

II

(Non-legislative acts)

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2018 OF THE EU-UKRAINE ASSOCIATION COMMITTEE IN TRADE CONFIGURATION

of 14 May 2018

updating Annex XXI to Chapter 8 on Public Procurement of Title IV — Trade and Trade-Related Matters of the Association Agreement and giving a favourable opinion regarding the comprehensive roadmap on public procurement [2018/972]

THE ASSOCIATION COMMITTEE IN TRADE CONFIGURATION,

Having regard to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ⁽¹⁾ ('the Agreement'), and in particular Article 149, Article 153 and Article 463 thereof,

Whereas:

- (1) In accordance with Article 486 of the Agreement, parts of the Agreement, including provisions on public procurement, are applied provisionally as of 1 January 2016.
- (2) Article 149 of the Agreement provides that the value thresholds for public procurement contracts provided for in Annex XXI-P are to be revised regularly, beginning in the first even year following the entry into force of the Agreement and such revision is to be adopted by decision of the Association Committee in Trade Configuration, as set out in Article 465(4) of the Agreement.
- (3) Article 153 of the Agreement provides that Ukraine is to ensure that its public procurement legislation is gradually made compatible with the relevant Union *acquis*, in line with the schedule provided in Annex XXI to the Agreement.
- (4) Several Union acts listed in Annex XXI to the Agreement have been recast or repealed and replaced by a new Union act since the initialling of the Agreement on 30 March 2012. In particular, the Union adopted and notified to Ukraine the following acts:
 - (a) Directive 2014/23/EU of the European Parliament and of the Council ⁽²⁾;
 - (b) Directive 2014/24/EU of the European Parliament and of the Council ⁽³⁾;
 - (c) Directive 2014/25/EU of the European Parliament and of the Council ⁽⁴⁾.

⁽¹⁾ OJ L 161, 29.5.2014, p. 3.

⁽²⁾ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

⁽³⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

⁽⁴⁾ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

- (5) The abovementioned Directives amended the value thresholds for public procurement contracts provided for in Annex XXI-P, which were subsequently amended by Commission Delegated Regulations (EU) 2015/2170 ⁽¹⁾, (EU) 2015/2171 ⁽²⁾ and (EU) 2015/2172 ⁽³⁾, respectively.
- (6) Article 463(3) of the Agreement provides that the Association Council shall have the power to update or amend the Annexes to the Agreement.
- (7) It is necessary to update Annex XXI to the Agreement in order to reflect the changes made to the Union *acquis* listed in that Annex, in accordance with Articles 149, 153 and 463 of the Agreement.
- (8) The new Union *acquis* on public procurement has a new structure. It is appropriate to reflect this new structure in Annex XXI. In the interest of clarity, Annex XXI should be updated in its entirety and replaced by the Annex as set out in the Appendix to this Decision. It is furthermore appropriate to take into account the progress made by Ukraine in the process of approximation to the Union *acquis*.
- (9) Article 465(2) of the Agreement specifies that the Association Council may delegate to the Association Committee in Trade Configuration any of its powers, including the power to take binding decisions.
- (10) The EU-Ukraine Association Council empowered the Association Committee in Trade Configuration in its Decision No 3/2014 ⁽⁴⁾ of 15 December 2014 to update or amend certain trade-related annexes.
- (11) Article 152(1) of the Agreement stipulates that Ukraine shall submit to the Association Committee in Trade Configuration a comprehensive roadmap for the implementation of the legislation related to public procurement with time schedules and milestones which should include all reforms in terms of legislative approximation to the Union *acquis*.
- (12) Article 152(3) specifies that a favourable opinion by the Association Committee in Trade Configuration is needed in order for the comprehensive roadmap to become a reference document for the process of implementation, namely for the legislative approximation of the public procurement related legislation to the Union *acquis*.
- (13) It is therefore appropriate for the Association Committee in Trade Configuration to adopt a decision giving favourable opinion regarding the comprehensive roadmap,

HAS ADOPTED THIS DECISION:

Article 1

Annex XXI to Chapter 8 on Public Procurement to the Title IV on Trade and Trade-Related Matters of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States of the one part, and Ukraine, of the other part, is hereby replaced by the updated version of the Annex, which is attached to this Decision.

Article 2

A favourable opinion is given regarding the comprehensive roadmap approved by the Ordinance of the Cabinet of Ministers of Ukraine of 24 February 2016 (number 175-p) adopted by the Government of Ukraine on 24 February 2016.

⁽¹⁾ Commission Delegated Regulation (EU) 2015/2170 of 24 November 2015 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts (OJ L 307, 25.11.2015, p. 5).

⁽²⁾ Commission Delegated Regulation (EU) 2015/2171 of 24 November 2015 amending Directive 2014/25/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts (OJ L 307, 25.11.2015, p. 7).

⁽³⁾ Commission Delegated Regulation (EU) 2015/2172 of 24 November 2015 amending Directive 2014/23/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts (OJ L 307, 25.11.2015, p. 9).

⁽⁴⁾ Decision No 3/2014 of the EU-Ukraine Association Council of 15 December 2014 on the delegation of certain powers by the Association Council to the Association Committee in Trade configuration (OJ L 158, 24.6.2015, p. 4).

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 14 May 2018.

*For the Association Committee in Trade Configuration**The Chair*

Nataliya MYKOLSKA

*The Secretaries**For Ukraine*

Oleksiy ROZHKOVA

For the EU

Christian Frigaard RASMUSSEN

ANNEX

'ANNEX XXI-A TO CHAPTER 8 ON PUBLIC PROCUREMENT

INDICATIVE TIME SCHEDULE FOR INSTITUTIONAL REFORM, LEGISLATIVE APPROXIMATION AND MARKET ACCESS

Phase		Indicative time schedule	Market access granted to the EU by Ukraine	Market access granted to Ukraine by the EU	
1.	Implementation of Articles 150(2) and 151 of this Agreement Agreement of the Reform Strategy set out in Article 152 of this Agreement	6 months after the entry into force of this Agreement	Supplies for central government authorities	Supplies for central government authorities	
2.	Approximation and implementation of basic elements of Directive 2014/24/EU and of Directive 89/665/EEC	3 years after the entry into force of this Agreement	Supplies for state, regional and local authorities and bodies governed by public law	Supplies for state, regional and local authorities and bodies governed by public law	Annexes XXI-B and XXI-C
3.	Approximation and implementation of basic elements of Directive 2014/25/EU and of Directive 92/13/EEC	4 years after the entry into force of this Agreement	Supplies for all contracting entities in the utilities sector	Supplies for all contracting entities	Annexes XXI-D and XXI-E
4.	Approximation and implementation of other elements of Directive 2014/24/EU. Approximation and implementation of Directive 2014/23/EU	6 years after the entry into force of this Agreement	Service and works contracts and concessions for all contracting authorities	Service and works contracts and concessions for all contracting authorities	Annexes XXI-F, XXI-G, and XXI-H
5.	Approximation and implementation of other elements of Directive 2014/25/EU	8 years after the entry into force of this Agreement	Service and works contracts for all contracting entities in the utilities sector	Service and works contracts for all contracting entities in the utilities sector	Annexes XXI-I and XXI-J

ANNEX XXI-B TO CHAPTER 8 ON PUBLIC PROCUREMENT

**BASIC ELEMENTS OF DIRECTIVE 2014/24/EU
OF 26 FEBRUARY 2014 ON PUBLIC PROCUREMENT
(PHASE 2)**

TITLE I

Scope, definitions and general principles

CHAPTER I

Scope and definitions

Section 1 Subject matter and definitions

Article 1 Subject matter and scope: paragraphs 1, 2, 5 and 6

Article 2 Definitions: paragraph 1, points (1), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (18), (19), (20), (22), (23), (24)

Article 3 Mixed procurement

Section 2	Thresholds
Article 4	Threshold amounts
Article 5	Methods for calculating the estimated value of procurement
Section 3	Exclusions
Article 7	Contracts in the water, energy, transport and postal services sectors
Article 8	Specific exclusions in the field of electronic communications
Article 9	Public contracts awarded and design contests organised pursuant to international rules
Article 10	Specific exclusions for service contracts
Article 11	Service contracts awarded on the basis of an exclusive right
Article 12	Public contracts between entities within the public sector
Section 4	Specific situations
Subsection 1	Subsidised contracts and research and development services
Article 13	Contracts subsidised by contracting authorities
Article 14	Research and development services
Subsection 2	Procurement involving defence and security aspects
Article 15	Defence and security
Article 16	Mixed procurement involving defence or security aspects
Article 17	Public contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules

CHAPTER II

General Rules

Article 18	Principles of procurement
Article 19	Economic operators
Article 21	Confidentiality
Article 22	Rules applicable to communication: paragraphs 2-6
Article 23	Nomenclatures
Article 24	Conflicts of interest

TITLE II

Rules on public contracts

CHAPTER I

Procedures

Article 26	Choice of procedures: paragraphs 1, 2, first alternative of paragraph 4, 5, 6
Article 27	Open procedure
Article 28	Restricted procedure
Article 29	Competitive procedure with negotiation
Article 32	Use of the negotiated procedure without prior publication

CHAPTER III

Conduct of the procedure

Section 1	Preparation
Article 40	Preliminary market consultations
Article 41	Prior involvement of candidates or tenderers

Article 42	Technical specifications
Article 43	Labels
Article 44	Test reports, certification and other means of proof: paragraphs 1, 2
Article 45	Variants
Article 46	Division of contracts into lots
Article 47	Setting time limits
Section 2	Publication and transparency
Article 48	Prior information notices
Article 49	Contract notices
Article 50	Contract award notices: paragraphs 1 and 4
Article 51	Form and manner of publication of notices: first subparagraph of paragraph 1, first subparagraph of paragraph 5
Article 53	Electronic availability of procurement documents
Article 54	Invitations to candidates
Article 55	Informing candidates and tenderers
Section 3	Choice of participants and award of contracts
Article 56	General principles
Subsection 1	Criteria for qualitative selection
Article 57	Exclusion grounds
Article 58	Selection criteria
Article 59	European Single Procurement Document: paragraph 1 <i>mutatis mutandis</i> , paragraph 4
Article 60	Means of proof
Article 62	Quality assurance standards and environmental management standards: paragraphs 1 and 2
Article 63	Reliance on the capacities of other entities
Subsection 2	Reduction of numbers of candidates, tenders and solutions
Article 65	Reduction of the number of otherwise qualified candidates to be invited to participate
Article 66	Reduction of the number of tenders and solutions
Subsection 3	Award of the contract
Article 67	Contract award criteria
Article 68	Life-cycle costing: paragraphs 1 and 2
Article 69	Abnormally low tenders: paragraphs 1 to 4

CHAPTER IV

Contract performance

Article 70	Conditions for performance of contracts
Article 71	Subcontracting
Article 72	Modification of contracts during their term
Article 73	Termination of contracts

TITLE III

Particular procurement regimes

CHAPTER I

Social and other specific services

Article 74	Award of contracts for social and other specific services
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Article 75	Publication of notices
Article 76	Principles of awarding contracts
ANNEXES	
ANNEX II	LIST OF THE ACTIVITIES REFERRED TO IN POINT 6(a) OF ARTICLE 2(1)
ANNEX III	LIST OF PRODUCTS REFERRED TO IN ARTICLE 4(b) WITH REGARD TO CONTRACTS AWARDED CONTRACTING AUTHORITIES IN THE FIELD OF DEFENCE
ANNEX IV	REQUIREMENTS RELATING TO TOOLS AND DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS FOR PARTICIPATION AS WELL AS PLANS AND PROJECTS IN CONTESTS
ANNEX V	INFORMATION TO BE INCLUDED IN NOTICES
Part A:	INFORMATION TO BE INCLUDED IN NOTICES OF THE PUBLICATION OF A PRIOR INFORMATION NOTICE ON A BUYER PROFILE
Part B:	INFORMATION TO BE INCLUDED IN PRIOR INFORMATION NOTICES (as referred to in Article 48)
Part C:	INFORMATION TO BE INCLUDED IN CONTRACT NOTICES (as referred to in Article 49)
Part D:	INFORMATION TO BE INCLUDED IN CONTRACT AWARD NOTICES (as referred to in Article 50)
Part G:	INFORMATION TO BE INCLUDED IN NOTICES OF MODIFICATIONS OF A CONTRACT DURING ITS TERM (as referred to in Article 72(1))
Part H:	INFORMATION TO BE INCLUDED IN CONTRACT NOTICES CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES (as referred to in Article 75(1))
Part I:	INFORMATION TO BE INCLUDED IN PRIOR INFORMATION NOTICES FOR SOCIAL AND OTHER SPECIFIC SERVICES (as referred to in Article 75(1))
Part J:	INFORMATION TO BE INCLUDED IN CONTRACT AWARD NOTICES CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES (as referred to in Article 75(2))
ANNEX VII	DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS
ANNEX IX	CONTENTS OF THE INVITATIONS TO SUBMIT A TENDER, TO PARTICIPATE IN THE DIALOGUE OR TO CONFIRM INTEREST PROVIDED FOR UNDER ARTICLE 54
ANNEX X	LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN ARTICLE 18(2)
ANNEX XII	MEANS OF PROOF OF SELECTION CRITERIA
ANNEX XIV	SERVICES REFERRED TO IN ARTICLE 74

ANNEX XXI-C TO CHAPTER 8 ON PUBLIC PROCUREMENT

BASIC ELEMENTS OF DIRECTIVE 89/665/EEC

OF 21 DECEMBER 1989 ON THE COORDINATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO THE APPLICATION OF REVIEW PROCEDURES TO THE AWARD OF PUBLIC SUPPLY AND PUBLIC WORKS CONTRACTS (DIRECTIVE 89/665/EEC)

AS AMENDED BY DIRECTIVE 2007/66/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 11 DECEMBER 2007 AMENDING COUNCIL DIRECTIVES 89/665/EEC AND 92/13/EEC WITH REGARD TO IMPROVING THE EFFECTIVENESS OF REVIEW PROCEDURES CONCERNING THE AWARD OF PUBLIC CONTRACTS (DIRECTIVE 2007/66/EC) AND BY DIRECTIVE 2014/23/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 FEBRUARY 2014 ON THE AWARD OF CONCESSION CONTRACTS (DIRECTIVE 2014/23/EU)

(PHASE 2)

Article 1	Scope and availability of review procedures
Article 2	Requirements for review procedures
Article 2a	Standstill period
Article 2b	Derogations from the standstill period
	Point (b) of the first paragraph of Article 2b
Article 2c	Time limits for applying for review
Article 2d	Ineffectiveness
	Paragraph 1(b)
	Paragraphs 2 and 3
Article 2e	Infringements of this Directive and alternative penalties
Article 2f	Time limits

ANNEX XXI-D TO CHAPTER 8 ON PUBLIC PROCUREMENT

BASIC ELEMENTS OF DIRECTIVE 2014/25/EU

OF 26 FEBRUARY 2014 ON PROCUREMENT BY ENTITIES OPERATING IN THE WATER, ENERGY, TRANSPORT AND POSTAL SERVICES SECTORS

(PHASE 3)

TITLE I

Scope, definitions and general principles

CHAPTER I

Subject matter and definitions

Article 1	Subject matter and scope: paragraphs 1, 2, 5 and 6
Article 2	Definitions: points 1 to 9, 13 to 16 and 18 to 20
Article 3	Contracting authorities (paragraphs 1 and 4)
Article 4	Contracting entities: paragraphs 1 to 3
Article 5	Mixed procurement covering the same activity
Article 6	Procurement covering several activities

*CHAPTER II***Activities**

Article 7	Common provisions
Article 8	Gas and heat
Article 9	Electricity
Article 10	Water
Article 11	Transport services
Article 12	Ports and airports
Article 13	Postal services
Article 14	Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels

*CHAPTER III***Material scope**

Section 1	Thresholds
Article 15	Threshold amounts
Article 16	Methods for calculating the estimated value of procurement: paragraphs 1 to 4 and 7 to 14
Section 2	Excluded contracts and design contests: Special provisions for procurement involving defence and security aspects
Subsection 1	Exclusions applicable to all contracting entities and special exclusions for the water and energy sector
Article 18	Contracts awarded for purposes of resale or lease to third parties: paragraph 1
Article 19	Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country: paragraph 1
Article 20	Contracts awarded and design contests organised pursuant to international rules
Article 21	Specific exclusions for service contracts
Article 22	Service contracts awarded on the basis of an exclusive right
Article 23	Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy
Subsection 2	Procurement involving defence and security aspects
Article 24	Defence and security
Article 25	Mixed procurement covering the same activity and involving defence or security aspects
Article 26	Procurement covering several activities and involving defence or security aspects
Article 27	Contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules
Subsection 3	Special relations (cooperation, affiliated undertakings and joint ventures)
Article 28	Contracts between contracting authorities
Article 29	Contracts awarded to an affiliated undertaking
Article 30	Contracts awarded to a joint venture or to a contracting entity forming part of a joint venture
Subsection 4	Specific situations
Article 32	Research and development services

*CHAPTER IV***General principles**

Article 36	Principles of procurement
Article 37	Economic operators
Article 39	Confidentiality
Article 40	Rules applicable to communication
Article 41	Nomenclatures
Article 42	Conflicts of interest

TITLE II

Rules applicable to contracts*CHAPTER I***Procedures**

Article 44	Choice of procedures: paragraphs 1, 2 and 4
Article 45	Open procedure
Article 46	Restricted procedure
Article 47	Negotiated procedure with prior call for competition
Article 50	Use of the negotiated procedure without prior call for competition: points (a) to (i)

*CHAPTER III***Conduct of the procedure**

Section 1	Preparation
Article 58	Preliminary market consultations
Article 59	Prior involvement of candidates or tenderers
Article 60	Technical specifications
Article 61	Labels
Article 62	Test reports, certification and other means of proof
Article 63	Communication of technical specifications
Article 64	Variants
Article 65	Division of contracts into lots
Article 66	Setting time limits
Section 2	Publication and transparency
Article 67	Periodic indicative notices
Article 68	Notices on the existence of a qualification system
Article 69	Contract notices
Article 70	Contract award notices: paragraphs 1, 3 and 4
Article 71	Form and manner of publication of notices: paragraph 1, first subparagraph of paragraph 5
Article 73	Electronic availability of procurement documents
Article 74	Invitations to candidates
Article 75	Informing applicants for qualification, candidates and tenderers
Section 3	Choice of participants and award of contract
Article 76	General principles

Subsection 1	Qualification and qualitative selection
Article 78	Criteria for qualitative selection
Article 79	Reliance on the capacities of other entities: paragraph 2
Article 80	Use of exclusion grounds and selection criteria provided for under Directive 2014/24/EU
Article 81	Quality assurance standards and environmental management standards: paragraphs 1 and 2
Subsection 2	Award of the contract
Article 82	Contract award criteria
Article 83	Life-cycle costing: paragraphs 1 and 2
Article 84	Abnormally low tenders: paragraphs 1 to 4

CHAPTER IV

Contract performance

Article 87	Conditions for performance of contracts
Article 88	Subcontracting
Article 89	Modification of contracts during their term
Article 90	Termination of contracts

TITLE III

Particular procurement regimes

CHAPTER I

Social and other specific services

Article 91	Award of contracts for social and other specific services
Article 92	Publication of notices
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ANNEXES

ANNEX I	List of activities as set out in point (a) of point 2 of Article 2
ANNEX V	Requirement relating to tools and devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests
ANNEX VI A	Information to be included in the periodic indicative notice (as referred to in Article 67)
ANNEX VI B	Information to be included in notices of publication of a periodic indicative notice on a buyer profile not used as a means of calling for competition (as referred to in Article 67(1))
ANNEX VIII	Definition of certain technical specifications
ANNEX IX	Features concerning publication
ANNEX X	Information to be included in the notice on the existence of a qualification system (as referred to in point (b) of Article 44(4) and in Article 68)
ANNEX XI	Information to be included in contract notices (as referred to in Article 69)
ANNEX XII	Information to be included in the contract award notice (as referred to in Article 70)
ANNEX XIII	Contents of the invitation to submit a tender, to participate in the dialogue, to negotiate or to confirm interest provided for under Article 74
ANNEX XIV	List of International Social and Environmental Conventions referred to in Article 36(2)
ANNEX XVI	Information to be included in notices of modifications of a contract during its term (as referred to in Article 89(1))
ANNEX XVII	Services referred to in Article 91
ANNEX XVIII	Information to be included in notices concerning contracts for social and other specific services (as referred to in Article 92)

ANNEX XXI-E TO CHAPTER 8 ON PUBLIC PROCUREMENT

BASIC ELEMENTS OF COUNCIL DIRECTIVE 92/13/EEC

OF 25 FEBRUARY 1992 COORDINATING THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO THE APPLICATION OF COMMUNITY RULES ON THE PROCUREMENT PROCEDURES OF ENTITIES OPERATING IN THE WATER, ENERGY, TRANSPORT AND TELECOMMUNICATIONS SECTORS (DIRECTIVE 92/13/EEC)

AS AMENDED BY DIRECTIVE 2007/66/EC AND DIRECTIVE 2014/23/EU
(PHASE 3)

Article 1	Scope and availability of review procedures
Article 2	Requirements for review procedures
Article 2a	Standstill period
Article 2b	Derogations from the standstill period Point (b) of the first paragraph of Article 2b
Article 2c	Time limits for applying for review
Article 2d	Ineffectiveness Paragraphs 1(b), 2 and 3
Article 2e	Infringements of this Directive and alternative penalties
Article 2f	Time limits

ANNEX XXI-F TO CHAPTER 8 ON PUBLIC PROCUREMENT

I. OTHER NON-MANDATORY ELEMENTS OF DIRECTIVE 2014/24/EU
(PHASE 4)

The elements of Directive 2014/24/EU set out in this Annex are not mandatory but recommended for approximation. Ukraine may approximate these elements within the time-frame set in Annex XXI-B

TITLE I

Scope, definitions and general principles

CHAPTER I

Scope and definitions

Section 1	Subject matter and definitions
Article 2	Definitions (paragraph 1, points (14) and (16))
Article 20	Reserved contracts

TITLE II

Rules on public contracts

CHAPTER II

Techniques and instruments for electronic and aggregated procurement

Article 37	Centralised purchasing activities and central purchasing bodies
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CHAPTER III

Conduct of the procedure

Section 3	Choice of participants and award of contracts
Article 64	Official lists of approved economic operators and certification by bodies established under public or private law

TITLE III

Particular procurement regimes

CHAPTER I

Article 77 Reserved contracts for certain services

II. NON-MANDATORY ELEMENTS OF DIRECTIVE 2014/23/EU
(PHASE 4)

The elements of Directive 2014/23/EU set out in this Annex are not mandatory but recommended for approximation. Ukraine may approximate these elements within the time-frame set in Annex XXI-B

TITLE I

Subject matter, scope, principles and definitions

CHAPTER I

Scope, general principles and definitions

Section IV Specific situations

Article 24 Reserved Concessions

ANNEX XXI-G TO CHAPTER 8 ON PUBLIC PROCUREMENT

I. OTHER MANDATORY ELEMENTS OF DIRECTIVE 2014/24/EU
(PHASE 4)

TITLE I

Scope, definitions and general principles

CHAPTER I

Scope and definitions

Section 1 Subject matter and definitions

Article 2 Definitions (paragraph 1, point (21))

Article 22 Rules applicable to communication: paragraph 1

TITLE II

Rules on public contracts

CHAPTER I

Procedures

Article 26 Choice of procedures: paragraph 3, second alternative of paragraph 4

Article 30 Competitive dialogue

Article 31 Innovation Partnership

CHAPTER II

Techniques and instruments for electronic and aggregated procurement

Article 33 Framework agreements

Article 34 Dynamic purchasing systems

Article 35 Electronic auctions

Article 36 Electronic catalogues

Article 38 Occasional joint procurement

CHAPTER III

Conduct of the procedure

- Section 2 Publication and Transparency
 Article 50 Contract award notices: paragraphs 2 and 3

TITLE III

Particular procurement regimes

CHAPTER II

Rules governing design contests

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 Article 79 Notices
 Article 80 Rules on the organisation of design contests and the selection of participants
 Article 81 Composition of the jury
 Article 82 Decisions of the jury

ANNEXES

ANNEX V INFORMATION TO BE INCLUDED IN NOTICES

- Part E: INFORMATION TO BE INCLUDED IN DESIGN CONTEST NOTICES (as referred to in Article 79(1))
 Part F: INFORMATION TO BE INCLUDED IN NOTICES OF THE RESULTS OF A CONTEST (as referred to in Article 79(2))

ANNEX VI INFORMATION TO BE INCLUDED IN THE PROCUREMENT DOCUMENTS RELATING TO ELECTRONIC AUCTIONS (ARTICLE 35(4))

II. MANDATORY ELEMENTS OF DIRECTIVE 2014/23/EU

(PHASE 4)

TITLE I

Subject matter, scope, principles and definitions

CHAPTER I

Scope, general principles and definitions

- Section I Subject matter, scope, general principles, definitions and threshold
 Article 1 Subject matter and scope: paragraphs 1, 2 and 4
 Article 2 Principle of free administration by public authorities
 Article 3 Principle of equal treatment, non-discrimination and transparency
 Article 4 Freedom to define services of general economic interest
 Article 5 Definitions
 Article 6 Contracting authorities: paragraphs 1 and 4
 Article 7 Contracting entities
 Article 8 Threshold and methods for calculating the estimated value of concessions
 Section II Exclusions
 Article 10 Exclusions applicable to concessions awarded by contracting authorities and contracting entities
 Article 11 Specific exclusions in the field of electronic communications
 Article 12 Specific exclusions in the field of water
 Article 13 Concessions awarded to an affiliated undertaking
 Article 14 Concessions awarded to a joint venture or to a contracting entity forming part of a joint venture
 Article 17 Concessions between entities within the public sector

Section III	General provisions
Article 18	Duration of the concession
Article 19	Social and other specific services
Article 20	Mixed contracts
Article 21	Mixed procurement contracts involving defence or security aspects
Article 22	Contracts covering both activities referred to in Annex II and other activities
Article 23	Concessions covering both activities referred to in Annex II and activities involving defence or security aspects
Article 25	Research and development services

CHAPTER II**Principles**

Article 26	Economic operators
Article 27	Nomenclatures
Article 28	Confidentiality
Article 29	Rules applicable to communication

TITLE II

Rules on the award of concessions: General principles and procedural guarantees

CHAPTER I

General principles

Article 30	General principles: paragraphs 1, 2 and 3
Article 31	Concession notices
Article 32	Concession award notices
Article 33	Form and manner of publication of notices: first subparagraph of paragraph 1
Article 34	Electronic availability of concession documents
Article 35	Combating corruption and preventing conflicts of interest

CHAPTER II

Procedural guarantees

Article 36	Technical and functional requirements
Article 37	Procedural guarantees
Article 38	Selection of and qualitative assessment of candidates
Article 39	Time limits for receipt of applications and tenders for the concession
Article 40	Provision of information to candidates and tenderers
Article 41	Award criteria

TITLE III

Rules on performance of concessions

Article 42	Subcontracting
Article 43	Modification of contracts during their term
Article 44	Termination of concessions
Article 45	Monitoring and Reporting

ANNEXES

ANNEX I	LIST OF THE ACTIVITIES REFERRED TO IN POINT (7) OF ARTICLE 5
ANNEX II	ACTIVITIES EXERCISED BY CONTRACTING ENTITIES AS REFERRED TO IN ARTICLE 7
ANNEX III	LIST OF LEGAL ACTS OF THE UNION REFERRED TO IN POINT (B) OF ARTICLE 7(2)
ANNEX IV	SERVICES REFERRED TO IN ARTICLE 19
ANNEX V	INFORMATION TO BE INCLUDED IN CONCESSION NOTICES REFERRED TO IN ARTICLE 31
ANNEX VI	INFORMATION TO BE INCLUDED IN PRIOR INFORMATION NOTICES CONCERNING CONCESSIONS FOR SOCIAL AND OTHER SPECIFIC SERVICES, AS REFERRED TO IN ARTICLE 31(3)
ANNEX VII	INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES, AS REFERRED TO IN ARTICLE 32
ANNEX VIII	INFORMATION TO BE INCLUDED IN CONCESSION AWARD NOTICES CONCERNING CONCESSIONS FOR SOCIAL AND OTHER SPECIFIC SERVICES, AS REFERRED TO IN ARTICLE 32
ANNEX IX	FEATURES CONCERNING PUBLICATION
ANNEX X	LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN ARTICLE 30(3)
ANNEX XI	INFORMATION TO BE INCLUDED IN NOTICES OF MODIFICATIONS OF A CONCESSION DURING ITS TERM ACCORDING TO ARTICLE 43

 ANNEX XXI-H TO CHAPTER 8 ON PUBLIC PROCUREMENT

**OTHER ELEMENTS OF DIRECTIVE 89/665/EEC
AS AMENDED BY DIRECTIVE 2007/66/EC AND DIRECTIVE 2014/23/EU
(PHASE 4)**

Article 2b	Derogations from the standstill period Point (c) of the first paragraph of Article 2b
Article 2d	Ineffectiveness Point (c) of the first paragraph of Article 2d Paragraph 5

 ANNEX XXI-I TO CHAPTER 8 ON PUBLIC PROCUREMENT

(PHASE 5)

I. OTHER MANDATORY ELEMENTS OF DIRECTIVE 2014/25/EU

TITLE I

Scope, definitions and general principles

CHAPTER I

Subject matter and definitions

Article 2	Definitions: point 17
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CHAPTER III

Material scope

Section 1 Thresholds

Article 16 Methods for calculating the estimated value of procurement: paragraphs 5, 6

TITLE II

Rules applicable to contracts

CHAPTER I

Procedures

Article 44 Choice of procedures: paragraph 3

Article 48 Competitive dialogue

Article 49 Innovation Partnership

Article 50 Use of the negotiated procedure without prior call for competition: point (j)

CHAPTER II

Techniques and instruments for electronic and aggregated procurement

Article 51 Framework agreements

Article 52 Dynamic purchasing systems

Article 53 Electronic auctions

Article 54 Electronic catalogues

Article 56 Occasional joint procurement

CHAPTER III

Conduct of the procedure

Section 2 Publication and transparency

Article 70 Contract award notices: paragraph 2

Section 3 Choice of participants and award of contract

Subsection 1 Qualification and qualitative selection

Article 77 Qualification systems

Article 79 Reliance on the capacities of other entities: paragraph 1

TITLE III

Particular procurement regimes

CHAPTER II

Rules governing design contests

Article 95 Scope

Article 96 Notices

Article 97 Rules on the organisation of design contests, the selection of participants and the jury

Article 98 Decision of the jury

ANNEXES

ANNEX VII Information to be included in the procurement documents relating to electronic auctions (Article 53(4))

ANNEX XIX Information to be included in the design contest notice (as referred to in Article 96(1))

ANNEX XX Information to be included in the results of design contest notices (as referred to in Article 96(1))

II. OTHER NON-MANDATORY ELEMENTS OF DIRECTIVE 2014/25/EU

The further elements of Directive 2014/25/EU set out in this Annex are not mandatory but recommended for approximation. Ukraine may approximate these elements within the time-frame set in Annex XXI-B.

TITLE I

Scope, definitions and general principles

CHAPTER I

Subject matter and definitions

Article 2 Definitions: points 10 to 12

CHAPTER IV

General principles

Article 38 Reserved contracts

TITLE II

Rules applicable to contracts

CHAPTER I

Procedures

Article 55 Centralised purchasing activities and central purchasing bodies

TITLE III

Particular procurement regimes

CHAPTER I

Social and other specific services

Article 94 Reserved contracts for certain services

ANNEX XXI-J TO CHAPTER 8 ON PUBLIC PROCUREMENT

OTHER ELEMENTS OF DIRECTIVE 92/13/EEC

AS AMENDED BY DIRECTIVE 2007/66/EC AND DIRECTIVE 2014/23/EU

(PHASE 5)

Article 2b Derogations from the standstill period
Point (c) of the first paragraph of Article 2b

Article 2d Ineffectiveness
Point (c) of paragraph 1 of Article 2d,
Paragraph 5

ANNEX XXI-K TO CHAPTER 8 ON PUBLIC PROCUREMENT

I. PROVISIONS OF DIRECTIVE 2014/24/EU OUTSIDE THE SCOPE OF APPROXIMATION

The elements of Directive 2014/24/EU listed in this Annex are not subject to the process of approximation.

TITLE I

Scope, definitions and general principles

CHAPTER I

Scope and definitions

Section 1 Subject matter and definitions

Article 1 Subject matter and scope: paragraphs 3 and 4

Article 2	Definitions: paragraph 2
Section 2	Thresholds
Article 6	Revision of the thresholds and of the list of central government authorities
TITLE II	
Rules on public contracts	
CHAPTER I	
Procedures	
Article 25	Conditions relating to the GPA and other international agreements
CHAPTER II	
Techniques and instruments for electronic and aggregated procurement	
Article 39	Procurement involving contracting authorities from different Member States
CHAPTER III	
Conduct of the procedure	
Section 1	Preparation
Article 44	Test reports, certification and other means of proof: paragraph 3
Section 2	Publication and transparency
Article 51	Form and manner of publication of notices: second subparagraph of paragraph 1, paragraphs 2, 3, 4, second subparagraph of paragraph 5, paragraph 6
Article 52	Publication at national level
Section 3	Choice of participants and award of contracts
Article 61	Online repository of certificates (e-Certis)
Article 62	Quality assurance standards and environmental management standards: paragraph 3
Article 68	Life-cycle costing: paragraph 3
Article 69	Abnormally low tender: paragraph 5
TITLE IV	
Governance	
Article 83	Enforcement
Article 84	Individual reports on procedures for the award of contracts
Article 85	National reporting and statistical information
Article 86	Administrative Cooperation
TITLE V	
Delegated powers, implementing powers and final provisions	
Article 87	Exercise of the delegation of powers
Article 88	Urgency procedure
Article 89	Committee procedure
Article 90	Transposition and transitional provisions
Article 91	Repeals
Article 92	Review
Article 93	Entry into force
Article 94	Addressees

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ANNEX I	CENTRAL GOVERNMENT AUTHORITIES
ANNEX VIII	FEATURES CONCERNING PUBLICATION
ANNEX XI	REGISTERS
ANNEX XIII	LIST OF EU LEGISLATION REFERRED TO IN ARTICLE 68(3)
ANNEX XV	CORRELATION TABLE

II. PROVISIONS OF DIRECTIVE 2014/23/EU OUTSIDE THE SCOPE OF APPROXIMATION

The elements of Directive 2014/23/EU listed in this Annex are not subject to the process of approximation.

TITLE I

Subject matter, scope, principles and definitions

CHAPTER I

Scope, general principles and definitions

Section I Subject matter, scope, general principles, definitions and threshold

Article 1 Subject matter and scope: paragraph 3

Article 6 Contracting authorities: paragraphs 2 and 3

Article 9 Revision of the threshold

Section II Exclusions

Article 15 Notification of information by contracting entities

Article 16 Exclusion of activities which are directly exposed to competition

TITLE II

Rules on the award of concessions: General principles and procedural guarantees

CHAPTER I

General principles

Article 30 General principles: paragraph 4

Article 33 Form and manner of publication of notices: second subparagraph of paragraph 1, paragraphs 2, 3 and 4

TITLE IV

Amendments to Directive 89/665/EEC and 92/13/EEC

Article 46 Amendments to Directive 89/665/EEC

Article 47 Amendments to Directive 92/13/EEC

TITLE V

Delegated powers, implementing powers and final provisions

Article 48 Exercise of the delegation

Article 49 Urgency procedure

Article 50 Committee procedure

Article 51 Transposition

Article 52 Transitional provisions

Article 53 Monitoring and reporting

Article 54 Entry into force

Article 55 Addressees

ANNEX XXI-L TO CHAPTER 8 ON PUBLIC PROCUREMENT

PROVISIONS OF DIRECTIVE 2014/25/EU OUTSIDE THE SCOPE OF APPROXIMATION

The elements listed in this Annex are not subject to the process of approximation.

TITLE I

Scope, definitions and general principles

CHAPTER I

Subject matter and definitions

Article 1 Subject matter and scope: paragraphs 3 and 4

Article 3 Contracting authorities: paragraphs 2 and 3

Article 4 Contracting entities: paragraph 4

CHAPTER III

Material scope

Section 1 Thresholds

Article 17 Revision of the thresholds

Section 2 Excluded contracts and design contests: Special provisions for procurement involving defence and security aspects

Subsection 1 Exclusions applicable to all contracting entities and special exclusions for the water and energy sector

Article 18 Contracts awarded for purposes of resale or lease to third parties: paragraph 2

Article 19 Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country: paragraph 2

Subsection 3 Special relations (cooperation, affiliated undertakings and joint ventures)

Article 31 Notification of information

Subsection 4 Specific situations

Article 33 Contracts subject to special arrangements

Subsection 5 Activities directly exposed to competition and procedural provisions relating thereto

Article 34 Activities directly exposed to competition

Article 35 Procedure for establishing whether Article 34 is applicable

TITLE II

Rules applicable to contracts

CHAPTER I

Procedures

Article 43 Conditions relating to the GPA and other international agreements

CHAPTER II

Techniques and instruments for electronic and aggregated procurement

Article 57 Procurement involving contracting entities from different Member States

CHAPTER III

Conduct of the procedure

Section 2 Publication and transparency

Article 71 Form and manner of publication of notices: paragraphs 2, 3, 4, second subparagraph of paragraph 5, paragraph 6

Article 72 Publication at national level

Section 3	Choice of participants and award of contract
Article 81	Quality assurance standards and environmental management standards: paragraph 3
Article 83	Life-cycle costing: paragraph 3
Section 4	Tenders comprising products originating in third countries and relations with those countries
Article 85	Tenders comprising products originating in third countries
Article 86	Relations with third countries as regards works, supplies and service contracts

TITLE IV

Governance

Article 99	Enforcement
Article 100	Individual reports on procedures for the award of contracts
Article 101	National reporting and statistical information
Article 102	Administrative cooperation

TITLE V

Delegated powers, implementing powers and final provisions

Article 103	Exercise of the delegation
Article 104	Urgency procedure
Article 105	Committee procedure
Article 106	Transposition and transitional provisions
Article 107	Repeal
Article 108	Review
Article 109	Entry into force
Article 110	Addressees

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ANNEX II	List of Union legal acts referred to in Article 4(3)
ANNEX III	List of Union legal acts referred to in Article 34(3)
ANNEX IV	Deadlines for the adoption of the implementing acts referred to in Article 35
ANNEX XV	List of Union legal acts referred to in Article 83(3)

 ANNEX XXI-M TO CHAPTER 8 ON PUBLIC PROCUREMENT

PROVISIONS OF DIRECTIVE 89/665/EEC AS AMENDED BY DIRECTIVE 2007/66/EC AND DIRECTIVE 2014/23/EU OUTSIDE THE SCOPE OF APPROXIMATION

The elements listed in this Annex are not subject to the process of approximation.

Article 2b	Derogations from the standstill period Point (a) of the first paragraph of Article 2b
Article 2d	Ineffectiveness Point (a) of paragraph 1 of Article 2d, Paragraph 4
Article 3	Corrective Mechanisms
Article 3a	Content of the notice for voluntary <i>ex ante</i> transparency
Article 3b	Committee Procedure
Article 4	Implementation
Article 4a	Review

ANNEX XXI-N TO CHAPTER 8 ON PUBLIC PROCUREMENT

PROVISIONS OF DIRECTIVE 92/13/EEC AS AMENDED BY DIRECTIVE 2007/66/EC AND DIRECTIVE 2014/23/EU OUTSIDE THE SCOPE OF APPROXIMATION

The elements listed in this Annex are not subject to the process of approximation.

Article 2b	Derogations from the standstill period Point (a) of the first paragraph of Article 2b
Article 2d	Ineffectiveness Point (a) of paragraph 1 of Article 2d, Paragraph 4
Article 3a	Content of the notice for voluntary <i>ex ante</i> transparency
Article 3b	Committee Procedure
Article 8	Corrective Mechanisms
Article 12	Implementation
Article 12a	Review

ANNEX XXI-O TO CHAPTER 8 ON PUBLIC PROCUREMENT

UKRAINE: INDICATIVE LIST OF ISSUES FOR COOPERATION

1. Training, in Ukraine and EU countries, of Ukrainian officials from government bodies engaged in public procurement;
2. Training of suppliers interested participating in public procurement;
3. Exchange of information and experience on best practice and regulatory rules in the sphere of public procurement;
4. Enhancement of the functionality of the public procurement website and establishment of a system of public procurement monitoring;
5. Consultations and methodological assistance from the EU Party in application of modern electronic technologies in the sphere of public procurement;
6. Strengthening the bodies charged with guaranteeing a coherent policy in all areas related to public procurement and the independent and impartial consideration (review) of contracting authorities' decisions. (Cf. Article 150 paragraph 2 of this Agreement)

ANNEX XXI-P TO CHAPTER 8 ON PUBLIC PROCUREMENT

THRESHOLDS

1. The value thresholds mentioned in Article 149(3) of this Agreement shall be for both Parties:
 - (a) EUR 135 000 for public supply and service contracts awarded by central government authorities and design contests awarded by such authorities;
 - (b) EUR 209 000 in the case of public supply and public service contracts not covered by point (a);
 - (c) EUR 5 225 000 in the case of public works contracts;
 - (d) EUR 5 225 000 in the case of works contracts in the utilities sector;
 - (e) EUR 5 225 000 in the case of concessions;

- (f) EUR 418 000 in the case of supply and service contracts in the utilities sector;
 - (g) EUR 750 000 for public service contracts for social and other specific services;
 - (h) EUR 1 000 000 for service contracts for social and other specific services in the utilities sector.
2. The EUR thresholds quoted in paragraph 1 shall be adapted to reflect the thresholds applicable under the EU Directives at the moment of the entry into force of this Agreement.'
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