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PROCEDURES FOR PUBLIC PROCUREMENT & AWARD OF CONCESSION CONTRACTS  
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# EU Directive nr. 2014/23/EU on concession contracts

## Definition of “concession contract”

Art. 5 (*Definitions*): “*For the purposes of this Directive the following definitions apply:*

- (1) *‘concessions’ means works or services concessions, as defined in points (a) and (b):*
- (a) *‘works concession’ means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the execution of works to one or more economic operators the consideration for which consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment;*
- (b) *‘services concession’ means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the provision and the management of services other than the execution of works referred to in point (a) to one or more economic operators, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment”.*

# The Directive's provisions, however, are not directly applicable to airport operation concessions:

Preamble – “*Whereas*” n. 15: “*In addition, certain agreements having as their object the right of an economic operator to exploit certain public domains or resources under private or public law, such as land or any public property, in particular in the maritime, inland ports or airports sector, whereby the State or contracting authority or contracting entity establishes only general conditions for their use without procuring specific works or services, should not qualify as concessions within the meaning of this Directive*”.

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# The implementation of the Directive nr. 2014/23 in Italy:

## The Legislative Decree nr. 50/2016

Principles: Mixed concession contracts of building and management (Applicability also to combined contracts for the building of the structure and the operation of services) (Art. 169); duration of the concession contract (art 168); minimum content of the concession notice (art. 171); proceedings for the awarding (art. 173); award criteria (art. 173); matters relating to the performance of the “concessionaire” obligations (art. 174); modification of the concession contracts during their term (art. 175); termination of the concession contract (art. 176).

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## Problems:

A provision similar to that of the "Whereas 15" of the Preamble is not included in Code of public contracts

The Code expressly applies to concessions with similar characteristics, such as highway concessions

The Code applies to concessions for the building and management of marinas and, according to some interpretations, to the concessions for the management of port terminals

The ANAC (Italian National Anti-Corruption Authority) seems to be inclined to apply the Code of public contracts to the concessions for maritime State property (Decision 5 October 2016)

The provisions of Legislative Decree n. 50/2016 do not apply to concessions for air transport services based on the granting of an operating licence within the meaning of Regulation (EC) No 1008/2008 (art. 18 letter. a), but nothing is said on concessions for the management of an airport

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# The question:

How long it is going to last the  
exclusion for the building /  
management of airports and airport  
services?