



HIGH COUNCIL DECISION N. 4/2016

of 3 June 2016

amending Title V on Public Procurement

of the EUI's Financial Rules

(laid down in High Council Decision N° 6/15 of 4 December 2015)

in order to introduce rules on concessions

THE HIGH COUNCIL,

Having regard to the Convention setting up the European University Institute (EUI), and in particular Article 6(5)(a) thereof,

Having regard to High Council Decision n°6/2015 of 4 December 2015 laying down the EUI's Financial Rules,

Having regard to EUI President's n°44/2014 of 5 December 2014 implementing Title V concerning Procurement of the EUI's Financial Rules,

Whereas:

1. The reformed EUI's public procurement rules as they are contained in the Institute's Financial Rules need to be further amended as to introduce the legal basis for the award of concession contracts.
2. Such amendment follows the lines and recent legislative developments at EU level on the award of concession contracts (with the adoption of Directive 2014/23/EU on the award of concession contracts) and the proposed novelties are inspired by the relevant amendments of the Financial Rules of the EU institutions.
3. Concessions are different from public contracts that have been traditionally used to procure supplies, works or services. They are forms of partnerships between the public sector and mostly private companies which mobilise private capital and know-how to complement public resources.
4. These amendments along with the subsequent amendments to the Institute's Public Procurement Regulation will provide legal certainty, flexibility and transparency in the

award of concession contracts thus increasing business opportunities for economic operators.

5. For harmonisation and simplification purposes, the standard procedures and thresholds applicable for public procurement should also be applied to concession contracts. A competitive procedure with negotiation is introduced as another possible procedure for the award of concession contracts.
6. Some definitions should be added and certain technical clarifications should be made to ensure that the terminology of these Financial Rules is consistent with the Institute's Public Procurement Regulation.

HAS DECIDED AS FOLLOWS:

Article 1

Scope

The EUI's Financial Rules (last revised by High Council Decision n^o 6/15 of 4 December 2015) are amended as follows:

(1) All references to EUI's "Public Procurement Regulation" are replaced by references to EUI's "Public Procurement and Concessions Regulation".

(2) One existing definition is amended and some new ones are inserted, as follows:

- (a) the definition for '**procurement**' is replaced by the following in order to remove the term "public" before the term "contract", hence making it applicable to both public service/supply/works as well as to concession contracts:

'(dd) '**procurement**' means the acquisition by means of a contract of works, supplies or services by the Institute from economic operators chosen by it;'

- (b) a new definition for '**concession contract**' is inserted:

'(ff) 'concession contract' means a contract for pecuniary interest concluded in writing between one or more economic operators and the Institute as contracting authority and having as their object to entrust the execution of works or the provision and management of services to an economic operator. The remuneration shall consist either solely in the right to exploit the works or services or in that right together with payment. The award of a works or services concession contract shall involve the transfer to the concessionaire of an operating risk in exploiting those works or services encompassing demand risk or supply risk or both. The concessionaire shall be deemed to assume an

operating risk where, under normal operating conditions, there is no guarantee of recouping the investments made or the costs incurred in operating works or the services at stake;

(c) a new definition for '**contract**' is inserted:

'(gg) 'contract' means a public contract or a concession contract;'

(d) a new definition for '**framework contract**' is inserted:

'(hh) 'framework contract' means a public contract concluded between one or more economic operators and the Institute as contracting authority, the purpose of which is to establish the terms governing specific contracts under it to be awarded during a given period, in particular with regard to price, and, where appropriate, the quantity envisaged;'

(e) a new definition for '**procurement/tender document**' is inserted:

'(ii) 'procurement/tender document' means any document produced or referred to by the Institute in its capacity of contracting authority to describe or determine elements of the procurement procedure, including *i.a.*:

(i) the publicity measures set out in Article 63;

(ii) the invitation to tender;

(iii) the tender specifications, which shall include the technical specifications and the relevant criteria;

(iv) the draft contract.'

(3) The heading of Title V is replaced by the following, explicitly now making reference also to concessions:

'TITLE V- Public Procurement and Concessions'

(4) Article 62 (Procurement Procedures) is replaced by the following thus introducing the necessary adaptations in order to make the standard procedures and thresholds currently applicable for public procurement also applicable to concession contracts. A competitive procedure with negotiation is also introduced as another possible procedure for the award of concession contracts¹:

1. All procurement procedures and subsequent public and concession contracts shall respect the principles of transparency, proportionality, equal treatment and non-discrimination and shall be put out to open competition, except when the negotiated procedure is used.

¹ Amended parts highlighted in bold for ease of visibility should appear in bold in the consolidated version of the Financial Rules only when relevant and appropriate.

2. **Concession Contracts** or public contracts, **including framework contracts**, shall be awarded following an open or restricted procurement procedure. They may also be awarded following the negotiated procedure but only in the cases provided for in Article 65 of these Financial Rules. **The Institute may also use a competitive procedure with negotiation for concession contracts regardless of the estimated value of the contract.**

A mixed contract covering two or more types of procurement (works, supplies or services) or concessions (works or services) or both, shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject matter of the contract in question.

The applicable procurement **and concessions** procedures are further detailed in the EUI's Public Procurement **and Concessions** Regulation.

3. **Procurement procedures for awarding concession contracts or public contracts, including framework contracts, shall take one of the following forms:**

- i. Open procedures where any interested economic operator may submit a tender in response to a call for tender.
- ii. Restricted procedures **or competitive procedures with negotiation (the latter applicable only to concession contracts)**, where any economic operator may submit a request to participate in call for tender in response to a contract notice. Only those economic operators that satisfy the selection criteria and that are not in any of the pre-announced exclusion situations shall be invited by the contracting authority to submit a tender.
- iii. Tenders for contracts with value below the lowest threshold for open and restricted procedures indicated in the EUI's Public Procurement Regulation are normally done by a negotiated procedure.

4. **In all procedures involving negotiation**, the Institute may negotiate **with tenderers the initial and any subsequent tenders in terms of** either the quality of the tender or the offered price, or both, if it deems that they can be improved to obtain better quality or a lower price.

The Institute may award a contract on the basis of the initial tender without negotiation where it has indicated in the procurement documents that it reserves the possibility to do so.

5. Purchases with value below the lowest threshold for negotiated procedure may be made against a simple bill or invoice as defined in the Public Procurement Regulation and any implementing rules laid down by the President pursuant to Article 95 of these Financial Rules.'

Article 2

Entry into force

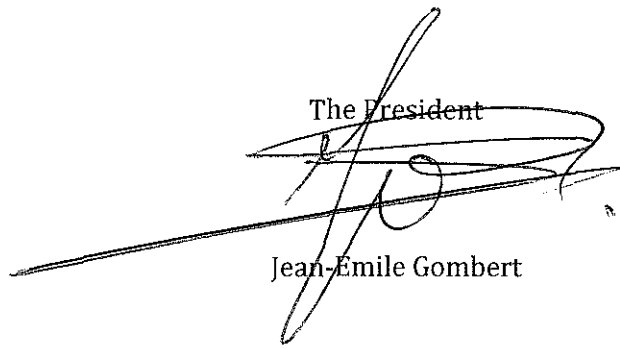
The present decision shall enter into force on the date of its adoption.

Done at Florence, 3 June 2016

For the High Council

The President

Jean-Emile Gombert

A large, stylized handwritten signature in black ink, written over the printed name 'Jean-Emile Gombert'. The signature is highly cursive and loops around the text.