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ANNEX A TO DECISION NO 154/2019

- CONSOLIDATED TEXT ¹ -

Regulatory measures on “Revision of Decision No 49/2015 - Measures for drawing up tender notices and related contracts for the award of local public services by rail and road and for setting the criteria for the appointment of tender evaluation committees, as well as for defining model public service contracts that are directly awarded or performed by internal operators or publicly-owned companies”.

¹ Text of decision no. 154/2019 in force as of 29 November 2024, incorporating the revisions approved by:

- decision no. 113/2021 of 29 July 2021, “Conclusion of the proceeding concerning amendments to Measure 12 of Annex "A" to decision no. 154/2019, initiated by decision no. 210/2020”;
- Decision no. 64/2024 of 15 May 2024, “Proceeding of revision of decision no. 154/2019 to align with the provisions of Legislative Decree 201/2022, initiated by decision no. 90/2023 of 18 May 2023. Conclusion of proceeding”;
- Decision no. 177/2024 of 29 November 2024, “Proceeding of revision of the methodology to determine the reasonable profit margin of maritime cabotage services subject to PSO, as referred to in Measure 10 of Annex "A" to decision no. 22/2019, and in road and rail public transport services under Measure 17 of Annex "A" to decision no. 154/2019, initiated by decision no. 244/2022 of 14 December 2022. Conclusion of proceeding”.

CONTENTS

Definitions.....	4
Acronyms	8
Measure 1 – Purpose and scope of the Measures	9
Title I – PRELIMINARY STAGES FOR THE AWARD OF PUBLIC SERVICES.....	11
Chapter I - Regulatory measures concerning lots to be awarded, content of public service contracts and capital assets.....	11
Measure 2 - Criteria for the identification of award procedures and minimum mandatory content of Public Service Contracts.....	11
Measure 3 – Instrumental assets for the performance of the service.....	11
Measure 4 - Essential, necessary and commercial assets. Consultation of stakeholders.....	12
Measure 5 - Rolling Stock.....	13
Measure 6 - Instrumental assets acquired through public funding.....	14
Measure 7 - Provision of essential and necessary assets.....	15
Measure 8 - Actions by the AE to promote the availability of instrumental assets.....	16
Measure 9 - Criteria for determination of takeover value of essential and necessary assets	16
Measure 10 - Criteria for determination of leasing fees.....	18
Chapter II — Regulatory measures aimed at transparency, effectiveness and efficiency of award procedures	18
Measure 11 — Regulatory accounting and accounting separation requirements for local public rail passenger transport.....	18
Measure 12 — Regulatory accounting and accounting separation requirements for local public road passenger transport.....	18
Measure 13 — Criteria for risk identification and allocation in the contract award.....	20
Measure 14 —Drafting of simulated EFP for awards by tendering procedure	20
Measure 15 — Drafting of simulated EFP for direct awards.....	21
Measure 16 — Determination of the objectives of the PSC.....	21
Measure 17 — Determination of reasonable profit margin	22
Title II – STAGES OF SERVICE AWARD.....	25
Chapter I - Regulatory measures to identify the information.....	25
to be provided in the award procedures.....	25
Measure 18 - Provision of minimum information to participants in the award procedures.	25
Chapter II - Regulatory measures for equitable and non-discriminatory tender participation.....	25
Measure 19 - Participation requirements.....	25
Measure 20 – Awarding criteria	26

Measure 21 - Transfer of personnel.....	26
Measure 22 - Economic-Financial Plan of tender participants in the award of concessions..	27
Measure 23 - Deadline for tender submission.....	28
Measure 24 - Criteria for appointment of the tender evaluation committee.....	28
Title III – STAGE OF IMPLEMENTATION OF THE PSC.....	29
Measure 25 - Monitoring and reporting of the service	29
Measure 26 - Testing economic and financial equilibrium.....	30
Measure 27 – Criteria for fare updating.....	31
Measure 28 – Contract review and renegotiation	31

Definitions

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

- a) *Assets acquired through public financing*: capital assets for the performance of LPT services that are purchased through public resources; they include both the assets related to investment account and those related to income (for which the contractual compensation takes into account the obligation for the CC to purchase/replace rolling stock or purchase/build infrastructure).
- b) *Authority (ART)*: Transport Regulation Authority.
- c) *Awarding Entity (AE)*: public body, or entity delegated by a public body, (including a so-called instrumental publicly-owned company) that is entrusted with the responsibility of awarding a public service contract to a CC, and is in charge of the operation, monitoring, verification and control of the contract, through any awarding form and method allowed by the legal system. The AE may therefore be other than the public entity in charge of the service (infra). In this case, the relationship between the two parties shall be governed by a special agreement governing their duties, roles and split responsibilities. The agreement shall include, but is not limited to, the aspects relating to the quantity of the awarded service and relevant economic aspects, service planning, fares, required standards (e.g. commercial speed by line, type of vehicles to be used, fuel system, average/maximum age, minimum technological equipment), type and quantity of controls, investments, basic reporting, as well as any other aspect that is deemed relevant for the purpose of the PSC.
- d) *Body in charge of the service*: public body (region and local authorities) that are entrusted, pursuant to legislative decree no. 422/97, with "functions and duties (...) regarding public transport services of regional and local interest carried out by whichever mode and awarded in whichever form " (cf. Article 1 (1)).
- e) *Contracting Company (CC)*: LPT company that enters into a new PSC with the competent AE, for the provision of LPT services, whether it is a new operator or the IO. Aggregated CC refers to a CC formed by a group of companies, in the forms provided under the applicable legislation, each of which is clearly identified at the time of the award, excluding subcontracted companies.
- f) *Coverage ratio*: ratio between traffic revenue and operating costs, excluding infrastructure costs (cf. lgs. d. 422/1997, Article 19 (5), calculated according to the formats referred to in Appendix 5 of Annex A.
- g) *Data access plan*: document that is defined by the AE before the signing of the PSC, through the consultation of the main stakeholders (cf. Measure 4), by identifying at least the following:
 - a) set of elementary data available to the AE;
 - b) method of data collection, that is differentiated into automatic (real time) and manual (final, as reported according to a specified time interval);
 - c) method of data access by third parties, in compliance with the restrictions on the processing of personal data and non-disclosable information due to industrial secrecy that is guaranteed by the AE, by facilitating the general criterion of "open access" in an editable format and with reference to real-time elementary data and online data request;
 - d) data provider, that is subject to mandatory transmission to the AE.
- h) *Debt Service Coverage Ratio (DSCR)*: bankability factor for enterprise's ability to produce sufficient flows to cover its debt (principal and interest); it is equal to the ratio of: (i) operating cash flow for debt service over a specific period, related to the investment programme associated with the PSC, including any cash reserve available for debt service, to (ii) debt service including both principal and interest payments.
- i) *Economic-Financial Plan (EFP)*: management planning document that includes the time development of economic, capital and financial data and indicators over the contract period. In case of tenders, the EFP is prepared by the AE to determine the starting bid (hereinafter: simulated EFP) and by the TP to submit its

offer (hereinafter: tender EFP); following the tender, the document drawn up by the CC constitutes the EFP of the PSC; "final EFP" refers to the document drawn up at the end of each regulatory period to verify the economic and financial equilibrium, through a comparison between the EFP of the initial PSC and/or of the previous period; for this purpose, the final EFP includes both the data recorded *ex post* for past periods and the forecasts updated for the remaining periods.

- j) *Flexible transport services*: non-scheduled transport services offered to the public on an equal basis and continuously upon request, typically operated in ways that allow users to book trips using electronic or other types of communication. These services may involve passenger boarding and alighting at stops designated by the operator upon request or at scheduled public transport stops.
- k) *Incumbent Operator (IO)*: economic operator providing LPT services that are regulated under an expiring contract, which is subject to a new award procedure by the competent AE.
- l) *Instrumentality* (to be always referred to a local or regional authority): public body, special undertaking or private company with public ownership, including in the form of a public agency or asset company, other than the service provider.
- m) *Key Performance Indicator (KPI)*: indicator that monitors the development of a business process and provides a benchmark to identify effectiveness and efficiency targets. For regional rail transport services, KPIs are defined by the Authority pursuant to Decision no. 120/2018 of 29 November 2018 (hereinafter: Decision no. 120/2018); for road transport services, KPIs are defined by the Authority following the proceeding initiated by decision no. 23/2023 of 8 February 2023.
- n) *Load factor: coefficient of vehicle occupancy, typically referring to a ride or transport line, measured at a specific time (e.g., average value on a weekday), given by the ratio of passenger-km (demand) to seat-km (supply), with respect to the different modes of transport, where:*
 - *Passenger-km*: sum of the products of the number of passengers carried on each ride on the corresponding travelled distances;
 - *Seat-km*: sum of available seats on each vehicle in service (including seats, standing areas, and spaces for wheelchair users), multiplied by the length of each ride made.
- o) *Loan Life Coverage Ratio (LLCR)*: bankability indicator for debt sustainability, given by the (cumulated and discounted) total cash-flows available for debt service (valued up to the last year of debt repayment), increased by the cash reserve for debt repayment, divided by the debt balance outstanding at the time of evaluation.
- p) *Local public transport (LPT) services*: "passenger transport services of general economic interest provided to the public on a non-discriminatory and continuous basis" (cf. art. 2 (a) of Regulation (EC) No 1370/2007) that are subject to public service obligations, which are provided by any means of land transport - by road (by bus, trolley bus, trams and underground), rail or other infrastructure (e.g., funicular railways) – sea, lagoon, lake, river or air, at the local (urban, suburban, interurban) and/or regional level.
For the purpose of defining the service areas of reference, as outlined in the relevant regulatory accounting formats provided under Measure 12 (1) (b), the following definitions are adopted:
 - *urban/suburban LPT*: services provided within the territory of a single municipality and/or connecting neighbouring municipalities, characterized by a high level of coverage within their territories, with high frequency and stop density;
 - *interurban/regional LPT*: services provided in the territories of multiple municipalities within a provincial and/or regional area, not falling under the previous category, including interregional routes connecting two neighbouring regions.
- q) *LPT company*: individual or aggregated economic operator, whether governed by public or private law, that provides LPT services by road and by rail (LPT), and any ancillary and support services.

- r) *Market value*: average price charged for the same or similar assets, under open access and at the same marketing stage.
- s) *Minimum quality requirements (MQR)*: minimum obligations and/or performance that are measured through qualitative and quantitative indicators and standards of passenger transport services, as identified according to territorial demand and supply characteristics, within the meaning of Article 37 (2) (d) of Decree-law no. 201 of 6 December 2011, converted, with amendments, into Law no. 214 of 22 December 2011 (hereinafter: Decree-law no. 201/2011). For local and national rail transport, the *minimum quality requirements* are defined by the Authority pursuant to Decision no. 16/2018 of 8 February 2018; in the road sector, the MQR are defined by the Authority pursuant to decision no. 53/2024 of 18 April 2024.
- t) *Movable assets*: e.g. hardware, software and other technological systems for performance control and assessment and for fleet monitoring (including AVM systems) and related database, operation of facilities, and management of demand and ticketing data, with related database, and any other equivalent systems that are strictly necessary for the awarded services.
- u) *Net book value*: purchase cost of an asset net of relevant depreciation fund and of any residual value.
- v) *Net invested capital (NIC)*: measure obtained by summing specific items of the assets and liabilities of the balance sheet, which reflect the capital contributed by the LPT company for the fulfilment of the awarded public service obligations.
- w) *Networks, facilities and infrastructures*: e.g. tracks (for rail, underground and tram transport) and related passenger stations, bus terminals, stopping areas and related assets (range poles, shelters, any furniture), refuelling facilities (in particular for alternative fuels and/or electric traction) and technological monitoring safety systems on these networks, facilities and infrastructures. For passenger stations and related buildings for the different transport modes, common areas and facilities open to the public, ticket offices and other facilities including travel information systems, suitable space for ticketing services for LPT services and ancillary systems are included. For rail, underground and tram transport, areas and facilities for shunting and train composition are encompassed, including shunting areas, areas, facilities and buildings intended for rolling stock parking, shelter and storage, maintenance centres, except for rail transport, heavy maintenance facilities for high-speed trains or other rolling stock that require specialised centres. For road transport, depots and any other immovable assets, facility or other equivalent asset.
- x) *Production value*: distances provided under the LPT PSC by road, expressed in service units (s.u.) such as vehicle*km (or ride*km), which can further be broken down into the following specific s.u. based on the relevant service mode (cf. m. d. 157/2018, art. 2 (1): "bus*km" for bus and trolleybus services, "train*km" for tram, underground, (and regional rail) services; if the PSC also includes inland waterway transport services, in accordance with Measure 1 (8) of Annex "A" to the decision, the s.u. is expressed as "ride*mile". The total production value of a multimodal PSC is calculated by summing up the different s.u. for each transport mode involved.
- y) *Public Service Contract (PSC)*: agreement and contract as referred to in Article 37 (2) (f), first sentence of Decree-law no. 201/2011, Article 2 (i) of Regulation (EC) no. 1370/2007 and Article 19 of legislative decree no. 422 of 19 November 1997 (hereinafter: lgs. d. 422/1997).
- z) *Public Service Obligations (PSO)*: requirement as defined or identified by a competent authority in order to ensure the provision of LPT passenger services in the general interest that an operator, if it were considering its own commercial interest, would not assume or would not assume to the same extent or under the same conditions without reward (Regulation (EC) no. 1370/2007, Article 2 (e)).
- aa) *(Quality) Customer Charter*: document whereby a CC engages in a number of commitments to its users concerning its services, specifying, in particular, the ways they are provided, the quality standards and user

information on the performance achieved and the customer protection, in accordance with the provisions of Article 2 (461) of Law no. 244 of 24 December 2007 (hereinafter: Law no. 244/2007), Prime Minister's Decree of 30 December 1998 and relevant existing regional provisions, if any.

- bb) *Reasonable profit margin*: rate of return on capital as defined under paragraph 6 of the Annex to Regulation (EC) No. 1370/2007, that is applicable to any type of awarding.
- cc) *Regulatory period*: period ranging from 3 to 5 years within the term of the PSC, in which effectiveness and efficiency targets are set and at the end of which the economic and financial equilibrium and the achievement of the aforementioned objectives are tested. The AE defines the minimum length of this period also in relation to the planned investments as provided for in the PSC.
- dd) *Replacement value*: cost of replacing the existing facilities with new installations with similar technological characteristics and capacity as the existing equipment.
- ee) *Report of award (RoA)*: document in which the AE outlines the main regulatory elements characterizing the awarding procedure, including the outcome of the consultation with stakeholders as per Measure 4, according to the model formats provided in Appendix 8. These formats are differentiated based on the chosen awarding method, referring to awards through tendering procedure (Appendix 8a), in-house awards (Appendix 8b), and direct awards for railway services (Appendix 8c).
- ff) *Revamping*: term including the various types of work on rolling stock (that involve investments by AE, CC or third parties), including the plant renewal (e.g. air conditioning, lighting, video communication and surveillance), refurbishing/internal-external cleaning (e.g. wrapping, repainting, replacement of furniture/saddlery/glass/interior equipment), restyling and layout enhancement, including technological (passenger counting systems, wi-fi, electronic validators) and restructuring, including structural interventions on the body (e.g. underframe, windows, floor, doors, motor, sanitary facilities).
- gg) *Risk matrix*: document whereby the AE defines and allocates the risks between each of the contractual parties in the case of award of a concession.
- hh) *Rolling stock*: e.g. means equipped with any type of wheels and traction used for the transport of people for the purpose of the provision of the awarded LPT services (rail, bus, trolley bus, tram, underground etc.), including first-stock spare parts and other assets that are strictly related to that transport.
- ii) *Stakeholder*: person, including collective persons, that is/are interested, whether directly or indirectly, in the proper operation and performance of local public transport services.
- jj) *Tender participant (TP)*: LPT company that meets the requirements laid down by the AE in the tender documents and therefore participates in the award procedure by presenting a technical and economic offer.

Acronyms

- a) AE: Awarding entity
- b) AVM: Automatic Vehicle Monitoring
- c) DAP: Data Access Plan
- d) d.l.: Decree-Law
- e) DSCR: Debt Service Cover Ratio
- f) EFP: Economic and Financial Plan
- g) GAP: Regulatory Goal Achievement Plan
- h) IO: Incumbent Operator
- i) ITS: Intelligent Transport Systems
- j) KPI: Key Performance Indicators
- k) lgs.d.: Legislative Decree
- l) LLCR: Loan Life Coverage Ratio
- m) LPT: (passenger) Local Public Transport
- n) m.d.: Ministerial Decree
- o) MITE: Ministry of Ecological Transition
- p) MQR: Minimum Quality Requirements
- q) MV: Market Value
- r) NBV: Residual or Net Book Value
- s) NIC: Net Invested Capital
- t) PRM: Person with Reduced Mobility or Person with Disabilities
- u) PSC: Public Service Contract
- v) PSC CC: PSC Contracting Company
- w) PSO: Public Service Obligations
- x) RoA: Report of Award
- y) TP: (LPT Company as a) Tender Participant
- z) WACC: Weighted Average Cost of Capital

Measure 1 – Purpose and scope of the Measures

1. The present act lays down regulatory measures for the award of LPT services by rail and by road, in accordance with the different procedures allowed by the law. The provisions shall apply both to contracts awarded by public procurement and to contracts awarded on a concession basis, as described in the table under Appendix 1.
2. The measures contained herein are defined by reference to Article 37 (2) (a), (b), (c) and (f) of d.l. No 201/2011, as amended by Article 48 (6) (b) of d.l. No 50 of 24 April 2017, converted, with amendments, into Law No 96 of 21 June 2017 (hereinafter: d.l. No 50/2017, and in accordance with Article 48 (7), taking account of Article 27 (12-c) of d.l. No 50/2017.
3. These measures shall be applied by the AE, CC and IO of LPT services.
4. The measures provided for herein, except Measure 12 which is referred to under paragraph 6, shall apply
 - a) to open procedures, whose tender notice is published after the date of entry into force of these measures, and to restricted procedures, whose letters of invitation are sent after this date.
 - b) to direct awarding or in-house procedures whose decision approving the awarding is published after the date of entry into force of this regulatory act.
 - c) to existing PSC upon review of the EFP at the end of the regulatory period and, in any case, upon contractual review of the PSC with simultaneous revision of the EFP.
5. In case of award procedures at an advanced stage of development, in order to avoid administrative burden, the AE may continue to apply the Measures referred to in Annex A of Decision no. 49/2015 of 17 June 2015 for the contracts referred to under 4 (a) and (b), for which, on the date of entry into force of this regulatory act, the notice of prior information referred to in article 7 (2) of Regulation (EC) No 1370/2007 has already been published, by giving adequate reasons thereof in the dossier of the award procedure and, in any case, without prejudice to the adjustment referred to under 4 (c).
6. Measure 12 concerning regulatory accounting and accounting separation shall apply to LPT companies operating road transport under a PSC as of the 1st of January 2021, by accounting therefor with the publication of the financial statements of the same year.
7. The Measures referred to in this act do not apply to PSC for which the publication of the above-mentioned notice of prior information is not provided for, pursuant to article 7 (2) of Regulation (EC) No 1370/2007.
8. In the case of extension of a PSC pursuant to Article 4 (4) of Regulation (EC) 1370/2007, the AE takes into account any legislative and regulatory changes in the LPT sector, agreeing with the CC on the adoption of measures providing for more favourable conditions for management of the awarded service, with reference to:
 - a) risk allocation and related matrix of reference (Measure 13, Appendix 4);
 - b) preparation of an EFP for the relevant award period (Measure 15, Appendix 5), subject to periodic verification of the economic and financial equilibrium of the PSC (Measure 26);
 - c) identification of specific effectiveness and efficiency objectives (Measure 16, Appendix 7), subject to adequate monitoring and reporting (Measure 25), and preparation of the related DAP.In order to ensure adequate transparency conditions, the administrative acts related to the extension of the PSC are published on the AE's institutional website and simultaneously transmitted to the Authority. The AE publishes the aforementioned documentation in compliance with the measures approved by

ANAC² regarding transparency, as applicable, while safeguarding the confidentiality of sensitive commercial and industrial information or personal data.

9. The AE may extend the application of the measures provided for herein also:
 - a) to LPT services by inland waterway and on fixed installations (funiculars, cableways), in particular where these services are integrated into a wider LPT network;
 - b) to flexible transport services, particularly where such services are subject to an exclusive right and/or compensation in exchange for the fulfilment of PSO.

² The Italian Anticorruption Authority (TN)

Title I – PRELIMINARY STAGES FOR THE AWARD OF PUBLIC SERVICES

Chapter I - Regulatory measures concerning lots to be awarded, content of public service contracts and capital assets

Measure 2 - Criteria for the identification of award procedures and minimum mandatory content of Public Service Contracts

1. The lots of LPT services to be awarded are identified according to the criteria laid down in the Authority's Decision no. 48/2017 of 30 March 2017.
2. The AE drafts an *ad hoc* Report of Award (hereinafter: RoA), according to the model formats set out in Appendix 8, which forms an integral part of the dossier of the award procedure; the report shall be published on the AE's website and at the same time transmitted to the Authority for the purpose of its supervision, in order to ensure adequate transparency and assessment of the compliance of the choices with the regulatory measures. The Authority may provide remarks within 60 days of receipt of the aforementioned RoA. These remarks are published on the official website of the Authority, in the "Opinions" section. In the case of direct or in-house award of a LPT rail service, it is at the discretion of the AE to supplement the RoA into the GAP referred to in Measure 2 (7) of decision no. 120/2018, providing for a single transmission.
3. Before starting the awarded service, the AE and the CC shall conclude a public service contract, in accordance with the minimum content referred to in Appendix 2, which refer to the type of service to be awarded. The PSC format is attached to the dossier of the award procedure, as a substantial and integral part.
4. In order to ensure adequate transparency conditions, the documentation governing the award procedure and the PSC concluded with the CC are published on the AE's institutional website and simultaneously transmitted to the Authority. The AE publishes the above documentation in compliance with the transparency measures approved by ANAC, as applicable, while safeguarding the confidentiality of sensitive commercial and industrial information or personal data.

Measure 3 – Instrumental assets for the performance of the service

1. For the purpose of launching the award procedure of the LPT service, the AE prepares the list of capital assets that are required for carrying out the service that is covered by the new awarding; this shall be published together with the documents governing the procedure.
2. The list shall classify the assets, as far as possible, into the following three categories depending on their technical and functional features:
 - a) networks, facilities and infrastructures;
 - b) rolling stock;
 - c) movable assets, including databases.

Measure 4 - Essential, necessary and commercial assets. Consultation of stakeholders

1. Essential assets for the performance of the LPT service are those instrumental assets for which the following conditions are cumulatively met:
 - a) shareability;
 - b) non-substitutability;
 - c) non-duplicability at socially sustainable cost;
 - d) dominance.
2. Necessary assets for the performance of the LPT service are those instrumental assets for which the following conditions are cumulatively met:
 - a) non-shareability;
 - b) non-substitutability;
 - c) non-duplicability at socially sustainable cost.
3. For the essential and necessary assets referred to in paragraphs 1 and 2 above, guarantees shall be provided as to their full availability, or as to the availability of assets with the same characteristics, from the time the service is awarded; further, access to these assets shall be ensured, including for any training activities, in time for the takeover of the CC, in accordance with the procedures laid down in Measure 7.
4. Commercial assets, which are therefore neither essential nor necessary, for the performance of the LPT service are those instrumental assets which do not meet all the characteristics under paragraphs 1 or 2 and are available on the market or duplicable at socially sustainable price or cost.
5. In the case of award through tendering procedure, the identification of the essential and necessary assets by the AE, and of the relevant procedures for making them available, takes into account the outcome of the *ad hoc* stakeholder consultation referred to under (6).
6. In the case of award through tendering procedure, the AE carries out a consultation, to be concluded within 60 days and, in any case, in time for the publication of the dossier of the award procedure, that is aimed at least at the following:
 - a) identification of essential/necessary assets made available by the IO or other owners, also with similar characteristics, within the limits of what is strictly necessary for the performance of the services put up for tender;
 - b) identification of the technical and functional characteristics of the aforementioned assets, of the economic and contractual terms for the takeover by the CC or of any other aspect concerning the regulation of capital assets;
 - c) definition of objectives and indicators of service quality, provided for under Measure 16;
 - d) specification of (any) participation requirements to be held by the operators;
 - e) identification of the personnel in charge of providing the service;
 - f) DAP format.

The AE retains the right to extend the scope of the consultation to additional elements of the award procedure and/or characteristics of the concerned services.

7. In the case of direct or in-house award, the AE conducts a consultation that must be completed within 60 days and, in any case, prior to the publication of the documents governing the award procedure, with reference at least to:
 - a) definition of service quality requirements, including the relevant certifications, and of objectives and indicators provided under Measure 16;
 - b) DAP draft.

The AE retains the right to extend the scope of the consultation to additional elements of the award procedure and/or characteristics of the services concerned.

8. The consulted stakeholders shall comprise at least:
 - a) the IO and potential interested competitors,
 - b) passengers and/or their associations, with reference to service quality requirements and DAP;
 - c) rolling stock providers and other undertakings holding essential/necessary assets, also with similar characteristics;
 - d) market operators seeking access to data, including for implementation of digital platforms to support collective mobility and establishment of the relevant technical standards.
9. Where the award procedure involves the construction of dedicated infrastructure in equipped areas, the above-mentioned consultation shall involve the local authorities in charge of urban and territorial policies and the holders of property rights or use of property, so as to verify that the areas concerned are available and not subject to any constraints.
10. The EA shall publish in anonymised form, on its institutional website, any remarks received in the consultation procedure, by deleting the parts containing commercially sensitive data and information, if the participant has filed a properly justified request for confidentiality. The consultation procedure shall not distort competition and shall not entail a breach of the non-discrimination and transparency principles. Where a competitor, tenderer or related undertaking has taken part in the consultation procedure, the AE shall take all necessary measures to ensure that competition is not distorted by the participation of the competitor or tenderer concerned.
11. Where, as a result of the consultation procedure, the AE identifies immovable assets of a commercial nature, that is instrumental to the performance of the service, it shall establish a reasonable term between the date the service is awarded and the date it is started, in order to allow, where necessary, the acquisition of these assets by the CC.
12. In the context of the RoA, the AE shall describe the outcome of the above-mentioned consultation procedure. The draft DAP prepared by the AE is submitted to the Authority together with the RoA and forms an integral part of both the documents governing the award procedure and of the related PSC.

Measure 5 - Rolling Stock

1. In order to verify the indispensability of rolling stock, the AE shall take account of the following:
 - a) characteristics of the services to be awarded (schedule of operations) and of the mobility area concerned;
 - b) performance standards required;
 - c) vehicle fleet characteristics (also taking into account the investments planned for its renewal) and remaining useful life of rolling stock;
 - d) timing for supply.
2. If the AE classifies rolling stock as a necessary asset for the performance of the service, having verified the availability of the assets owned by the IO or by a third party, the AE shall provide the appropriate guarantees that the equipment is made available to the CC, by including in the dossier of the award procedure the information referred to in Appendix 6, Table 3, "Rolling Stock".
3. Where the AE classifies the rolling stock as a commercial asset, it shall set out a reasonable deadline between the date of awarding of the service and the date the service is started, in order to enable the

CC, where necessary, to procure the rolling stock that is instrumental to the performance of the service. To identify this deadline, the AE shall take into account:

- a) estimates arising from dedicated surveys carried out with rolling stock manufacturers; the estimates shall consider the non-binding nature for rolling-stock suppliers of the statements made during the surveys and their actual production capacity, including for other tender procedures, in the relevant markets, for the award of similar transport services;
 - b) presence in the market of companies and/or operators providing rental of the rolling stock concerned, under fair and non-discriminatory conditions;
 - c) quantity, specificity and complexity of the material required, with particular reference to the railway sector, also with regard to the time needed to obtain the certification required by law or the approval of the equipment, and the time needed for staff training;
 - d) availability of the IO to transfer to the CC, for consideration, the rolling stock used in the service to be awarded.
4. The availability of the rolling stock that is necessary for the service performance shall be guaranteed by the CC only as from the commencement of the contract and is a precondition for the signing of the PSC; therefore, such availability may not be required as a pre-requisite for admission of the tender participants (hereinafter: TP).
 5. By virtue of a provision of law or of the PSC or other negotiated agreement, the IO may be required to ensure that rolling stock is available for lease or otherwise expressly established, until the entry into operation of the CC's material for the performance of the service.
 6. In the context of the RoA, the AE shall specify the measures adopted to ensure effective and non-discriminatory access to the rolling stock concerned.

Measure 6 - Instrumental assets acquired through public funding

1. For each asset instrumental to the performance of the awarded services, where it is procured through public financing, in compliance with the provisions of the law, the financing entity shall impose a restriction on use for the period specified by law, and establish its length based on the useful life and the share of the assigned public resources compared to the total value; these assets are transferred to the CC according to the procedures set out in Measure 7, without prejudice to the provisions of paragraph 6 below.
2. The value of the transferred assets is determined according to the procedures provided for in Measure 9, in case of takeover, or in Measure 10, in case of lease. Where the public contribution has not been directly deducted from the cost of the relevant assets, the share of public contribution, as resulting from the accounts, shall constitute public financing for the CC, taking into account any residual value of the expenditure for plant and equipment that has not been yet compensated and is subject to the original constraint.
3. The IO or the owner of the asset, even in the absence of specific legal/contractual provisions, is in any case obliged to make available to the CC the assets purchased through public financing, taking into account the restriction on use referred to under (1) above; this condition is considered to be an "implicit" restriction on use for the entire useful life of the asset, subject to any other indications specified in the public funding allocation document.
4. In the case of public funding for improvements to an asset, the financing entity determines any extension of the asset's use restriction period, in agreement with the beneficiary CC, and in proportion to the share of the planned improvement intervention.

5. At the time of the allocation of the public funding referred to under (1) above, the financing entity, in agreement with the beneficiary CC, establishes the procedures for allocating any proceeds from the sale of the assets concerned once the use restriction period has expired.
6. If the existing PSC, legal provisions or financing agreement include a provision that allows the IO to keep the financed assets, in case they are not transferred to the CC, the IO shall return any funding received for the unamortized contributions, for the part that is attributable to the residual years of useful life, as calculated in proportion to the length of the inalienability constraint.
7. In the RoA the AE specifies the arrangements for the transfer of these assets, which are a binding condition for takeover by the CC.
8. The AE specifies in the PSC the assets that are subject to public financing, identifying the length of the restriction on use, the financing methods, including any component of the compensation intended for asset financing, the methods for depreciation and reporting in the financial statement by the CC, as well as the required maintenance standards and related control systems by the AE on the maintenance of the assets concerned.

Measure 7 - Provision of essential and necessary assets

1. The AE shall ensure access of the CC to essential assets, i.e. networks, facilities and infrastructures that are identified as instrumental to the service performance and are in the availability of the AE itself, an instrumentality thereof or a third party, by means of loan agreements, leasing or other form of legally binding agreement, depending on the legal nature and ownership of the assets concerned.
2. In accordance with pre-established procedures, the AE shall provide the CC with the instrumental assets for the performance of the LPT service that are qualified as essential or necessary and are owned either directly or through an instrumentality.
3. With regard to the scope of these measures, the procedures for access to railway infrastructures and service facilities are governed by the provisions of Implementing Regulation (EU) 2017/2177 and of legislative decree no. 112 of 15 July 2015 (hereinafter: lgs.d. 112/2015); in this context, the AE concludes a framework agreement with the rail infrastructure manager, concerning the path availability and the rules governing the use of the infrastructures, in accordance with Article 23 of the a.m. Decree; the framework agreement is attached to the dossier of the award procedure.
4. In case of availability of essential or necessary assets owned by the IO, as arising from provision of the law or of the PSC, or in case of restrictions on use of the assets, or based on a negotiated agreement, these assets shall be made available by the IO to the CC in accordance with the following procedures:
 - a) lease or transfer of ownership, or other form of legally binding agreement, with obligation for the CC to maintain and take over the assets;
 - b) access to assets and related services; in the case of service facilities governed by lgs.d. 112/2015, the provisions under existing legislation and ART's Decision no. 130/2019 of 1 October 2019 shall apply.In the absence of constraints on the provision of assets, the choice of the procedures referred to under a) and b) is left to the owner of the asset.
5. For essential and necessary assets owned by third parties, that are already covered by a contract with the IO and whose availability has been verified, the takeover by the CC is guaranteed throughout the term of the new contract, in accordance with the same procedures set out under 4.
6. Any provision and/or transfer to the CC of databases and of the related user licenses, shall take into account the existing commercially sensitive information of the IO, or of other previous owner, and shall take place in compliance with the legislation on the protection of commercial and industrial confidentiality.

7. The AE lays down in the RoA the procedures adopted to make available the assets referred to in this Measure, specifying the maintenance obligations (ordinary, extraordinary, cyclical, including any certifications of the assets concerned) and the reporting obligations by the CC, that are in line with the actual needs to perform the services and with reference to the legal title used.
8. The AE specifies in the PSC the aforesaid maintenance and reporting obligations imposed on the CC, as well as the intended use and any constraints, at the end of the awarding period, pertaining to all the assets made available to the CC in accordance with this Measure, including those which may have been acquired during the term of the contract.

Measure 8 - Actions by the AE to promote the availability of instrumental assets

1. Without prejudice to public finance needs, in compliance with EU legislation on State aid and with Article 5a (2) of Regulation (EC) No 1370/2007, and depending on the characteristics of the award procedure, the AE takes one or more of the following actions, by committing, where appropriate, towards the CC:
 - a) to acquire, including through its instrumentalities, rolling stock and immovable and movable assets that are necessary for the performance of the service, so as to make them available to the CC;
 - b) to provide a guarantee for financing the procurement by the CC of rolling stock and of movable and immovable assets for the performance of the service or for the residual value thereof;
 - c) to adopt additional financial measures to mitigate charges and risks related to the investments required from the awarded entity, in compliance with the PSC and the associated risk allocation;
 - d) to promote coordination and cooperation with other competent entities/authorities and/or private entities, in order to facilitate the availability of instrumental assets.
2. Where during the term of the contract it is planned to carry out the construction of infrastructure works aimed at supplying the instrumental immovable assets for the performance of the service with logistical, technical and commercial characteristics that are necessary for the awarded services and have sustainable costs, the AE, by involving the local authorities concerned, shall take appropriate measures to provide the CC with suitable facilities or equipped areas, that are not subject to planning restrictions.

Measure 9 - Criteria for determination of takeover value of essential and necessary assets

1. The takeover value of the assets owned by the IO, or by any third party, to be transferred to the CC shall be identified on the basis of the market value, in accordance with the criteria laid down in this Measure.
2. The market value of immovable assets, facilities or other equivalent asset shall be determined by the owner through sworn expert estimates that determine the price within the maximum and minimum values published by the Revenue Agency. The estimates shall take into account the market value of the asset as it is, as well as the net book value and the reconstruction or buy-back value of the asset or of a similar asset, if it cannot be duplicated. In the case of instrumental assets that are used exclusively for the performance of the rail service, instead of expert estimates, the market value is determined by reference to a range of values between: (i) the market values for similar assets, (ii) the reconstruction value of the asset reduced by age. If it is applicable to the case at issue, account is taken of the available equipment of the specific facilities that cannot be separated from the building, carrying out a separate assessment thereof.
3. The takeover value of rolling stock for road transport shall be determined by the AE based on the data provided by the owner, by reference to the higher of the residual value or net book value (hereinafter: NBV), that result from the application of national or international accounting standards adopted by the company and certified by an auditor or audit firm, and the market value (hereinafter: MV), within a

maximum deviation of 5% in case of $NBV > MV$. The NBV includes all increases or decreases relating to the revamping of the rolling stock after the acquisition or availability of the asset, which is carried out during the term of contract and is borne by the owner, net of depreciation.

4. The MV shall be calculated by taking into account the following parameters:
 - a) initial value of reference, corresponding to the replacement value;
 - b) residual maturity;
 - c) conditions of use;
 - d) state of conservation;
 - e) performance capacity;
 - f) indicators concerning reliability and availability;
 - g) any increases or decreases relating to ensuing revamping works, net of depreciation.
5. In order to determine the replacement value, the acquisition value, as revalued on the basis of the producer price index for ISTAT³ category "means of transport", is assumed as a reference. Revaluation is excluded if the compensation for the service provided for in the PSC includes one or more items that are explicitly intended for depreciation of individual assets and for coverage of financial charges and risks relating to the investments in rolling stock.
6. In order to determine, according to objective criteria, the parameters from (b) to (f) referred to in paragraph 4, reference is made to standard UNI 11282/2008 as amended or supplemented. The residual value thus calculated is referred to homogeneous subsets of the fleet. The resulting assessment shall be certified by a professional chosen from among those included in the list of experts of the competent court (Register of Court-appointed experts), depending on where the AE is based.
7. The takeover value of the rolling stock for rail, underground and tramway services shall be determined by the AE based on the data made available by the owner by reference to the NBV, as calculated in accordance with national or international accounting standards adopted by the company and certified by an auditor or audit firm. The NBV includes all increases or decreases relating to ensuing revamping works or to the availability of the asset, as carried out during the term of contract and with charges borne by the owner, net of depreciation.
8. The value of technological systems shall be determined by the AE based on the data made available by the owner, by reference to the higher of the NBV, that result from the application of national or international accounting standards adopted by the company and certified by an auditor or audit firm, and the MV. The MV shall be calculated on the basis of the acquisition cost entered into the accounts, as revalued on the basis of the producer price index for ISTAT category "means of transport" and by applying a linear depreciation coefficient that is calculated on the basis of a maximum five-year period. A residual value of the asset is guaranteed, as determined at the end of the depreciation period on the basis of a pre-determined fixed percentage of the asset cost of acquisition. Revaluation is excluded if the compensation for the service provided for in the PSC includes one or more items that are explicitly intended for depreciation of individual assets and for coverage of financial charges and risks relating to the investments in the aforesaid assets.
9. In the event of a post-award dispute between the parties regarding the sale price, pending the dispute settlement, the assets are temporarily made available to the CC upon payment of a consideration that is equal to the estimated value in accordance with the criteria laid down. Upon dispute settlement, the sale price shall be determined on the basis of the decision by the judicial authority and, where necessary, compensated.

³ ISTAT: Italian National Institute of Statistics (TN).

10. In the RoA the AE shall specify the takeover value of any identified asset, as well as the procedures to update/review the assessment depending on the effective date of commencement of the award and signing of the PSC.

Measure 10 - Criteria for determination of leasing fees

1. Where it is provided for the allocation of leased assets to the CC, the dossier of the award procedure shall specify fees, terms of lease, including the ordinary maintenance requirements, and other asset-related contractual clauses.
2. The annual leasing fee is calculated by reference to the MV as determined under Measure 9 above for each type of asset. In any case, it shall ensure recovery of depreciation costs, including recapitalization for any extraordinary maintenance, financial costs, provisions for cyclical maintenance and a reasonable profit margin that is equal to the WACC published by the Authority. Any public contributions that are not yet used as they are related to the applicable depreciation plan shall be deducted from the asset value, as determined in accordance with this paragraph.
3. In the RoA, the EA shall specify the leasing fee of any identified asset, as well as the procedures to update/review the fee depending on the effective date of commencement of the award and signing of the PSC.

Chapter II — Regulatory measures aimed at transparency, effectiveness and efficiency of award procedures

Measure 11 — Regulatory accounting and accounting separation requirements for local public rail passenger transport

1. The CC shall adopt the regulatory accounting formats referred to in Decision No 120/2018, in compliance with the effective date of application provided for therein.

Measure 12 — Regulatory accounting and accounting separation requirements for local public road passenger transport

1. The CC shall adopt the regulatory accounting formats (income statements, balance sheets and technical data) referred to in Appendix 3, and shall allocate, on the basis of the criteria set out below, the income statement and balance sheet items, in line with the annual financial statements, to each PSC. In the case of an aggregated CC, the entity responsible for adopting the regulatory accounting formats is the individual LPT company that is part of the CC, unless this responsibility is borne by the CC holding the PSC.

In particular, with reference to Appendix 3:

- a) "Simplified Formats" are adopted by individual LPT companies with fewer than 50 employees, even if they are part of aggregated CC, and by CC holding a PSC whose total aggregate production value is less than 4.5 million vehicle*km per year;
- b) "Service Areas Formats" are adopted by CC holding a PSC whose total aggregate production value is 4.5 million vehicle*km per year or more, but less than 10 million vehicle-km per year;
- c) "Transport Mode Formats" are adopted by CC holding a PSC whose total aggregate production value is 10 million vehicle*km per year or more;
- d) all CC adopt the "Reconciliation with the Balance Sheet" formats.

2. The regulatory accounting formats concerning each PSC, where the LPT company holds several PSCs or operates several activities, shall be supplied separately from:
 - a) other PSCs for the same or for other mode of passenger transport;
 - b) other services of general economic interest (SGEI);
 - c) other non-ancillary commercial activities.
3. For regulatory accounting purposes, the income statement and balance sheet items relating to the management of services pertaining to each PSC may be:
 - a) of direct and exclusive relevance of the cost centre represented by the PSC;
 - b) attributable only in part to a specific PSC; in this case, they must be allocated on the basis of specific drivers as outlined in (6) below.
4. The regulatory accounting formats shall differentiate the income statement and balance sheet items (i) for each PSC concerning LPT by road and (ii) for all the activities operated by the LPT company that are not subject to PSO.
5. The CC or, in case of aggregated CC, each individual LPT company that is part of the CC, shall provide for direct and exclusive allocation of income statement and balance sheet items which are objectively and exclusively related to a specific PSC and, in case of adoption of the formats referred to under (1) (b) and (c), to each group of transport services included therein.
6. For the income statement and balance sheet items that are related to different PSC and/or to a variety of transport services included in a specific PSC, or to other activities carried out by the CC, the allocation to each PSC is carried out in an objective and analytical manner, on the basis of specific drivers used by each LPT company for their being suitable to measure resource consumption or asset allocation, by applying principles of causality and relevance based on the FDC (Fully Distributed Costing) methodology. The choices made are justified in the explanatory report referred to in paragraph 9 below. Alternatively, the CC may use the drivers defined by the Authority, as outlined in Appendix 3 (List of drivers); in the case of an aggregated CC, the drivers adopted by each individual LPT company may differ.
7. The income statement items and balance sheet items that are attributable to the set of organisational units of the CC are allocated to a specific PSC in an objective and analytical manner based on specific drivers used by each LPT company. The choices made are justified in the explanatory report referred to in (9) below. Alternatively, the CC may use the allocation criteria defined by the Authority in Appendix 3 (List of drivers); in the case of an aggregated CC, the drivers adopted by each individual LPT company may differ.
8. As a rule, each PSC may be assigned exclusively those income statement and balance sheet items which, in the light of the relevance criterion, are attributable to the ordinary production process.
9. Each year the CC under (1) above shall forward to the Authority the regulatory accounting formats for the previous year, as referred to in Appendix 3, within 60 days of approval of its financial statements, or within another date if communicated by the Authority, by specifying the relevant PSC and by using the formats and technical instructions available on the Authority's institutional website; the formats shall be accompanied by an explanatory report outlining the content, methodology and choice of allocation. In the case of an aggregated CC, the aggregating entity submits "Simplified Statements," as referred to under (1) (a), exclusively referring to any income statement and balance sheet components related to the PSC concerned that are not attributable to activities carried out by individual LPT companies making up the CC.
10. The regulatory accounting formats and the explanatory report shall be accompanied by a certification, that is drawn up, in compliance with the provisions of art. 2409 bis of the Civil code, by the legal auditor, the board of auditors, or an audit firm, attesting their compliance with the criteria laid down in this Measure, as well as with the internal procedure and related chart of accounts adopted by the CC to comply therewith.

11. The "List of personnel" format referred to in Appendix 3/Formats of the decision must be completed by the CC only once and solely with reference to the situation as of 31 December of the year preceding the expiration of the relevant PSC.

Measure 13 — Criteria for risk identification and allocation in the contract award

1. For the purpose of drawing up the simulated EFP, and for the ensuing management and verification of the economic and financial equilibrium of the PSC, the AE shall identify and assess the risks associated with the performance of the awarded service, by identifying the type of award at the end of this process.
2. In the case of a concession, on the basis of the matrix model under Appendix 4, the AE shall define and allocate the risks to each contractual party (AE and CC) and shall identify any additional risks supplementing the matrix.
3. In the PSC, the AE may decide to provide for the revenue collection by the CC (net cost contracts) or to retain the revenues (gross cost contracts), with particular reference to the services where the fare integration is provided among different operators, and which are divided in several lots under the responsibility of the same AE.
4. Concerning the nature and level of the different risks identified, and their allocation to each contracting party, the AE shall specify in the dossier of the award procedure and describing the risk matrix, any mitigation measures of the allocated risks, along with the identified application thresholds.
5. At the end of each regulatory period, the AE shall assess, in agreement with the CC, whether the risks allocated to the contracting parties are adequate and whether the mitigation measures should be reviewed.
6. In the context of the RoA, the AE describes the methods for identifying, assessing, and allocating the risks associated with the operation of the awarded service, the mitigation measures, and the identified application thresholds. The risk matrix drawn up by the AE is transmitted to the Authority together with the RoA and forms an integral part of both the award procedure documents and the related PSC. The matrix provides the references to the PSC that regulates the contractual obligations associated with the identified risks.

Measure 14 —Drafting of simulated EFP for awards by tendering procedure

1. In accordance with the provisions of Article 4(1)(a) of Regulation (EC) No 1370/2007 and Articles 17 and 19 of lgs.d. 422/1997, the AE shall draw up, for each awarding lot, a simulated EFP, broken down for all the years of the contract period, in accordance with the formats referred to under nos 1 to 3 of Appendix 5 and the related methodological indications in Appendix 5.
2. The simulated EFP is aimed at determining the tender price, testing the economic and financial equilibrium of the PSC throughout the contract period and allowing for comparison of the tenders submitted by each TP. The EFP is drawn up by taking as a reference the standard cost referred to in m.d. no. 157 of 28 March 2018 (hereinafter: m.d. 157/2018) with any additions that take into account the specific service rendered and the objectives of local authorities in terms of service planning and promotion of the efficiency of the sector. For rail transport, concerning the promotion of the efficiency of the sector, account is taken of the parameters of operating efficiency referred to in Decision no. 120/2018.
3. The simulated PEF is transmitted to the Authority together with the RoA. In the RoA the AE shall describe the methods and criteria used to define the simulated EFP. In the dossier of the award procedure the AE indicates only the PSC compensation⁴ resulting from the simulated EFP.

Measure 15 — Drafting of simulated EFP for direct awards

1. In compliance with the provisions laid down in Article 4(1) (a) and (b) and in the Annex to Regulation (EC) No 1370/2007, as well as in Articles 17 and 19 of lgs.d. 422/1997, the AE shall draw up a simulated EFP, broken down for all the years of the contract period, in accordance with the formats referred to in nos 1-3 and the related methodological indications in Appendix 5.
2. The simulated EFP is aimed at determining the PSC compensation to be awarded and testing the economic and financial equilibrium of the PSC throughout the contract period. The EFP is drawn up by taking as a reference the standard cost referred to in m.d. 157 of 28 March 2018 with any additions that take into account the specific service rendered and the objectives of local authorities in terms of service planning and promotion of the efficiency of the sector. For rail transport, concerning the promotion of the efficiency of the sector, account is taken of the parameters of operating efficiency referred to in Decision no. 120/2018.
3. In the context of the simulated EFP, the AE shall specify the targets to be pursued by the CC, in order to gradually improve the effectiveness of the service and the efficiency of the management throughout the contract period.
4. The simulated EFP is transmitted to the Authority together with the RoA. In the RoA the AE shall describe the methods and criteria used to define the simulated EFP.
5. The EFP drawn up by the AE is attached to the PSC and forms an integral and substantial part thereof.

Measure 16 — Determination of the objectives of the PSC

1. The AE shall specify in the dossier of the award procedure the targets to be pursued by the CC throughout the PSC period. These targets are defined for each regulatory period so as to measure the performance falling under the CC's liability, in respect of at least the following:
 - a) effectiveness-profitability, with reference to the number of passengers carried and the load factor, and the increase in profitability which can be achieved through countering fare evasion/avoidance and through other commercial policies of the CC;
 - b) efficiency, with reference to the reduction of the operating cost of the service resulting from the increased productivity of the different inputs. The system of cost efficiency is applied in the EFP. For rail services this system is related to the percentage value concerning the recovery of efficiency of the operating cost pursuant to Decision no. 120/2018;
 - c) effectiveness-quality, in terms of improving the levels corresponding to the MQR laid down by the Authority;
 - d) environmental sustainability, in terms of energy efficiency, air and noise pollution, vibrations, waste management solutions, in compliance with the minimum environmental criteria identified pursuant to art. 57 of lgs.d. no. 36 of 31 March 2023 (hereinafter: lgs. d. 36/2023);
 - e) social sustainability, with reference to the mobility needs of different passenger types, and, in particular, PRM, through adequate accessibility conditions of vehicles/infrastructure, information, and sales network, in compliance with the current legislation and regulatory measures approved by the Authority on user rights;
 - f) digitalization and technological innovation, with reference to the adoption of ITS solutions to support LPT services.

2. In case of award of LPT services by road, the contractual objectives are measured by means of *ad hoc* KPIs, as regulated by the AE in the PSC, corresponding to at least the minimum set in Appendix 7. For direct awards to any public service operator, included internal operators, the targets of these indicators are identified within the simulated EFP.
3. In case of award of LPT services by rail, the indicators measuring the contractual objectives shall at least correspond to the KPIs as defined by the Authority under Decision no. 120/2018.
4. The adopted KPIs are transmitted to the Authority together with the RoA. In the context of the RoA, the AE describes the selection criteria for the KPIs and the related expected results. In the case of award through tendering procedure, the KPIs may be subject to revised proposals from the TP, based on the award criteria established by the AE under Measure 20.
5. The EA specifies in the PSC:
 - a) adopted KPIs, any standards of reference, and the improvement objectives to be pursued in the contract period, taking into account the risk allocation defined pursuant to Measure 13;
 - b) applicable penalties in the event of failure to achieve the aforementioned objectives due to proven responsibility on the part of the CC, which constitutes a contractual breach;
 - c) a premium system to be applied in case of achievement by the CC of higher performance levels than those set by the aforementioned objectives;
 - d) monitoring methods for objectives and transparency obligations, including reporting on investments, as outlined in Measure 25 below;
 - e) periodic verification procedures, typically conducted at the start of each regulatory period, to assess whether the indicators and corresponding qualitative and quantitative levels of the service provided are adequate to meet user needs.

Measure 17 — Determination of reasonable profit margin

1. In order to draw up the simulated EFP, as referred to under Measures 14 and 15, the AE provides for granting the CC, for the provision of the PSO service during the award period, a reasonable profit margin that is equal to the amount resulting from the application of the rate of return (WACC), as defined each year by the Authority and published on its website, to the net invested capital (NIC). This WACC value is taken as a reference for all award procedures initiated by the AE in the following twelve months for the preparation of the simulated EFP (SEFP). The AE, following the consultation with the stakeholders referred to in Measure 4, may adopt a rate other than the WACC published by the Authority in the following cases:
 - a) an increase not exceeding 200 basis points, in the case of tender procedures involving investments with a significant risk level, also related to core operations, financed by the CC and aimed at improving the service. These investments include, in particular, rolling stock renewal and infrastructure construction, including digital, with the risk borne by the CC pursuant to Measure 13. The WACC value, thus proportionally adjusted, shall be applied starting from the regulatory period in which the investments made by the CC become operational;
 - b) a reduction, not falling below the value of the nominal risk-free rate, in cases where a low level of risk is associated with the investments made by the CC pursuant to Measure 13. This applies especially in award procedures other than tendering and in the case of contracting, where the AE has provided for the SEFP as a supporting tool for determining the tender price. In particular, in cases of direct award,

the value is determined in agreement with the CC, taking into account the intensity and allocation of risks borne under Measure 13.

For all awarding methods, the AE provides justification for adopting a value other than the WACC published by the Authority, according to the following procedures:

- i. for LPT road services, in the context of the Report of Award;
- ii. for rail services, in the context of the GAP⁵ or, in the case of award through tender procedure, in the context of the report accompanying the SEFP.⁶

2. The NIC rate of return, that is differentiated for rail and road transport, is determined by the Authority by applying the Weighted Average Cost of Capital method (WACC), according to the following formula:

$$R = g \cdot \frac{R_d \cdot (1 - t)}{1 - T} + (1 - g) \cdot \frac{R_e}{1 - T}$$

where:

- R nominal rate of return on net invested capital before taxes;
g (*gearing*) % of financial debt;
R_d allowed cost of debt;
t IRES tax rate (*tax shield*);
T income tax rate (IRES + IRAP);
(1-g) % of equity;
R_e nominal rate of return on equity.

3. The WACC of reference mentioned under (2), or any other rate determined as outlined under (1) (a) and (b), is applied to the regulatory NIC, calculated by the AE for the preparation of the SEFP, based on Format 2 of Appendix 5. This is determined by the net book value of the capital required for the provision of the service, in line with the characteristics of the tender notice and, in particular, with the participation requirements and award criteria, including those related to the average age of rolling stock.
4. At the end of each regulatory period and upon contractual review with ensuing update of the EFP attached to the PSC, the rate of return referred to under (1) to be applied for the following regulatory period, is updated based on the WACC published by the Authority in the year in which the EFP is updated and, in any case, no later than one year prior to the effective date of the EFP to be updated.
Where the rate has been recalculated pursuant to (1) (a) and (b), the update is carried out by applying the same percentage differential recorded in the previous regulatory period, between the WACC published by the Authority and the rate of return actually applied.
5. Upon drafting the SEFP, for all award procedures where management is characterised by limited or no capital investment, as specified under (7), the AE submits for the prior evaluation of the Authority, providing appropriate justification, the application of an alternative method to the WACC for determining the reasonable profit to be acknowledged, as outlined under (6), according to the following procedures:
 - a) for LPT services by road, in the context of the Report of Award⁷;
 - b) for rail services, in the context of the GAP⁸ or, in the case of awarding through tendering procedure, in the context of the report accompanying the SEFP⁹.

⁵ referred to under Measure 2 (4) of Annex A to ART decision no 120/2018.

⁶ referred to under Measure 2 (5) of Annex A to ART decision no 120/2018.

⁷ referred to in Measure 2 (2) of Annex A to ART decision no 154/2019

⁸ referred to in Measure 2 (4) of Annex A to ART decision no 154/2019

⁹ referred to in Measure 2 (5) of Annex A to ART decision no 154/2019

In this framework, the AE provides the necessary information to ensure that the CC achieves higher profitability from the alternative method compared to the standard approach.

6. The alternative method for determining the reasonable profit in the SEFP must ensure that the CC achieves an EBIT margin¹⁰ for the period, aligned with the risk matrix outlined in Measure 13, that is no higher than 80% and no lower than 50% of the market reference rate, determined as specified in (8). For contracts awarded through tendering procedure, the percentage under the previous sentence is set at 50%. At the end of each regulatory period and during contract review, with ensuing update of the EFP attached to the PSC for the following regulatory period, and for the related verification of the economic and financial equilibrium as per Measure 26, reference is made to the market return rate under (8), as published by the Authority in the year in which the EFP is updated or, in any case, no later than one year prior to the effective date of the updated EFP.
7. The capital investment is assumed to be limited or null if the return referred to in (1), expressed as a percentage of revenues (including the consideration) is less than 50% of the reference rate specified under (8) in at least one year of the EFP. In the case of competitive procedures, for the purpose of evaluating the characteristics of the potential market related to the services tendered by the AEs, in terms of the capitalization of potential competitors, the AE also uses the sector data made annually available by ART on its official website.
8. The reference market rate, differentiated for railway sector and for road LPT, is determined by the arithmetic mean of the EBIT margin, based on a significant sample of PSC identified as specified under (9). This return rate will be updated annually and published on the Authority's official website alongside with the rate referred to in (1).
9. The sample used for the calculation of the reference market rate referred to under (8), based on an appropriate observation period, consists of the PSC of companies in the sector that, based on the regulatory accounting data provided, report a positive net operating margin.

¹⁰ EBIT margin: given by the ratio between the net operating result and revenue (including consideration and deriving from ART formats).

Title II – STAGES OF SERVICE AWARD

Chapter I - Regulatory measures to identify the information to be provided in the award procedures

Measure 18 – Provision of minimum information to participants in the award procedures

1. The AE shall provide, at the different stages of the award procedure, the minimum set of information, referred to in Appendix 6.
2. In the pre-information stage, the AE shall publish at least the information listed in Appendix 6, Table 1.
3. The AE ensures the protection of the commercial and industrial confidentiality of the information referred to in this Measure, in compliance with the provisions of the "Data access plan".

Chapter II - Regulatory measures for equitable and non-discriminatory tender participation

Measure 19 - Participation requirements

1. The AE shall lay down in the tender dossier the terms for participation of the undertakings concerned.
2. Among the financial capacity requirements, in accordance with Article 48 (7) (b) of Decree Law No 50/2017, the AE sets out the obligation for each TP to hold a net worth of at least 15% of the annual amount that is established as tender price.
3. Where the AE lays down further requirements for tender participation in addition to those required under the legislation in force, in order to ensure maximum participation in the tendering procedures by the operators concerned, such requirements shall be laid down, in particular, in accordance with the following general principles:
 - (a) relevance and proportionality with respect to the service to be awarded;
 - (b) non-discrimination, by ensuring equal treatment where a substantial level playing field is in place, in order to protect all potential TPs.
4. The AE shall appropriately quantify and harmonise the tender requirements, especially those concerning economic and financial capacity and technical and operational suitability, so as to:
 - a) avoid oversizing of the technical and economic parameters of reference, that would lead to substantial barriers to the participation of potentially interested parties;
 - b) reconcile the specific requirements imposed on the undertakings concerned with the subjective characteristics of tenderers (single or multiple operators), without prejudice to the prohibition to discriminate against an economic operator located in a specified territory.
5. With reference to the necessary administrative instruments for the performance of the service, such as security licenses and certificates, and in accordance with the general principles of non-discrimination, equal treatment and freedom of establishment, the AE provides for the following in the tender dossier:
 - a) commitment by the TPs, in the bidding stage, to obtain all the a.m. administrative instruments in time for the signing of the PSC and, in any case, before the operation of the awarded service is started;

- b) provision to the TPs of all the information and documents that are needed to obtain such administrative instruments, in the tender stages (i.e. data room) and at the time of the final award;
 - c) holding by the CC of the a.m. administrative instruments in time for the signing of the PSC and, in any case, before the operation of the awarded service is started.
6. In the context of the RoA, the AE specifies the reasons for the introduction of any additional participation requirement and shall prove that such additional requirements are reasonable and proportionate to the tender characteristics, and that no discrimination is in place to the detriment of potential TPs.

Measure 20 – Awarding criteria

1. In order to award the contract to the most economically advantageous tender, the AE shall set out in the tender dossier:
 - a) the awarding criteria, that are linked to the identified objectives of effectiveness and efficiency, environmental protection, energy efficiency, social sustainability, technological innovation, and multimodal integration, by differentiating technical and qualitative parameters from exclusively economic parameters;
 - b) the ways these criteria are assessed and the relevant weighting and scoring systems.
2. The AE shall lay down the awarding criteria in compliance with the general transparency principles of 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 operators concerned, environmental protection and energy efficiency, so as to ensure:
 - a) that the stage of assessment of the technical offer is clearly separated from that of the evaluation of the economic offer of each PG and that the scope of assessment of the technical offer is not affected by exclusively economic parameters;
 - b) that the criteria are relevant to nature, scope and characteristics of the service to be awarded, also with regard to the rolling stock provided for by the tender procedure.
3. The AE lays down in the tender dossier the procedures for assessment of the individual criteria (and any sub-criteria) on the basis of adequate reasons by establishing, where possible, algorithms for calculating the scores that will be adopted by the tender evaluation committee, referred to in the following Measure 24.
4. The AE verifies that the conduct of the tender evaluation committee complies with the procedures and evaluation criteria as previously identified.
5. In the context of the Report of Award, the AE describes the award criteria, including in relation to the objectives of the new award.

Measure 21 - Transfer of personnel

1. The AE shall provide in the tender dossier for *ad hoc* rules concerning the social clause, to protect the IO's personnel employed for the performance of the service to be awarded, in compliance with the general rules adopted by the Authority pursuant to art. 48 (7) of lgs. d. 50/2017, as specified below.
2. The AE shall lay down rules on the social clause by taking into account whether the services to be awarded are comparable to those of the existing PSC. If the volume of the services to be awarded is lower than that covered by the existing PSC, these rules shall take into account the actual staffing requirements required by the new service. Where the award takes place after the service covered by the existing PSC has been divided into lots, the general rules under this Measure shall apply to the transfer of personnel from the IO

to each contracting company that has been awarded a lot, by taking into account the criterion for allocating the service into lots.

3. In the tender dossier the AE provides for the obligation that the personnel already employed by the IO is taken over seamlessly in the workforce of the CC. For this purpose:
 - a) the AE shall identify the personnel to be transferred after consultation with the IO and with the territorially competent trade union organizations that are signatories to the national collective agreement for the sector concerned, to be carried out, if it is deemed appropriate, in the framework of the procedure referred to under paragraph 5 of Measure 4;
 - b) in the light of the outcome of the consultation, the IO shall forward to the AE the list of its non-managerial staff to be transferred to the CC, including the information referred to in Appendix 6, Table 3, "Transfer of personnel"; this list is prepared by the IO by ensuring that the staff identified is consistent with the regulatory accounting formats of the last available year and it is annexed to the tender dossier.
4. Each TP expressly agrees in the bidding stage on the social clause as defined by the AE in the relevant dossier; the non-acceptance of the clause is a ground for exclusion of the bid from the tender procedure; the mere acceptance of the obligations concerning the takeover of personnel cannot become a criterion of assessment of the technical bid.
5. The rules concerning the social clause are included in the PSC signed with the CC, that also specifies the rights and obligations relating to the personnel transferred by the IO; for this purpose, the tender dossier and the PSC shall provide for the following:
 - a) that the failure to comply with the obligations set out in the social clause in the execution of the contract is a ground for termination of the contract;
 - b) appropriate and adequate penalties and termination clauses.

Measure 22 - Economic-Financial Plan of tender participants in the award of concessions

1. In the tender dossier the AE shall lay down rules for the drafting by each TP of an EFP, that includes projections of costs and revenues, investments and cash flows, for the contract period, according to the formats under 1-4 and the related methodological indications in Appendix 5, taking into account the risk allocation referred to in Appendix 4.
2. Each TP shall draw up, for each awarding lot, an EFP in accordance with the requirements provided for by the AE, that ensures the strict confidentiality thereof.
3. Where the tender requires the submission of an investment plan, the AE shall include in the EFP formats appropriate indices to assess the financial sustainability of the proposal, such as, but not limited to, DSCR and LLCR by providing for the methods of their determination in order to guarantee their univocal calculation.
4. The tender EFP shall be accompanied by an explanatory report of the formats, including, in particular, a description of supply and demand input data, of the assumptions underlying the bid and the method of calculation of the values.
5. In the case of multi-modal award, for the purpose of the reporting arrangements laid down in the PSC, a format shall be drawn up for each mode of the transport service to be awarded.
6. In the case of procedures involving investments in (movable and immovable) instrumental assets for the performance of the service by the CC, the tender EFP for awards with a total tender price exceeding EUR

10 million shall be certified by a credit institution or a service company set up by the credit institution and entered in the register of financial intermediaries pursuant to Article 106 of legislative decree no. 385 of 1 September 1993, or by an auditing firm pursuant to Article 1 of Law no. 1966 of 23 November 1939, or by statutory auditors, pursuant to legislative decree no. 39 of 27 January 2010.

7. The tender EFP of the CC is an integral and substantial part of the PSC and is subject to update/revision at the end of each regulatory period.

Measure 23 - Deadline for tender submission

1. In order to ensure maximum participation of operators, the time limit for the submission of tenders, without prejudice to paragraph 2 below, may not be less than 110 days from the date of publication of the tender notice or of transmission of the invitation, and shall be determined in the light of the complexity of the services to be awarded and of the evaluation of the investments.
2. The AE may provide for a shorter deadline within the limits laid down by law, on account of the specific features and/or degree of complexity of the award procedure or of the service concerned, by appropriately specifying the reasons for its choice in the tender dossier.

Measure 24 - Criteria for appointment of the tender evaluation committee

1. The AE delegates the technical and economic evaluation of the bids to an *ad hoc* designated tender committee.
2. The procedure for appointing the tender committee is carried out in compliance with the provisions of Article 93 of lgs. d. 36/2023) and is aimed at screening persons with adequate professional skills and competence, including with regard to the assessment of the tender EFP, as well as with particular experience in the planning of transport networks and in the scheduling, management and monitoring of LPT services.
3. Following the appointment of the tender evaluation committee, pursuant to art. 28 (2) of lgs. D. 36/2023. the AE shall publish in the relevant dedicated "Transparent administration" section of its website the composition of the committee and the résumés attesting the competence and professional skills of its members.
4. At least in the first three years following the date of signing of the PSC, the CC may not entrust the members of the tender committee with any tasks or functions.
5. The AE shall ensure the effective application of this Measure by providing for appropriate deterrents and penalties, in particular with respect to the provisions of:
 - a) Article 93 (5) of lgs. d. 36/2023 and art. 6 (7) of lgs. d. 201 of 23 December 2022 (hereinafter: lgs. d. 201/2022) concerning causes of incompatibility and ineligibility of a committee member;
 - b) art. 16 of lgs. d. 36/2023 concerning conflicts of interestas well as with respect to the CC that infringes the provisions under paragraph 4 above, as regulated in the PSC.
6. The provisions of this Measure shall also apply where the AE avails itself of another contracting authority pursuant to Article 27 (12) (c) of lgs. d. 50/2017; in this case, the provisions contained in this Measure, which include the obligations assigned to the AE as the contracting authority, shall be understood as referred to the entity through which the AE awards the service.

Title III – STAGE OF IMPLEMENTATION OF THE PSC

Measure 25 - Monitoring and reporting of the service

1. The AE shall establish in the PSC an adequate monitoring of the service with reference to the economic, technical, management and qualitative performance under the contract, by specifying in the PSC the responsibilities, procedures (whether automatic or manual), instruments and timing for collection, reporting and transmission of data, information and useful documents, in compliance with the existing legislation concerning mobility information services and in line with the investments planned for the duration of the contract.
2. For this purpose, the AE shall lay down in the contract, for each group of services:
 - a) the type of data, information and documents (reports/final statements) that the CC shall provide to the AE in relation to the objectives and indicators under the PSC, pursuant to Measure 16, and the associated penalties in case of non-compliance;
 - b) the procedures for the performance of the verification activities within its remit, including pursuant to art. 2 (461) of Law no. 244 of 24 December 2007 (hereinafter: law 244/2007);
 - c) any obligations of the CC concerning the performance of regular surveys on the expected and perceived quality of the service (Customer Satisfaction Surveys), by ensuring the involvement of users and consumer associations in the adjustment of the supply and assessment of service quality, in accordance with the provisions of the Quality Customer Charter.
3. The AE regulates the contents referred to under 2, including in order to:
 - a) monitor the service comprehensively, ideally at the level of each individual line, with particular focus on passengers transported, load factor, and coverage ratio;
 - b) ensure that the CC forwards in due time the information within its remit referred to in Appendix 6, that is preparatory to the launch of a new award procedure. The AE defines in the PSC the applicable penalties in case of non-compliance by the CC.
4. The data, information and documents shall be made available by the CC to the AE in editable electronic format, unless otherwise provided for in the PSC.
5. The data, information and documents are held by the AE; in order to ensure maximum transparency in the contract management, they are published on the AE's website, with particular reference to:
 - a) existing PSCs;
 - b) existing Quality Customer Charters;
 - c) outcome of Customer Satisfaction Surveys;
 - d) final balance for economic, technical, management and quality indicators under the PSC, including any bonuses and penalties;
 - e) the annual level of investments made and their schedule until the end of the award.The AE publishes the aforementioned documents in compliance with the measures approved by ANAC regarding transparency, as applicable, while safeguarding the confidentiality of sensitive commercial and industrial information or personal data.
6. As part of the consultation procedure referred to under 5 of Measure 4, the AE lays down the DAP , specifying the procedures to access the data, information and documents by third parties; as for economic data concerning, in particular, individual basic cost items, the AE shall assess whether they may be disclosed in relation to the protection of commercial and industrial confidentiality of the information.

7. With reference to TPL services falling within the scope of lgs. d. 201/2022, the AE annually publishes on its website the report on economic performance, efficiency, quality, and compliance with the PSO outlined in the PSC, in accordance with Article 30 (2) of the decree. This report includes the results of the monitoring outlined in this Measure, with particular reference to the economic, technical, management, and quality indicators specified in the PSC, as well as the investments made, and in relation to the objectives outlined in Measure 16.

Measure 26 - Testing economic and financial equilibrium

1. The AE shall lay down rules in the PSC concerning the procedures to test the objectives referred to in Measure 16 and the corresponding financial and economic equilibrium, by splitting the contractual term into regulatory periods.
2. For this purpose the AE shall define in the PSC timing and procedures for the preparation of an updated EFP by the CC at the end of each regulatory period (final EFP), including the items of costs and revenues in accordance with the formats in Appendix 5, that allows the comparison with the previous EFP (prior EFP), accounting, in particular, for the investments actually realised and quantifying any over-compensation or under-compensation, by highlighting the impact of any external factors to the PSC.
3. This Measure shall apply to all services that are awarded through a concession. In order to pursue management efficiency, the AEs shall in any case take into account the objectives of economic and financial equilibrium, in terms of cost coverage and reasonable profit margin, through revenue from passenger services and PSC compensation.
4. If, as a result of the comparison referred to in (2) above, an over-compensation is found due to a reduction in cost items and/or an increase in revenue items, the AE takes action to recover the excess amounts paid in the previous years of the regulatory period under review and to reduce the payment for the subsequent regulated period. If the aforementioned changes in costs and/or revenues are associated with a risk allocated to the CC pursuant to Measure 13, while ensuring the achievement of the objectives referred to in Measure 16, the PSC will grant a (one-off) premium to the CC, corresponding to a part of the savings achieved in terms of increased revenues and/or reduced costs, as identified in the regulatory period under review. This will consider any effects on increased income resulting from changes in production volume recorded in the final accounts. For this purpose, the PSC outlines the calculation method for the a.m. premium, establishing a predefined range of values relative to the total amount of increased revenues or reduced costs.

In the case of a contract awarded through a tendering procedure, any additional revenue generated from an increase in revenues and/or a reduction in costs associated with risks borne by the CC under Measure 13, as identified during the regulatory period under review, is fully granted to the CC, taking into account any effects on increased income resulting from changes in production volume recorded in the final accounts. These changes are attributable to the same cost and/or revenue items, the same risks, and period of reference, without affecting the calculation of the compensation outlined in Appendix 5a, Format 3. The procedures for granting the premium mentioned in the above sentence are specified in the Report of Award and in the tender documentation.

5. If, as a result of the comparison referred to in (2) above, an under-compensation is found due to an increase in cost items and/or a decrease in revenue items, for which no risk has been allocated to the CC under Measure 13, the AE shall, for the previous regulatory period, pay out of the lower amounts identified, and, for the subsequent regulatory period, increase the payment or redefine the scope of services or the fare system in an amount equivalent to the lower sums paid, excluding, in any case, the possibility of extending the contract duration beyond the scheduled expiration date.

Measure 27 – Criteria for fare updating

1. Fares of LPT services are updated by the competent authorities taking into account the need to ensure the economic equilibrium of the CC and/or of other operators concerned, and to contain costs for users, businesses and consumers; this update is based on the application of the price-cap method, in compliance with the objectives under Measure 16, and is determined according to the following formula:

$$[F_t \leq F_{t-1} * [1 + I_{t-1} + (Q_t - Q_{t-1})]$$

where:

t: period of reference;

I: inflation rate (ISTAT/FOI¹¹ or any other index under regional regulations) for the relevant period;

F: average fare referred to the basket of the existing tickets, as weighted on: (i) number of travel tickets sold for each type and (ii) coefficient of use of each type of ticket concerned;

Q: indicator of actual quality of the LPT service, as determined according to the procedures referred to in paragraph 2 below;

2. Q value is calculated for the period of reference as weighted annual average, on the basis of the volume of service concerned (train-km/year or vehicle-km/year), of a set of indicators of delivered and perceived quality as collected in each year by the competent authority; the authority establishes these indicators in agreement with each AE involved in the application of the fare F_t , with reference to the efficiency and quality objectives provided for by the service monitoring system, referred to in Measure 16. Where the AE is also in charge of setting the fares, the coefficient is defined in relation to the performance achieved by the CC.
3. The application of the price-cap method should not affect the adoption of integrated ticketing or integrated services and the variation in prices or fares may be allowed only up to a fixed upper limit (maximum percentage increase) by the competent entity.
4. Without prejudice to the periodic adjustment to the inflation rate (ISTAT FOI or another rate defined under regional regulations), the competent authorities responsible for determining the fares of LPT services may provide for the update of fares through other methods than those outlined under (1), provided that the chosen method is more conducive to achieving the quality improvement objectives of the service, as referred to in Measure 16. These authorities shall provide appropriate justification for this decision in the administrative acts under their remit that govern the fare-setting methods; each AE concerned will include the fare update methods in the PSC.

Measure 28 – Contract review and renegotiation

1. The terms of contract review are specified by the AE in the PSC, on the basis of the outcome of the monitoring of the performance of the PSC, which shall take place on a regular basis and, in any case, at the end of each regulatory period, at least with reference to the following:
 - a) % deviation of net result estimated in the EFP from final net result above a specified threshold;
 - b) permanent modification of the schedule of operations above a specified % threshold of the planned journeys as estimated upon the signing of the PSC;

¹¹ FOI: Italian statistical index for families, workers and employees (TN).

- c) adequacy of qualitative performance of the service provided to the users' needs, pursuant to article 2 (461) of law 244/2007.
2. Quantitative adjustments (schedule of operations) or qualitative changes (performance) that do not have a significant impact on the EFP, while complying with the thresholds of reference provided for in the PSC under the previous paragraph, shall not be considered as grounds for contract review.
 3. Without prejudice to the previous paragraphs, the occurrence of unforeseen or unforeseeable events upon the signing of the PSC may only involve the adoption of non-substantial contract amendments.
 4. The AE shall regulate in the PSC the terms and modes for users' involvement in case of a modification of the schedule of operations, by at least ensuring that the information to users is supplied without delay and through any appropriate communication channel of the CC.
 5. With reference to LPT services falling under the scope of lgs. d. 201/2022, revisions and amendments to in-house awarded PSC shall be certified in accordance with the procedures set out in Article 17 (4) of the a.m. decree.