



**Ministry of Infrastructure and Transport  
General Directorate for Regulation and Public Contracts**

**Guidelines for completing the form template of the European Single Procurement**

**Document (ESPD) approved by Commission Implementing Regulation (EU) 2016/7 of 5 January 2016.**

**1. Foreword**

On 19.04.2016 the Legislative Decree 18 April 2016, no. 50 was published in the Official Gazette no. 91, laying down "*Implementing Directives 2014/23 / EU, 2014/24 / EU and 2014/25 / EU on the award of concession contracts, public procurement and procurement procedures of entities operating in water, energy, transport and postal services, as well as for the reorganisation of the existing guidelines on public procurement for works, services and supplies*" (hereinafter Code).

Article 85 of the aforementioned legislative provision incorporates Article 59 of Directive 2014/24 / EU on public procurement (ordinary Sectors) by introducing the European Single Procurement Document (ESPD) (hereinafter referred to as "ESPD").

The ESPD form template was adopted by Commission Implementation Regulation 2016/7 of 5 January 2016 and published in the Official Gazette of the European Union L 3116 of 6 January 2016; pursuant to the provisions of Article 2 of that Regulation, it entered into force on the twentieth day following the date of publication.

The Regulation is available on the following web page: [http://eur-lex.europa.eu/legal-content/it/TnxF/?uri=CELEX\\_0/03A32016R0007](http://eur-lex.europa.eu/legal-content/it/TnxF/?uri=CELEX_0/03A32016R0007).

Pursuant to Article 85, paragraph 1, sentence 1 of the Code at the time of submission of the request or tenders, the contracting authorities, after the date of entry into force of the Code, shall accept the ESPD, drawn up in accordance with the form template approved by the aforementioned Regulation by the European Commission.

In the framework of the *Instructions* accompanying the Regulation, Member States shall be free to adopt the *Guidelines* on the use of the ESPD to clarify the relevant national regulatory provisions and provide detailed explanations of each of them, as to make them intelligible.

In exercising this power, these *Guidelines* are intended to provide the contracting Administrations and Bodies with some initial information on the correct use of the ESPD within the existing national regulatory framework, including a form template adapted in light of the provisions of the Code. It should be noted,

however, that a period of applied experimentation on this subject matter will be required, in order to be able to adapt these *Guidelines* to any and other application needs that should emerge in the meantime, thus providing the needed supplementary clarifications to this document.

These *Guidelines* have been prepared on the basis of the contributions provided by the Institutional Subjects involved for this purpose, and following a favourable opinion expressed by the Legislative Office of this Department, in its notes of 15.7.2016 registered as No 27635 and of 18.7.2016 registered as 27819.

## **2. Purpose, scope of application and format of the ESPD**

The ESPD aims at simplifying and reducing administrative burdens on the awarding authorities, awarding bodies and economic operators by adopting a self-declaration template, which shall be standardised on a European level and based on the fulfilment of the general and special requirements. The aforementioned template is intended to replace the individual forms prepared by the contracting authorities and contracting bodies for the participation in each single Competitive procedure.

The ESPD is used for all procedures for the awarding of contracts for work, services and supplies in the ordinary and special sectors, as well as for the procedures for the award of concession contracts and public-private partnership contracts regulated by the Code.

The ESPD form template is also used for the procedures for the awarding of contracts that are valued below the thresholds specified in Article 35 of the Code, with the exception of the procedure referred to in art. 36 paragraph 2, letter *a*), (direct award of contracts of an amount below € 40,000) for which the opportunity to use the ESPD is to be determined by the single contracting authority.

The ESPD, filled in with the required information by the economic operator, shall be attached to the tender in the open procedures and to the request for participation in restricted procedures, competitive procedures with negotiation, competitive dialogue procedures or in innovation partnerships.

It is also used within negotiated procedures without prior publication of a call for tender, as referred to in Article 63 of the Code, paragraph 2, letter *a*); in the other cases provided for by Article 63, the contracting authority shall consider the opportunity to use the ESPD.

From 18 April 2018, the ESPD will only be available electronically.

Prior to that date, the European Single Procurement Document may be compiled in paper form or electronically, using the national computerised systems intended for that purpose or the electronic ESPD service provided free of charge by the Commission to the Administrations or contracting bodies and the economic operators. This service allows both the ESPD to be compiled electronically in the case of procedures that allow the use of electronic means of communication, and to print the electronically compiled document, to get a paper version to use in all other cases.

The economic operators may re-use the ESPD compiled and used in an earlier procurement procedure, provided that they confirm that the information herein contained is still valid and relevant to the procedure they intend to re-use the ESPD in. The simplest course of action is to enter the information into the ESPD using the features made available through the aforementioned electronic ESPD service. Obviously the information may also be reused through other forms of data recovery (for example, copy-paste) of the electronic tools (PCs, tablets, servers...) of the proceeding economic operator.

Upon completion of the award procedure, when the procurement contract is being executed, the appropriately adapted ESPD template may be used to submit the subcontractor's declarations for the authorisation to subcontract.

Contracting authorities and contracting bodies shall specify all the information that the economic operators must enter in the ESPD in tendering documents. This information must also be indicated with proper recalls in the form template.

### 3. Structure and procedures for compiling the ESPD

The ESPD provides preliminary documentary evidence in lieu of the certificates issued by public Authorities and/or third parties and consist of a formal declaration by the economic operator of:

- not being in any of the exclusion situations referred to in Article 80 of the Code;
- meeting the relevant selection criteria referred to in Article 83 of the Code;
- respecting, in the relevant cases, the rules and objective criteria set in order to limit the number of qualified tenderers to be invited to participate in accordance with Article 91 of the Code.

The ESPD consists of **six Parts**.

**Part I** provides information on the procurement procedure and the contracting authority or contracting body.

In all cases where the contracting authorities or contracting bodies use the electronic ESPD service to generate and compile the document in electronic format, the information contained in this part is automatically acquired for all procurement procedures for which a call for competition has been published in the Official Gazette of the European Union. Conversely, for tenders not subject to the requirement of transnational disclosure, the Contracting Authorities or the contracting Bodies shall fill out the information in such a way as to ensure that the procurement procedure the information relates to is unequivocally identified.

If the contracts are split into lots and the selection criteria are different according to the lot, an ESPD for each lot (or set of lots with identical selection criteria) must be compiled.

The information in this Part must be supplemented with the following information:

- taxpayer code of the contracting authority;
- CIG (tender ID code);
- CUP (procedure ID code) (where required);
- project code (where the contract is financed or co-funded with European funds).

**Part II**, contains information on the economic operator and its representatives, on the possible reliance on other parties' capacity (for the purpose of pooling) and on the recourse to subcontracting.

With reference to the information contained in the aforementioned Part, the following clarifications are provided:

1) The information to be provided in relation to the possible registration of the economic operator on "official lists" or the possession of an "equivalent certificate" refers to the provisions of Articles 84, 90 and 134 of the Code.

In particular, the following subjects are not required to compile sections B and C of Part IV (Selection criteria) of the ESPD, but must provide only the necessary information in Section A of Part II:

- economic operators registered on official lists of contractors, suppliers, or service providers or with a certificate issued by accredited bodies, pursuant to Article 90 of the Code;
- economic operators with a certificate of qualification issued by attestation bodies (Società Organismo di Attestazione, SOA), pursuant to Article 84 of the same Code, for public works contracts involving of an amount above € 150,000;

- economic operators with a certificate issued by qualification systems referred to in Article 134 of the Code, in the case of contracts in special sectors.

If the abovementioned registration, certification or attestation do not meet all the selection criteria required, the information is to be provided in accordance with the selection criteria not met in the aforementioned documentation, and shall be entered in Part IV, Sections A, B or C.

2) In the case of economic operators participating with the forms provided for by Article 45 paragraph 2, letter *d), e), f), and g)* and Article 46, paragraph 1), letter *e)* of the Code,

for each of the participating economic operators, a separate ESPD is submitted with the information

required by Parts II to VI.

In the case of participation of consortia as referred to in Article 45, paragraph 2, letter b) and c) and

in Article 46, paragraph 1, letter f) of the Code, the ESPD is compiled separately by the consortium and the consortium companies carrying out the works indicated therein. Therefore, the template model shall indicate the name of the economic operators in a consortium, as referred to in Article 45, paragraph 2, letter b) or c) or a professional association as referred to in Article 46, paragraph 1, letter f), who perform the services covered by the contract.

3) In case of pooling (Part II, Section C), the economic operator shall indicate the names of the economic operators they intend to use and the requirements being pooled.

The Auxiliary companies fill in a separate ESPD with the information required by

Sections A and B of this Part, Part III, and Part IV if expressly provided for in the call, the notice or the tender documents and Part VI. Pursuant to their obligation, contracting authorities shall however verify that the auxiliary companies continue to meet their requirements in the following steps of the procedure, including during the execution of the contract.

The declaration signed by the auxiliary company, whereby the latter has to provide the tenderer with the necessary resources the tenderer is lacking during the entirety of the contract, is considered not to be included in the ESPD. That declaration must be attached to the documentation submitted by the tenderer.

- 4) In the case of subcontracting, the operator indicates the performances or works they intend to subcontract and, in the cases referred to in Article 105, paragraph 6 of the Code, expressly indicate the proposed subcontractors. The latter will fill out their ESPD providing the information required in Section A and B of this Part, in Part III, by Part IV if expressly provided for in the call, the notice or the tender documents and Part VI. Pursuant to their obligation, the contracting authorities shall verify that the auxiliary companies continue to meet their requirements in the next steps of the procedure, including during the execution of the contract.

**Part III** includes the self-declaration about the absence of grounds for exclusion from the tender, as regulated by Article 80 of the Code.

Section A refers to the exclusion grounds related to penal conviction provided for in Article 57, paragraph 1 of Directive 2014/24/UE, which are regulated by Article 80, paragraph 1 of the Code.

With reference to this Section, where cases of sentencing with final judgement are covered by the ESPD, the content of the information, required by the provisions of paragraph 1 of said Article 80, must be aligned by including the reference to the penalty order which has become final and the sentence of application of the penalty at the request of the parties, pursuant to Article 444 of the Code of Criminal Procedure.

In addition, the relevant subjects of these convictions shall be indicated, referring specifically to Article 80, paragraph 3 of the Code. Where the convictions relate to persons who have ceased to hold office, it is necessary to indicate the self-cleaning measures adopted by the economic operator, in order to demonstrate that there has been complete and effective dissociation from the criminally-sanctioned conduct.

Lastly, the information on such exclusion grounds must be supplemented with the data relating to the type of offence committed, the duration of the conviction imposed, as well as the data on any ancillary penalty application which prohibits contracting with the public administration and the relevant duration. Such integrations are necessary to enable the contracting authority to establish, as provided for in paragraph 7 of the above Article 80, the applicability of self-cleaning measures and consequently the assessment of the measures covered herein, taken by the economic operator for the decision on whether or not to exclude the economic operator from the tendering procedure, in accordance with paragraph 8 of the same Article 80.

To this end, some requests for detailed information have been included in the appropriate fields of the ESPD template attached to these *Guidelines*.

Section B refers to the exclusion grounds related to the payment of taxes, fees or social security contributions provided for in paragraph 4 of the abovementioned Article 80 of the Code.

The information contained in this Section should be supplemented by including the reference to the fees, in accordance with the provisions referred to in Article 80, paragraph 4.

In addition, under letter d), if the economic operator fulfilled its obligations by paying or undertaking to pay, in a binding manner, the taxes, fees or social security contributions due, including any interest or fines, it will be necessary to indicate whether the payment or formalisation of the commitment have occurred or not before the expiry of the deadline for the submission of the request to participate in the tender.

Section C refers to the exclusion grounds related to insolvency, conflict of interest or professional misconduct provided for in paragraph 5 of the aforementioned Article 80 of the Code.

The part regulating the violation of environmental, social and labour law obligations (Article 30, paragraph 3 of the Code) should be supplemented with an indication of any breaches of the rules on health and safety at work, consistent with the provision referred to in letter a) of the above mentioned paragraph 5 of Article 80.

With reference to the exclusion grounds related to insolvency, the cases provided for by the ESPD must be aligned with the types referred to in paragraph 5, letter b) of the abovementioned Article 80, including the references to any authorisation of the bankruptcy trustee regarding the temporary carrying-on of business referred to in Article 110, paragraph 3, of the Code and any authorisation by the judge appointed to deal with the bankruptcy in the event of a business subject to a composition scheme enabling the continuity of the business, pursuant to Article 110, paragraph 3, letter b) of the Code.

Such specific provisions were duly covered by the attached ESPD sheet.

The cases set out in the corresponding Part III, Section C, of Annex 2 containing the *Form Template for the ESPD to Implementing Regulation (EU) 2016/7* of 5 January 2016 but not covered by the Code, include the hypothesis referred to under letter e) on temporary receivership.



This specific situation must be eliminated from the list of the cases covered in that part, since it is not foreseen by the existing national law.

Similarly, the case described under letter *f)* of the aforementioned *Form template* attached to Implementing Regulation (EU) 2016/7 of 5 January 2016 is not covered by the Code and therefore shall be eliminated.

Regarding the indications of serious professional misconduct, it should be noted that they refer to the cases covered by Article 80 paragraph 5, letter *c)* of the Code.

Therefore, it would be appropriate to request information on the type of offence, and it be provided in the relevant box.

The further case relating to the exclusion ground related to a conflict of interest is covered by the following letter *d)* of Article 80, paragraph 5 of the Code.

The case referred to in the next box refers to the exclusion grounds referred to under letter *e)* of the abovementioned paragraph 5 of Article 80 of the Code.

It should be noted that the cases described in this Section and relating, respectively, to agreements aimed at distorting competition and the early termination of a previous procurement or concession contract are not appropriately covered by the current Code and therefore shall be eliminated.

In all the abovementioned cases referred to in this Section, the *self-cleaning* referred to in Article 80 paragraph 7 shall apply. The Article also provides reference to the situations referred to in paragraph 5 of the same Article, that an economic operator is entitled to prove that it has compensated any damage caused by criminal offence or misconduct and that it has taken concrete technical, organisational and personal measures that are appropriate to prevent further offences or misconduct.

Therefore, the information needed to enable the Contracting authority to assess, in accordance with the provisions of paragraph 8 of the above Article 80, the suitability of the self-cleaning measures taken by the economic operator to avoid their exclusion from participation in the tender procedure, shall be entered. It should be noted that *self-cleaning* does not apply in cases where the ancillary penalty, which prohibits contracting with the public administration during the entire period of duration of the penalty, has been applied.

In order to better clarify the cases covered by paragraph 7 of the aforementioned Article 80 regarding *self-cleaning*, the attached ESPD includes requests for separate information, provided in separate fields, for each of the abovementioned cases.

With particular reference to the application of *self-cleaning* to the cases referred to in Article 80 paragraph 5 c) on serious professional misconduct, it should be noted that, as provided for in Article 80, paragraph 13, the Italian National Anti-Corruption Authority (Associazione Nazionale Anti Corruzione, ANAC) will adopt suitable guidelines aimed at harmonising current practices in the contracting authorities, with regard to the assessment of the appropriateness of the evidence, for the purposes of checking where the economic operators should be excluded or not, from the tendering procedure.

With regard to the contents of letters *a)* and *b)* of the last box of this Section, concerning false declarations when providing the required information aimed at the verification of no exclusion grounds or the compliance with the selection criteria, in the event that the existence of such cases is declared, the details of the registration in the National Anti-Corruption Authority's computerised register shall be specified in Section D below, as referred to in Article 213, paragraph 10 of the Code.

The cases mentioned under letters *c)* and *d)* of the box in question that do not match any provision of the Code, will be eliminated.

Section D concerns additional grounds for exclusion provided for in the Code.

In particular, the abovementioned exclusion grounds relate to the cases provided for in Article 80, paragraph 2, paragraph 5, letters *f)*, *g)*, *h)*, *i)*, *l)* and *m)* of the Code and art. 53 paragraph 16-ter of Legislative Decree No. 165/2011.

Therefore, it is necessary to request detailed information regarding each of the abovementioned cases. This aspect is properly covered by the ESPD sheet attached to these *Guidelines*.

With regard to the hypothesis (anti-Mafia) provided for in paragraph 2 of the abovementioned Article 80 (causes of forfeiture, suspension or prohibition provided for in Article 67 of Legislative Decree No. 159/2011 or Mafia infiltration attempts as referred to in Article 84, paragraph 4, of the same Decree) it is necessary to indicate the reference to the subjects provided for by Legislative Decree No. 159/2011 in the box.

In particular, it should be noted that *self-cleaning* does not apply to the type of criminal offences in question.

The other abovementioned cases (letters *f)*, *g)*, *h)*, *i)*, *l)* and *m)*) of Article 80, paragraph 5 shall be described in detail. If the answer is yes and when its application is permitted, indications as to where the relevant documentation and the information necessary for the application of *self cleaning* can be obtained and shall be provided, referred to in paragraphs 7 and 8 of said Article 80.,.

In addition, the economic operator must indicate whether or not it is in the situation envisaged by Article 53 paragraph 16-ter, of Legislative Decree No. 165/2001 (pantouflage or revolving doors), if it has stipulated any employment or self-employment contract or has assigned any engagement to former employees of the contracting authority who have terminated their employment relationship for less than three years and who have exercised authoritative or negotiating powers on behalf of the same contracting authority in the last three years of service in respect of the same economic operator.

**Part IV** contains information on the selection requirements provided for in Article 83 of the Code (professional suitability, economic and financial standing, technical and professional capacity requirements) and information on the quality certifications referred to in Article 87 below.

Part IV, Section B, Point 6 and Section C, Point 13 may provide for declarations relating to the economic and financial standing requirements and the technical and professional capacity required by the call for tenders, whereas that information is not included the list of requirements set out in the preceding paragraphs.

The economic operator shall provide the information listed therein only if expressly requested by the Contracting Authority or the Contracting Body in the notice, call for tenders or tender documents; otherwise, it will only fill in the “*Global indication for all selection criteria*” section, if this possibility is repealed in the notice, call for tenders or tender documents.

In the latter case, the Contracting authorities or Contracting Entities shall directly obtain the documentation by accessing the National economic operator database referred to in Article 81 of the Code.

**Part V** contains the self-declaration by the economic operator attesting the fulfillment of the criteria and rules established by the Contracting Authority or the Contracting Body, as to limit the number of candidates in accordance with Article 91 of the Code.

This part must therefore be filled in only in the event of restricted procedures, competitive negotiated procedures, competitive dialogue procedures and innovation partnerships.

**Part VI** contains the final declarations by which the declarant assumes responsibility for the truthfulness of the information provided and certifies that they are able to produce, on request and without delay, certificates and other relevant documentary evidence, unless the Contracting Authority or the Contracting Body can acquire the supplementary documentation by accessing the National economic operator database referred to in Article 81 of the Code and without prejudice to the obligation to use the electronic communication means, with effects from 18 April 2018.

The above declarations must expressly recall and be made in accordance with Articles 40, 43, 46 and 76 of the Presidential Decree No. 445/2000.

Lastly, it should be noted that, in the various Parts of the ESPD herein analysed, the economic operator also indicates, corresponding to each single data where required – the Public Authority or third party where the Contracting Authorities or the Contracting Bodies can acquire all the supplementary documentation that supports what was declared by the economic operator.

In addition, the ESPD gives the information necessary for the Contracting Authorities or the Contracting Bodies to be able to obtain direct feedback by accessing the Database indicated by the operator. For this purpose, the ESPD includes the web address of the Database together with its identification parameters.

In this respect, it seems appropriate to recall that Article 81 of the Code provides that the documentation proving the fulfilment of the general, technical and professional, economic and financial requirements for the participation in the tendering procedures is acquired through the centralised Database managed by the Ministry of Infrastructure and Transport called National Database of Economic Operators. The operation of said Database will be covered by a Decree of

the Ministry of Infrastructure and Transport, after consulting the ANAC and the Agency for Digital Italy (Agenzia per l'Italia Digitale, AGID)

Lastly, it should be recalled that, pursuant to the combined provisions of Articles 88 and 212 of the Code, through the Control Center (Cabina di regia) referred to in Art. 212, a complete list of the Databases containing information on the economic operators, available for consultation by contracting authorities of other Member States. This list will be available and updated on the *e-Certis* register.

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