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| Subject: | Proposal for a Directive of the European Parliament and of the Council on public procurement<br>- Cluster 6: Aggregation of demand |

Delegations will find in the Annex a non-paper prepared by the Commission services (DG Internal Market) on Cluster 6 of the above proposal.

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**ANNEX**

**Cluster 6**

**Aggregation of demand**

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Changes to the substance are highlighted in **bold**; minor modifications or purely linguistic adaptations are not highlighted.

## 1. Framework agreements

*Article 31*

*Framework agreements*

*[Directive 2004/18/EC: Articles 1(5), 32]*

1. **Contracting authorities** may conclude framework agreements, provided that they apply the procedures provided for in this Directive.

The previous formulation, "Member States may provide that contracting authorities may conclude framework agreements" has been changed; in line with the overall toolbox approach it must always be possible for contracting authorities to use this procurement instrument.

A framework agreement means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

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

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

Those procedures may be applied only between those contracting authorities **clearly identified** for this purpose in the call for competition **or the invitation to confirm interest** and those economic operators originally party to the framework agreement.

This provision has been clarified in two respects: firstly, by stating explicitly that the framework agreement may be used only by the contracting authorities clearly identified for that purpose and, secondly, that framework agreements may be concluded also where the call for competition is a prior information notice.

Contracts based on a framework agreement may under no circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement.

For the award of those contracts, contracting authorities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways:

(a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents;

(b) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework agreement.

The current provision of Article 32(4) stipulates that multiple framework agreements if at all possible (i. e. if there is a sufficient number of qualified candidates/admissible tenders) must be concluded with at least three economic operators. This requirement has now been eliminated; it will thus be possible to conclude framework agreements with two economic operators even where there would be more than that number of admissible tenders.

5. The competition referred to in paragraph (4)(b) shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:

(a) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;

(b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;

(d) contracting authorities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

## 2. Dynamic Purchasing Systems

*Article 32*

*Dynamic purchasing systems*

*[Directive 2004/18/EC: Articles 1(6), 33]*

Under the current Directive, dynamic purchasing systems (in the following DPS) are structured around the open procedure, which entails major procedural complexities, not least the need for the indicative tenders as a condition for being admitted to system. Together with the obligation to publish a simplified contract notice before proceeding to the award of any specific contract, the indicative offers – and the 15 days deadline for their submission – were among the main reasons for the DPS not being used in practice. The proposal bases the DPS on the restricted procedure and provides for permanent publication[1] instead of the ad hoc simplified contract notices and both of these changes allow for a major streamlining of the procedure.

The functioning of the modified DPS can be schematised as follows:

Publication of call for competition ⇒ requests for participation ⇒ evaluation of exclusion and selection criteria (applying normal provision including self-certification, procurement passport etc.) ⇒ admission to the system. This sequence is the same for both economic operators having responded to the notice as of its first appearance as well as for economic operators responding at a later time (in response to the permanently published call for competition, cf. Art. 49(4)). Specific contracts based on the system are awarded as follows: invitations to tender sent to all who - at that moment – are admitted to the system ⇒ submission of tenders ⇒ evaluation (award criteria) ⇒ award of contract.

1. For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities, **contracting authorities** may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.

[1] Art. 49(4): " The Commission shall ensure that the full text and the summary of prior information notices referred to in Article 46(2) and calls for competition setting up a dynamic purchasing system, as referred to in Article 32(3)(a) continue to be published: … (b) in the case of calls for competition setting up a dynamic purchasing system, for the period of validity of the dynamic purchasing system."

The previous formulation, "Member States may provide that contracting authorities may use dynamic purchasing systems" has been changed; in line with the overall toolbox approach it must always be possible for contracting authorities to use this procurement instrument. As part of the above-mentioned switch from the open to the restricted procedure, the conditions for admission to the DPS no longer includes the previous, additional condition "and has submitted an indicative tender that complies with the specification."

2. In order to award contracts under a dynamic purchasing system, contracting authorities shall follow the rules of **the restricted procedure. All the candidates satisfying the selection criteria shall be admitted to the system; the number of candidates to be admitted to the system shall not be limited in accordance with Article 64.** All communications in the context of a dynamic purchasing system shall only be made with electronic means in accordance with Article 19(2) to (6).

To ensure that access to the DPS is not restricted through the switch from open to restricted procedures, it was necessary to provide explicitly that the possibility to restrict the number of participants in restricted procedures (to at least 5) is not available in this case. It should also be stressed that the assessment of requests for participation is otherwise carried out in accordance with the normal rules of Article 55 to 63; the normal provisions in respect of documentation and proof are therefore fully applicable.

3. For the purposes of awarding contracts under a dynamic purchasing system, contracting authorities shall:

   (a) publish a **call for competition** making it clear that a dynamic purchasing system is involved;

   (b) indicate in the specifications at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;

(c) offer unrestricted and full direct access, as long as the system is valid, to the specifications and to any additional documents in conformity with Article 51.

The provisions under point c have been streamlined compared to the current provisions of Article 33(3)(c) because of the now generalised obligation to offer electronic access to procurement documents pursuant to Article 51. Furthermore, point a has been adapted to take into account the possibility to use a prior information notice as a means of calling for competition (cf. Art. 24(2)).

4. Contracting authorities shall give any economic operator, throughout the entire duration of the dynamic purchasing system, the possibility of **requesting to participate** in the system under the conditions referred to in paragraph 2. **Contracting authorities shall finalise their assessment of such requests according to the selection criteria within 10 working days following their receipt.**

The contracting authority shall inform the economic operator referred to in the first subparagraph at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

The previous requirement of an indicative tender as condition for acceding to the system has been eliminated as part of the above-mentioned switch from an open to a restricted procedure. Furthermore, the provision has been changed as to substance in two respects: firstly, the deadline for assessing the response from economic operators seeking admission has been shortened from 15 days to 10 days, This is due to the substantial difference in the workloads connected on the one hand to the assessment of both the qualifications of the economic operators as well as the compliance of the (indicative) tender and, on the other, to the assessment of whether the economic operator meets or not the selection criteria, furthermore based on the provisions on simplified proof (self-declarations etc.). The previous possibility to prolong the period that contracting authorities dispose of, compensated by an interdiction to launch specific procurements as long as the assessment was being performed, has not been taken over.

5. Contracting authorities shall invite **all qualified participants** to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 52.

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

The mechanisms for carrying out specific procurements have been substantially streamlined. The current Directive foresees the obligation, for the contracting authority, to transmit a simplified contract notice prior to each specific procurement, to wait 15 days for the (possible) submission of the indicative tenders, to complete the assessment of the indicative tenders and then, once the assessment completed, to invite all the economic operators admitted to the system to submit their – now binding – tenders for the specific contract. The proposal abolishes this rather cumbersome system: when contracting authorities decide to proceed to a specific procurement they invite all those economic operators, who – at that time - have already been admitted to the system, to tender for the specific contract. Any receipt of requests for participation will not trigger a suspension of the possibility to carry out specific procurements, the request shall instead be assessed within the 10 days provided for under paragraph 4 and the economic operator concerned will then – if meeting the selection criteria – be able to tender for any specific procurement launched after his admission to the system.

**6. Contracting authorities shall indicate the duration of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in duration, using the following standard forms:**

**(a) where the duration is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;**

**(b) where the system is terminated, a contract award notice referred to in Article 48.**

No charges may be billed to the interested economic operators or to parties to the dynamic purchasing system.

The prior limitation of the duration of dynamic procurement systems ("4 years, except in duly justified exceptional cases") has been abolished, because the permanent publication of the call for competition, combined with the possibility to be admitted to the system at any time during its period of validity, renders the DPS a genuinely open and transparent system.

**3. Central purchasing bodies, ancillary purchasing activities and occasional joint procurement**

The provisions of Articles 35 to 37 must be seen on the background of the relevant definitions, set out in Article 2, points 16 to 19, and reading as follows:

(16) 'centralised purchasing activities' means activities conducted **on a permanent basis**, in one of the following forms:

(a) the acquisition of supplies and/or services intended for contracting authorities,

(b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;

The definition of "central purchasing activities" is new; however, as to substance it is essentially a paraphrase of the existing definition of central purchasing ***bodies*** set out in the current Article 1(10). There is one addition, namely the reference to the activities being conducted on "a permanent basis." This is necessary to create a difference between central purchasing bodies and contracting authorities carrying out occasional joint procurement as provided for under Article 37.

**(17) 'ancillary purchasing activities' means activities consisting in the provision of support to purchasing activities, in particular in the following forms:**

**(a) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;**

**(b) advice on the conduct or design of public procurement procedures;**

**(c) preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;**

The notion of "ancillary purchasing activities" lists –**non-exhaustively** – a series of activities and services which have traditionally been provided by (private) economic operators as well as by central purchasing bodies. Point a would include providing electronic platforms or specific electronic tools, such as e. g. software need for the conduct of electronic auctions; examples of the services and activities under points b) and c) can be found in the "traditional" roles of consultants, advising engineers etc.

(18) 'central purchasing body' means a contracting authority providing centralised purchasing activities **and, possibly, ancillary purchasing activities**;

The definition of central purchasing bodies is substantially unchanged compared to the current one (Art. 1(10) of Directive 2004/18/EC; it is however specified that central purchasing bodies may, but do not need to, provide ancillary purchasing activities.

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

The purpose of this provision is to clarify that ancillary purchasing activities may be offered by all economic operators, whether public or private. "Central purchasing activities" must, by definition, be provided by central purchasing bodies and they must, as is the case under the current Directive, themselves be contracting authorities.

*Article 35*

*Centralised purchasing activities and central purchasing bodies*

*[Directive 2004/18/EC: Articles 1(10), 11]*

1. **Contracting authorities** may purchase works, supplies and/or services from or through a central purchasing body.

The previous formulation, "Member States may stipulate that contracting authorities may purchase works, supplies and/or services from or through a central purchasing body" has been changed; in line with the overall toolbox approach it must always be possible for contracting authorities to use this procurement technique. As is the case under the current provision, the formulation "from or through" clarifies that contracting authorities may have recourse to central purchasing bodies both where these function as "wholesalers" (buying, stocking and reselling – "from") as well as in cases where their role is that of an "intermediary" (i. e. stipulating the contracts or framework agreements which are subsequently used by the individual contracting authorities - "through").

2. **Member States shall provide for the possibility for contracting authorities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.**

See also Article 38(2) on joint procurement.

3. **A contracting authority fulfils its obligations pursuant to this Directive when it procures by having recourse to centralised purchasing activities, to the extent that the procurement procedures concerned and their performance are conducted by the central procurement body alone in all its stages from the publication of the call for competition to the end of the execution of the ensuing contract or contracts.**

**However, where certain stages of the procurement procedure or the performance of the ensuing contracts are carried out by the contracting authority concerned, the contracting authority continues to be responsible for fulfilling the obligations pursuant to this Directive in respect of the stages it conducts.**

The current provision in Article 11(2) of Directive 2004/18/EC provides that "Contracting authorities which purchase works, supplies and/or services from or through a central purchasing body … **shall be deemed** to have complied with this Directive **insofar as the central purchasing body has complied with it**." This goes some way towards providing a "safe haven" for contracting authorities which have recourse to central purchasing bodies. However, the consequences for the contracting authorities who have procured from or through a central purchasing body are far from clear in case it is – subsequently – found that the central purchasing body has not complied with the provisions of the Directive. Paragraph 3, 1st subparagraph therefore provides explicitly that contracting authorities meet their obligations when procuring from or through a central purchasing body, provided that the conduct of the relevant procurement procedures rests entirely and exclusively with the central purchasing body. The 2nd subparagraph clarifies that in case a contracting authority having recourse to a central purchasing body continues to carry out certain stages of the award procedure then it remains responsible for those stages. A practical example might be where the central purchasing body establishes a framework agreement and the individual contracting authority, which needs a specific delivery, conducts the relative mini-competition.

**4. All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements of Article 19.**

Because of their transaction volume and expertise, central purchasing bodies have an obvious role to play as spearheads for the transition towards full use of electronic means of communications – a role that many are already playing today.

**5. Contracting authorities may, without applying the procedures provided for in this Directive, choose a central purchasing body to provide centralised purchasing activities, including where the central purchasing body is remunerated for so doing.**

This explicitly establishes that contracting authorities may always have recourse to a central purchasing body of their choice, including in situations where this entails concluding a service contract for the provision of services having an estimated value above the relevant threshold, without it being necessary to examine whether the conditions of Article 11 ("relations between public authorities") are met.

**6. Central purchasing bodies shall ensure the documentation of all transactions performed in the course of the execution of the contracts, framework agreements or dynamic purchasing systems they conclude in the course of their central purchasing activities.**

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| Because of the high volume contracts and the often large numbers of economic operators and/or contracting authorities involved, it is important to document all **transactions** (that is including also all call-offs etc.) that take place in the context of central purchasing bodies. This will be greatly facilitated through the obligatory use of electronic means of communication and should go a long way towards meeting the statistical obligations. As far as the conduct of the procurement procedures themselves is concerned, the general obligations set out in the 2nd subparagraph of Article 85 apply. |

*Article 36*

*Ancillary purchasing activities*

*[New]*

**The providers of ancillary purchasing activities shall be chosen in accordance with the procurement procedures set out in this Directive.**

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| As already mentioned, ancillary purchasing activities may be provided by "normal" economic operators and are not reserved for central purchasing bodies. Where such activities have an estimated value equal to or greater than the relevant threshold, the ensuing service contracts must therefore be awarded in accordance with the normal provisions of the Directive. |

*Article 37*

*Occasional joint procurement*

*[New]*

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| Given the (partially) new provisions that may strengthen the role of central purchasing bodies, it was all the more important to set out explicitly that other forms of joint procurement may exist within the borders of any given Member States (joint procurement between contracting authorities from different Member States is dealt with in Article 38). A common model for the occasional joint procurement dealt with in this provision, is often to be found at e. g. regional or local levels when several contracting authorities agree to achieve economies of scale by joining certain of their procurements. This may take various forms, including cases where one contracting authorities, for instance because it disposes of more resources or a specific experience with that particular subject matter, conducts on its own the procurement procedure(s) concerned. Paragraph 2 therefore mirrors the provisions of Article 35(3). |

**1. One or more contracting authorities may agree to perform certain specific procurements jointly.**

**2. Where one contracting authority alone conducts the procurement procedures concerned in all its stages from the publication of the call for competition to the end of the performance of the ensuing contract or contracts, that contracting authority shall have sole responsibility for fulfilling the obligations pursuant to this Directive.**

**However, where the conduct of the procurement procedures and the performance of the ensuing contracts is carried out by more than one of the participating contracting authorities, each shall continue to be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.**

*Article 38*

*Joint procurement between contracting authorities from different Member States*

*[New]*

The proposal provides for the first time specific rules on cross-border joint procurement. This responds to a request expressed by various stakeholders who complained about a lack of legal certainty in cross-border joint procurement situations, in particular in cases where contracting authorities from different Member States are jointly awarding a public contract. Cross-border joint purchasing plays a significant role in innovation procurement, for instance in the case of networks of public procurers from different Member States purchasing jointly innovative clean vehicles. It is therefore particularly important to remove legal and administrative obstacles to such cross-border projects.

**1. Without prejudice to Article 11, contracting authorities from different Member States may jointly award public contracts by using one of the means described in this Article.**

Paragraph 1 makes clear that contracting authorities can engage in cross-border procurement and that they have free choice between the techniques described in the following paragraphs, namely joint procurement through a central purchasing body, joint contract awards and procurement through a joint legal entity.

**2. Several contracting authorities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.**

If the participating authorities decide to award a contract through a central purchasing body (within the meaning of Article 1 (18)), then the actual procurement procedure takes place only between the central purchasing body and the economic operators. As a consequence, the contract award procedure will be governed by the national procurement law of the Member State where the central purchasing body is located. It is for the participating authorities to decide on the applicable law for their internal relationships (i.e. the relations between the individual contracting authorities and the central purchasing body and, possibly, between the participating contracting authorities).

**3. Several contracting authorities from different Member States may jointly award a public contract. In that case, the participating contracting authorities shall conclude an agreement that determines:**

**(a) which national provisions shall apply to the procurement procedure.**

**(b) the internal organisation of the procurement 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 contracts.**

**When determining the applicable national law in accordance with point (a), contracting authorities may choose the national provisions of any Member State in which at least one of the participating authorities is located.**

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| In the case of a joint contract award by several contracting authorities from different countries, determining the applicable public procurement law becomes less evident. Since the contract award procedure takes place between all participating authorities, on the one hand, and all participating economic operators, on the other, theoretically each national procurement law involved would have a claim to govern the procedure. The proposal overcomes this positive conflict – which is often cited as the biggest obstacle to cross-border joint contract awards – by inviting the participating authorities to determine the applicable national procurement rules in an internal agreement which should also cover the practical details, such as distribution of tasks and responsibilities and allocation of the purchased works, supplies or services. |

**4. Where several contracting authorities 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 Parliament and of the Council[2] or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national procurement rules of one of the following Member States:**

**(a) the national provisions of the Member State where the joint legal entity has its registered office;**

**(b) the national provisions of the Member State where the joint legal entity is carrying out its activities.**

**This agreement may either apply for an undetermined period, when fixed in the constitutive act of the joint legal entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.**

Where contracts are awarded through a joint legal entity set up by the participating authorities, the situation with regard to the applicable procurement law is again different: Although, on a purely technical level, the procurement procedure involves only the joint entity and the participating economic operators, one has to take into account that the entity has been created as vehicle to be used on a long-term basis for cooperation and common procurement by public authorities from different Member States. It is therefore preferable that the participating authorities determine through the decision-making mechanism of their joint entity the applicable national public procurement rules. Their choice is, however, limited to the Member State where the joint entity is registered or where it carries out its activities. This restriction is necessary to ensure that the procedure has a sufficiently strong legal and factual link to the Member State whose rules are to be applied.

[2] OJ L 210 of 31.7.2006, p. 19

**5. In the absence of an agreement determining the applicable public procurement law, the national legislation governing the contract award shall be determined following the rules set out below:**

**(a) where the procedure is conducted or managed by one participating contracting authority on behalf of the others, the national provisions of the Member State of that contracting authority shall apply;**

**(b) where the procedure is not conducted or managed by one participating contracting authority on behalf of the others, and**

**(i) concerns a works contract, contracting authorities shall apply the national provisions of the Member State where most of the works are located;**

**(ii) concerns a service or supply contract, contracting authorities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;**

**(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.**

**6. In the absence of an agreement determining the applicable public procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting authorities from different Member States shall be determined following the following rules:**

**(a) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply.**

**(b) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply.**

**(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting authorities shall apply the national provisions of the Member State where the legal entity has its registered office.**

Paragraphs 5 and 6 deal with situations where the participating contracting authorities have failed to determine the applicable national public procurement rules in their internal agreement (in the case of a joint contract award under paragraph 4) or in the decision of the competent body (in the case of a joint legal entity under paragraph 5). In such cases, the applicable national procurement rules are determined on the basis of objective connection factors which are inspired by the rules of international private and economic law. The main principles are as follows: 1) Where a single contracting authority (or an organ of the joint legal entity) is acting on behalf of the others, the national rules of this contracting authority (or of the joint legal entity) shall prevail. 2) In other cases, the applicable procurement rules are determined on the basis of the main place of the contract performance (location of works, place of provision of supplies and services. 3) As fall-back solution, the national rules of the contracting authority bearing the largest share of the costs (or, in the case of a joint legal entity, the rules of the Member State of the registered office) shall apply.

**7. One or more contracting authorities may award individual contracts 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 to award the individual contracts.**

Paragraph 7 clarifies that framework agreements can also be used in cross-border situations. This includes the possibility to make use of a framework agreement concluded by a contracting authority in another Member State by awarding individual contracts under the conditions described in Article 31(2).

**8. Decisions on the award of public contracts in cross-border public procurement shall be subject to the ordinary review mechanisms available under the national law applicable.**

**9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive 89/665/EEC[3] located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting authorities established on their territory participating in the relevant cross-border public procurement procedure.**

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| Review procedures related to cross-border joint contract awards can lead to conflicts of jurisdiction. Paragraph 8 and 9 ensure the appropriate standards of judicial protection in cross-border procurement: Decisions must be subject to the full set of review mechanisms and Member States have to make sure that decision by review bodies from other Member States are recognised and executed. |

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[3] OJ L 395, 30.12. 1989, p. 33.