

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (Text with EEA relevance)

TITLE II

RULES ON PUBLIC CONTRACTS

CHAPTER III

Conduct of the procedure

Section 3

Choice of participants and award of contracts

Subsection 1

Criteria for qualitative selection

Article 57

Exclusion grounds

1 Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with Articles 59, 60 and 61, or are otherwise aware that that economic operator has been the subject of a conviction by final judgment for one of the following reasons:

- a participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA⁽¹⁾;
- 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⁽²⁾ and Article 2(1) of Council Framework Decision 2003/568/JHA⁽³⁾ as well as corruption as defined in the national law of the contracting authority or the economic operator;
- c fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests⁽⁴⁾;
- d terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA⁽⁵⁾ respectively, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;
- e money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council⁽⁶⁾;
- f child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council⁽⁷⁾.

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.

2 An economic operator shall be excluded from participation in a procurement procedure where the contracting authority 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 judicial 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.

Furthermore, contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure an economic operator where the contracting authority can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.

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 taxes or social security contributions due, including, where applicable, any interest accrued or fines.

3 Member States may provide for a derogation from the mandatory exclusion provided for in paragraphs 1 and 2, on an exceptional basis, for overriding reasons relating to the public interest such as public health or protection of the environment.

Member States may also provide for a derogation from the mandatory exclusion provided in paragraph 2, where an exclusion would be clearly disproportionate, in particular where only minor amounts of taxes or social security contributions are unpaid or where the economic operator was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions at such time that it did not have the possibility of taking measures as provided for in the third subparagraph of paragraph 2 before expiration of the deadline for requesting participation or, in open procedures, the deadline for submitting its tender.

4 Contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure any economic operator in any of the following situations:

- a where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in Article 18(2);
- 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 can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;
- d where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;
- e where a conflict of interest within the meaning of Article 24 cannot be effectively remedied by other less intrusive measures;

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- f where a distortion of competition from the prior involvement of the economic operators in the preparation of the procurement procedure, as referred to in Article 41, cannot be remedied by other, less intrusive measures;
- g where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract which led to early termination of that prior contract, damages or other comparable sanctions;
- h 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 Article 59; or
- i where the economic operator has undertaken to unduly influence the decision-making process of the contracting authority, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

Notwithstanding point (b) of the first subparagraph, Member States may require or may provide for the possibility that the contracting authority does not exclude an economic operator which is in one of the situations referred to in that point, where the contracting authority has established that the economic operator in question will be able to perform the contract, taking into account the applicable national rules and measures on the continuation of business in the case of the situations referred to in point (b).

5 Contracting authorities shall at any time during the procedure exclude an economic operator where it turns out that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraphs 1 and 2.

At any time during the procedure, contracting authorities may exclude or may be required by Member States to exclude an economic operator where it turns out that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraph 4.

6 Any economic operator that is in one of the situations referred to in paragraphs 1 and 4 may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. If such evidence is considered as sufficient, the economic operator concerned shall not be excluded from the procurement procedure.

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 insufficient, the economic operator shall receive a statement of the reasons for that decision.

An economic operator which has been excluded by final judgment from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided for under this paragraph during the period of exclusion resulting from that judgment in the Member States where the judgment is effective.

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7 By law, regulation or administrative provision and having regard to 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 6 are taken by the economic operator to demonstrate its reliability. Where the period of exclusion has not been set by final judgment, that period shall not exceed five years from the date of the conviction by final judgment in the cases referred to in paragraph 1 and three years from the date of the relevant event in the cases referred to in paragraph 4.

Article 58

Selection criteria

- 1 Selection criteria may relate to:
 - a suitability to pursue the professional activity;
 - b economic and financial standing;
 - c technical and professional ability.

Contracting authorities may only impose criteria referred to in paragraphs 2, 3 and 4 on economic operators as requirements for participation. They shall limit any requirements to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded. All requirements shall be related and proportionate to the subject-matter of the contract.

2 With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled in one of the professional or trade registers kept in their Member State of establishment, as described in Annex XI, or to comply with any other request set out in that Annex.

In procurement procedures for services, in so far as economic operators have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.

3 With regard to economic and financial standing, contracting authorities may impose requirements ensuring that economic operators possess the necessary economic and financial capacity to perform the contract. For that purpose, contracting authorities may require, in particular, that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract. In addition, contracting authorities may require that economic operators provide information on their annual accounts showing the ratios, for instance, between assets and liabilities. They may also require an appropriate level of professional risk indemnity insurance.

The minimum yearly turnover that economic operators are required to have shall not exceed two times the estimated contract value, except in duly justified cases such as relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate the main reasons for such a requirement in the procurement documents or the individual report referred to in Article 84.

The ratio, for instance, between assets and liabilities may be taken into consideration where the contracting authority specifies the methods and criteria for such consideration in the procurement documents. Such methods and criteria shall be transparent, objective and non-discriminatory.

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Where a contract is divided into lots this Article shall apply in relation to each individual lot. However, the contracting authority may set the minimum yearly turnover that economic operators are required to have by reference to groups of lots in the event that the successful tenderer is awarded several lots to be executed at the same time.

Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement referred to in the second subparagraph of this paragraph shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum yearly turnover requirement referred to in the second subparagraph shall be calculated on the basis of the expected maximum size of specific contracts to be awarded under that system.

4 With regard to technical and professional ability, contracting authorities may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard.

Contracting authorities may require, in particular, that economic operators have a sufficient level of experience demonstrated by suitable references from contracts performed in the past. A contracting authority may assume that an economic operator does not possess the required professional abilities where the contracting authority has established that the economic operator has conflicting interests which may negatively affect the performance of the contract.

In procurement procedures for supplies requiring siting or installation work, services or works, the professional ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency, experience and reliability.

5 Contracting authorities shall indicate the required conditions of participation which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.

Article 59

European Single Procurement Document

1 At the time of submission of requests to participate or of tenders, contracting authorities shall accept the European Single Procurement Document (ESPD), consisting of an updated self-declaration as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the relevant economic operator fulfils the following conditions:

- a it is not in one of the situations referred to in Article 57 in which economic operators shall or may be excluded;
- b it meets the relevant selection criteria that have been set out pursuant to Article 58;
- c where applicable, it fulfils the objective rules and criteria that have been set out pursuant to Article 65.

Where the economic operator relies on the capacities of other entities pursuant to Article 63, the ESPD shall also contain the information referred to in the first subparagraph of this paragraph in respect of such entities.

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The ESPD shall consist of a formal statement by the economic operator that the relevant ground for exclusion does not apply and/or that the relevant selection criterion is fulfilled and shall provide the relevant information as required by the contracting authority. The ESPD shall further identify the public authority or third party responsible for establishing the supporting documents and contain a formal statement to the effect that the economic operator will be able, upon request and without delay, to provide those supporting documents.

Where the contracting authority can obtain the supporting documents directly by accessing a database pursuant to paragraph 5, the ESPD shall also contain the information required for this purpose, such as the internet address of the database, any identification data and, where applicable, the necessary declaration of consent.

Economic operators may reuse an ESPD which has already been used in a previous procurement procedure, provided that they confirm that the information contained therein continues to be correct.

2 The ESPD shall be drawn up on the basis of a standard form. The Commission shall establish that standard form, by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 89(3).

The ESPD shall be provided exclusively in electronic form.

3 Notwithstanding Article 92, the Commission shall review the practical application of the ESPD taking into account the technical development of databases in the Member States and report thereon to the European Parliament and the Council by 18 April 2017.

Where appropriate, the Commission shall make proposals for solutions optimising the cross-border access to such databases and the use of certificates and attestations in the internal market.

4 A contracting authority may ask tenderers and candidates at any moment during the procedure to submit all or part of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

Before awarding the contract, the contracting authority shall, except in respect of contracts based on framework agreements where such contracts are concluded in accordance with Article 33(3) or point (a) of Article 33(4), require the tenderer to which it has decided to award the contract to submit up-to-date supporting documents in accordance with Article 60 and, where appropriate, Article 62. The contracting authority may invite economic operators to supplement or clarify the certificates received pursuant to Articles 60 and 62.

5 Notwithstanding paragraph 4, economic operators shall not be required to submit supporting documents or other documentary evidence where and in so far as the contracting authority has the possibility of obtaining the certificates or the relevant information directly by accessing a national database in any Member State that is available free of charge, such as a national procurement register, a virtual company dossier, an electronic document storage system or a prequalification system.

Notwithstanding paragraph 4, economic operators shall not be required to submit supporting documents where the contracting authority having awarded the contract or concluded the framework agreement already possesses these documents.

For the purpose of the first subparagraph, Member States shall ensure that databases which contain relevant information on economic operators and which may be consulted

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by their contracting authorities may also be consulted, under the same conditions, by contracting authorities of other Member States.

6 Member States shall make available and up-to-date in e-Certis a complete list of databases containing relevant information on economic operators which can be consulted by contracting authorities from other Member States. Upon request, Member States shall communicate to other Member States any information related to the databases referred to in this Article.

Article 60

Means of proof

1 Contracting authorities may require the certificates, statements and other means of proof referred to in paragraphs 2, 3 and 4 of this Article and Annex XII as evidence for the absence of grounds for exclusion as referred to in Article 57 and for the fulfilment of the selection criteria in accordance with Article 58.

Contracting authorities shall not require means of proof other than those referred to in this Article and in Article 62. In respect of Article 63, economic operators may rely on any appropriate means to prove to the contracting authority that they will have the necessary resources at their disposal.

2 Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in Article 57 apply to the economic operator:

- a as regards paragraph 1 of that Article, the production of an extract from the relevant register, such as judicial records or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the Member State or country of origin or the country where the economic operator is established showing that those requirements have been met;
- b as regards paragraph 2 and point (b) of paragraph 4 of that Article, a certificate issued by the competent authority in the Member State or country concerned.

Where the Member State or country in question does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1 and 2 and point (b) of paragraph 4 of Article 57, they may be replaced by a declaration on oath or, in Member States or countries where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the Member State or country of origin or in the Member State or country where the economic operator is established.

A Member State shall, where relevant, provide an official declaration stating that the documents or certificates referred to in this paragraph are not issued or that they do not cover all the cases specified in paragraphs 1 and 2 and point (b) of paragraph 4 of Article 57. Such official declarations shall be made available through the online repository of certificates (e-Certis) referred to in Article 61.

3 Proof of the economic operator's economic and financial standing may, as a general rule, be provided by one or more of the references listed in Annex XII Part I.

Where, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, it may prove its economic and financial standing by any other document which the contracting authority considers appropriate.

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4 Evidence of the economic operators' technical abilities may be provided by one or more of the means listed in Annex XII Part II, in accordance with the nature, quantity or importance, and use of the works, supplies or services.

5 Upon request, Member States shall make available to other Member States any information relating to the grounds for exclusion listed in Article 57, the suitability to pursue the professional activity, and the financial and technical capacities of tenderers referred to in Article 58, and any information relating to the means of proof referred to in this Article.

Article 61

Online repository of certificates (e-Certis)

1 With a view to facilitating cross-border tendering, Member States shall ensure that the information concerning certificates and other forms of documentary evidence introduced in e-Certis established by the Commission is constantly kept up-to-date.

2 Contracting authorities shall have recourse to e-Certis and shall require primarily such types of certificates or forms of documentary evidence that are covered by e-Certis.

3 The Commission shall make available all language versions of the ESPD in e-Certis.

Article 62

Quality assurance standards and environmental management standards

1 Contracting authorities shall, where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures where the economic operator concerned had no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

2 Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, they shall refer to the Eco-Management and Audit Scheme (EMAS) of the Union or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States.

Where an economic operator had demonstrably no access to such certificates, or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall also accept other evidence of environmental management measures, provided that the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.

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3 Upon request, Member States shall make available to other Member States, in accordance with Article 86, any information relating to the documents produced as evidence of compliance with quality and environmental standards referred to in paragraphs 1 and 2.

Article 63

Reliance on the capacities of other entities

1 With regard to criteria relating to economic and financial standing as set out pursuant to Article 58(3), and to criteria relating to technical and professional ability as set out pursuant to Article 58(4), an economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. With regard to criteria relating to the educational and professional qualifications as set out in point (f) of Annex XII Part II, or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect.

The contracting authority shall, in accordance with Articles 59, 60 and 61, verify whether the entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria and whether there are grounds for exclusion pursuant to Article 57. The contracting authority shall require that the economic operator replaces an entity which does not meet a relevant selection criterion, or in respect of which there are compulsory grounds for exclusion. The contracting authority may require or may be required by the Member State to require that the economic operator substitutes an entity in respect of which there are non-compulsory grounds for exclusion.

Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting authority may require that the economic operator and those entities be jointly liable for the execution of the contract.

Under the same conditions, a group of economic operators as referred to in Article 19(2) may rely on the capacities of participants in the group or of other entities.

2 In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, contracting authorities may require that 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 19(2), by a participant in that group.

Article 64

Official lists of approved economic operators and certification by bodies established under public or private law

1 Member States may establish or maintain either official lists of approved contractors, suppliers or service providers or provide for a certification by certification bodies complying with European certification standards within the meaning of Annex VII.

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They shall inform the Commission and the other Member States of the address of the certification body or the body responsible for the official lists, to which applications shall be sent.

2 Member States shall adapt the conditions for registration on the official lists referred to in paragraph 1 and for the issue of certificates by certification bodies to the provisions of this subsection.

Member States shall also adapt those conditions to Article 63 as regards applications for registration submitted by economic operators belonging to a group and claiming resources made available to them by the other companies in the group. In such cases, those operators shall prove to the authority establishing the official list that they will have those resources at their disposal throughout the period of validity of the certificate attesting to their registration on the official list and that throughout the same period those companies continue to fulfil the qualitative selection requirements encompassed by the official list or certificate on which operators rely for their registration.

3 Economic operators registered on the official lists or having a certificate may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority or the certificate issued by the competent certification body.

Those certificates shall state the references which enabled those economic operators to be registered on the official list or to obtain certification and the classification given in that list.

4 Certified registration on official lists by the competent bodies or a certificate issued by the certification body shall constitute a presumption of suitability with regard to requirements for qualitative selection encompassed by the official list or certificate.

5 Information that can be deduced from registration on official lists or certification shall not be questioned without justification. With regard to the payment of social security contributions and taxes, an additional certificate may be required of any registered economic operator whenever a contract is to be awarded.

The contracting authorities of other Member States shall apply paragraph 3 and the first subparagraph of this paragraph only in favour of economic operators established in the Member State holding the official list.

6 The requirements of proof for the criteria for qualitative selection encompassed by the official list or certificate shall comply with Article 60 and, where appropriate, Article 62. For any registration of economic operators of other Member States on an official list or for their certification, no further proof or statements shall be required other than those requested of national economic operators.

Economic operators may request at any time their registration on an official list or the issuance of a certificate. They shall be informed within a reasonably short period of time of the decision of the authority drawing up the official list or of the competent certification body.

7 Economic operators from other Member States shall not be obliged to undergo such registration or certification in order to participate in a public contract. The contracting authorities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other equivalent means of proof.

8 Upon request, Member States shall make available to other Member States any information relating to the documents produced as evidence that the economic operators

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fulfil the requirements to be registered on the official list of approved economic operators or as evidence that economic operators from another Member State possess an equivalent certification.

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- (1) Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).
- (2) OJ C 195, 25.6.1997, p. 1.
- (3) Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).
- (4) OJ C 316, 27.11.1995, p. 48.
- (5) Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).
- (6) Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).
- (7) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).