

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

TITLE I

**SCOPE, DEFINITIONS AND GENERAL PRINCIPLES**

*CHAPTER III*

*Material scope*

*Section 2*

*Excluded contracts and design contests; special provisions  
for procurement involving defence and security aspects*

*Subsection 2*

*Procurement involving defence and security aspects*

*Article 25*

**Mixed procurement covering the same activity and involving defence or security aspects**

1 In the case of mixed contracts covering the same activity which have as their subject-matter procurement covered by this Directive and procurement or other elements covered by Article 346 TFEU or Directive 2009/81/EC, this Article shall apply.

2 Where the different parts of a given contract are objectively separable, contracting entities may choose to award separate contracts for the separate parts or to award a single contract.

Where contracting entities choose to award separate contracts for separate parts, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

Where contracting entities choose to award a single contract, the following criteria shall apply to determine the applicable legal regime:

- a where part of a given contract is covered by Article 346 TFEU, the contract may be awarded without applying this Directive, provided that the award of a single contract is justified for objective reasons;
- b where part of a given contract is covered by Directive 2009/81/EC, the contract may be awarded in accordance with that Directive, provided that the award of a single contract is justified for objective reasons. This point shall be without prejudice to the thresholds and exclusions for which that Directive provides.

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The decision to award a single contract shall not, however, be taken for the purpose of excluding contracts from the application of either this Directive or Directive 2009/81/EC.

3 Point (a) of the third subparagraph of paragraph 2 shall apply to mixed contracts to which both point (a) and point (b) of that subparagraph could otherwise apply.

4 Where the different parts of a given contract are objectively not separable, the contract may be awarded without applying this Directive where it includes elements to which Article 346 TFEU applies; otherwise it may be awarded in accordance with Directive 2009/81/EC.