

European Stability Mechanism



## Procurement Policy

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## 1 Introduction

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The ESM is a crisis resolution mechanism set up to safeguard the financial stability of the euro area. In order to deliver its mandate it is essential that the ESM maintains a high level of operational effectiveness and readiness to respond within short time frames.

Having regard to

- a) The ESM's commitment to the principles of cost-efficiency and value for money in the procurement of supplies, services, and works;
- b) The legal status of the ESM as an intergovernmental international financial institution governed by public international law;
- c) That neither Directive 2014/24/EU of the European Parliament and of the Council<sup>1</sup>, nor Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council (as amended)<sup>2</sup> apply to the ESM; and
- d) That the ESM respects the general principles of public procurement as reflected in Directive 2014/24/EU of the European Parliament and of the Council, which have to be interpreted in the light of the specific nature and mandate of the ESM, its size and the particular environment in which it operates;

the Managing Director has established this Procurement Policy of the ESM (the "Policy").

## 2 Terms and Definitions

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For the purposes of this Policy, the definitions provided in Annex 1 to this Policy apply.

## 3 Scope

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1. The ESM procures supplies, services and works on its own behalf and for its own account pursuant to this Policy.
2. This Policy does not apply to:
  - a) Employment contracts between the ESM and its members of staff;
  - b) Financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, including those within the meaning of Annex 2 to this Policy as well as the ESM's use of central bank services;

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<sup>1</sup> 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 states in recital 22 that "this Directive does not apply to procurement carried out by international organisations on their own behalf and for their own account".

<sup>2</sup> Regulation (EC, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (so-called Financial Regulation).

- c) Any funding instruments (and connected services) foreseen in the ESM Borrowing Guidelines, and any investment instruments (and connected services) foreseen in the ESM Investment Guidelines, not mentioned in (b) above;
  - d) All contentious and non-contentious legal advice and services which are contracted through, or with the express approval of the Legal Department of the ESM, including any arbitration, litigation, mediation, conciliation and notarial services;
  - e) Research and development services on condition that the services provided are wholly or partially remunerated by the ESM;
  - f) The purchase, rental or lease, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;
  - g) Agreements entered into by the ESM and other EU institutions and bodies, international organisations or public authorities, where the cooperation is governed by considerations relating to the common interest of the institutions involved;
  - h) Contracts for broadcasting time and programme provision that are awarded to audio-visual or other media service providers;
  - i) Contracts which are mandated by governmental or regulatory bodies to be concluded with a specific Economic Operator;
  - j) Hospitality and event-related services, including but not limited to, taxis, passenger transportation, car rental and auxiliary services, hotel accommodation, venue rentals, event catering, as well as direct purchases by members of staff of the ESM for operational or business travel needs not obtained through travel management service providers selected in accordance with the Procurement Policy;
  - k) Subscriptions to paper and electronic publications and information services as well as purchases of professional literature, professional certifications, professional memberships and attendance of readily available educational, training and professional programmes, conferences and events organised by third parties;
  - l) Sponsorship agreements entered into by the ESM and third parties which reflect the mission, values, or business activities of the ESM.
3. Mixed Contracts whose scope comprises Deliverables attributable to different types of Contracts (supplies, services or works) are awarded pursuant to the rules applicable to the Deliverable that forms the main subject matter of the Contract. The main subject matter of the mixed Contract is determined by the Deliverable with the highest estimated value, unless there are exceptional circumstances requiring that another Deliverable, due to its specific qualities or other characteristics, should form the main subject matter of the Contract.
4. In order to achieve cost-efficiency and value for money through synergies and economies of scale, the ESM may, without following a Procurement Procedure, enter into Contracts awarded as a result of joint procurement procedures conducted on behalf of the ESM by any of the following authorities:
- a) the EU institutions and bodies;
  - b) the executive agencies of the European Union;
  - c) the decentralised agencies of the European Union acting in the financial sector, such as the European Banking Authority, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority, the Single Resolution Board;
  - d) the European Central Bank or one or more national central banks of the EU member states conducting joint procurement pursuant to the Decision of the European Central Bank ECB/2008/17 (as amended)<sup>3</sup>.

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<sup>3</sup> Decision (EU) 2016/21 of the European Central Bank of 23 December 2015 amending Decision ECB/2008/17 of the European Central Bank laying down the framework for joint Eurosystem procurement (ECB/2015/51).

## 4 General Principles of ESM Procurement

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1. The ESM conducts the Procurement Procedures pursuant to this Policy respecting the general principles of transparency, proportionality, equal treatment and non-discrimination.
2. The ESM procures supplies, services and works in accordance with the highest standards of integrity, ethical and professional conduct and in compliance with the applicable ESM policies and procedures, including the ESM Code of Conduct. The members of the ESM Evaluation Committees evaluating applications and/or proposals submitted by Candidates in the Procurement Procedures, as well as the experts advising them, confirm their independence, impartiality and duty of confidentiality in written declarations.
3. Unless otherwise provided for in this Policy, any Procurement Procedure is conducted with the involvement of the Commercial Legal & Procurement function, unless it is conducted pursuant to a “self-service” approach authorized by the Commercial Legal & Procurement function.
4. In case of a need for interpretation of the provisions of this Policy or their application to a particular situation, including any assistance in dealing with any of the exclusions and exceptions set out in this Policy, members of staff are advised to consult the Commercial Legal & Procurement function.
5. This Policy, including the general principles set forth in Article 4.1, shall be interpreted in the light of the specific nature of the ESM, its size and the particular environment in which it operates, in order to allow for the effective fulfilment of the ESM's mandate as a crisis resolution mechanism.
6. The ESM conducts the Procurement Procedures pursuant to this Policy in the English language, unless there are exceptional circumstances relating to the Procurement Procedure or the subject matter of the Contract that require the use of a different language than English.

## 5 Contract Value and Thresholds

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### 5.1 Applicable Procurement Procedures

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1. Contracts with a Contract Value which is equal to or greater than the thresholds specified in Article 5.2 are awarded in accordance with the Procurement Procedures laid down in Article 9.
2. Contracts with a Contract Value which is below the thresholds specified in Article 5.2 are awarded in accordance with the Procurement Procedures laid down in Article 10.

## 5.2 Thresholds

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The ESM awards Contracts pursuant to Article 9 in accordance with the thresholds set out in Article 4 lit. (a), (c) and (d)<sup>4</sup> of the Directive 2014/24/EU of the European Parliament and of the Council, as revised periodically to reflect the value of the thresholds established by the Commission and published in the Official Journal of the EU pursuant to Article 6 of Directive 2014/24/EU of the European Parliament and of the Council.

## 5.3 Calculation of Contract Value

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1. The Contract Value is calculated on the basis of the total amount payable, as estimated by the ESM, over the entire term of the Contract and includes all applicable duties, taxes, transportation, packaging, travel and accommodation expenses, and any other fees and costs expected to be paid by the ESM to the Supplier under the Contract, including any form of options, renewals and extensions of the Contract.
2. In the case of Contracts which do not have a fixed term or in the case of Contracts with a term greater than four years, the Contract Value is calculated on the basis of a four year term.
3. The estimation of the Contract Value shall be valid at the time at which the ESM decides which type of Procurement Procedure to use.
4. No procurement may be subdivided with the intention of avoiding the application of the Procurement Procedures established in this Policy, unless justified by objective reasons.
5. The calculation of the Contract Value of Works Contracts takes into account the total costs related to the execution of the works, including the total estimated value of the supplies and services which will be made available by the ESM to the Supplier provided that they are necessary for executing the works. The costs related to the design and planning of the works are also included if they form part of the Works Contract.
6. If a Contract is divided in several lots, or if several Contracts to be awarded are strictly interrelated and have the same tasks as their objective, the combined value of all lots or individual Contracts is considered. If the combined value is equal to or exceeds the thresholds pursuant to Article 5.2, the Procurement Procedures pursuant to Article 9 apply to all such lots and Contracts.

Notwithstanding the aforementioned, the ESM may apply the Procurement Procedures pursuant to Article 10 to individual lots and Contracts, provided that:

- a) the Contract Value of the individual lot or Contract concerned is less than EUR 80,000 for supplies and services and EUR 1,000,000 for works, and
- b) the combined Contract Value of the lots and Contracts awarded pursuant to Article 10 does not exceed 20% of the combined Contract Value of all lots and Contracts.

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<sup>4</sup> Only the threshold for public service contracts for social and other specific services set out in Article 4 lit. (d) of the Directive 2014/24/EU of the European Parliament and of the Council applies to this Policy. The types of public service contracts for social and other specific services, which the ESM awards under this Policy, are listed in Annex 3 to this Policy.

7. The Contract Value of Framework Agreements is calculated on the basis of the Contract Value of all the Implementing Contracts envisaged for the entire term of the Framework Agreement. Paragraphs 1, 2, 3 and 4 above apply accordingly.

## 6 Exceptions

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1. Irrespective of the Contract Value, the ESM may deviate from this Policy or award a Contract directly in the following cases:
- a) where, for objective reasons, to the best knowledge of the ESM, the Contract can be awarded only to one particular Economic Operator. These reasons may be of a technical, artistic or legal nature, including among others the exercise of exclusive rights and warranty rights;
  - b) where, for reasons of extreme urgency brought about by events unforeseen by the ESM, a Procurement Procedure applicable under this Policy cannot be complied with;
  - c) where the ESM has classified the Contract as strictly confidential or where the performance of the Contract must be accompanied by special confidentiality measures or where the protection of the ESM's essential interests so requires;
  - d) in the case of Supply Contracts, where the products involved are manufactured purely for the purpose of research, experimentation, study or development. This provision does not extend to quantity production to establish commercial viability or to recover research and development costs;
  - e) where supplies or services are purchased on particularly advantageous terms from either an Economic Operator which is definitively winding up its business activities or the receivers or liquidators appointed following a bankruptcy, an arrangement with creditors, or a similar procedure under national laws or regulations;
  - f) in the case of new or additional Deliverables that partially or entirely replace, extend or complement the initial Deliverables, where a change of the Supplier would oblige the ESM to acquire supplies, services or works having technical characteristics which would result in incompatibility, issues of interoperability, or a deterioration of service levels, or lead to disproportionate difficulties in operation, or regarding maintenance, cost-efficiency, or value for money;
  - g) in the case of a business continuity incident or threat where there is a risk to life, health, or the assets of the ESM, necessitating immediate preventive or corrective action;
  - h) in the case of contracts with Suppliers (including, but not limited to, agencies) for the continuation of an assignment of an individual highly qualified IT system expert supporting the ESM on specific tasks defined by the ESM during the assignment on a daily basis and which require the IT system expert to have significant ESM-specific system knowledge and experience and where a change of the IT system expert would require significant training, time and costs before a new IT system expert could be fully operational and capable to replace the current IT system expert, provided such assignment of external IT system expert constitutes accepted industry practice;
  - i) when no or no suitable proposals or applications have been submitted in response to a Procurement Procedure initiated by the ESM in accordance with this Policy, provided that the initial conditions of the Request for Proposal are not substantially altered;
  - j) in exceptional cases other than those mentioned above where, for objective reasons, the application of the Policy would not be appropriate in light of the specific nature of the ESM, its size, the particular environment in which it operates or the effective fulfilment of the ESM's mandate as a crisis resolution mechanism and which are specifically authorised by the Managing Director.

2. The term of a Contract awarded as a result of an exception foreseen in Article 6.1 shall not exceed four years, except to the extent that its subject matter or another objective reason justifies a longer duration. The term of such Contract may only be extended if an assessment at the end of its initial term, or subsequent extension according to this Article 6.2, comes to the conclusion that the applicable exception foreseen in Article 6.1 continues to apply.

## **7 Duration of Contracts**

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1. The overall term of a Contract including any extensions shall not exceed four years, except to the extent that its subject matter or another objective reason justifies a longer duration (“Overall Term”).
2. Within the Overall Term, the initial term of the Contract may be extended without a new Procurement Procedure if an assessment at the end of the initial term comes to the conclusion that the following conditions are met:
  - a) the Procurement Documents provided for the possibility of extension;
  - b) the extension is duly justified considering the subject matter of the Contract or another objective reason; and
  - c) the extension was taken into consideration when determining the Contract Value pursuant to Article 5.3.

## **8 Modifications of the Scope of Contracts during Their Term**

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The ESM may modify the scope of a Contract without a new Procurement Procedure, provided that the modifications would not alter the overall nature of the Contract and in particular in any of the following cases:

- a) where the modifications, irrespective of their value, have been provided for in the initial Procurement Documents;
- b) for additional Deliverables by the original Supplier not exceeding 50% of the value of the original Contract that have become necessary where a change of the Supplier cannot be made for economic or technical reasons and would cause significant inconvenience or substantial duplication of costs for the ESM;
- c) due to circumstances which the ESM could not foresee provided that the increase in value does not exceed 50% of the value of the original Contract;
- d) in all cases where the cumulative value of the modification(s) is below both the thresholds pursuant to Article 5.2 and 10% of the initial value for Service Contracts and Supply Contracts and 15% of the initial value for Works Contracts;
- e) where a new Supplier replaces the one to which the ESM has awarded the initial Contract due to universal or partial succession into the position of the initial Supplier, following corporate restructuring, including takeover, merger, acquisition or insolvency, and the new Supplier fulfils the same eligibility and selection criteria as were initially established provided that this does not entail other substantial amendments to the contract and is not aimed at circumventing the application of this Policy;
- f) where the modifications, irrespective of their value, are not substantial.



## 9 Public Procurement Procedures

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### 9.1 Overview

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1. The ESM awards Contracts with a Contract Value that is equal to or greater than the thresholds specified in Article 5.2 by applying an Open Procedure, Restricted Procedure or Negotiated Procedure, as described in Annex 4 to this Policy.
2. The ESM applies an Open Procedure or Restricted Procedure when the needs of the ESM can be met with readily available solutions, the subject matter of the Contract does not include design or innovative solutions, the technical specifications can be established with sufficient precision, and the Contract may be awarded without prior negotiations while taking into account its nature, complexity, risks, and legal and financial terms.
3. The ESM applies a Negotiated Procedure in particular in any of the following cases:
  - a) where the Contract cannot be awarded without prior negotiations because of the Deliverables' specific nature, complexity, legal and/or financial character and corresponding risks, including but not limited to the procurement of professional, consulting and any other intellectual services;
  - b) where the interests of the ESM are expected to be better served by reserving the right to enter into negotiations provided this option is laid down in the Procurement Documents;
  - c) where the ESM needs innovative supplies, services or works which are not readily available on the market or require design, or the ESM needs to conduct a dialogue with suitable Economic Operators in order to identify and define the means best suited to satisfying its needs;
  - d) where the ESM is not able to establish the technical specifications with sufficient precision.
4. Implementing Contracts based on a Framework Agreement awarded pursuant to this Policy are awarded in accordance with the provisions laid down in the Framework Agreement, regardless of the Contract Value of the Implementing Contract(s). In case of Framework Agreements with multiple Suppliers and unless such Framework Agreements provide for different criteria for awarding Implementing Contracts, Implementing Contracts are awarded by running a competition pursuant to Article 10 of this Policy among the Suppliers with which the Framework Agreements have been concluded, regardless of the Contract Value of the Implementing Contract(s).

### 9.2 Publication of Procurement Opportunities

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1. When the ESM carries out an Open Procedure, Restricted Procedure or Negotiated Procedure for Contracts with a Contract Value which is equal to or greater than the thresholds specified in Article 5.2, the ESM publishes a Notice in the Official Journal of the EU and on the ESM website. If subsequently a corrigendum to the Notice is required, the ESM publishes such corrigendum in the Official Journal of the EU and on the ESM website. If the Notice includes a Pre-Qualification

Document and the changes are in the Pre-Qualification Document only, the ESM publishes the corrigendum on the ESM website only.

2. Whenever appropriate, the ESM may advertise the procurement opportunities also in other relevant media. Announcements on the ESM's website and in other media shall not precede the publication of the Notice in the Official Journal of the EU.
3. In the case of discrepancies between different versions of the Notice, the version published in the Official Journal of the EU takes precedence over any other versions.
4. Following the publication of the Notice, the ESM may inform Economic Operators of the publication of the Notice.
5. The ESM may publish a Notice in the Official Journal of the EU and on the ESM website informing Economic Operators about planned Procurement Procedures and indicating, for example, the estimated total value of planned supplies, services and works contracts, groups of products, categories of services or the essential characteristics of works contracts, which the ESM plans to award during a budgetary year. Publishing a Notice does not constitute a commitment for the ESM to launch a Procurement Procedure.

### 9.3 Calls for Expression of Interest

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1. The ESM may conduct a call for expressions of interest if it intends to establish a list of suitable Candidates for procuring a certain type of supplies, services or works.
2. Following the publication of a Notice, the ESM verifies the eligibility of the Candidates and evaluates their applications against the selection criteria set out in the Notice. The ESM includes in the list all Candidates meeting the eligibility and selection criteria. The ESM informs the Candidates whether they have been included in the list.
3. The list of suitable Candidates is valid for no more than four years from the date on which the Notice is published. A Candidate may apply to be included in the list at any time until three months before its expiry. The application shall be accompanied by the documentation specified in the Notice.
4. Candidates included in the list inform the ESM, without undue delay, of any changes relevant for their fulfilment of the eligibility and selection criteria. The ESM has the right to request such information or updated documentation at any time.
5. If the ESM intends to award a Contract for which a call for expression of interest has been conducted, the ESM follows the applicable Procurement Procedure pursuant to this Policy, except for the requirement to publish a Notice.

### 9.4 Market Research

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1. The ESM may approach Economic Operators in order to inform itself of the availability, suitability and specific characteristics of supplies, services or works available on the market and to obtain relevant technical, commercial, financial or other information ("Market Research"). A Market Research does not oblige the ESM to subsequently conduct a Procurement Procedure.

2. If the ESM intends to award a Contract for which a Market Research has been conducted, the ESM follows the applicable Procurement Procedure pursuant to this Policy.

### 9.5 Time Limits for Receipt of Applications and Proposals

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1. When fixing the time limits for the receipt of applications and proposals by Candidates, the ESM takes into account the complexity of the supplies, services or works which are procured and the time required for preparing applications and proposals, without prejudice to the minimum time limits set forth in this Article 9.5.
2. The ESM applies the following minimum time limits:
  - a) For an Open Procedure, a time limit for the receipt of proposals which is not less than 25 days from the date on which the Notice was published in the Official Journal of the EU;
  - b) For a Restricted Procedure and Negotiated Procedure, a time limit for the receipt of applications which is not less than 20 days from the date on which the Notice was published in the Official Journal of the EU, and for the receipt of proposals not less than 20 days from the date on which the Request for Proposals was sent by the ESM to the suitable Candidates.
3. Where a duly substantiated urgency renders the time limits set forth in Article 9.5 (2) above impracticable, or the ESM has published a Notice in accordance with Article 9.2 (5), the ESM may apply shorter time limits which will be set forth in the Procurement Documents. Such shorter time limits shall not be less than 15 days from the date on which the Notice was published in the Official Journal of the EU and, in the case of Restricted and Negotiated Procedure, not less than 15 days from the date on which the Request for Proposals was sent by the ESM to the suitable Candidates.
4. Prior to their expiry, the ESM may extend the time limits set forth in the Procurement Documents if the ESM has significantly modified the Procurement Documents or in other duly justified cases (for example, when the ESM has received multiple requests for clarifications from Candidates).
5. For the purpose of calculation of time limits laid down in or pursuant to this Policy, time shall run from 00.00 hours (CET) on the day following that on which the relevant event occurs.

### 9.6 Request for Proposals

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The ESM sends a Request for Proposals simultaneously to at least five eligible Candidates satisfying the selection criteria to submit a proposal in case of a Restricted Procedure, and to at least three eligible Candidates satisfying the selection criteria in case of a Negotiated Procedure, provided that a sufficient number of Candidates meeting the selection criteria are available.

## 9.7 Technical Specifications

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1. The ESM lays down in the Procurement Documents the technical specifications for the supplies, services or works.
2. The technical specifications and the requested evidence demonstrating compliance with the technical specifications are necessary and proportionate to meet the objectives of the procurement, and are based on objective and non-discriminatory considerations.
3. The ESM may allow the submission of variants that deviate from the technical specifications formulated by the ESM provided that they are consistent with the procurement needs of the ESM.

## 9.8 Communication with Candidates

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1. During the Procurement Procedure, Candidates shall communicate only with the contact person(s) indicated by the ESM. The means of communication offered by the ESM are generally available and non-discriminatory.
2. Candidates submit their applications and proposals in writing in accordance with the requirements set out in the Procurement Documents.
3. Candidates may submit in writing questions to the ESM concerning the Procurement Documents in accordance with the procedure set forth in such Procurement Documents. The ESM replies to such questions within reasonable time limits, and communicates the answers to all Candidates on an anonymous basis if they are of relevance to all of them.
4. The ESM ensures that the information provided by Candidates is treated and stored in accordance with the principles of confidentiality and integrity and protects Personal Data.
5. Receipt of emails sent by the ESM is deemed to occur on the day of their dispatch.

## 9.9 ESM Requests for Additional Documentation and Clarification

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After the ESM opens the submitted applications or proposals, it may request Candidates to submit, supplement, clarify or complete information or documentation which is or appears to be missing, incomplete, inconsistent or erroneous within an appropriate time limit. Such requests shall be made in full compliance with the general principles set forth in Article 4.1 and shall in particular not lead to a preferential treatment or give a competitive advantage to any Candidate.

## 9.10 Rectification of ESM Procurement Documents

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1. If the ESM discovers, before the expiry of the time limit for the submission of applications or proposals, a lack of precision, an omission or any other type of error in the Procurement Documents, it rectifies the error and informs all Candidates in writing.

2. If Candidates consider that the ESM's requirements set forth in the Procurement Documents are incomplete, inconsistent or erroneous or do not comply with this Policy, they may notify their objections to the ESM in writing within five days from the date of receipt of the Procurement Documents. The ESM may then, in its sole discretion, either correct or supplement the Procurement Documents or remedy otherwise the irregularities, or reject the request indicating the reasons for doing so. Objections which are not communicated to the ESM within the above time limit may not be raised at a later stage.

### 9.11 Opening of Applications and Proposals

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1. The Procurement Documents specify the time limits and the appropriate means for submitting applications and/or proposals in order to ensure the efficiency and integrity of a Procurement Procedure. Candidates may submit applications and/or proposals to the ESM in accordance with the means specified in the Procurement Documents at any time until the expiry of the specified time limits.
2. Applications and/or proposals received after the specified time limit or through alternative means may be accepted only with adequate justification approved by the ESM, in its sole discretion, and provided that such acceptance is in full compliance with the general principles set forth in Article 4.1 and does in particular not lead to a preferential treatment or give a competitive advantage to any Candidate.
3. The ESM does not open applications and proposals before the expiry of the time limits specified in the Procurement Documents. Applications and/or proposals received by the ESM are opened in the presence of at least two members of staff of the ESM and are stored in a secure manner ensuring their confidentiality and integrity.
4. For Contracts with a Contract Value exceeding EUR 5,000,000, the ESM invites Candidates, where appropriate, to attend public opening of applications and proposals received.

### 9.12 General Evaluation Principles

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1. The ESM specifies the eligibility, selection and award criteria in the Procurement Documents. The criteria are linked to the subject matter of the Contract and are necessary and proportionate in order to ensure fair competition and achieve the procurement objectives.
2. The ESM evaluates all applications and proposals against the award criteria after having:
  - a) verified compliance with the formal requirements of the Procurement Procedure;
  - b) verified the eligibility of the Candidates; and
  - c) assessed the fulfilment of the selection criteria.
3. The ESM awards the Contract to the Candidate that meets best the award criteria.
4. The evaluation process and outcome are documented.

### 9.13 Eligibility of Candidates

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1. All natural and legal persons, irrespective where they are residing or located, are eligible to participate in the Procurement Procedures, unless restrictions are justified for objective reasons and are specified in the Procurement Documents.
2. The ESM may exclude Candidates from participation in Procurement Procedures at any time if:
  - a) they are bankrupt, being wound up, subject to administration or in any similar situation provided for in national laws or regulations;
  - b) they are guilty of grave professional misconduct, which renders their integrity questionable;
  - c) they are in breach of obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or where the Contract is to be performed;
  - d) they have shown significant or persistent deficiencies in the performance of another contract, or with their obligations under the law;
  - e) they or their management, staff or agents are subject to a conflict of interest;
  - f) they have seriously misrepresented information required by the ESM; or
  - g) they contact other Candidates with the purpose of distorting competition, or try to unduly influence the ESM's decision-making process.
3. Candidates have to certify that they are not in one of the situations listed in Paragraph 2 above and provide the evidence to that effect as specified in the Procurement Documents. If such circumstances arise in the course of the Procurement Procedure, the Candidate concerned must inform the ESM thereof without undue delay. Candidates may submit evidence to demonstrate their eligibility despite the existence of grounds for exclusion. The ESM may, in its sole discretion, decide whether such evidence is satisfactory.
4. Where a Candidate, or an undertaking related to a Candidate, has been involved in the preparation of a Procurement Procedure, for example by advising the ESM on the procurement strategy or developing the technical specifications, the ESM may exclude the Candidate from the Procurement Procedure if this is necessary to ensure fair competition and equal treatment. Prior to the exclusion, the Candidate is given an opportunity to prove that its previous involvement does not distort competition. Where the ESM chooses not to exclude the Candidate, the ESM takes appropriate measures to ensure fair competition and equal treatment, including an equal level of information among all Candidates.

### 9.14 Selection Criteria

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1. The ESM applies selection criteria for assessing a Candidate's capacity to perform the Contract. The selection criteria relate to the Candidate's authorisation and suitability to carry out the relevant professional activity, its economic and financial standing, and its technical or professional ability.
2. The selection criteria are necessary and proportionate to ensure fair competition and achieve the Contract objectives.

### 9.15 Award Criteria

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1. The ESM awards the Contract to the Candidate whose proposal meets best the award criteria.
2. Unless otherwise provided in this Policy, the Contract is awarded on the basis of either:
  - a) price or costs only;
  - b) best price-quality ratio; or
  - c) quality only, in accordance with Article 9.15 (3).
3. Quality may be the sole basis for awarding a Contract in the following cases:
  - a) when the price or costs for supplies, services or works is fixed; or
  - b) when awarding Framework Agreements to multiple Suppliers where Implementing Contracts are awarded by conducting a competition based on price or costs only or best price-quality ratio.

### 9.16 Abnormal Proposals

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1. The ESM requests in writing explanations of prices or costs proposed by Candidates that appear to be abnormally low or high in relation to the supplies, services or works which are procured.
2. Following a review of the explanations submitted by the Candidates, the ESM may reject abnormally low or high proposals, in particular in the following cases:
  - a) where the information provided by the Candidate does not sufficiently account for the low or high level of the price or costs proposed; or
  - b) where the proposal and the additional information provided do not provide sufficient assurance of proper Contract performance.

### 9.17 Notification of Procurement Decision

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1. The ESM notifies its decision in writing and without undue delay to all Candidates whose applications or proposals are not advanced. The notification is sent by fax or electronic means at least fifteen (15) business days prior to the signing of the Contract by the ESM ("Standstill Period").
2. Candidates may, no later than four (4) business days from receipt of the above notification, request from the ESM to provide the reasons for not advancing their application or proposal ("De-briefing Request"). The ESM provides the Candidates who have submitted a De-briefing Request with an email explaining the reasons for not advancing their application or proposal ("De-briefing Note") no later than four (4) business days from receipt of the De-briefing Request but in any case allowing at least seven (7) business days between providing the De-briefing Note and the signing of the Contract.



3. For Procurement Procedures conducted in accordance with Article 9, after the signing of the Contract, the ESM announces which Supplier has been awarded the Contract on the ESM website.
4. The ESM may decide to withhold certain information from the De-briefing Note or from publication on the ESM website, where its release would affect other Candidates' legitimate commercial interests, would hinder the application of the law, might prejudice fair competition between Economic Operators or would otherwise be contrary to the ESM's or public interest.

## 10 Procurement below the Thresholds

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1. Contracts with a Contract Value below the thresholds specified in Article 5.2 are awarded pursuant to the following procedures:
  - 1.1. Procedure for Supply Contracts and Service Contracts:
    - a) If the Contract Value is below EUR 50,000, the Contract may be awarded directly to a suitable Economic Operator on the basis of a single offer, and if the Contract Value is equal to or exceeds EUR 20,000, also the completion of a Value for Money Assessment;
    - b) If the Contract Value is equal to or exceeds EUR 50,000 and is below the thresholds specified in Article 5.2, the ESM invites at least three suitable Economic Operators to submit proposals, unless there are exceptional circumstances justifying limitation in the number of suitable Economic Operators to be invited to submit proposals or the Contract is subject to an exception pursuant to Article 6.1, in which case it may be awarded directly on the basis of a single offer.
  - 1.2. Procedure for Works Contracts:
    - a) If the Contract Value is below EUR 100,000, the contract may be awarded directly to a suitable Economic Operator on the basis of a single offer, and if the Contract Value is equal to or exceeds EUR 20,000, also the completion of a Value for Money Assessment;
    - b) If the Contract Value is equal to or exceeds EUR 100,000 and is below EUR 1,000,000, the ESM invites at least three suitable Economic Operators to submit proposals, unless there are exceptional circumstances justifying limitation in the number of suitable Economic Operators to be invited to submit proposals, or the Contract is subject to an exception pursuant to Article 6.1, in which case it may be awarded directly on the basis of a single offer;
    - c) If the Contract Value is equal to or exceeds EUR 1,000,000 and is below the thresholds specified in Article 5.2, the ESM invites at least five suitable Economic Operators to submit proposals unless there are exceptional circumstances justifying limitation in the number of suitable Economic Operators to be invited to submit proposals, or the Contract is subject to an exception pursuant to Article 6.1, in which case it may be awarded directly on the basis of a single offer.
2. Article 9.4 to Article 9.17 of this Policy apply accordingly.



## 11 Cancellation of Procurement Procedures

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1. The ESM may decide, in its sole discretion while respecting the general principles set forth in Article 4.1, to cancel a Procurement Procedure in whole or in part at any time before the Contract is signed.
2. The cancellation does not give rise to any form of compensation for any of the Candidates.
3. The ESM notifies all Candidates without undue delay of its decision to cancel the Procurement Procedure.

## 12 Procurement Review Procedure

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1. In accordance with and subject to the provisions of this Article 12 and the ESM Procurement Review Procedure (“PRP”), a Candidate may challenge the ESM’s decision not to advance its application or proposal no later than fifteen (15) business days after its notification pursuant to Article 9.17 (1). The PRP is established by the Managing Director and is available on the ESM website.
2. The procedures pursuant to the PRP do not have an automatic suspensive effect. If deemed appropriate, the ESM may suspend the signing of the Contract.
3. The introduction of a procedure pursuant to the PRP is only admissible if the Candidate has previously submitted a De-briefing Request in accordance with Article 9.17 (2).

## 13 Entry into Force and Transitional Provisions

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1. This Policy entered into force on 2 May 2016, repealing and replacing the ESM Procurement Policy dated 26 September 2013, and was amended on 1 July 2017, as of 2 January 2018, and as of 2 January 2020.
2. Procurement Procedures which have started before the entry into force of the amendment of 2 January 2020 will be completed in accordance with the version of the Policy which was in force at the start of such Procurement Procedures. For the purpose of this provision, a Procurement Procedure is deemed to start on the day on which the ESM invites one or more Economic Operators to submit Proposals in accordance with Article 10, or in case of Procurement Procedures conducted in accordance with Article 9, on the day a Notice was published in the Official Journal of the EU and on the ESM website.

## 14 Policy Review

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This Policy is reviewed and, where necessary, revised whenever significant changes occur in the European Union public procurement law or in the ESM's approach to the procurement of supplies, services and works, but in any case not less than once every three years.

## Annex 1. Definitions

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For the purposes of this Policy, the following definitions apply:

'Contract'	means a contract, including Framework Agreements, concluded in writing between the ESM and one or more Suppliers and having as its subject matter the execution of works, the supply of products, or the provision of services against remuneration.
'Contract Value'	means the estimated value of a Contract established pursuant to this Policy and in all cases net of VAT.
'Supply Contract'	means a Contract other than a Works Contract or a Services Contract having as its object the purchase, lease, rental or hire-purchase, with or without the option to buy, of products. A Contract having as its object the supply of products and which also covers, as an incidental matter, siting and installation operations shall be considered a Supply Contract.
'Service Contract'	means a Contract other than a Works Contract or a Supply Contract having as its object the provision of services.
'Works Contract'	means a Contract having as its object either the execution, or both the design and execution, of a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the ESM. Work means the outcome of building or civil engineering works taken as a whole which is sufficient by itself to fulfil an economic or technical function.
'Framework Agreement'	means an agreement between the ESM and one or more Suppliers, the purpose of which is to establish the terms governing the specific Implementing Contracts to be concluded during a given period.
'Implementing Contract'	means a Contract based on a Framework Agreement and established in accordance with the provisions laid down in such Framework Agreement.
'Deliverable(s)'	means the works to be executed, services to be provided or products to be supplied under a Contract.
'Economic Operator'	means any natural or legal person or public entity or group of such persons and/or entities which offers on the market, respectively, the execution of works, the supply of products or the provision of services.
'Candidate'	means one or more Economic Operators that have submitted proposals or applications to participate in an ESM Procurement Procedure where such applications are required.

'Supplier'	means one or more Candidates to whom the ESM has awarded a Contract as a result of a Procurement Procedure.
'Procurement Procedure'	means any of the procurement procedures established in this Policy (including Annex 4 to this Policy).
'Open Procedure'	means the Procurement Procedure provided for in Article 1.1 of Annex 4 to this Policy.
'Restricted Procedure'	means the Procurement Procedure provided for in Article 1.2 of Annex 4 to this Policy.
'Negotiated Procedure'	means the Procurement Procedure provided for in Article 1.3 of Annex 4 to this Policy.
'Value for Money Assessment'	means an assessment whether the Economic Operator's proposal constitutes good value for money. This assessment may include, yet is not limited to, a comparison with prices paid previously for similar supplies, services or works, a comparison with price information received from peer institutions or other third parties (e.g. consultancy companies), an online price comparison or obtaining an additional proposal by email. The ESM division requesting the supplies, services or works conducts the assessment, documents it in writing and keeps it on record.
'Pre-Qualification Document'	means a document forming part of the Notice produced by the ESM and used in case of Restricted Procedure and Negotiated Procedure which invites the Candidates to submit applications to participate in such Restricted Procedure or Negotiated Procedure and which sets out, among other things, description of the supplies, services and works to be procured by the ESM, detailed information about the eligibility and selection criteria, unless they have been described in the Notice, the deadline for submission of applications and contact details of the ESM.
'Procurement Documents'	means any document produced by the ESM to describe or determine elements of the applicable Procurement Procedure, such as Notice (including Pre-Qualification Document), Request for Proposals, technical specifications, terms and conditions of the Contract or the draft Contract, and any other documents required for conducting the applicable Procurement Procedure according to this Policy.
'Request for Proposals'	means the invitation sent by the ESM to eligible Candidates to submit proposals.
'Notice'	means a notice, whichever form it may take, including a 'contract notice' and 'prior information notice' within the meaning of the Official Journal of the EU, published by the ESM in the Official Journal of the EU and on the ESM's website in accordance with the rules laid down in Article 9.

'Personal Data'	means any information relating to an identified or identifiable natural person. An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural, religious or social identity.
'ESM Procurement Panels'	mean the ESM Procurement Review Panel and the ESM Procurement Oversight Panel, as defined in the ESM Procurement Review Procedure.
'day'	means a calendar day.
'business day'	means any day between and including Monday to Friday, except for official public holidays in Luxembourg.
'written' or 'in writing'	means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means (e.g. email).

## Annex 2. Financial Services Subject to Article 3.2 (b)

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In accordance with Article 3.2 (b), this Policy does not apply to financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of this Annex 2, in particular transactions by the ESM to raise money or capital, instruments of monetary policy, exchange rates, public debt, reserve management or other policies involving transactions in securities or other financial instruments, as well as the ESM's use of central bank services.

Financial services covered by Article 3.2 (b) of this Policy are as follows:

### **A. Investment services and activities**

- 1) Reception and transmission of orders in relation to one or more financial instruments.
- 2) Execution of orders on behalf of clients.
- 3) Dealing on own account.
- 4) Portfolio management.
- 5) Investment advice.
- 6) Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.
- 7) Placing of financial instruments without a firm commitment basis.
- 8) Operation of Multilateral Trading Facilities.

### **B. Ancillary services**

- 1) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management.
- 2) Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.
- 3) Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.
- 4) Foreign exchange services where these are connected to the provision of investment services.
- 5) Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments, including rating agencies and related advisory services.
- 6) Services related to underwriting.
- 7) Investment services and activities as well as ancillary services of the type included under Section A or B related to the underlying of the derivatives included under Section C – 5, 6, 7 and 10 – where these are connected to the provision of investment or ancillary services.

### **C. Financial Instruments**

- 1) Transferable securities.
- 2) Money-market instruments.
- 3) Units in collective investment undertakings.
- 4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash.

- 5) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event).
- 6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF.
- 7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in C.6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls.
- 8) Derivative instruments for the transfer of credit risk.
- 9) Financial contracts for differences.
- 10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

### Annex 3. Public service contracts for social and other specific services

CPV Code	Description
79611000-0 [Supply services of domestic help personnel]; 98133100-5, 98133000-4 [Private households with employed persons]	Health, social and related services
85321000-5 and 85322000-2, 75000000-6 [Administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92700000-8 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services]	Administrative social, educational, healthcare and cultural services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3	Other community, social and personal services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service] 55520000-1 Catering services, 55523000-2 Catering services for other enterprises or other institutions, 55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services	Restaurant services
75240000-0 to 75252000-7; 794300000-7	Public security and rescue services
79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1 [Graphology services], 79723000-8 [Waste analysis services]	Investigation and security services
98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]	International services
64000000-6 [Postal and telecommunications services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services], 64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]	Postal services



## Annex 4. Public Procurement Procedures

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### 1. Open Procedure

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1. Upon publication of a Notice, all interested Economic Operators may request to receive the Request for Proposal if not already made available by electronic means. The ESM provides the Request for Proposal without undue delay, provided that the request was made in good time before the time limit for the submission of the proposals.
2. Candidates submit their proposals within the time limits set by the ESM and include all documentation requested by the ESM.
3. The ESM awards the Contract to the Candidate that meets best the award criteria set out in the Notice or the Request for Proposal.

### 2. Restricted Procedure

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1. Upon publication of a Notice, all interested Economic Operators may apply for participation in the Restricted Procedure. They submit their applications within the time limit specified in the Notice and provide the documentation requested by the ESM.
2. The ESM verifies the eligibility of the Candidates and evaluates their applications against the selection criteria set out in the Notice. The ESM invites at least five eligible Candidates satisfying the selection criteria to submit a proposal, provided that a sufficient number of Candidates meeting the selection criteria are available. The Request for Proposals is sent in writing and simultaneously to all pre-qualified Candidates invited to submit proposals.
3. The invited Candidates submit their proposals within the time limit set by the ESM and include all documentation requested by the ESM.
4. The ESM awards the Contract to the Candidate that meets best the award criteria set out in the Notice or the Request for Proposals.

### 3. Negotiated Procedure

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1. On publication of a Notice, interested Economic Operators may apply to participate in the Negotiated Procedure. They submit their application within the time limit specified in the Notice and provide the documentation requested by the ESM.
2. The ESM verifies the eligibility of the Candidates and evaluates their applications against the selection criteria set out in the Notice. The ESM invites at least three eligible Candidates satisfying the selection criteria to submit a proposal, provided that a sufficient number of Candidates meeting the selection criteria are available. The Request for Proposals is sent in writing and simultaneously to all pre-qualified Candidates invited to submit proposals.

3. Following the receipt of the proposals, the ESM may negotiate with one or several Candidates who best meet the award criteria in order to bring their proposals in line with the ESM's requirements. The number of Candidates admitted to the negotiations may be reduced in successive stages by applying the award criteria set forth in the Notice or the Request for Proposals.
4. The scope of the negotiations is determined by the ESM and may include the Candidates' technical offers, financial offers and/or the Contract's terms and conditions. The ESM may also invite Candidates to submit revised proposals. During the negotiations, the ESM ensures equal treatment of all Candidates invited to participate in the negotiations.
5. Once the negotiations are closed, the ESM awards the Contract to the Candidate that meets best the award criteria set out in the Notice or the Request for Proposals.