

Commissione Concorso pubblico, per titoli ed esami, per n. 2 posti da funzionario con esperienza in contrattualistica pubblica di cui n. 1 posto nel ruolo dell'Autorità di regolazione dei trasporti e n. 1 posto nel ruolo dell'Ufficio del Garante per la protezione dei dati personali – Delibera ART n. 144/2024 (cod. FG-APP).

TRACCE PROVE ORALI

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La Commissione, prima di recarsi nella sala dell'Autorità ove si svolgeranno le prove orali, procede, previa discussione e all'unanimità dei componenti, alla formulazione delle domande e del testo in lingua inglese per lo svolgimento dei colloqui.

Le domande e i testi in lingua inglese sono determinati in numero congruo, affinché anche l'ultimo candidato possa scegliere tra più alternative. Ai fini dello svolgimento del colloquio, quindi, il candidato sarà invitato ad estrarre una busta tra le sedici buste approntate, quattro in più rispetto al numero dei candidati ammessi alla prova. Ogni busta contiene **tre** domande sulle materie di cui all'annesso 1/A del bando e un breve testo in lingua inglese.

La prova di inglese verte sulla lettura, comprensione e capacità di commentare un testo in inglese sulle materie e nei settori di cui all'annesso 1/A del bando.

Di seguito, si riporta l'elenco dei raggruppamenti delle domande e dei testi in inglese convenuti:

N. 1

- 1) Le cause di esclusione non automatica nel d.lgs. n. 36/2023.
- 2) Il riparto di giurisdizione tra giudice ordinario e giudice amministrativo.
- 3) Le fattispecie dei reati di corruzione, con particolare riferimento alla corruzione propria e impropria.
- 4) What is a concession under EU law? (Directive 2014/23/EU)

A concession is a contract of pecuniary interest through which one or more contracting authorities entrust the execution of works or the provision and management of services to one or more economic operators. The operator's payment mainly consists of the right to exploit the works or services, or that right together with a financial contribution.

The operator also assumes most of the operational and financial risks related to the project. Ownership may or may not be transferred to the authority, but the authority always benefits from the results. Concessions therefore combine public interest with private sector involvement, promoting efficient and high-quality service delivery through shared responsibility and risk.

N. 2

- 1) Offerte anormalmente basse nel d.lgs. n. 36/2023.
- 2) Il mercato unico europeo.
- 3) Decretazione delegata e decretazione d'urgenza.
- 4) When may negotiated procedures without prior publication apply? (Directive 2014/24/EU)

A negotiated procedure without prior publication can be used only in very exceptional situations when normal competition is impossible or would not improve results. This may happen in cases of extreme urgency caused by unforeseeable events beyond the contracting authority's control, or when only one operator can perform the contract.

Such situations include unique cases of genuine, objective exclusivity not created by the authority itself. The authority must explain why no reasonable alternatives or substitutes exist, such as similar services available elsewhere. These strict conditions ensure transparency and limit the use of this procedure to cases where fair competition cannot realistically occur.

N. 3

- 1) L'affidamento dei contratti di servizi e forniture di importo inferiore alle soglie europee.
- 2) Il silenzio amministrativo.
- 3) I presupposti per la dichiarazione di apertura della liquidazione giudiziale.
- 4) Why coordinate procurement procedures in utility and service sectors? (Directive 2014/25/EU)

The EU coordinates procurement in the water, energy, transport, and postal sectors to open them to competition and improve the efficiency of public spending. The rules apply to contracts above a certain value and guarantee compliance with key EU principles, including free movement of goods, freedom of establishment, equal treatment, non-discrimination, proportionality, and transparency.

These sectors are vital for the economy and often involve public monopolies or limited competition. By setting EU-wide rules, the Directive prevents unfair advantages and ensures fair access for companies from all Member States. At the same time, it allows flexibility to adapt to each sector's specific needs, promoting both sound commercial practices and protection of the public interest.

N. 4

- 1) Sistemi dinamici di acquisizione e aste elettroniche nel d.lgs. n. 36/2023.
- 2) La procedura di infrazione.
- 3) Composizione e competenze della Corte costituzionale.
- 4) Why regulate personal data protection and its free movement? (Regulation (EU) 2016/679 – GDPR)

The General Data Protection Regulation (GDPR) aims to ensure a consistent and high level of protection for personal data across the EU. Before the Regulation, differences between national laws created obstacles to the free flow of information and uncertainty for businesses and citizens. The GDPR harmonises these rules and guarantees that people's data rights are equally protected in all Member States.

At the same time, the Regulation allows Member States to introduce specific provisions for certain situations, such as data processing related to public tasks, legal obligations, or sensitive data. This flexibility ensures that national differences can be respected without undermining consistency. The GDPR therefore strengthens both the protection of individuals and the free movement of data within the EU.

N. 5

- 1) La verifica del possesso dei requisiti nel d.lgs. n. 36/2023.
- 2) Liberalizzazioni e privatizzazioni.
- 3) La nullità contrattuale.

4) Is the right to the protection of personal data an absolute right? (Regulation (EU) 2016/679 – GDPR)

The right to the protection of personal data is not absolute. According to the GDPR, data processing should serve humanity and must be balanced with other fundamental rights. It must therefore be considered in relation to its role in society and applied according to the principle of proportionality.

This means that protecting personal data cannot override all other rights, such as freedom of expression, freedom of information, or the right to conduct a business. The Regulation recognises the need to respect all fundamental freedoms listed in the EU Charter, including privacy, family life, equality, and cultural and religious diversity. Data protection is essential, but it coexists with other rights that must also be protected.

N. 6

- 1) Le fasi delle procedure di affidamento dei contratti pubblici.
- 2) Discrezionalità amministrativa e discrezionalità tecnica.
- 3) La fattispecie del reato di concussione.
- 4) The Community (now Union) as a new legal order (Case 28/67 – Molkerei-Zentrale Westfalen-Lippe)

The European Economic Community Treaty (now the EU Treaty) created more than just an agreement between states. It established a new legal order directly affecting individuals and Member States. By signing the Treaty, states limited part of their sovereign rights within specific areas and transferred certain powers to the Community.

This new system means that EU law creates obligations for individuals but also gives them rights that become part of their legal heritage. These rights arise not only from explicit Treaty provisions but also from clear obligations imposed on Member States and EU institutions. The case confirmed that Community law stands above national law and directly affects citizens.

N. 7

- 1) I criteri di aggiudicazione nei contratti pubblici.
- 2) Inesistenza e nullità dell'atto amministrativo.
- 3) Revisione della Costituzione e leggi costituzionali.
- 4) On the supremacy of EU law (Case 6/64 – Flaminio Costa v. ENEL)

In this landmark case, the Court of Justice ruled that EU law has supremacy over national law. The Court explained that by creating a Community of unlimited duration with its own institutions, personality, and legal capacity, the Member States had transferred part of their sovereign powers to the EU. This created an independent legal system binding on both citizens and states.

The Court added that EU law must prevail over any conflicting national law. Article 189 of the Treaty confirmed that regulations are binding and directly applicable in all Member States. Allowing national laws to override EU law would make these provisions meaningless and undermine the legal foundation of the EU itself.

N. 8

- 1) Il responsabile unico del progetto.
- 2) Le fonti originarie e derivate del diritto UE.
- 3) Le fattispecie del peculato.
- 4) Powers of the European Commission in assessing State aid (Regulation (EU) 2015/1589)

Under Article 108 of the Treaty on the Functioning of the European Union, the European Commission has exclusive powers to assess whether State aid is compatible with the internal market. To perform this task effectively, the Commission may request all necessary information from Member States, undertakings, or associations whenever it has doubts about a measure's legality.

This power is important in complex cases that require detailed economic and technical evaluation. If the information provided during the preliminary phase is insufficient, the Commission can issue formal requests or binding decisions to obtain additional data. These powers ensure that State aid rules are applied consistently and proportionately across the EU, maintaining fair competition within the internal market.

N. 9

- 1) Le modifiche dei contratti pubblici durante il periodo di efficacia.
- 2) Le Autorità amministrative indipendenti.
- 3) La fidejussione e il contratto autonomo di garanzia.
- 4) The exercise of administrative functions under the Italian Constitution (Article 118)

According to Article 118 of the Italian Constitution, administrative functions are primarily given to the municipalities. They may be assigned to provinces, metropolitan cities, regions, or the State, based on the principles of subsidiarity, differentiation, and proportionality. This ensures that responsibilities are exercised at the most appropriate level for effective and uniform implementation.

Municipalities, provinces, and metropolitan cities perform both their own functions and those delegated by national or regional laws. State legislation must also promote cooperation between the State and regions, particularly in areas such as cultural heritage. What is more, all public authorities must encourage citizens' initiatives in activities of general interest, reflecting the constitutional principle of subsidiarity and civic participation.

N. 10

- 1) La risoluzione e il recesso nei contratti pubblici.
- 2) Gli aiuti di Stato.
- 3) Il principio di buon andamento dell'amministrazione.
- 4) On the protection of whistleblowing (Directive (EU) 2019/1937)

Whistleblowers are people who report breaches of EU law that threaten or harm the public interest. They are often employees or people in contact with an organisation through their work. By exposing wrongdoing, they help prevent harm and protect society's welfare. However, many potential whistleblowers hesitate to report violations because they fear retaliation or damage to their careers.

To address this problem, the EU adopted rules to ensure effective protection for those who report in good faith. The Directive recognises that protecting whistleblowers promotes transparency, accountability, and public trust. It requires Member States to establish safe reporting channels and legal safeguards against dismissal or discrimination. This protection encourages people to speak up and strengthens the enforcement of EU law.

N. 11

- 1) La direzione dei lavori e dell'esecuzione dei contratti.
- 2) Consiglio europeo e Consiglio UE.
- 3) Il contratto di mutuo.
- 4) The rule of law in the EU (2022 Rule of Law Report)

The rule of law is a fundamental value of the European Union and essential for a stable, fair, and democratic society. It supports the functioning of the Single Market and ensures that the Union operates according to justice and equality. The rule of law reflects Europeans' shared values, as stated in Article 2 of the Treaty on European Union.

The European Commission is responsible for safeguarding and promoting this principle throughout the EU. A strong rule of law guarantees citizens' rights, trust in institutions, and effective protection against corruption or abuse of power. In recent years, challenges such as the Russian invasion of Ukraine have highlighted the importance of defending these values consistently and decisively.

N. 12

- 1) La procedura negoziata.
- 2) Provvedimenti concessori e autorizzatori.
- 3) La cessione del credito.
- 4) Recourse to direct award in public procurement (ECA Special Report 2023)

A direct award occurs when a public authority does not publish a call for tenders but directly asks one or more companies to submit an offer. This procedure, measured by the "No call for bids" indicator, restricts competition because fewer companies can participate. If only one firm is approached, competition is entirely absent.

EU procurement directives allow this method only in exceptional situations - for example, when no suitable bids have been received in an open procedure, when extreme urgency exists, when a contract follows a design contest, or when new works repeat previous ones under the same conditions. These strict rules aim to ensure fairness and transparency while allowing flexibility in special cases.

N. 13

- 1) Il subappalto.
- 2) Il rinvio pregiudiziale dinanzi alla Corte di Giustizia UE.
- 3) La rescissione del contratto nel codice civile.

4) Public access to documents in the EU (Regulation No 1049/2001)

Regulation No 1049/2001 guarantees the public the broadest possible access to documents of the European Parliament, Council, and Commission. This access increases transparency, legitimacy, and accountability of the EU institutions. It helps citizens understand how decisions are made and promotes trust in the European Union.

However, this right is not unlimited. Access may be refused to protect certain public or private interests, such as security, confidentiality of legal advice, or personal data.

Each request must be assessed carefully to balance openness with protection. If access is denied, the applicant can ask for a review, complain to the European Ombudsman, or appeal to the General Court for a final decision.

N. 14

- 1) I rimedi alternativi alla tutela giurisdizionale nel d.lgs. n. 36/2023.
- 2) L'accesso civico.
- 3) La cessione del contratto.
- 4) Environmental Impact Assessment under EU Law

Under EU law, projects which have significant environmental effects, such as large infrastructure developments, industrial facilities, or energy installations, must undergo an Environmental Impact Assessment (EIA) before approval.

The EIA identifies, predicts, and evaluates potential environmental consequences, ensuring that adverse impacts on ecosystems, human health, and local communities are properly considered. The assessment must rely on scientific evidence and allows authorities, stakeholders, and the public to provide input before a final decision.

The procedure requires an environmental report, examination of alternatives, and consultations with affected parties. Competent authorities must consider the findings and public opinions when authorising a project. EU member states are obliged to implement EIA rules, promoting transparency, environmental protection, and sustainable development in line with Union law.

N. 15

- 1) La trasparenza nei contratti pubblici.
- 2) L'autotutela amministrativa.
- 3) La libertà di iniziativa economica (art. 41 Cost.).
- 4) The Precautionary Principle in EU Environmental Law (Article 191 TFEU)

The precautionary principle is a fundamental element of EU environmental policy. It allows preventive measures to be taken when there is scientific uncertainty about potential risks to human health or the environment. Instead of waiting for full proof of harm, authorities can act early to avoid serious or irreversible damage. This approach reflects the idea that prevention is better than cure.

Under Article 191 of the Treaty on the Functioning of the European Union, the EU must base its environmental action on precaution, prevention, and rectification of damage at source. When applying the principle, decision-makers must assess available scientific data, evaluate risks, and choose proportionate measures that respect economic and social factors.

The precautionary principle thus ensures a high level of environmental and health protection while maintaining balanced and reasoned decision-making across the Union.

N. 16

- 1) La Banca dati nazionale dei contratti pubblici e il fascicolo virtuale dell'operatore economico.
- 2) Il responsabile del procedimento amministrativo.
- 3) La condizione quale elemento accidentale del contratto.
- 4) The Principle of Subsidiarity in EU Governance (Article 5 TEU)

The principle of subsidiarity ensures that decisions are taken as closely as possible to citizens and that the Union acts only when objectives cannot be sufficiently achieved by Member States. According to Article 5 of the Treaty on European Union, the EU should intervene only if its action brings clear added value compared to national or local efforts.

This principle preserves the balance between EU competences and national sovereignty. It particularly applies in areas of shared competence, such as environment, energy, or transport policy. National parliaments play a key role in monitoring compliance through the so-called "early warning mechanism." If they believe a proposal breaches subsidiarity, they can request a review. By applying subsidiarity, the EU promotes democratic legitimacy, efficiency, and respect for diversity while ensuring coordinated action where common solutions are necessary.

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