

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 1

Exclusions applicable to all contracting entities and special exclusions for the water and energy sectors

Article 18

Contracts awarded for purposes of resale or lease to third parties

1 This Directive shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.

2 The contracting entities shall notify the Commission if so requested of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the *Official Journal of the European Union*, for information purposes, of lists of the categories of products and 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 information.

Article 19

Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country

1 This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 8 to 14 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 nor shall it apply to design contests organised for such purposes.

2 The contracting entities shall notify the Commission, if so requested, of any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the *Official Journal of the European Union*, 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.

Article 20

Contracts awarded and design contests organised pursuant to international rules

1 This Directive shall not apply to contracts or design contests which the contracting entity is obliged to award or organise in accordance with procurement procedures different from those laid down in this Directive established by any of the following:

- a a legal instrument creating international law obligations, such as an international agreement, concluded in accordance with the Treaties, 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 an international organisation.

Member States shall communicate all legal instruments referred to in point (a) of the first subparagraph of this paragraph to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 105.

2 This Directive shall not apply to contracts and design contests which the contracting entity awards or organises in accordance with procurement rules provided by an international organisation or international financing institution, where the contracts or design contests concerned are fully financed by that organisation or institution; in the case of contracts or design contests co-financed the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures.

3 Article 27 shall apply to contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules. Paragraphs 1 and 2 of this Article shall not apply to those contracts and design contests.

Article 21

Specific exclusions for service contracts

This Directive shall not apply to service contracts for:

- (a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;
- (b) arbitration and conciliation services;
- (c) any of the following legal services:
 - (i) legal representation of a client by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC⁽¹⁾ in:

Status: This is the original version (as it was originally adopted).

- an arbitration or conciliation held in a Member State, a third country or before an international arbitration or conciliation instance; or
 - judicial proceedings before the courts, tribunals or public authorities of a Member State or a third country or before international courts, tribunals or institutions;
- (ii) legal advice given in preparation of any of the proceedings referred to in point (i) of this point or where there is a tangible indication and high probability 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;
 - (iii) document certification and authentication services which must be provided by notaries;
 - (iv) legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;
 - (v) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority;
- (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⁽²⁾ and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;
 - (e) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
 - (f) employment contracts;
 - (g) public passenger transport services by rail or metro;
 - (h) civil defence, civil protection, and danger prevention that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8; 98113100-9 and 85143000-3 except patient transport ambulance services;
 - (i) contracts for broadcasting time or programme provision that are awarded to audiovisual or radio media service providers. For the purposes of this point, ‘media service providers’ shall have the same meaning as pursuant to point (d) of Article 1(1) of Directive 2010/13/EU of the European Parliament and of the Council⁽³⁾. ‘Programme’ shall have the same meaning as pursuant to point (b) of Article 1(1) of that Directive, 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’.

Article 22

Service contracts awarded on the basis of an exclusive right

This Directive shall not apply to service contracts awarded to an entity which is itself a contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provision which is compatible with the TFEU.

Article 23

Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy

This Directive shall not apply:

- (a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities relating to drinking water referred to in Article 10(1);
- (b) to contracts awarded by contracting entities themselves being active in the energy sector by being engaged in an activity referred to in Article 8(1), Article 9(1) or Article 14 for the supply:
 - (i) of energy;
 - (ii) of fuels for the production of energy.

- (1) Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services ([OJ L 78, 26.3.1977, p. 17](#)).
- (2) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC ([OJ L 145, 30.4.2004, p. 1](#)).
- (3) 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) ([OJ L 95, 15.4.2010, p. 1](#)).