

Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (Text with EEA relevance)

TITLE I

SUBJECT-MATTER, SCOPE, PRINCIPLES AND DEFINITIONS

CHAPTER I

Scope, general principles and definitions

Section III

General provisions

Article 20

Mixed contracts

1 Concessions which have as their subject-matter both works and services shall be awarded in accordance with the provisions applicable to the type of concession that characterises the main subject-matter of the contract in question.

In the case of mixed concessions consisting partly of social and other specific services listed in Annex IV and partly of other services, the main subject-matter shall be determined according to which of the estimated values of the respective services is the higher.

2 Where the different parts of a given contract are objectively separable, paragraphs 3 and 4 shall apply. Where the different parts of a given contract are objectively not separable, paragraph 5 shall apply.

Where part of a given contract is covered by Article 346 TFEU or Directive 2009/81/EC, Article 21 of this Directive shall apply.

In the case of contracts intended to cover several activities, one of them being subject either to Annex II of this Directive or to Directive 2014/25/EU, the applicable provisions shall be established in accordance with Article 22 of this Directive and Article 6 of Directive 2014/25/EU, respectively.

3 In the case of contracts which have as their subject-matter elements covered by this Directive as well as other elements, contracting authorities and contracting entities may choose to award separate contracts for the separate parts. Where contracting authorities or contracting entities choose to award separate contracts for separate parts, the decision as to 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 authorities or contracting entities choose to award a single contract, this Directive shall, unless otherwise provided in paragraph 4 of this Article or in Article

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21, apply to the ensuing mixed contract, irrespective of the value of the parts that would otherwise fall under a different legal regime and irrespective of which legal regime those parts would otherwise have been subject to.

4 In the case of mixed contracts containing elements of concessions as well as elements of public contracts covered by Directive 2014/24/EU or contracts covered by Directive 2014/25/EU, the mixed contract shall be awarded in accordance with Directive 2014/24/EU or Directive 2014/25/EU, respectively.

5 Where the different parts of a given contract are objectively not separable, the applicable legal regime shall be determined on the basis of the main subject-matter of that contract.

In the event such contracts involve both elements of a services concession and of a supply contract, the main subject-matter shall be determined according to which of the estimated values of the respective services or supplies is the higher.