of contract performance, including the obligations referred to in Article - 26a(3). To this end, Member States may provide for a system of liability throughout the subcontracting chain so that the direct contractor of a subcontractor is liable in the event that the subcontractor fails to comply with one of those provisions or is insolvent. When a direct contractor is insolvent, such system should provide that the next solvent direct contractor up the subcontracting chain, including the main contractor, is liable.</i>		
	<i>2b. Member States may provide for more stringent liability rules under national law. [Am. 223]</i>		

<i>Article 42</i> <i>Modification of concessions during their term</i>	<i>Article 42</i> <i>Modification of concessions during their term</i>	<i>Article 42</i> <i>Modification of concessions during their term</i>	
1. A substantial modification of the provisions of a concession during its term shall be considered as a new award for the purposes of this Directive and shall require a new concession award procedure in accordance with this Directive.	1. A substantial modification of the provisions of A concession shall be considered as a new award for the purposes of this Directive and shall require a new concession award procedure in accordance with this Directive by means of a supplementary agreement unless the modifications are substantial. [Am. 224]	1. A substantial modification of the provisions of a concession during its term shall be considered as a new award for the purposes of this Directive and shall require a new concession award procedure in accordance with this Directive.	
2. A modification of a concession during its term shall be considered substantial within the meaning of paragraph 1, where it renders the concession substantially different from the one initially concluded, In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:	2. A Substantial modification of a concession during its term shall require a new award procedure in accordance with this Directive. A modification shall be considered substantial within the meaning of paragraph 1 where it renders the concession substantially different from the one initially concluded, In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:	2. A modification of a concession during its term shall be considered substantial within the meaning of paragraph 1, where it renders the concession materially different in character from the one initially concluded. In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:	
	(-a) the modification changes the nature of the concession;		

	<i>(-aa) the modification entails replacement of the concessionaire;</i>		
(a) the modification introduces conditions which, had they been part of the initial concession award procedure, would have allowed for the selection of other applicants than those initially selected, or would have allowed for awarding the concession to another applicant or tenderer;	(a) the modification introduces conditions which, had they been part of the initial concession award procedure, would have allowed for the selection of other applicants than those initially selected, or would have allowed for awarding the concession to another applicant or tenderer;	(a) the modification introduces conditions which, had they been part of the initial concession award procedure, would have allowed for the admission of other applicants than those initially selected, or for the acceptance of an offer other than that originally accepted or would have attracted additional participants in the concession award procedure.	
(b) the modification changes the economic balance of the concession in favour of the concessionaire or	(b) the modification <i>substantially</i> changes the economic balance of the concession in favour of the concessionaire ; or	(b) the modification changes the economic balance of the concession in favour of the concessionaire in a manner which was not provided for in the initial concession.	
(c) the modification extends the scope of the concession considerably to encompass supplies, services or works not initially covered	(c) the modification extends the scope of the concession considerably to encompass in that it encompasses supplies, services or works not initially covered. [Am. 225]	(c) the modification extends the scope of the concession considerably. [...]	
3. The replacement of the concessionaire shall be considered a substantial modification within the meaning of paragraph 1.	3. The replacement of the concessionaire shall be considered a substantial modification within the meaning of paragraph 1.	3. Without prejudice to paragraph 5, the substitution of a new concessionaire for the one to which the contracting authority or entity had initially awarded the contract shall be considered a substantial modification within the	

		meaning of paragraph 1.	
However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations, insolvency or on the basis of a contractual clause of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the concession and is not aimed at circumventing the application of this Directive.	However, the first subparagraph <i>Point (-aa) of the first subparagraph of this paragraph</i> shall not apply in the event of universal or partial succession into the position of the initial contractor following: [Am. 226]	However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring including takeover, merger, acquisition or insolvency or on the basis of a contractual clause of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the concession and is not aimed at circumventing the application of this Directive.	
	(a) corporate restructuring operations;		
	(b) the transfer of capital or assets between undertakings,		
	(c) the takeover of the concessionaire following insolvency or on the basis of pursuant to a contractual clause of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the concession and is not aimed at circumventing the application of this Directive. [Am. 226]		

	<i>2a. Provided the overall nature of the concession remains the same, modification of the concession shall not be considered substantial where:</i>		
	<i>(a) the modification has been provided for in the original concession contract in clear, precise and unequivocal review clauses or options made in accordance with Union and national law which state the scope and nature of possible modifications as well as the conditions under which they may be used; or</i>		
	<i>(b) the value thereof is below 10 % of the updated value of the original contract.</i>		
	<i>Where several successive modifications are made, the value of the successive modifications shall be assessed on the basis of the updated cumulative value of the successive modifications. [Am. 227]</i>		
4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 5 and where it is below 5 % of	4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 5 and where it is below 5 % of	4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 5 and where it is below 10 %	

the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.	the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications. [Am. 228]	for services concessions and below 15% for works concessions of the value of the initial contract, calculated according to the method provided for in Article 6 , provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.	
5. Concession modifications shall not be considered substantial within the meaning of paragraph 1, where they have been provided for in the concession documents in clear, precise and unequivocal review clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the concession.	5. Concession modifications shall not be considered substantial within the meaning of paragraph 1, where they have been provided for in the concession documents in clear, precise and unequivocal review clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the concession. [Am. 229]	5. Concession modifications shall not be considered substantial within the meaning of paragraph 1, where they have been provided for in the initial concession documents in clear, precise and unequivocal review clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the concession.	
6. By way of derogation from paragraph 1, a substantial modification shall not require a new concession award procedure where the following cumulative conditions are fulfilled:	6. By way of derogation from paragraph 1, a substantial modification shall not require a new concession award procedure where the following cumulative conditions are fulfilled:	6. A modification shall not be considered to be substantial within the meaning of paragraph 1 , where the following cumulative conditions are fulfilled:	

(a) the need for modification has been brought about by circumstances which a diligent contracting authority or entity could not foresee	(a) the need for modification has been brought about by circumstances which a diligent contracting authority or entity grantor could not foresee <i>anticipate</i> ; [Am. 230]	- the need for modification has been brought about by circumstances which a diligent contracting authority or entity could not foresee	
(b) the modification does not alter the overall nature of the concession	(b) the modification does not alter the overall nature of the concession	- the modification does not alter the overall nature of the concession	
(c) in case of concessions awarded by contracting authorities where any increase in price is not higher than 50% of the value of the original concession.	(c) in case of concessions awarded by contracting authorities where <i>the value of the intended modification does not exceed</i> any increase in price is not higher than 50% of the original <i>updated initial</i> value of the concession; [Am. 231]	deleted	
Contracting authorities or contracting entities shall publish in the <i>Official Journal of the European Union</i> a notice on such modifications. Such notices shall contain the information set out in Annex VII and be published in accordance with the provisions of Article 28.	Contracting authorities or contracting entities The grantor shall publish in the Official Journal of the European Union a notice on such modifications. Such notices shall contain the information set out in Annex VII and be published in accordance with the provisions of Article 28. [Am. 232]	Contracting authorities or contracting entities shall publish in the Official Journal of the European Union a notice on such modifications. Such notices shall contain the information set out in Annex VII and be published in accordance with the provisions of Article 28.	
7. Contracting authorities and contracting entities shall not have recourse to modifications of the concession in the following cases:	7. Contracting authorities and contracting entities shall not have recourse to modifications of the concession The grantor shall not invoke this Article in the following cases: [Am. 233]	deleted	

(a) where the modification would aim at remedying deficiencies in the performance of the concessionaire or the consequences thereof, which can be remedied through the enforcement of contractual obligations;	(a) where the modification would aim at remedying deficiencies in the performance of the concessionaire or the consequences thereof, which can be remedied through the enforcement of contractual obligations;	deleted	
(b) where the modification would aim at compensating risks of price increases that are the result of price fluctuations that could substantially impact the performance of a contract and that have been hedged by the concessionaire.	(b) where the modification would aim at compensating lessening the operating risks of price increases that are the result of price fluctuations that could substantially impact the performance of a contract and that have been hedged assumed by the concessionaire. [Am. 234]	deleted	
Article 43 Termination of concessions	Article 43 Termination of concessions	Article 43 Termination of concessions	
Member States shall ensure that contracting authorities and contracting entities have the possibility, under the conditions determined by the applicable national contract law, to terminate a concession during its term, where one of the following conditions is fulfilled:	Member States shall ensure that contracting authorities and contracting entities have the grantor has the possibility, under the conditions determined by the applicable national contract law, to terminate a concession during its term, where one of the following conditions is fulfilled: [Am. 235]	Member States shall ensure that contracting authorities and contracting entities have the possibility, under the conditions determined by the applicable national contract law, to terminate a concession during its term, where one of the following conditions is fulfilled:	
(a) the exceptions provided for in Article 15 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 15 (4);	(a) the exceptions provided for in Article 15 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 15(4); [Am. 236]	(a) the exceptions provided for in Article 15 cease to apply following a participation of private capital in the legal entity awarded the contract pursuant to Article 15 (4);	

(b) a modification of the concession constitutes a new award within the meaning of Article 42;	(b) a modification of the concession constitutes a new award within the meaning of Article 42;	(b) a modification of the concession constitutes a new award within the meaning of Article 42;	
(c) the Court of Justice of the European Union finds, in a procedure pursuant to Article 258 of the Treaty, that a Member State has failed to fulfil its obligations under the Treaties by the fact that a contracting authority or entity belonging to that Member State has awarded the concession in question without complying with its obligations under the Treaties and this Directive.	(c) the Court of Justice of the European Union finds, in a procedure pursuant to Article 258 of the Treaty, that a Member State has failed to fulfil its obligations under the Treaties by the fact that a contracting authority or entity grantor belonging to that Member State has awarded the concession in question without complying with its obligations under the Treaties and this Directive. [Am. 237]	(c) the Court of Justice of the European Union finds, in a procedure pursuant to Article 258 of the <u>TFEU</u> , that a Member State has failed to fulfil its obligations under the Treaties by the fact that a contracting authority or entity belonging to that Member State has awarded the concession in question without complying with its obligations under the Treaties and this Directive.	
	Article 43a		
	Governance		
	1. In order to ensure correct and efficient implementation of this Directive, Member States shall ensure that at least the tasks set out in this Article are performed by one or more authorities or structures. They shall indicate to the Commission all authorities or structures competent for performing those tasks.		

	<i>2. Member States shall ensure that the application of rules for the award of concessions contracts is monitored, including the implementation of projects co-financed by the Union with a view to detecting threats to the financial interests of the Union. Such monitoring shall be used to prevent, detect and adequately report possible instances of procurement fraud, corruption, conflict of interest and other serious irregularities.</i>		
	<i>Where monitoring authorities or structures identify specific violations or systemic problems, they shall be empowered to refer those violations or problems to national auditing authorities, courts or tribunals or other appropriate authorities or structures, such as the ombudsman, national Parliaments or committees thereof.</i>		
	<i>3. At their request, the competent national authorities shall be notified by contracting authorities and entities of any activities which they regard as excluded from this Directive pursuant to Article 8(5b).</i>		

	<i>4. The results of the monitoring activities carried out pursuant to paragraph 2 shall be made available to the public through appropriate means of information. In particular, Member States shall publish, at least once every two years, an overview of the most frequent causes of incorrect application of the rules for the award of concessions contracts or of legal uncertainty, including possible structural or recurring problems in the application of the rules, including possible cases of fraud and other illegal behaviour.</i>		
	<i>5. Member States shall ensure that guidance on the interpretation and application of Union law for the award of concessions contracts is available free of charge to assist contracting authorities and entities and economic operators in correctly applying the Union rules. [Am. 238]</i>		
TITLE V AMMENDEMENTS OF DIRECTIVES 89/665/EEC AND 92/13/EEC	TITLE V AMMENDEMENTS OF DIRECTIVES 89/665/EEC AND 92/13/EEC	TITLE V AMMENDEMENTS OF DIRECTIVES 89/665/EEC AND 92/13/EEC	
Article 44 <i>Amendments to Directive 89/665/EEC</i>	Article 44 <i>Amendments to Directive 89/665/EEC</i>	Article 44 <i>Amendments to Directive 89/665/EEC</i>	
Directive 89/665/EEC shall be amended as follows:	Directive 89/665/EEC shall be amended as follows:	Directive 89/665/EEC shall be amended as follows:	

1. Article 1 is amended as follows:	1. Article 1 is amended as follows:	1. Article 1 is amended as follows:	
(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:	
<p>‘1. This Directive applies to contracts referred to in 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 unless such contracts are excluded in accordance with Articles 10 to 18 of that Directive.</p> <p>This Directive also applies to concessions awarded by contracting authorities, referred to in Directive [on the award of concessions] unless such concessions are excluded in accordance with Articles 8, 9, 15 and 21 of that Directive.</p> <p>Contracts within the meaning of this Directive include public contracts, framework agreements, public works concessions, services concessions and dynamic purchasing systems.’</p>	<p>‘1. This Directive applies to contracts referred to in 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 unless such contracts are excluded in accordance with Articles 10 to 18 of that Directive.</p> <p>This Directive also applies to concessions awarded by contracting authorities, referred to in Directive [on the award of concessions] unless such concessions are excluded in accordance with Articles 8, 9, 15 and 21 of that Directive.</p> <p>Contracts within the meaning of this Directive include public contracts, framework agreements, public works concessions, services concessions and dynamic purchasing systems.’</p>	<p>‘1. This Directive applies to contracts referred to in 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 unless such contracts are excluded in accordance with Articles 10 to 18 of that Directive.</p> <p>This Directive also applies to concessions awarded by contracting authorities, referred to in Directive [on the award of concessions] unless such concessions are excluded in accordance with Articles 8, 9, 15 and 21 of that Directive.</p> <p>Contracts within the meaning of this Directive include public contracts, framework agreements, public works concessions, services concessions and dynamic purchasing systems.’</p>	
(b) Article 1 first paragraph, 3 subparagraph is replaced by the following:	(b) Article 1 first paragraph, 3 subparagraph is replaced by the following:	(b) Article 1 first paragraph, 3 subparagraph is replaced by the following:	

‘ Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2004/18/EC or Directive [on Concessions], decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Community law in the field of public procurement or national rules transposing that law’.	‘ Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2004/18/EC or Directive [on Concessions], decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Community law in the field of public procurement or national rules transposing that law’.	‘ Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2004/18/EC or Directive [on Concessions], decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Community law in the field of public procurement or national rules transposing that law’.	
2. Article 2a(2) is amended as follows:	2. Article 2a(2) is amended as follows:	2. Article 2a(2) is amended as follows:	
(a) the first subparagraph is replaced by the following:	(a) the first subparagraph is replaced by the following:	(a) the first subparagraph is replaced by the following:	
‘A contract may not be concluded following the decision to award a contract falling within the scope of Directive 2004/18/EC or Directive [on Concessions] before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on	‘A contract may not be concluded following the decision to award a contract falling within the scope of Directive 2004/18/EC or Directive [on Concessions] before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on	‘A contract may not be concluded following the decision to award a contract falling within the scope of Directive 2004/18/EC or Directive [on Concessions] before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on	

which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.’;	which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.’;	which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.’;	
(b) in the fourth subparagraph, first indent is replaced by the following:	(b) in the fourth subparagraph, first indent is replaced by the following:	(b) in the fourth subparagraph, first indent is replaced by the following:	
‘– a summary of the relevant reasons as set out in Article 41(2) of Directive 2004/18/EC, subject to the provisions of Article 41(3) of that Directive, or in Article 35 (7) of Directive [on Concessions], subject to the provisions of Article 35 (8) of that Directive and,’	‘– a summary of the relevant reasons as set out in Article 41(2) of Directive 2004/18/EC, subject to the provisions of Article 41(3) of that Directive, or in Article 35 (7) of Directive [on Concessions], subject to the provisions of Article 35 (8) of that Directive and,’	‘– a summary of the relevant reasons as set out in Article 41(2) of Directive 2004/18/EC, subject to the provisions of Article 41(3) of that Directive, or in Article 35 (7) of Directive [on Concessions], subject to the provisions of Article 35 (8) of that Directive and,’	
3. in Article 2b, point (a) is replaced by the following:	3. in Article 2b, point (a) is replaced by the following:	3. in Article 2b, point (a) is replaced by the following:	
‘(a) if Directive 2004/18/EC or Directive [on Concessions] does not require prior publication of a contract notice in the <i>Official Journal of the European Union</i> ;’;	‘(a) if Directive 2004/18/EC or Directive [on Concessions] does not require prior publication of a contract notice in the <i>Official Journal of the European Union</i> ;’;	‘(a) if Directive 2004/18/EC or Directive [on Concessions] does not require prior publication of a contract notice in the <i>Official Journal of the European Union</i> ;’	
4. Article 2d is amended as follows:	4. Article 2d is amended as follows:	4. Article 2d is amended as follows:	
(a) in paragraph 1, point (a) is replaced by the following:	(a) in paragraph 1, point (a) is replaced by the following:	(a) in paragraph 1, point (a) is replaced by the following:	
‘(a) if the contracting authority has awarded a contract without prior publication of a contract notice in the <i>Official Journal of the European Union</i> without this being permissible	‘(a) if the contracting authority has awarded a contract without prior publication of a contract notice in the <i>Official Journal of the European Union</i> without this being permissible	‘(a) if the contracting authority has awarded a contract without prior publication of a contract notice in the <i>Official Journal of the European Union</i> without this being permissible	

in accordance with Directive 2004/18/EC or Directive [on Concessions]’;	in accordance with Directive 2004/18/EC or Directive [on Concessions]’;	in accordance with Directive 2004/18/EC or Directive [on Concessions]’;	
(b) in paragraph 4, the first indent is replaced by the following:	(b) in paragraph 4, the first indent is replaced by the following:	(b) in paragraph 4, the first indent is replaced by the following:	
‘- the contracting authority considers that the award of a contract without prior publication of a contract notice in the <i>Official Journal of the European Union</i> is permissible in accordance with Directive 2004/18/EC or Directive [on Concessions]’;	‘- the contracting authority considers that the award of a contract without prior publication of a contract notice in the <i>Official Journal of the European Union</i> is permissible in accordance with Directive 2004/18/EC or Directive [on Concessions]’;	‘- the contracting authority considers that the award of a contract without prior publication of a contract notice in the <i>Official Journal of the European Union</i> is permissible in accordance with Directive 2004/18/EC or Directive [on Concessions]’;	
5. Article 2f (1)(a) is amended as follows:	5. Article 2f (1)(a) is amended as follows:	5. Article 2f (1)(a) is amended as follows:	
(a) the first indent is replaced by the following:	(a) the first indent is replaced by the following:	(a) the first indent is replaced by the following:	
- the contracting authority published a contract award notice in accordance with Articles 35(4), 36 and 37 of Directive 2004/18/EC or with Articles 26 and 27 of Directive [on Concessions], provided that this notice includes justification of the decision of the contracting authority to award the contract without prior publication of a contract notice in the <i>Official Journal of the European Union</i> , or’;	- the contracting authority published a contract award notice in accordance with Articles 35(4), 36 and 37 of Directive 2004/18/EC or with Articles 26 and 27 of Directive [on Concessions], provided that this notice includes justification of the decision of the contracting authority to award the contract without prior publication of a contract notice in the <i>Official Journal of the European Union</i> , or’;	‘- the contracting authority published a contract award notice in accordance with Articles 35(4), 36 and 37 of Directive 2004/18/EC or with Articles 26 and 27 of Directive [on Concessions], provided that this notice includes justification of the decision of the contracting authority to award the contract without prior publication of a contract notice in the <i>Official Journal of the European Union</i> , or’;	
(b) after the first indent, the following indent is inserted:	(b) after the first indent, the following indent is inserted:	(b) after the first indent, the following indent is inserted:	

<p>‘- the contracting authority informed the tenderers and candidates concerned of the conclusion of the contract, provided that this information contains a summary of the relevant reasons as set out in Article 41(2) of Directive 2004/18/EC, subject to the provisions of Article 41(3) of that Directive or in in Article 35 (7) of Directive [on Concessions], subject to the provisions of Article 35 (8) of that Directive. This option also applies to the cases referred to in Article 2b(c) of this Directive;’;</p>	<p>‘- the contracting authority informed the tenderers and candidates concerned of the conclusion of the contract, provided that this information contains a summary of the relevant reasons as set out in Article 41(2) of Directive 2004/18/EC, subject to the provisions of Article 41(3) of that Directive or in in Article 35 (7) of Directive [on Concessions], subject to the provisions of Article 35 (8) of that Directive. This option also applies to the cases referred to in Article 2b(c) of this Directive;’;</p>	<p>‘- the contracting authority informed the tenderers and candidates concerned of the conclusion of the contract, provided that this information contains a summary of the relevant reasons as set out in Article 41(2) of Directive 2004/18/EC, subject to the provisions of Article 41(3) of that Directive or in in Article 35 (7) of Directive [on Concessions], subject to the provisions of Article 35 (8) of that Directive. This option also applies to the cases referred to in Article 2b(c) of this Directive;’;</p>	
<p>6. In Article 3, paragraph 1 is replaced by the following:</p>	<p>6. In Article 3, paragraph 1 is replaced by the following:</p>	<p>6. In Article 3, paragraph 1 is replaced by the following:</p>	
<p>‘1. The Commission may invoke the procedure provided for in paragraphs 2 to 5 when, prior to a contract being concluded, it considers that a serious infringement of Community law in the field of public procurement has been committed during a contract award procedure falling within the scope of Directive 2004/18/EC or Directive [on Concessions].’.</p>	<p>‘1. The Commission may invoke the procedure provided for in paragraphs 2 to 5 when, prior to a contract being concluded, it considers that a serious infringement of Community law in the field of public procurement has been committed during a contract award procedure falling within the scope of Directive 2004/18/EC or Directive [on Concessions].’.</p>	<p>‘1. The Commission may invoke the procedure provided for in paragraphs 2 to 5 when, prior to a contract being concluded, it considers that a serious infringement of Community law in the field of public procurement has been committed during a contract award procedure falling within the scope of Directive 2004/18/EC or Directive [on Concessions].’.</p>	

<i>Article 45 Amendments to Directive 92/13/EEC</i>	<i>Article 45 Amendments to Directive 92/13/EEC</i>	<i>Article 45 Amendments to Directive 92/13/EEC</i>	
Directive 92/13/EEC shall be amended as follows:	Directive 92/13/EEC shall be amended as follows:	Directive 92/13/EEC shall be amended as follows:	
1. Article 1(1) is amended as follows:	1. Article 1(1) is amended as follows:	1. Article 1(1) is amended as follows:	
(a) the first and second subparagraph is replaced by the following:	(a) the first and second subparagraph is replaced by the following:	(a) the first and second subparagraph is replaced by the following:	
‘This Directive applies to contracts referred to in 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 (1) unless such contracts are excluded in accordance with Article 5 (2), Articles 19 to 26, Articles 29 and 30 or Article 62 of that Directive. This Directive also applies to concessions awarded by contracting entities, referred to in Directive [on Concessions] unless such contracts are excluded in accordance with Articles 8, 10, 11, 12, 14, 15 and 21 of that Directive.’ ;	‘This Directive applies to contracts referred to in 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 (1) unless such contracts are excluded in accordance with Article 5 (2), Articles 19 to 26, Articles 29 and 30 or Article 62 of that Directive. This Directive also applies to concessions awarded by contracting entities, referred to in Directive [on Concessions] unless such contracts are excluded in accordance with Articles 8, 10, 11, 12, 14, 15 and 21 of that Directive.’ ;	‘This Directive applies to contracts referred to in 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 (1) unless such contracts are excluded in accordance with Article 5 (2), Articles 19 to 26, Articles 29 and 30 or Article 62 of that Directive. This Directive also applies to concessions awarded by contracting entities, referred to in Directive [on Concessions] unless such contracts are excluded in accordance with Articles 8, 10, 11, 12, 14, 15 and 21 of that Directive.’ ;	
(b) the third subparagraph is replaced by the following:	(b) the third subparagraph is replaced by the following:	(b) the third subparagraph is replaced by the following:	

‘Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2004/17/EC or Directive [on Concessions], decisions taken by contracting entities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Community law in the field of procurement or national rules transposing that law.’;	‘Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2004/17/EC or Directive [on Concessions], decisions taken by contracting entities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Community law in the field of procurement or national rules transposing that law.’;	‘Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2004/17/EC or Directive [on Concessions], decisions taken by contracting entities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Community law in the field of procurement or national rules transposing that law.’;	
2. Article 2a(2) is amended as follows:	2. Article 2a(2) is amended as follows:	2. Article 2a(2) is amended as follows:	
(a) the first subparagraph is replaced by the following:	(a) the first subparagraph is replaced by the following:	(a) the first subparagraph is replaced by the following:	
‘A contract may not be concluded following the decision to award a contract falling within the scope of Directive 2004/17/EC or Directive [on Concessions] before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect	‘A contract may not be concluded following the decision to award a contract falling within the scope of Directive 2004/17/EC or Directive [on Concessions] before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect	‘A contract may not be concluded following the decision to award a contract falling within the scope of Directive 2004/17/EC or Directive [on Concessions] before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either	

from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.’;	from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.’;	at least 15 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.’;	
(b) in the fourth subparagraph, the first indent is replaced by the following:	(b) in the fourth subparagraph, the first indent is replaced by the following:	(b) in the fourth subparagraph, the first indent is replaced by the following:	
‘— a summary of the relevant reasons as set out in Article 49(2) of Directive 2004/17/EC or in Article 35 (7) of Directive [on Concessions], subject to the provisions of Article 35 (8) of that Directive, and’;	‘— a summary of the relevant reasons as set out in Article 49(2) of Directive 2004/17/EC or in Article 35 (7) of Directive [on Concessions], subject to the provisions of Article 35 (8) of that Directive, and’;	‘— a summary of the relevant reasons as set out in Article 49(2) of Directive 2004/17/EC or in Article 35 (7) of Directive [on Concessions], subject to the provisions of Article 35 (8) of that Directive, and’;	
3. in Article 2b, point (a) is replaced by the following:	3. in Article 2b, point (a) is replaced by the following:	3. in Article 2b, point (a) is replaced by the following:	
‘(a) if Directive 2004/17/EC or Directive [on Concessions] does not require prior publication of a notice in the <i>Official Journal of the European Union</i> ; ‘	‘(a) if Directive 2004/17/EC or Directive [on Concessions] does not require prior publication of a notice in the <i>Official Journal of the European Union</i> ; ‘	‘(a) if Directive 2004/17/EC or Directive [on Concessions] does not require prior publication of a notice in the <i>Official Journal of the European Union</i> ; ‘	
4. Article 2c is replaced by the following:	4. Article 2c is replaced by the following:	4. Article 2c is replaced by the following:	
‘Article 2c	‘Article 2c	‘Article 2c	
Where a Member State provides that any application for review of a contracting entity's decision taken in the context of, or in relation to, a contract award procedure falling within the scope of Directive	Where a Member State provides that any application for review of a contracting entity's decision taken in the context of, or in relation to, a contract award procedure falling within the scope of Directive	Where a Member State provides that any application for review of a contracting entity's decision taken in the context of, or in relation to, a contract award procedure falling within the scope of Directive	

2004/17/EC or Directive [on Concessions] must be made before the expiry of a specified period, this period shall be at least 10 calendar days with effect from the day following the date on which the contracting entity's decision is sent to the tenderer or candidate if fax or electronic means are used or, if other means of communication are used, this period shall be either at least 15 calendar days with effect from the day following the date on which the contracting entity's decision is sent to the tenderer or candidate or at least 10 calendar days with effect from the day following the date of receipt of the contracting entity's decision. The communication of the contracting entity's decision to each tenderer or candidate shall be accompanied by a summary of the relevant reasons. In the case of an application for a review concerning decisions referred to in Article 2(1)(b) of this Directive that are not subject to a specific notification, the time period shall be at least 10 calendar days from the date of the publication of the decision concerned.'	2004/17/EC or Directive [on Concessions] must be made before the expiry of a specified period, this period shall be at least 10 calendar days with effect from the day following the date on which the contracting entity's decision is sent to the tenderer or candidate if fax or electronic means are used or, if other means of communication are used, this period shall be either at least 15 calendar days with effect from the day following the date on which the contracting entity's decision is sent to the tenderer or candidate or at least 10 calendar days with effect from the day following the date of receipt of the contracting entity's decision. The communication of the contracting entity's decision to each tenderer or candidate shall be accompanied by a summary of the relevant reasons. In the case of an application for a review concerning decisions referred to in Article 2(1)(b) of this Directive that are not subject to a specific notification, the time period shall be at least 10 calendar days from the date of the publication of the decision concerned.'	2004/17/EC or Directive [on Concessions] must be made before the expiry of a specified period, this period shall be at least 10 calendar days with effect from the day following the date on which the contracting entity's decision is sent to the tenderer or candidate if fax or electronic means are used or, if other means of communication are used, this period shall be either at least 15 calendar days with effect from the day following the date on which the contracting entity's decision is sent to the tenderer or candidate or at least 10 calendar days with effect from the day following the date of receipt of the contracting entity's decision. The communication of the contracting entity's decision to each tenderer or candidate shall be accompanied by a summary of the relevant reasons. In the case of an application for a review concerning decisions referred to in Article 2(1)(b) of this Directive that are not subject to a specific notification, the time period shall be at least 10 calendar days from the date of the publication of the decision concerned.'	
1. Article 2d is amended as follows:	1. Article 2d is amended as follows:	5. Article 2d is amended as follows:	

(a) paragraph 1, point (a) is replaced by the following:	(a) paragraph 1, point (a) is replaced by the following:	(a) paragraph 1, point (a) is replaced by the following:	
‘(a) if the contracting entity has awarded a contract without prior publication of a notice in the <i>Official Journal of the European Union</i> without this being permissible in accordance with Directive 2004/17/EC or Directive [on Concessions]’;	‘(a) if the contracting entity has awarded a contract without prior publication of a notice in the <i>Official Journal of the European Union</i> without this being permissible in accordance with Directive 2004/17/EC or Directive [on Concessions]’;	‘(a) if the contracting entity has awarded a contract without prior publication of a notice in the <i>Official Journal of the European Union</i> without this being permissible in accordance with Directive 2004/17/EC or Directive [on Concessions]’;	
(b) in paragraph 4, the first indent shall be replaced by the following:	(b) in paragraph 4, the first indent shall be replaced by the following:	(b) in paragraph 4, the first indent shall be replaced by the following:	
‘— the contracting entity considers that the award of a contract without prior publication of a notice in the <i>Official Journal of the European Union</i> is permissible in accordance with Directive 2004/17/EC or Directive [on Concessions],’;	‘— the contracting entity considers that the award of a contract without prior publication of a notice in the <i>Official Journal of the European Union</i> is permissible in accordance with Directive 2004/17/EC or Directive [on Concessions],’;	‘— the contracting entity considers that the award of a contract without prior publication of a notice in the <i>Official Journal of the European Union</i> is permissible in accordance with Directive 2004/17/EC or Directive [on Concessions],’;	
2. In Article 2f(1), point (a) is replaced by the following:	2. In Article 2f(1), point (a) is replaced by the following:	6. In Article 2f(1), point (a) is replaced by the following:	
‘— the contracting entity published a contract award notice in accordance with Articles 43 and 44 of Directive 2004/17/EC or with Articles 26 and 27 of Directive [on Concessions], provided that this notice includes the justification of the decision of the contracting entity to award the contract without prior publication of a notice in the <i>Official Journal of the European Union</i> , or	‘— the contracting entity published a contract award notice in accordance with Articles 43 and 44 of Directive 2004/17/EC or with Articles 26 and 27 of Directive [on Concessions], provided that this notice includes the justification of the decision of the contracting entity to award the contract without prior publication of a notice in the <i>Official Journal of the European Union</i> , or	‘— the contracting entity published a contract award notice in accordance with Articles 43 and 44 of Directive 2004/17/EC or with Articles 26 and 27 of Directive [on Concessions], provided that this notice includes the justification of the decision of the contracting entity to award the contract without prior publication of a notice in the <i>Official Journal of the European Union</i> , or	

— the contracting entity informed the tenderers and candidates concerned of the conclusion of the contract, provided that this information contains a summary of the relevant reasons as set out in Article 49(2) of Directive 2004/17/EC or in Article 35 (7) of Directive [on Concessions], subject to the provisions of Article 35 (8) of that Directive. This option also applies to the cases referred to in Article 2b(c) of this Directive;’;	— the contracting entity informed the tenderers and candidates concerned of the conclusion of the contract, provided that this information contains a summary of the relevant reasons as set out in Article 49(2) of Directive 2004/17/EC or in Article 35 (7) of Directive [on Concessions], subject to the provisions of Article 35 (8) of that Directive. This option also applies to the cases referred to in Article 2b(c) of this Directive;’;	— the contracting entity informed the tenderers and candidates concerned of the conclusion of the contract, provided that this information contains a summary of the relevant reasons as set out in Article 49(2) of Directive 2004/17/EC or in Article 35 (7) of Directive [on Concessions], subject to the provisions of Article 35 (8) of that Directive. This option also applies to the cases referred to in Article 2b(c) of this Directive;’;	
3. in Article 8, paragraph 1 is replaced by the following:	3. in Article 8, paragraph 1 is replaced by the following:	7. in Article 8, paragraph 1 is replaced by the following:	
‘1. The Commission may invoke the procedure provided for in paragraphs 2 to 5 when, prior to a contract being concluded, it considers that a serious infringement of Community law in the field of procurement has been committed during a contract award procedure falling within the scope of Directive 2004/17/EC or Directive [on Concessions], or in relation to Article 27(a) of Directive 2004/17/EC in the case of contracting entities to which that provision applies’.	‘1. The Commission may invoke the procedure provided for in paragraphs 2 to 5 when, prior to a contract being concluded, it considers that a serious infringement of Community law in the field of procurement has been committed during a contract award procedure falling within the scope of Directive 2004/17/EC or Directive [on Concessions], or in relation to Article 27(a) of Directive 2004/17/EC in the case of contracting entities to which that provision applies’.	‘1. The Commission may invoke the procedure provided for in paragraphs 2 to 5 when, prior to a contract being concluded, it considers that a serious infringement of Community law in the field of procurement has been committed during a contract award procedure falling within the scope of Directive 2004/17/EC or Directive [on Concessions], or in relation to Article 27(a) of Directive 2004/17/EC in the case of contracting entities to which that provision applies’.	

TITLE VI DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS	TITLE VI DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS	TITLE VI DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS	
<i>Article 46</i> <i>Exercise of the delegation of powers</i>	<i>Article 46</i> <i>Exercise of the delegation of powers</i>	<i>Article 46</i> <i>Exercise of the delegation of powers</i>	
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	
2. The delegation of power referred to in Articles 4 (3), 21 (3), 23 (2), 25 (3), 40 (3) and 52 (2) shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of the present Directive].	2. The delegation of power to adopt delegated acts referred to in Articles 4 (3), 21 (3) and Article 23 (2), 25 (3), 40 (3) and 52 (2) shall be conferred on the Commission for an indeterminate period of time from [*] [Am. 239]	2. The delegation of power referred to in Articles 4(4), 21(3) and 23(2) [...] shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of the present Directive].	
3. The delegation of power referred to in Articles 4 (3), 21 (3), 23 (2), 25 (3), 40 (3) and 52 (2), may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity	3. The delegation of power referred to in Articles 4 (3), 21 (3) and Article 23 (2), 25 (3), 40 (3) and 52 (2) may be revoked at any time by the European Parliament or the Council. The decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity	3. The delegation of power referred to in Articles 4(4), 21(3) and 23(2) [...] may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	

^{*} ***OJ: please insert the date of entry into force of this Directive.***

of any delegated acts already in force.	of any delegated acts already in force. [Am. 240]		
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	
5. A delegated act adopted pursuant to this Article shall enter into force only where no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of the act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.	5. A delegated act adopted pursuant to this Article shall enter into force only where no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of the act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.	5. A delegated act adopted pursuant to this Article shall enter into force only where no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of the act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.	
<i>Article 47</i> <i>Urgency procedure</i>	<i>Article 47</i> <i>Urgency procedure</i>	<i>Article 47</i> <i>Urgency procedure</i>	
1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the	1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the	1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the	

use of the urgency procedure.	use of the urgency procedure.	use of the urgency procedure.	
2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 46(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council.	2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 46(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council.	2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 46(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council.	
<i>Article 48 Committee Procedure</i>	<i>Article 48 Committee Procedure</i>	<i>Article 48 Committee Procedure</i>	
1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306/EEC ⁶¹ . That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306/EEC ⁶² . That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	1. The Commission shall be assisted by the Advisory Committee for Public Procurement established by Council Decision 71/306/EEC ⁶³ . That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	
2. Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.	2. Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.	2. Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.	

⁶¹ OJ L 185, 16.8.1971, p. 15.

⁶² OJ L 185, 16.8.1971, p. 15.

⁶³ OJ L 185, 16.8.1971, p. 15.

<i>Article 49 Transposition</i>	<i>Article 49 Transposition</i>	<i>Article 49 Transposition</i>	
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2014 at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2014 at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 months following the entry into force pursuant to Article 52 . They shall forthwith communicate to the Commission the text of those provisions.	
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	

	<i>2a. Member States shall ensure that this Directive does not apply to concessions awarded before ...*. This Directive shall however apply to modifications and terminations of contracts taking place after ...* .</i> [Am. 241]		
<i>Article 50</i> <i>Transitional provisions</i>	<i>Article 50</i> <i>Transitional provisions</i>	<i>Article 50</i> <i>Transitional provisions</i>	
References to paragraph 3(a) and (b) of Article 1 of Directive 2004/17/EC and paragraphs 3 and 4 of Article 1 and Title III of Directive 2004/18/EC Directive shall be construed as references to this Directive.	References to paragraph 3(a) and (b) of Article 1 of Directive 2004/17/EC and paragraphs 3 and 4 of Article 1 and Title III of Directive 2004/18/EC Directive shall be construed as references to this Directive.	References to paragraph 3(a) and (b) of Article 1 of Directive 2004/17/EC and paragraphs 3 and 4 of Article 1 and Title III of Directive 2004/18/EC Directive shall be construed as references to this Directive.	
<i>Article 51</i> <i>Review</i>	<i>Article 51</i> <i>Review</i>	<i>Article 51</i> <i>Review</i>	
The Commission shall review the economic effects on the Internal Market resulting from the application of the thresholds set in Article 5 and report thereon to the European Parliament and the Council by 30 June 2016.	The Commission shall review the economic effects on the Internal Market resulting from the application of the thresholds set in Article 5 and report thereon to the European Parliament and the Council by 30 June 2016.	The Commission shall review the economic effects on the internal market, in particular in terms of factors such as cross-border award of contracts and transaction costs , resulting from the application of the thresholds set in Article 5 and report thereon to the European Parliament and the Council by [3 years later than the date provided for in Article 49(1)] . In the event of any change to the	

* ***OJ: please insert the date of entry into force of this Directive.***

		threshold amounts applicable under the Agreement, the report shall, where appropriate, be followed by a legislative proposal amending the thresholds set out in this Directive.	
	<i>The Commission shall review the functioning of this Directive and shall report to the European Parliament and to the Council by ... **, and every five years thereafter, based on information that Member States shall provide.</i>		
	<i>The Commission shall make the results of the reviews carried out in accordance with the second paragraph publicly available.</i> [Am. 242]		
<i>Article 52</i> <i>Entry into force</i>	<i>Article 52</i> <i>Entry into force</i>	<i>Article 52</i> <i>Entry into force</i>	
This Directive shall enter into force on twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on twentieth day following that of its publication in the Official Journal of the European Union.	
<i>Article 53</i> <i>Addressees</i>	<i>Article 53</i> <i>Addressees</i>	<i>Article 53</i> <i>Addressees</i>	
This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	

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 ** *OJ Please insert the date: "[five] years after the date of transposition of this Directive set out in Article 49(1), first subparagraph".*