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STATUTORY INSTRUMENTS

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**2016 No. 274**

**The Utilities Contracts Regulations 2016**

PART 1

GENERAL

CHAPTER 3

MATERIAL SCOPE

SECTION 2

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

SUB-SECTION 3 *Special relations (cooperation, affiliated undertakings and joint ventures)*

**Contracts awarded to an affiliated undertaking**

**29.**—(1) These Regulations do not apply to contracts awarded—

- (a) by a utility to an affiliated undertaking; or
- (b) by a joint venture, formed exclusively by a number of utilities for the purpose of carrying out activities described in regulations 9 to 15, to an affiliated undertaking of one of its members,

provided that the conditions in paragraph (2) are fulfilled.

(2) The conditions are that—

- (a) in respect of service contracts, at least 80% of the average total turnover of the affiliated undertaking over the preceding 3 years, taking into account all services provided by that undertaking, derives from the provision of services to the utility or one or more of its affiliated undertakings;
- (b) in respect of supply contracts, at least 80% of the average total turnover of the affiliated undertaking over the preceding 3 years, taking into account all supplies provided by that undertaking, derives from the provision of supplies to the utility or one or more of its affiliated undertakings;
- (c) in respect of works contracts, at least 80% of the average total turnover of the affiliated undertaking over the preceding 3 years, taking into account all works provided by that undertaking, derives from the provision of works to the utility or one or more of its affiliated undertakings.

(3) Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover referred to in paragraph (2) is not available for the preceding 3 years, it shall be sufficient for that undertaking to show that the turnover is credible, in particular by means of business projections.

(4) Where more than one undertaking affiliated with the utility with which they form an economic group provides the same or similar services, supplies or works, the percentages referred to in paragraph (2) shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

(5) In this regulation, “affiliated undertaking” and any similar expression means—

(a) any undertaking the annual accounts of which are consolidated with those of the utility in accordance with the requirements of [Directive 2013/34/EU](#) of the European Parliament and of the Council<sup>(1)</sup>; and

(b) in the case of an undertaking which is not subject to that Directive, any undertaking that:—

(i) may be, directly or indirectly, subject to a dominant influence by the utility;

(ii) may exercise a dominant influence over the utility; or

(iii) in common with the utility, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

(6) For the purposes of paragraph (5)(b), a “dominant influence” shall be presumed on the part of a utility or, as the case may be, an undertaking, in the same circumstances in which it is, in accordance with regulation 5(3), presumed on the part of a contracting authority.

(7) This regulation applies despite the provisions of regulation 28.

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(1) OJ No L 182, 29.6.2013, p19, last amended by Council [Directive 2014/102/EU](#) (OJ No L 334, 21.11.2014, p86).