

# MEASURES FOR DEFINITION OF MODEL TENDER NOTICES TO BE COMPLIED WITH BY MOTORWAY CONCESSIONAIRES FOR THE AWARD OF EV CHARGING SERVICES

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Regulatory measures

# ART

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## Chapter 1 DEFINITIONS, PURPOSE AND SCOPE

### Measure 1. Definitions

For the purpose of these regulatory measures, the following definitions shall apply:

- 1.1 **Authority** (hereinafter also: **ART**): the Transport Regulation Authority.
- 1.2 **Highway Code** (hereinafter also: **HC**): New Highway Code, referred to in Legislative Decree No 285 of 30 April 1992.
- 1.3 **Highway Code Rules** (hereinafter also: **HC Rules**): rules implementing and enforcing the new Highway Code, referred to in Presidential Decree No 495 of 16 December 1992.
- 1.4 **'A'-type road** (hereinafter, also: **Motorway**): pursuant to Article 2 (3) of the HC, a suburban or urban road with independent or separate carriageways with uncrossable central reservations, each one with at least two traffic lanes, left paved roadside, if any, and emergency lane or right paved roadside, with no cross at grade or private accesses, fenced and equipped with user assistance systems along the entire route, reserved for traffic of certain categories of motor vehicles and marked by special start and end signs. It must be equipped with appropriate service and parking areas, both with access through acceleration and deceleration lanes.
- 1.5 **Service facilities**: pursuant to Article 24 (4) of the HC, *service areas*, with associated facilities for refuelling and refreshment, *parking areas*, areas and buildings for road maintenance or however intended by the owner of the road to be permanently and exclusively at the service of the road and its users.
- 1.6 **Area concerned**: for the purpose of these regulatory measures, area concerned shall mean each service facility where EV charging services are provided.
- 1.7 **Grantor of the concession**: public or private entity granting the motorway concessionaire the administrative powers pertaining to the construction and/or management of a motorway infrastructure, in accordance with the procedures and terms governed by the existing legislation and the concession agreement.
- 1.8 **Motorway concessionaire** (hereinafter also: **MC**): entity, either public or private, in charge of the construction and/or management of the motorway infrastructure under concession, in accordance with the procedures and terms governed by the existing legislation and the concession agreement.
- 1.9 **Concession agreement**: contract, including the relevant annexes, governing the concession relationship between the grantor of the concession and the concessionaire, relating to the construction and/or management of a motorway infrastructure.
- 1.10 **Sub-concessionaire** (hereinafter also: **SC**): economic operator that, following the tendering procedure, has been awarded the service to be carried out in the areas concerned.
- 1.11 **Sub-concession agreement**: contract between the concessionaire and the sub-concessionaire, following the public tendering procedure, which defines terms and procedures for the provision of EV charging services.
- 1.12 **Recharging point accessible to the public** (hereinafter: recharging point): pursuant to Legislative Decree No 257/2016, Article 2 (1) (c), (e) and (g), an interface capable of charging one electric vehicle at a time, which guarantees non-discriminatory access to all users, including through different authentication, use and payment methods. “High power” recharging points (more than 22 kW, divided into “fast” up to 50 kW and “ultra-fast” beyond that threshold) are of relevance on motorways.
- 1.13 **Charging device**: pursuant to Article 2 (1) (e-a) of Legislative Decree No 257/2016, a device capable of providing charging services through one or more recharging points, commonly referred to as “charging stations”.
- 1.14 **Charging infrastructure**: pursuant to Article 2 (1) (e-b) of Legislative Decree no 257/2016, a set of structures, works and systems that are necessary for the construction of parking areas equipped with one or more charging points for electric vehicles. In particular, the charging infrastructure consists of one or more charging devices and their electricity interconnections.
- 1.15 **Charging station**: pursuant to Article 2 (1) (e-c) of Legislative Decree no 257/2016, an area used for EV charging services, consisting of spaces, related charging infrastructure and architectural and building components that are functional to the charging service.

- 1.16 **Charging point operator** (hereinafter: **CPO**): entity in charge of the management of one or more EV charging devices, as well as of the provision of the electric charging service to final customers, either directly or by ensuring adequate access by mobility service providers.
- 1.17 **Mobility service provider** (hereinafter: **MSP**): entity selling electric charging services to final customers through one or more recharging points accessible to the public.
- 1.18 **Code**: the Code of Public Contracts approved by Legislative Decree No 50 of 18 April 2016.
- 1.19 **Award of service**: award, by tendering procedure, of EV charging services through ultra-fast charging points.
- 1.20 **Award report** (hereinafter: **AR**): report drawn up by the MC which forms an integral part of the documentation governing the awarding procedure, aimed at ensuring adequate conditions of transparency and assessment of the compliance of the choices made with the measures set out in this document.
- 1.21 **PRM**: persons with disabilities or reduced mobility.

## Measure 2. Purpose and scope

- 2.1 Pursuant to Article 37 (2) (g) of Legislative Decree No 201/2011, the regulatory measures set out herein refer to the definition of model tender notices to be complied with by motorway concessionaires for the award of new sub-concessions for EV charging services, pursuant to Article 18 (5) of Legislative Decree No 257/2016.

## Chapter 2 STAGE OF AWARD OF SUB-CONCESSIONS

### Measure 3. Construction of connecting infrastructure

- 3.1 The MC shall make available to the SCs the connecting infrastructure of the charging devices to the medium-voltage power grid, by ensuring its suitability for the overall rated power provided for the charging devices.

### Measure 4. Award of electric charging services

- 4.1 The MC shall provide for the award of the services for each area concerned so that at least two CPOs are available, ensuring the compliance with the principle of technological neutrality referred to in Article 18 (5) of Legislative Decree No 257/2016. Upon initial implementation, the MC shall ensure the availability of one CPO for each area concerned, making the additional awards no later than five years of the adoption of these regulatory measures.
- 4.2 The Authority may authorise a derogation from the provisions of Measure Misura 4 for the areas concerned where technical reasons prevent the availability of more than one CPO. The request for derogation shall be made by the MC in the context of the award report referred to in Measure Misura 8; in this case, the terms set out in the second and third sentence of Measure 8.2 shall not apply.
- 4.3 For the award of the services referred to in Measure Misura 4 the MC shall:
- a) subject to adequate justification in the award report as referred to in Measure Misura 8, provide for the bundling of several areas concerned, that are homogeneous in terms of number of areas and average traffic volume on the routes served, by ensuring that, after the transitional period referred to in the second sentence of Measure Misura 4, separate contractors operate in each of the areas concerned;
  - b) provide for appropriate reorganisation of the spaces of the areas concerned so that each of the CPOs in charge of the service, receive equal visibility, accessibility and availability of space, and in addition:
    - i. ensure the prompt use of commercial and catering activities, where available, by car drivers stopping for the time necessary to recharge;
    - ii. safeguard the use of commercial and catering activities, as well as fuel distribution, where available, by all other drivers;
  - c) provide that each of the CPOs in charge of the service ensure the supply of charging services to all requesting MSPs, under equitable and non-discriminatory conditions and in accordance with transparent procedures, by

providing for equitable and transparent tariffs for users, as well as for systems allowing immediate payment, without prior registration and without having to enter into contracts.

#### Measure 5. Necessary goods for the performance of services and activities under sub-concession

- 5.1 Necessary goods for the performance of the awarded services are those instrumental goods for which the following conditions are cumulatively met: a) non-shareability; b) non-substitutability; c) non-duplicability at socially sustainable cost.
- 5.2 For the purpose of launching the award procedures provided for under these measures, the MC shall identify the list of necessary goods, in accordance with principles of reasonableness and proportionality, so as to ensure maximum contestability of the awarded services.
- 5.3 The MC shall ensure that the necessary goods are fully available to the SC from the time the service is awarded, according to the following procedures:
  - a) by making available to the new SC, in accordance with pre-established procedures, any necessary goods directly owned by the MC;
  - b) for the goods owned by the MC and arising from investments of the incumbent SC which, upon expiry of the relevant sub-concession, have not exhausted their useful life, the MC guarantees the takeover by the new SC throughout the term of the new contract, ensuring that the incumbent SC receives by the new SC the compensation determined pursuant to Article 178 (7) of Legislative Decree No 50/2016;
  - c) for necessary goods owned by third parties, the MC shall ensure availability to the new SC throughout the term of the new contract, including on the basis of a fee identified on the basis of the market value of such goods, as determined by the owner through sworn expert estimates.
- 5.4 In the tender documentation, the MC shall:
  - a) publish the list of the necessary goods referred to in Measure 5.2 and the manner in which they are made available to the new SC;
  - b) identify in advance the goods, deriving from investments to be charged to the new SC in the context of the award procedure, which are regarded as necessary at the expiry of the concession, for the purpose of the new award, to be included in the simulated economic financial plan referred to in Measure 6.3; the latter shall also comprehend, for those goods, a prior estimate of the takeover value at the expiry of the sub-concession, to be determined in accordance with Article 178 (7) of Legislative Decree No 50/2016 in connection with appropriate assessments to be adequately justified in the Report of Award referred to in Measure Misura 8, with reference to useful life and depreciation criteria of the goods concerned in the period of the award.
- 5.5 Instrumental goods owned by the incumbent SC which do not cumulatively meet the characteristics set out in Measure Misura 5 are commercial goods, which are therefore not necessary for the performance of the awarded services and activities. Following the award procedure, these goods may be subject of side agreements between the incumbent SC and the new SC, should the latter be interested in their purchase.

#### Measure 6. Contract period

- 6.1 The MC shall assess the infrastructure level of the areas concerned, and any need for the SC to carry out investments of significant economic value.
- 6.2 The sub-concession period shall be determined by the MC for each award between 5 and 12 years, on the basis of the assessments referred to in Measure Misura 6 and taking into account the provisions under Measure 5 concerning the necessary goods, in order to ensure that the SC is able to appropriately recover the investments provided for therein, on the basis of criteria of proportionality and reasonableness, together with an appropriate return on the capital invested. For investments made by the incumbent sub-concessionaire, which are not amortised upon expiry of the concession, Article 178 (7) of Legislative Decree No 50/2016 shall apply.
- 6.3 In order, *inter alia*, to justify its choices for the contract period, the MC shall attach to the Report of Award a simulated economic financial plan, aimed at verifying in advance whether the sustainability of these choices.

### Measure 7. Economic value of sub-concession

- 7.1 The tender documentation shall indicate the methodology of calculation of the estimated value of the award based on objective and transparent criteria.
- 7.2 The estimated value of the award is determined net of taxes and of any public contributions in compliance with the provisions of the Code and is calculated on the basis of the energy quantities that are assumed to be provided by the charging services under subconcession for the contract period.

### Measure 8. Report of Award and minimum content of sub-concession agreements

- 8.1 The MC shall identify the subconcessions to be awarded and the award procedures in accordance with the criteria set out in this Chapter, drawing up the relevant Report of Award (hereinafter: RoA), that shall be adequately justified.
- 8.2 The RoA shall be transmitted to the Authority for the purpose of its supervision at least 60 days in advance of the initiation of the related award procedure. The Authority may provide remarks within the following 45 days, unless the procedure is suspended up to a maximum of 60 days. Upon expiry of this term, the MC may in any case initiate the award procedure.
- 8.3 Following the public tendering procedure for the choice of the SC, prior to the commencement of the awarded services, the MC and the SC shall conclude a sub-concession agreement, in accordance with the minimum content set out in Annex 1. The draft agreement shall be annexed to the tender documentation governing the award procedure, as an integral and substantial part thereof.

### Measure 9. Participation conditions and requirements

- 9.1 The MC shall define in the tender documentation the conditions for participation of the undertakings concerned, by ensuring, where applicable, compliance with the relevant legal provisions on technical and operational suitability, economic and financial capacity and integrity.
- 9.2 In order to ensure maximum participation of the operators concerned in the tender procedures, the participation requirements shall be defined in accordance with the following general principles:
  - a) relevance and proportionality with respect to the subject of the tender;
  - b) non-discrimination, by ensuring equal treatment in case of level playing field, to protect all potential tender participants.
- 9.3 The MC shall define an appropriate quantification and harmonisation of the above-mentioned requirements, with particular reference to those relating to economic and financial capacity and technical and operational suitability, in order to:
  - a) avoid oversize of the technical and economic parameters, such as to cause substantial impediment to the participation of potentially concerned parties;
  - b) balance the allocation of specific requirements for the undertakings concerned, in relation to the subjective characteristics of the parties (individual or multi-individual operator), without prejudice to the prohibition of discriminating against an economic operator in relation to the location in a given territory.
- 9.4 In the context of the RoA, the MC specifies the reasons supporting the inclusion of any participation requirement, to clearly show the reasonableness of its estimates and the proportionality with regard to the tender specificities, as well as the absence of discriminatory effects to the detriment of potential participants.

### Measure 10. Risk allocation

- 10.1 The MC shall identify the types of risk related to the awarded services and define a matrix for the allocation of such risks to each of the contractual parties (MC and SC). The matrix, together with the supporting reasons, is annexed to the RoA.
- 10.2 In any event, the operational risk, as defined in Article 3 (1) (zz) of the Code, related to the management of the services referred to in 0, is borne by the SC.

- 10.3 With respect to the nature and intensity of the different types of risk identified, as well as the relevant allocation to each of the contractual parties, the MC shall specify in the documentation governing the award procedure, and describe in the risk matrix, any measures to mitigate the allocated risks, including as to the allocation of any deviations in the final traffic volumes as compared to the parameters indicated by the MC in the tendering procedure.
- 10.4 The risk matrix, as drawn up by the MC in accordance with the relevant measures adopted by ANAC<sup>1</sup> in this area, forms an integral part of the documentation governing the award procedure and of the associated sub-concession agreement. The matrix shall provide the references to the parts of the agreement governing the contractual obligations related to the identified risks.

### Measure 11. Determination of fees

- 11.1 The fee to be paid by the SC to the MC is the charge for access and occupation of the part of the state-owned motorway which is covered by the award, from which the SC derives economic benefits.
- 11.2 For this purpose, the MC, as concession holder of the management of the motorway State property under its responsibility, is required to set the level of the fee to be paid by each SC, by taking into account the risk allocation referred to in 0, in accordance with the principles of transparency, equity, non-discrimination, reasonableness and proportionality, while ensuring the cost containment for motorway users.
- 11.3 To this end, the level of the fee is related to:
- a) a share of the relevant and efficient annual costs — that are not recovered by the MC through the toll paid by the motorway users or through public contributions, if any — which are actually incurred for the construction and operational management of the infrastructure of general and common interest pertaining to the part of the public motorway covered by the award, the management of which is not directly awarded to the SC on an exclusive basis;
  - b) the benefit obtained by the SC for the commercial exploitation of the access to the motorway infrastructure and to the allocated State property, taking into account, in connection with the investments necessary for the performance of the SC's activities, any public funding for which the MC and the SC are required to provide adequate reporting to the Authority.
- 11.4 The fee — which includes the concession fee that shall be paid by the MC, too, to the grantor of the concession pursuant to Article 1 (1020) of Law No 296 of 27 December 2006 and to the provisions of the concession agreement — consists of the following components:
- a) a fixed annual component, which is determined *ex ante* by the MC, corresponding to the relevant share of the annual costs referred to in Measure 11.3 (a).  
For the purpose of determining this share, the MC is required to:
    - i. quantify the above annual costs as a whole, on the basis of:
      - depreciation and return on capital relating to the constructed infrastructure;
      - activities actually planned in the context of the operational management and their prices of reference at territorial level;
    - ii. having deducted the share at its own expense, allocate these costs among the SCs operating in the same part of the motorway state property covered by the award, on the basis of transparent, equitable and non-discriminatory criteria.

This component is set by the MC itself and cannot be subject to best-value bid by tender participants.

The annual costs concerning the administrative, accounting and operational management of the award, as well as those relating to the performance of the tendering procedures, except for those that are explicitly regulated by relevant legislation, are entirely borne by the MC;

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<sup>1</sup> Italian Anti-corruption Authority (TN)

- b) an annual variable component, which is related to the benefit referred to in Measure 11.3 (b), expressed in EUR/kWh as for the annual quantities supplied or in percentage shares of the SC's turnover.

This component is set as tender price at 0 by the MC itself, cannot provide for minimum guaranteed quantities and is subject to best-value bid by tender participants.

For the definition of this component, the MC shall also establish *ex ante*: (i) the threshold values of the supply/turnover volumes, incrementally with respect to those reasonably estimated by the same MC, which shall correspond to progressive reductions in the EUR/kWh value or percentage share offered by the participant; (ii) the measure of such progressive reductions.

- 11.5 The fee, as determined in the tendering procedure and covered by the sub-concession agreement, is subject to annual update, applicable from the 1<sup>st</sup> of January of each year of the award starting from the second, in an amount equal to the annual variation in the consumer price index for blue and white-collar worker households (ISTAT FOI), net of tobacco, as published in the month of September of the previous year. This annual update excludes the variable components of the fee, if expressed in percentage shares of the SC's turnover.
- 11.6 In the context of the RoA, the MC shall specify the level of the fees to be established as tender price, as well as the reasons supporting their determination, to clearly show the reasonableness of its estimates and the proportionality with regard to the tender specificities, as well as the absence of any discriminatory effects to the detriment of potential participants.
- 11.7 Within the scope of its remit in this field, the Authority shall ensure that the level of the fees established by the MC in the tender notices is in line with the criteria set out in Measure 11 and adequately complies with:
- pursuit of the public interest related to the enhancement of the motorway infrastructure;
  - incentive of competition;
  - respect for the principles of transparency, equity, non-discrimination, reasonableness and proportionality;
  - cost containment for users, businesses and consumers.

## Measure 12. Tender evaluation criteria

- 12.1 In order to award the contract on the basis of the most economically advantageous tender, the MC shall set out in the tender documentation:
- the awarding criteria, that are linked to the identified objectives of effectiveness and efficiency, by differentiating technical and qualitative parameters from exclusively economic parameters, which may not affect more than 30% of the score, pursuant to Article 95 (10-a) of the Code of Contracts;
  - the procedures of assessment of these criteria, together with the relevant weighting and scoring systems.
- 12.2 The MC shall lay down the awarding criteria in compliance with general transparency principles governing the award procedure, proportionality and cost-effectiveness in respect to the services to be awarded, equal treatment and non-discrimination to the benefit of all potentially concerned operators, environmental protection and energy efficiency, so as to ensure:
- that the stage of assessment of the technical offer is clearly separated from that of the evaluation of the economic offer of each tender participant, including by ensuring that the scope of assessment of the technical offer is not affected by exclusively economic parameters;
  - that, in the weighting, the criteria of the technical offer prevail, in accordance with the principles laid down in Article 11 (5b) (b) of Law No 498/1992.
- 12.3 The awarding criteria shall be adopted by the MC in accordance with the relevant ANAC Guidelines.
- 12.4 The MC shall lay down in the tender documentation the procedures for assessment of the individual criteria (and sub-criteria, if any) on the basis of adequate justifications, by establishing, where possible, algorithms for the calculation of the scores that will be adopted by the tender evaluation committee.
- 12.5 In the determination of the scoring methods for each of the criteria adopted, the MC shall favour the adoption of criteria that are based on quantitative or tabular methods and shall comply with the following principles:
- the entire score scale should be used to the maximum extent possible in order to enhance the differences between the commitments made by tender participants;



- b) the differences in score obtained by tender participants must be representative of the commitments made. Hence, two candidates making different commitments cannot receive the same score under the same sub-criterion;
- c) in order not to distort the commitment made by each candidate, the methodology must not provide for automatic zero scoring for the lowest tender, unless this deviates from the tender terms and conditions;
- d) it is preferable to avoid evaluation systems involving the awarding of scores to clusters of offers through the pre-determination of threshold values. Such systems lead to unjustified score differences when two tenders are close to each other but do not belong to the same cluster, or to insufficient score difference when tenders are significantly different but belong to the same cluster.

12.6 In the determination of the assessment criteria of the technical offer, the MC shall take into account at least the following objectives of efficiency and effectiveness of the award:

- a) technical design of the area, in terms of layout, functionality and accessibility;
- b) efficiency of management;
- c) environmental sustainability;
- d) application of highly innovative technologies.

12.7 In order to discourage excessive best-value tenders, for the assessment criterion of the economic tender, the MC shall provide for the application of non-linear formulas of the following type:

$$V_i = \left( \frac{R_i}{R_{max}} \right)^\alpha$$

where:

$V_i$  score given to the i-th competitor;

$R_i$  best value offered by the i-th competitor, assessed in absolute terms with reference to the entire contract period, based on the volumes of supply/turnover estimated *ex ante* by the MC according to criteria of reasonableness;

$R_{max}$  maximum best value among the offers made by competitors, assessed in absolute terms with reference to the entire contract period, on the basis of the volumes of supply/turnover estimated *ex ante* by the MC according to criteria of reasonableness;

$\alpha$  coefficient greater than 0 and less than or equal to 0.3;

12.8 In the tender documentation the MC shall provide for the following:

- a) publication of the criteria adopted to define the simulated economic financial plan referred to in Measure 6.3;
- b) that participants in the procedure include their economic financial plan in the tenders, together with a report, in order to prove its sustainability compared to the plan simulated by the MC, and for the purpose of verification of any inconsistencies.

12.9 The MC shall verify that the conduct of the tender evaluation committee complies with the procedures and evaluation criteria as previously identified.

12.10 In the context of the RoA, the MC shall specify the awarding criteria it intends to adopt, and the reasons supporting their definition, to clearly show the reasonableness of its estimates and the proportionality with regard to the tender specificities, as well as the absence of discriminatory effects to the detriment of potential participants.

12.11 The Authority shall ensure that the awarding criteria adopted by the MC are in line with the criteria set out in Measure 12 and adequately comply with:

- a) pursuit of the public interest related to the enhancement of motorway infrastructure;
- b) incentive of competition;
- c) respect for the principles of transparency, equity, non-discrimination, reasonableness and proportionality;
- d) cost containment for users, businesses and consumers.

### Measure 13. Methods of performance of electric charging services

- 13.1 In the areas concerned, electric charging services are offered every day of the year, 24 hours a day, by:
- ensuring assistance to customers at least remotely, with possible emergency response;
  - providing for a number of ultra-fast recharging points accessible to the public that is appropriate to the traffic level operating on the lane served;
  - providing for the installation of recharging points accessible to the public with rated power of at least 100 kW and, in any case, appropriate to the foreseeable development of the vehicle charging capacity within the time horizon of the award and, in any case, according to the minimum technical specifications published by the motorway concessionaire pursuant to Article 1 (697) of Law No 178/2020.

### Measure 14. Limitation and transparency of prices to the public

- 14.1 In the cases provided for in Measure 4.2, the Authority reserves the right to adopt reasonable and proportionate measures for the price limitation for EV charging services.
- 14.2 In both the tender documentation and sub-concession contracts, the MC shall include provisions aimed at ensuring the publication by the CPO of the charging price directly offered to users, in the areas concerned, with adequate visibility for users, as well as on the internet in real time and open data format, so that they are also accessible through individual portable devices.

### Measure 15. Assessment of quality of services

- 15.1 The MC shall specify in the documentation governing the awarding procedure:
- the quality objectives to be pursued by the SC in the award period. These quality objectives shall identify minimum obligations and/or performance to ensure that the essential requirements of motorway users are met in relation to the awarded services;
  - the related sanctioning system to be applied to the SC in case of failure to achieve the quality objectives, in accordance with the principles of reasonableness and proportionality;
  - the indicators and related target values identified by the MC for assessment of the performance of the SC and achievement of the quality objectives, in the context of the thematic areas defined in Measure 15.2.
- 15.2 The quality assessment system shall provide for the identification by the MC of at least one indicator for each of the following thematic areas of electric charging services, where relevant for each award:
- operation of recharging points;
  - accessibility and assistance for PRM;
  - level of user satisfaction with operation of charging points, accessibility for PRM and availability of innovative technologies;
  - use of Intelligent Transport Systems (ITS) to share information about the availability of charging points and their prices.
- 15.3 In compliance with the aims and specificities of these measures and with the sanctioning system adopted for this purpose, the MC shall establish in the sub-concession agreement the monitoring and reporting obligations to be borne by the SC and the procedures for assessment and verification of the performance under its responsibility, in accordance with criteria that ensure effectiveness and efficiency of the solutions adopted, maximum transparency and accessibility of data and results by the stakeholders involved, together with their regular publication and sharing.
- 15.4 The monitoring of the performance by the SC may be carried out either automatically or through manual collection with periodic data reporting to the MC. In the event of automatic monitoring, the SC shall take any necessary steps to allow the MC access to the information systems for retrieval of the necessary data and verification of the indicators adopted. As part of the monitoring activities, the SC shall provide for customer feedback systems to collect and analyse any complaints and suggestions for improvement, including by accounting for any measures adopted.

- 15.5 The MC shall carry out the verification activities, also through random checks, at least every month. The choice of the items to be checked may be supplemented by considering the information arising either from alerts and/or complaints, and from customer satisfaction surveys. The controls include, in any case, those necessary to verify the accessibility conditions of services for PRM.
- 15.6 The qualitative and quantitative levels of the services defined in the sub-concession agreement are subject to periodic assessment, which is carried out at intervals of no more than five years, if consistent with the contract period.
- 15.7 In the context of the RoA, the MC shall specify the rules adopted for quality assessment and related sanctioning system, together with the reasons supporting their definition, to clearly show the reasonableness of its estimates and the proportionality with regard to the tender specificities, as well as the absence of discriminatory effects to the detriment of potential participants
- 15.8 The Authority shall ensure that the rules adopted by the MC for quality assessment and related sanctioning system comply with the criteria set out in Measure 15.
- 15.9 During the award procedures, and in the ensuing documents, the MC shall include a special provision containing the mobile reference to the regulation that may be adopted by the Authority in the exercise of its powers, with including the definition of the minimum content of the specific rights, including compensation, that may be claimed by users against the SCs (or the entities identified by them for the provision of the awarded services to final customers, as the case may be), pursuant to Article 37 (2) (e) of Legislative Decree No 201/2011.

### Chapter 3. STAGE OF IMPLEMENTATION OF SUB-CONCESSIONS

#### Measure 16. Monitoring of sub-concession and sanctioning system

- 16.1 The MC shall establish in the sub-concession agreement an adequate monitoring system of the service with reference to the economic, technical, management and qualitative performance under the contract, by specifying responsibilities, procedures, instruments and timing for data collection, reporting and transmission, any other useful information and documents.
- 16.2 For this purpose, the MC shall lay down in the contract, for each group of services:
- a) type of data, information and documents (reports/final statements) to be made available by the SC in relation to the indicators under the sub-concession agreement, as well as associated penalties in case of non-compliance;
  - b) procedures for the performance of the verification activities within its remit;
  - c) any obligations of the SC concerning the performance of regular surveys on expected and perceived quality of the service (customer satisfaction surveys), by ensuring the involvement of users and consumer associations, in compliance with the rules governing the service quality assessment.
- 16.3 The MC shall regulate the contents referred to under Measure 16.2, including to ensure that the SC forwards in due time the information within its remit, that is preparatory to the launch of a new award procedure. In this respect, the MC shall define in the sub-concession agreement the applicable penalties in case of non-compliance by the SC.
- 16.4 The data, information and documents referred in Measure 16 shall be made available by the SC to the MC in editable electronic format, unless otherwise provided for in the sub-concession agreement.
- 16.5 The aforementioned data, information and documents are held by the MC; in order to ensure maximum transparency in the contract management, they are published on the MC's website, in particular with reference to:
- a) existing sub-concession agreement;
  - b) existing service charters;
  - c) outcome of customer satisfaction surveys;
  - d) main economic, technical, management and qualitative indicators under the sub-concession agreement.

A schedule relating to the electric charging services available for each of the areas concerned shall be published as well and promptly updated on the MC's website, with notice to the Authority, by differentiating the maximum power available for each recharging point, the CPO, and the location of the recharging points within the area concerned.

- 16.6 The sub-concession agreement shall define a grading sanctioning system that is applicable to the SC in case of infringement of the contractual rules, in accordance with the principles of proportionality and seriousness of the applicable penalty, which may give rise, in case of repeated and particularly serious infringements, to the termination of the contractual relationship.
- 16.7 The MC shall provide in the sub-concession agreement specific obligations to be borne by the SC with regard to the transmission to the MC of the quantitative elements that are necessary for the assessment of the management sustainability and shall provide for the related transmission to the Authority on an annual basis. This information shall include at least the final data on the implementation of the economic and financial plan attached to the tender in the context of the awarding procedure.
- 16.8 Without prejudice to the requirements set out in the previous paragraphs, the monitoring system shall also be defined on the basis of the relevant information provided by ANAC.

#### Measure 17. Prohibition of extension/renewal of the sub-concession agreement

- 17.1 The tender documentation may not contain clauses providing for automatic renewal or extension of the sub-concession agreement.
- 17.2 The period of the existing sub-concession agreement may be amended, where provided for in the tender documentation, only for the time that is strictly necessary for the conclusion of the procedures for the identification of the new concessionaire pursuant to Article 106 (11) of the Code.
- 17.3 In the cases referred to in Measure 17.2, the SC is nevertheless required to perform its contractual obligations at the same prices, under the same terms and conditions as set out in the existing sub-concession agreement.
- 17.4 Upon expiry of the sub-concession agreement, the SC is obliged to continue the operation of the service or of the activities under the same conditions as provided for under the existing agreement, until the management is transferred to the economic operator that has been awarded the concession on the basis of the tendering procedure.
- 17.5 For the purpose of awarding the new sub-concession, the MC shall undertake to initiate the procedures well in advance, in any case not less than 18 months before the end of the sub-concession, in order to ensure a seamless management of the service.
- 17.6 In the event of early expiry of the sub-concession, for any reason, the MC shall endeavour to promptly initiate the necessary award procedure, in any case no later than 90 days of the expiry date.

#### Measure 18. Force majeure, withdrawal and termination of sub-concession agreement

- 18.1 The tender documentation, together with its annexes, provides for a non-exhaustive list of cases in which the contracting parties cannot be held liable for non-compliance or delayed compliance with the obligations agreed upon, if the non-compliance is caused by serious events of force majeure, which in no way depend on the will of the parties or, in any case, by events that are not subject to the control of the parties. In the event of a change in the economic and financial equilibrium of the sub-concession, due to events of force majeure, to be indicated in the contract as an illustrative, but not exhaustive, example, the agreement may be renegotiated.
- 18.2 Force majeure includes, but is not limited to, the following: general strikes, natural disasters, wars, embargoes, sabotage, riots, prohibitions and/or impediments laid down by laws and/or regulations that entered into force after the conclusion of the sub-concession agreement, acts involving the exercise of powers conferred by public law, expropriation and seizure of property, judicial, regulatory and administrative acts for events that are not attributable to the party concerned by such acts. Financial and economic shocks and changes in the macroeconomic scenario are not regarded as force majeure.

- 18.3 The tender documentation, together with its annexes, regulates the cases of withdrawal from the contract, and of the termination of the contract pursuant to art. 1456 of the Civil Code.
- 18.4 Without prejudice to the provisions of the legislation in force, the MC may withdraw from the sub-concession agreement with immediate effect, even before the commencement of the service, if the SC is placed in liquidation or has been declared bankrupt or subject to other insolvency proceedings or is in a state of suspension of the commercial activity. Any other cases of withdrawal by the MC to be indicated in the tender documentation shall remain unaffected.
- 18.5 The same powers are granted to the SC if the events referred to in Measure 18.4 relate to the MC.
- Without prejudice to force majeure, in the event of a significant decrease in revenues and provided that at least 5 years have elapsed from the conclusion of the sub-concession agreement, the SC may withdraw from the contract provided that it has paid the fees due.