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(Information)

COUNCIL

COMMON POSITION (EC) No 33/2003

adopted by the Council on 20 March 2003

with a view to adopting Directive 2003/.../EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

(2003/C 147 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 47(2) and Articles 55 and 95 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the Opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

(1) On the occasion of new amendments being made to Council Directives 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts ⁽⁵⁾, 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts ⁽⁶⁾ and 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts ⁽⁷⁾, which are necessary to meet requests for simplification and modernisation made by contracting authorities and economic operators alike in their responses

to the Green Paper adopted by the Commission on 27 November 1996, the Directives should, in the interests of clarity, be recast.

(2) The achievement of freedom of movement of goods in the matter of public supply contracts, and the achievement of freedom of establishment and freedom to provide services in the matter of public works contracts and public service contracts, for contracts concluded in the Member States on behalf of the State, regional or local authorities and other bodies governed by public law requires not only the abolition of restrictions but also the implementation of provisions on the coordination of national procedures for the award of public contracts which are based on the rules governing these three freedoms and on the principles deriving therefrom, such as the principles of equal treatment, of which the principle of non-discrimination is no more than a specific expression, the principle of mutual recognition, the principle of proportionality and the principle of transparency, and the opening-up of public procurement to competition. These coordinating provisions should therefore be interpreted in accordance with both the aforementioned rules and principles and other rules of the Treaty.

(3) Such coordinating provisions should comply as far as possible with current procedures and practices in each of the Member States.

(4) Member States should ensure that the participation of a body governed by public law as a tenderer in a procedure for the award of a public contract does not cause any distortion of competition in relation to private tenderers.

(5) Under Article 6 of the Treaty, environmental protection requirements are to be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of that Treaty, in particular with a view to promoting sustainable development. This Directive therefore clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts.

⁽¹⁾ OJ C 29 E, 30.1.2001, p. 11 and OJ C 203 E, 27.8.2002, p. 210.

⁽²⁾ OJ C 193, 10.7.2001, p. 7.

⁽³⁾ OJ C 144, 16.5.2001, p. 23.

⁽⁴⁾ Opinion of the European Parliament of 17 January 2001 (OJ C 271 E, 7.11.2002, p. 176), Council Common Position of 17 March 2003 and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁵⁾ OJ L 209, 24.7.1992, p. 1. Directive as last amended by European Parliament and Council Directive 97/52/EC (OJ L 328, 28.11.1997, p. 1).

⁽⁶⁾ OJ L 199, 9.8.1993, p. 1. Directive as last amended by European Parliament and Council Directive 97/52/EC.

⁽⁷⁾ OJ L 199, 9.8.1993, p. 54. Directive as last amended by European Parliament and Council Directive 97/52/EC.

- (6) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public policy, public morality, public security, health, human and animal life or the preservation of plant life, in particular with a view to sustainable development, provided that these measures are in conformity with the Treaty.
- (7) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) ⁽¹⁾, approved in particular the Agreement on Government Procurement, hereinafter referred to as the 'Agreement', the aim of which is to establish a multilateral framework of balanced rights and obligations relating to public contracts with a view to achieving the liberalisation and expansion of world trade.

In view of the international rights and commitments devolving on the Community as a result of the acceptance of the Agreement, the arrangements to be applied to tenderers and products from signatory third countries are those defined by the Agreement. This Agreement does not have direct effect. The contracting authorities covered by the Agreement which comply with this Directive and which apply the latter to economic operators of third countries which are signatories to the Agreement should therefore be in conformity with the Agreement. It is also appropriate that those coordinating provisions should guarantee for Community economic operators conditions for participation in public procurement which are just as favourable as those reserved for economic operators of third countries which are signatories to the Agreement.

- (8) Before launching a procedure for the award of a contract, contracting authorities may, using a technical dialogue, seek or accept advice which may be used in the preparation of the specifications provided, however, that such advice does not have the effect of precluding competition.
- (9) In view of the diversity of public works contracts, contracting authorities should be able to make provision

for contracts for the design and execution of work to be awarded either separately or jointly. It is not the intention of this Directive to prescribe either joint or separate contract awards. The decision to award contracts separately or jointly must be determined by qualitative and economic criteria, which may be defined by national law. A contract shall be deemed to be a public works contract only if its subject-matter specifically covers the execution of activities listed in Annex I, even if the contract covers the provision of other services necessary for the execution of such activities. Public service contracts, in particular in the sphere of property management services, may, in certain circumstances, include works. However, insofar as such works are incidental to the principal subject-matter of the contract, and are a possible consequence thereof or a complement thereto, the fact that such works are included in the contract does not justify the qualification of the contract as a public works contract.

- (10) A Community definition of framework agreements, together with specific rules on framework agreements concluded for contracts falling within the scope of this Directive, should be provided. Under these rules, when a contracting authority enters into a framework agreement in accordance with the provisions of this Directive relating, in particular, to advertising, time-limits and conditions for the submission of tenders, it may enter into contracts based on such a framework agreement during its term of validity either by applying the terms set forth in the framework agreement or, if all terms have not been fixed in advance in the framework agreement, by reopening competition between the parties to the framework agreement in relation to those terms. The reopening of competition should comply with certain rules the aim of which is to guarantee the required flexibility and to guarantee respect for the general principles, in particular the principle of equal treatment. For the same reasons, the term of the framework agreements should not exceed four years, except in cases duly justified by the contracting authorities.

- (11) Certain new electronic purchasing techniques are continuously being developed. Such techniques help to increase competition and streamline public purchasing, particularly in terms of the savings in time and money which their use will allow. Contracting authorities may make use of electronic purchasing techniques, providing such use complies with the rules drawn up under this Directive and the principles of equal treatment, non-discrimination and transparency. To that extent, a tender submitted by a tenderer, in particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used, may take the form of that tenderer's electronic catalogue if the latter uses the means of communication chosen by the contracting authority in accordance with Article 42.

⁽¹⁾ OJ L 336, 23.12.1994, p. 1.

- (12) In view of the rapid expansion of electronic purchasing systems, appropriate rules should now be introduced to enable contracting authorities to take full advantage of the possibilities afforded by these systems. Against this background, it is necessary to define a completely electronic dynamic purchasing system for commonly used purchases, and lay down specific rules for setting up and operating such a system in order to ensure the fair treatment of any economic operator who wishes to take part therein. Any economic operator which submits an indicative tender in accordance with the specification and meets the selection criteria should be allowed to join such a system. This purchasing technique allows the contracting authority, through the establishment of a list of tenderers already selected and the opportunity given to new tenderers to take part, to have a particularly broad range of tenders as a result of the electronic facilities available, and hence to ensure optimum use of public funds through broad competition.
- (13) Since use of the technique of electronic auctions is likely to increase, such auctions should be given a Community definition and governed by specific rules in order to ensure that they operate in full accordance with the principles of equal treatment, non-discrimination and transparency. To that end, provision should be made for such electronic auctions to deal only with contracts for works, supplies or services for which the specifications can be determined with precision. With the same objective, it must also be possible to establish the respective ranking of the tenderers at any stage of the electronic auction. Recourse to electronic auctions enables contracting authorities to ask tenderers to submit new prices, revised downwards, and when the contract is awarded to the most economically advantageous tender, also to improve elements of the tenders other than prices. However, in order to guarantee compliance with the principle of transparency, only the elements suitable for automatic evaluation by electronic means, without any intervention by the contracting authority, may be improved. To this end, such elements must be quantifiable so that they can be expressed in figures or percentages.
- (14) Certain centralised purchasing techniques have been developed in Member States. Several contracting authorities are responsible for making acquisitions or awarding public contracts/framework agreements for other contracting authorities. In view of the large volumes purchased, those techniques help increase competition and streamline public purchasing. Provision should therefore be made for a Community definition of central purchasing bodies dedicated to contracting authorities. A definition should also be given of the conditions under which, in accordance with the principles of non-discrimination and equal treatment, contracting authorities purchasing works, supplies and/or services through a central purchasing body may be deemed to have complied with this Directive.
- (15) In order to take account of the different circumstances obtaining in Member States, Member States should be allowed to choose whether contracting authorities may use framework agreements, central purchasing bodies, dynamic purchasing systems, electronic auctions or the competitive dialogue procedure, as defined and regulated by this Directive.
- (16) Multiplying the number of thresholds for applying the coordinating provisions complicates matters for contracting authorities. Furthermore, in the context of monetary union such thresholds should be established in euro. Accordingly, thresholds should be set, in euro, in such a way as to simplify the application of such provisions, while at the same time ensuring compliance with the thresholds provided for by the Agreement which are expressed in special drawing rights. In this context, provision should also be made for periodic reviews of the thresholds expressed in euro so as to adjust them, where necessary, in line with possible variations in the value of the euro in relation to the special drawing right.
- (17) The field of services is best delineated, for the purpose of applying the procedural rules of this Directive and for monitoring purposes, by subdividing it into categories corresponding to particular headings of a common classification and by bringing them together in two Annexes, II A and II B, according to the regime to which they are subject. As regards services in Annex II B, the relevant provisions of this Directive should be without prejudice to the application of Community rules specific to the services in question.
- (18) As regards public service contracts, full application of this Directive should be limited, for a transitional period, to contracts where its provisions will permit the full potential for increased cross-frontier trade to be realised. Contracts for other services need to be monitored during this transitional period before a decision is taken on the full application of this Directive. In this respect, the mechanism for such monitoring needs to be defined. This mechanism should, at the same time, enable interested parties to have access to the relevant information.

- (19) Public contracts which are awarded by the contracting authorities operating in the water, energy, transport and postal services sectors and which fall within the scope of those activities are covered by Directive 2003/.../EC of the European Parliament and of the Council of ... coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ⁽¹⁾. However, contracts awarded by the contracting authorities in the context of their service activities for maritime, coastal or river transport must fall within the scope of this Directive.
- (20) In view of the situation of effective market competition in the telecommunications sector following the implementation of the Community rules aiming to liberalise that sector, public contracts in that area should be excluded from the scope of this Directive insofar as they are intended primarily to allow the contracting authorities to exercise certain activities in the telecommunications sector. Those activities are defined in accordance with the definitions used in Articles 1, 2 and 8 of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sector ⁽²⁾, such that this Directive does not apply to contracts which have been excluded from the scope of Directive 93/38/EEC pursuant to Article 8 thereof.
- (21) Provision should be made for cases in which it is impossible to apply the measures for coordinating procedures on grounds relating to State security or secrecy, or because specific rules on the awarding of contracts which derive from international agreements, relating to the stationing of troops, or which are specific to international organisations are applicable.
- (22) Pursuant to Article 163 of the Treaty, the encouragement of research and technological development is a means of strengthening the scientific and technological basis of Community industry, and the opening-up of public service contracts contributes to this end. This Directive should not cover the cofinancing of research and development programmes: research and development contracts other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority, are not therefore covered by this Directive.
- (23) In the context of services, contracts for the acquisition or rental of immovable property or rights to such property have particular characteristics which make the application of public procurement rules inappropriate.
- (24) The awarding of public contracts for certain audiovisual services in the field of broadcasting should allow aspects of cultural or social significance to be taken into account which render application of procurement rules inappropriate. For these reasons, an exception must therefore be made for public service contracts for the purchase, development, production or co-production of off-the-shelf programmes and other preparatory services, such as those relating to scripts or artistic performances necessary for the production of the programme and contracts concerning broadcasting times. However, this exclusion does not apply to the supply of technical equipment necessary for the production, co-production and broadcasting of such programmes.
- (25) Arbitration and conciliation services are usually provided by bodies or individuals designated or selected in a manner which cannot be governed by procurement rules.
- (26) In accordance with the Agreement, the financial services covered by this Directive do not include instruments of monetary policy, exchange rates, public debt, reserve management or other policies involving transactions in securities or other financial instruments, in particular transactions by the contracting authorities to raise money or capital. Accordingly, contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments are not covered. Central bank services are also excluded.
- (27) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To this end, it must be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it must be possible to draw up the technical specifications in terms of functional performance and requirements, and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Contracting authorities must be able to provide a reason for any decision that equivalence does not exist in a given case. Contracting authorities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics and/or specific environmental effects of product groups or services. They can, but are not obliged to, use appropriate specifications that are defined in eco-labels, such as the European Eco-label, (multi-)national eco-labels or any other eco-label providing the requirements for the label are drawn up and
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- ⁽¹⁾ See p. 137 of this Official Journal.
- ⁽²⁾ OJ L 199, 9.8.1993, p. 84. Directive as last amended by Directive 98/4/EC of the European Parliament and of the Council (OJ L 101, 1.4.1998, p. 1).

adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and providing the label is accessible and available to all interested parties.

(28) Additional information concerning contracts must, as is customary in Member States, be given in the contract documents for each contract or else in an equivalent document.

(29) Contracting authorities which carry out exceptionally complex projects may, without this being due to any fault on their part, find it objectively impossible to define the means of satisfying their needs or of assessing what the market can offer in the way of technical solutions and/or financial/legal solutions. This situation may arise in particular with the implementation of important integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing the financial and legal make-up of which cannot be defined in advance. To the extent that use of open or restricted procedures does not allow the award of such contracts, a flexible procedure should be provided which preserves not only competition between economic operators but also the need for the contracting authorities to discuss all aspects of the contract with each candidate. However, this procedure must not be used in such a way as to restrict or distort competition, particularly by altering any fundamental aspects of the offers, or by imposing substantial new requirements on the successful tenderer, or by involving any tenderer other than the one selected as the most economically advantageous.

(30) In order to encourage the involvement of small and medium-sized undertakings in the public contracts procurement market, it is advisable to include provisions on subcontracting.

(31) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment or the protection of the environment. For instance, mention may be made, amongst other things, of the requirements — applicable during performance of the contract — to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO)

Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation.

(32) The laws, regulations and collective agreements, at both national and Community level, which are in force in the areas of welfare and safety at work apply during performance of a public contract, providing that such rules, and their application, comply with Community law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ⁽¹⁾ lays down the minimum conditions which must be observed by the host country in respect of such posted workers. If national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.

(33) In view of new developments in information and communications technology, and the simplifications these can bring in terms of publicising contracts and the efficiency and transparency of procurement processes, electronic means should be put on a par with traditional means of communication and information exchange. As far as possible, the means and technology chosen should be compatible with the technologies used in other Member States.

(34) To ensure development of effective competition in the field of public contracts, it is necessary that contract notices drawn up by the contracting authorities of Member States be advertised throughout the Community. The information contained in these notices must enable economic operators in the Community to determine whether the proposed contracts are of interest to them. For this purpose, it is appropriate to give them adequate information on the object of the contract and the conditions attached thereto. Improved visibility should therefore be ensured for public notices by means of appropriate instruments, such as standard contract notice forms and the Common Procurement Vocabulary (CPV) provided for in Regulation (EC) No 2195/2002 of the European Parliament and of the Council ⁽²⁾ as the reference nomenclature for public contracts. In restricted procedures, advertisement is, more particularly, intended to enable contractors of Member States to express their interest in contracts by seeking from the contracting authorities invitations to tender under the required conditions.

⁽¹⁾ OJ L 18, 21.1.1997, p. 1.

⁽²⁾ OJ L 340, 16.12.2002, p. 1.

- (35) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures ⁽¹⁾ and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on electronic commerce') ⁽²⁾ should, in the context of this Directive, apply to the transmission of information by electronic means. The public procurement procedures and the rules applicable to service contests require a level of security and confidentiality higher than that required by these Directives. Accordingly, the devices for the electronic receipt of offers, requests to participate and plans and projects should comply with specific additional requirements. Moreover, the existence of voluntary accreditation schemes could constitute a favourable framework for enhancing the level of certification service provision for these devices.
- (36) The use of electronic means leads to savings in time. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Community level.
- (37) Verification of the suitability of tenderers, in open procedures, and of candidates, in restricted and negotiated procedures with publication of a contract notice and in the competitive dialogue, and the selection thereof, should be carried out in transparent conditions. For this purpose, non-discriminatory criteria should be indicated which the contracting authorities may use when selecting competitors and the means which economic operators may use to prove they have satisfied those criteria. In the same spirit of transparency, the contracting authority should be required, as soon as a contract is put out to competition, to indicate the selection criteria it will use and the level of specific competence it may or may not demand of the economic operators before admitting them to the procurement procedure.
- (38) A contracting authority may limit the number of candidates in the restricted and negotiated procedures with publication of a contract notice, and in the competitive dialogue. Such a reduction of candidates should be performed on the basis of objective criteria indicated in the contract notice. These objective criteria do not necessarily imply weightings. For criteria relating to the personal situation of economic operators, a general reference in the contract notice to the situations set out in Article 45 may suffice.
- (39) In the competitive dialogue and negotiated procedures with publication of a contract notice, in view of the flexibility which may be required and the high level of costs associated with such methods of procurement, contracting authorities should be entitled to make provision for the procedure to be conducted in successive stages in order gradually to reduce, on the basis of previously indicated contract award criteria, the number of tenders which they will go on to discuss or negotiate. This reduction should, insofar as the number of appropriate solutions or candidates allows, ensure that there is genuine competition.
- (40) The relevant Community rules on mutual recognition of diplomas, certificates or other evidence of formal qualifications apply when evidence of a particular qualification is required for participation in a procurement procedure or a design contest.
- (41) The award of public contracts to economic operators who have participated in a criminal organisation or who have been found guilty of corruption or of fraud to the detriment of the financial interests of the European Communities or of money laundering should be avoided. Where appropriate, the contracting authorities should ask candidates or tenderers to supply relevant documents and, where they have doubts concerning the personal situation of a candidate or tenderer, they may seek the cooperation of the competent authorities of the Member State concerned. The exclusion of such economic operators should take place as soon as the contracting authority has knowledge of a judgment concerning such offences rendered in accordance with national law that has the force of *res judicata*. If national law contains provisions to this effect, non-compliance with environmental legislation or legislation on unlawful agreements in public contracts which has been the subject of a definitive judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.
- (42) In appropriate cases, in which the nature of the works and/or services justifies applying environmental management measures or schemes during the performance of a public contract, the application of such measures or schemes may be required. Environmental management schemes, whether or not they are registered under Community instruments such as Regulation (EC) No 761/2001 ⁽³⁾ (EMAS), can demonstrate that the economic operator has the technical capability to perform the contract. Moreover, a description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence.

⁽¹⁾ OJ L 13, 19.1.2000, p. 12.

⁽²⁾ OJ L 178, 17.7.2000, p. 1.

⁽³⁾ Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing a voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 114, 24.4.2001, p. 1).

(43) This Directive allows Member States to establish official lists of contractors, suppliers or service providers or a system of certification by public or private bodies, and makes provision for the effects of such registration or such certification in a contract award procedure in another Member State. As regards official lists of approved economic operators, it is important to take into account Court of Justice case law in cases where an economic operator belonging to a group claims the economic, financial or technical capabilities of other companies in the group in support of its application for registration. In this case, it is for the economic operator to prove that those resources will actually be available to it throughout the period of validity of the registration. For the purposes of that registration, a Member State may therefore determine the level of requirements to be met and in particular, for example where the operator lays claim to the financial standing of another company in the group, it may require that that company be held liable, if necessary jointly and severally.

(44) The contract should be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in conditions of effective competition. As a result, it is appropriate to allow the application of two award criteria only: 'the lowest price' and 'the most economically advantageous tender'.

To ensure compliance with the principle of equal treatment in the award of contracts, it is appropriate to lay down an obligation — established by case law — to ensure the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied to identify the most economically advantageous tender. It is therefore the responsibility of contracting authorities to indicate the criteria for the award of the contract and the relative weighting given to each of those criteria in sufficient time for tenderers to be aware of them when preparing their tenders. Contracting authorities may derogate from indicating the weighting of the criteria for the award in duly justified cases for which they must be able to give reasons, where the weighting cannot be established in advance, in particular on account of the complexity of the contract. In such cases, they must indicate the descending order of importance of the criteria.

Where the contracting authorities choose to award a contract to the most economically advantageous tender, they shall assess the tenders in order to determine which one offers the best value for money. In order to do this, they shall determine the economic and quality criteria which, taken as a whole, must make it possible to determine the most economically advantageous tender for the contracting authority. The determination of these criteria depends on the object of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the object of the

contract, as defined in the technical specifications, and the value for money of each tender to be measured.

In order to guarantee equal treatment, the criteria for the award of the contract should enable tenders to be compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, may enable the contracting authority to meet the needs of the public concerned, as expressed in the specifications of the contract. Under the same conditions, a contracting authority may use criteria aiming to meet social requirements, in response in particular to the needs — defined in the specifications of the contract — of particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong.

(45) In the case of public service contracts, the award criteria should not affect the application of national provisions on the remuneration of certain services, such as, for example, the services performed by architects, engineers or lawyers.

(46) Certain technical conditions, and in particular those concerning notices and statistical reports, as well as the nomenclature used and the conditions of reference to that nomenclature, will need to be adopted and amended in the light of changing technical requirements. The lists of contracting authorities in the Annexes will also need to be updated. It is therefore appropriate to put in place a flexible and rapid adoption procedure for this purpose.

(47) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.

(48) It is appropriate that Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time-limits ⁽²⁾ should apply to the calculation of the time-limits contained in this Directive.

(49) This Directive should not prejudice the time-limits set out in Annex XI, within which Member States are required to transpose and apply Directives 92/50/EEC, 93/36/EEC and 93/37/EEC,

HAVE ADOPTED THIS DIRECTIVE:

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 124, 8.6.1971, p. 1.

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TITLE I

DEFINITIONS AND GENERAL PRINCIPLES

Article 1

Definitions

1. For the purposes of this Directive, the definitions set out in paragraphs 2 to 15 shall apply.

2. (a) 'Public contracts' are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Directive.

(b) 'Public works contracts' are public contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.

(c) 'Public supply contracts' are public contracts other than those referred to in (b) having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of products.

A public contract having as its object the supply of products and which also covers, as an incidental matter, the siting and installation operations shall be considered to be a 'public supply contract'.

(d) 'Public service contracts' are public contracts other than public works or supply contracts having as their object the provision of services referred to in Annex II.

A public contract having as its object both products and services within the meaning of Annex II shall be considered to be a 'public service contract' if the value of the services in question exceeds that of the products covered by the contract.

A public contract having as its object services within the meaning of Annex II and including activities within the meaning of Annex I that are only incidental to the principal object of the contract shall be considered to be a public service contract.

3. 'Public works concession' is a contract of the same type as a public works contract except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the work or in this right together with payment.

4. 'Service concession' is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.

5. A 'framework agreement' is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

6. A 'dynamic purchasing system' is a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

7. An 'electronic auction' is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

8. The terms 'contractor', 'supplier' and 'service provider' mean any natural or legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of works and/or a work, products or services.

The term 'economic operator' shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interest of simplification.

An economic operator who has submitted a tender shall be designated a 'tenderer'. One which has sought an invitation to take part in a restricted or negotiated procedure or a competitive dialogue shall be designated a 'candidate'.

9. 'Contracting authorities' means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law.

A 'body governed by public law' means any body:

- (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character,
- (b) having legal personality and
- (c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

Non-exhaustive lists of bodies and categories of bodies governed by public law which fulfil the criteria referred to in (a), (b) and (c) of the second subparagraph are set out in Annex III. Member States shall periodically notify the Commission of any changes to their lists of bodies and categories of bodies.

10. A 'central purchasing body' is a contracting authority which:

- acquires supplies and/or services intended for contracting authorities or
- awards public contracts or concludes framework agreements for works, supplies or services intended for contracting authorities.

11. 'Open procedures' means those procedures whereby any interested economic operator may submit a tender.

'Restricted procedures' means those procedures in which any economic operator may request to participate and whereby only those economic operators invited by the contracting authority may submit a tender.

'Competitive dialogue' is a procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.

'Negotiated procedures' means those procedures whereby the contracting authorities consult the economic operators of their choice and negotiate the terms of contract with one or more of these.

'Design contests' means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

12. 'Written' or 'in writing' means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.

13. 'Electronic means' means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

14. The 'Common Procurement Vocabulary (CPV)' shall designate the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No 2195/2002, while ensuring equivalence with the other existing nomenclatures.

In the event of varying interpretations of the scope of this Directive, owing to possible differences between the CPV and NACE nomenclatures listed in Annex I, or between the CPV and CPC (provisional version) nomenclatures listed in Annex II, the NACE or the CPC nomenclature respectively shall take precedence.

15. For the purposes of Article 13, Article 57(a) and Article 68(b), the following phrases shall have the following meanings:

- (a) 'public telecommunications network' means the public telecommunications infrastructure which enables signals to be conveyed between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;
- (b) a 'network termination point' means all physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to, and efficient communication through, that public network;
- (c) 'public telecommunications services' means telecommunications services the provision of which the Member States have specifically assigned to, in particular to one or more telecommunications entities;

- (d) 'telecommunications services' means services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of broadcasting and television.

Article 2

Principles of awarding contracts

Contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

Article 3

Granting of special or exclusive rights: non-discrimination clause

Where a contracting authority grants special or exclusive rights to carry out a public service activity to an entity other than such a contracting authority, the act by which that right is granted shall provide that, in respect of the supply contracts which it awards to third parties as part of its activities, the entity concerned must comply with the principle of non-discrimination on the basis of nationality.

TITLE II

RULES ON PUBLIC CONTRACTS

CHAPTER I

General provisions

Article 4

Economic operators

1. Candidates or tenderers who, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the grounds that, under the law of the Member State in which the contract is awarded, they would have been required to be either natural or legal persons.

However, in the case of public service and public works contracts as well as for public supply contracts covering in addition services and/or siting and installation operations, legal persons may be required to indicate in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

2. Groups of economic operators may submit tenders or put themselves forward as candidates. In order to submit a tender or a request to participate, these groups may not be required by the contracting authorities to assume a specific legal form; however, the group selected may be required to do so when it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

Article 5

Conditions relating to agreements concluded within the World Trade Organisation

For the purposes of the award of contracts by contracting authorities, Member States shall apply in their relations conditions as favourable as those which they grant to economic operators of third countries in implementation of the Agreement on Government Procurement (hereinafter referred to as 'the Agreement'), concluded in the framework of the Uruguay Round multilateral negotiations. Member

States shall, to this end, consult one another within the Advisory Committee for Public Contracts referred to in Article 77 on the measures to be taken pursuant to the Agreement.

Article 6

Confidentiality

This Directive shall not limit the right of economic operators to require a contracting authority, in accordance with the national law to which it is subject, to respect the confidential nature of information which they make available; such information may include, in particular, technical or trade secrets and the confidential aspects of tenders.

CHAPTER II

Scope

Section 1

Thresholds

Article 7

Threshold amounts for public contracts

This Directive shall apply to public contracts which are not excluded in accordance with the exceptions provided for in Articles 10 and 11 and Articles 12 to 18 and which have a value exclusive of value-added tax (VAT) estimated to be equal or greater than the following thresholds:

- (a) EUR 162 000 for public supply and service contracts others than those covered by point (b), third indent, awarded by contracting authorities which are listed as central government authorities in Annex IV; in the case of public supply contracts awarded by contracting authorities operating in the field of defence, this shall apply only to contracts involving products covered by Annex V;

(b) EUR 249 000

- for public supply and service contracts awarded by contracting authorities other than those listed in Annex IV;
- for public supply contracts awarded by contracting authorities which are listed in Annex IV and operate in the field of defence, where these contracts involve products not covered by Annex V;
- for public service contracts awarded by any contracting authority in respect of the services listed in Category 8 of Annex II A, Category 5 telecommunications services the positions of which in the CPV are equivalent to CPC reference Nos 7524, 7525 and 7526 and/or the services listed in Annex II B.

(c) EUR 6 242 000 for public works contracts.

Article 8

Contracts subsidised by more than 50 % by contracting authorities

This Directive shall apply to the awarding of:

- (a) contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR 6 242 000,
 - where those contracts involve civil engineering activities within the meaning of Annex I;
 - where those contracts involve building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes;
- (b) service contracts which are subsidised directly by contracting authorities by more than 50 % and the estimated value of which, net of VAT, is equal to or greater than EUR 249 000 and which are connected with a works contract within the meaning of (a).

Member States shall take the necessary measures to ensure that the contracting authorities awarding such subsidies ensure compliance with this Directive where that contract is awarded by one or more entities other than themselves or comply with this Directive where they themselves award that contract for and on behalf of those other entities.

Article 9

Methods for calculating the estimated value of public contracts, framework agreements and dynamic purchasing systems

1. The calculation of the estimated value of a public contract shall be based on the total amount, net of VAT, payable as estimated by the contracting authority. This calculation shall take account of the estimated total amount, including any form of option and any renewals of the contract.

Where the contracting authority provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.

2. This estimate must be valid at the moment at which the contract notice is sent, as provided for in Article 35(2), or, in cases where such notice is not required, at the moment at which the contracting authority commences the contract awarding procedure.

3. No works project or proposed purchase of a certain quantity of supplies and/or services may be subdivided to prevent its coming within the scope of this Directive.

4. With regard to public works contracts, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies necessary for executing the works and placed at the contractor's disposal by the contracting authorities.

5. (a) Where a proposed work or purchase of services may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 7, this Directive shall apply to the awarding of each lot.

However, the contracting authorities may waive such application in respect of lots the estimated value of which net of VAT is less than EUR 80 000 for services or EUR 1 million for works, provided that the aggregate cost of those lots does not exceed 20 % of the aggregate value of the lots as a whole.

(b) Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying Article 7(a) and (b).

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 7, this Directive shall apply to the awarding of each lot.

However, the contracting authorities may waive such application in respect of lots, the estimated value of which, net of VAT, is less than EUR 80 000, provided that the aggregate cost of those lots does not exceed 20 % of the aggregate value of the lots as a whole.

6. With regard to public supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

- (a) in the case of fixed-term public contracts, if that term is less than or equal to twelve months, the total estimated value for the term of the contract or, if the term of the contract is greater than twelve months, the total value including the estimated residual value;
- (b) in the case of public contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

7. In the case of public supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:

- (a) either the total actual value of the successive contracts of the same type awarded during the preceding twelve months or financial year, if possible adjusted to take account of the changes in quantity or value which would occur in the course of the twelve months following the initial contract;
- (b) or the total estimated value of the successive contracts awarded during the twelve months following the first delivery, or during the financial year if that is longer than twelve months.

The choice of method used to calculate the estimated value of a public contract may not be made with the intention of excluding it from the scope of this Directive.

8. With regard to public service contracts, the value to be taken as a basis for calculating the estimated contract value shall be, where appropriate, the following:

- (a) for the following types of services:
 - (i) insurance services: the premium payable and other forms of remuneration;
 - (ii) banking and other financial services: the fees, commissions, interest and other forms of remuneration;
 - (iii) design contracts: fees, commission payable and other forms of remuneration;
- (b) for service contracts which do not indicate a total price:

- (i) in the case of fixed-term contracts, if that term is less than or equal to forty-eight months: the total value for their full term;

- (ii) in the case of contracts without a fixed term or with a term greater than forty-eight months: the monthly value multiplied by 48.

9. With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

Section 2

Specific situations

Article 10

Defence procurement

This Directive shall apply to public contracts awarded by contracting authorities in the field of defence, subject to Article 296 of the Treaty.

Article 11

Public contracts and framework agreements awarded by central purchasing bodies

1. Member States may stipulate that contracting authorities may purchase works, supplies and/or services from or through a central purchasing body.

2. Contracting authorities which purchase works, supplies and/or services from or through a central purchasing body in the cases set out in Article 1(10) shall be deemed to have complied with this Directive insofar as the central purchasing body has complied with it.

Section 3

Excluded contracts

Article 12

Contracts in the water, energy, transport and postal services sectors

This Directive shall not apply to public contracts which, under Directive 2003/.../EC, are awarded by contracting authorities exercising one or more of the activities referred to in Articles 3 to 7 of that Directive and are awarded for the pursuit of those activities, or to public contracts excluded from the scope of that Directive under Article 5(2) and Articles 19, 26 and 30 thereof.

However, this Directive shall continue to apply to public contracts awarded by contracting authorities carrying out one or more of the activities referred to in Article 6 of Directive 2003/.../EC and awarded for those activities, insofar as the Member State concerned takes advantage of the option referred to in the second subparagraph of Article 71 thereof to defer its application.

Article 13

Specific exclusions in the field of telecommunications

This Directive shall not apply to public contracts for the principal purpose of permitting the contracting authorities to provide or exploit public telecommunications networks or to provide to the public one or more telecommunications services.

Article 14

Secret contracts and contracts requiring special security measures

This Directive shall not apply to public contracts when they are declared to be secret, when their execution must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned, or when the protection of the essential interests of that Member State so requires.

Article 15

Contracts awarded pursuant to international rules

This Directive shall not apply to public contracts governed by different procedural rules and awarded:

- (a) pursuant to an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering supplies or works intended for the joint implementation or exploitation of a work by the signatory States or services intended for the joint implementation or exploitation of a project by the signatory States; all agreements shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 77;
- (b) pursuant to a concluded international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- (c) pursuant to the particular procedure of an international organisation.

Article 16

Specific exclusions

This Directive shall not apply to public service contracts for:

- (a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or

concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;

- (b) the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
- (c) arbitration and conciliation services;
- (d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting authorities to raise money or capital, and central bank services;
- (e) employment contracts;
- (f) research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority.

Article 17

Service concessions

Without prejudice to the application of Article 3, this Directive shall not apply to service concessions as defined in Article 1(4).

Article 18

Service contracts awarded on the basis of an exclusive right

This Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

Section 4

Special arrangement

Article 19

Reserved contracts

Member States may reserve the right to participate in public contract award procedures to sheltered workshops or provide for such contracts to be executed in the context of sheltered employment programmes where most of the employees concerned are handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions.

The contract notice shall make reference to this provision.

CHAPTER III

Arrangements for public service contracts

Article 20

Service contracts listed in Annex II A

Contracts which have as their object services listed in Annex II A shall be awarded in accordance with Articles 23 to 55.

Article 21

Service contracts listed in Annex II B

Contracts which have as their object services listed in Annex II B shall be subject solely to Article 23 and Article 35(4).

Article 22

Mixed contracts including services listed in Annex II A and services listed in Annex II B

Contracts which have as their object services listed both in Annex II A and in Annex II B shall be awarded in accordance with Articles 23 to 55 where the value of the services listed in Annex II A is greater than the value of the services listed in Annex II B. In other cases, contracts shall be awarded in accordance with Article 23 and Article 35(4).

CHAPTER IV

Specific rules governing specifications and contract documents

Article 23

Technical specifications

1. The technical specifications as defined in point 1 of Annex VI shall be set out in the contract documentation, such as contract notices, contract documents or additional documents.

2. Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the opening of public procurement to competition.

3. Without prejudice to compulsory national technical rules, to the extent that they are compatible with Community law, the technical specifications shall be formulated:

(a) either by reference to technical specifications defined in Annex VI and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems estab-

lished by the European standardisation bodies or — when these do not exist — to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied by the words 'or equivalent';

(b) or in terms of performance or functional requirements; the latter may include environmental characteristics. However, such parameters must be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

(c) or in terms of performance or functional requirements as mentioned in (b), with reference to the specifications mentioned in (a) as a means of presuming conformity with such performance or functional requirements;

(d) or by referring to the specifications mentioned in (a) for certain characteristics, and by referring to the performance or functional requirements mentioned in (b) for other characteristics.

4. Where a contracting authority makes use of the option of referring to the specifications mentioned in paragraph 3(a), it cannot reject a tender on the grounds that the products and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in his tender to the satisfaction of the contracting authority, by whatever appropriate means, that the solutions which he proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

An appropriate means might be constituted by a technical dossier of the manufacturer or a test report from a recognised body.

5. Where a contracting authority uses the option laid down in paragraph 3 to prescribe in terms of performance or functional requirements, it may not reject a tender for works, products or services which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard, a technical reference system established by a European standardisation body, if these specifications address the performance or functional requirements which it has laid down.

In his tender, the tenderer must prove to the satisfaction of the contracting authority and by any appropriate means that the work, product or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

An appropriate means might be constituted by a technical dossier of the manufacturer or a test report from a recognised body.

6. Where contracting authorities lay down environmental characteristics in terms of performance or functional requirements as referred to in paragraph 3(b) they may use the detailed specifications, or, if necessary, parts thereof, as defined by European or (multi-) national eco-labels, or by any other eco-label, providing that:

- those specifications are appropriate to define the characteristics of the supplies or services that are the object of the contract,
- the requirements for the label are drawn up on the basis of scientific information,
- the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and
- they are accessible to all interested parties.

The contracting authorities may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents; they must accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

7. 'Recognised bodies', within the meaning of this Article, are test and calibration laboratories and certification and inspection bodies which comply with applicable European standards.

Contracting authorities shall accept certificates from recognised bodies established in other Member States.

8. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraphs 3 and 4 is not possible; such reference shall be accompanied by the words 'or equivalent'.

Article 24

Variants

1. Where the criterion for award is that of the most economically advantageous tender, contracting authorities may authorise tenderers to submit variants.
2. The contracting authorities shall indicate in the contract notice whether or not they authorise variants: variants shall not be authorised without this indication.

3. The contracting authorities authorising variants shall state in the contract documents the minimum requirements to be respected by the variants and any specific requirements for their presentation.

4. Only variants meeting the minimum requirements laid down by these contracting authorities shall be taken into consideration.

In the procedures for awarding public supply or service contracts, contracting authorities which have authorised variants may not reject a variant on the sole ground that it would lead, if successful, to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

Article 25

Subcontracting

In the contract documents, the contracting authority may ask or may be required by a Member State to ask the tenderer to indicate in his tender any share of the contract he may intend to subcontract to third parties and any proposed subcontractors.

This indication shall be without prejudice to the question of the principal economic operator's liability.

Article 26

Conditions for performance of contracts

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.

Article 27

Obligations relating to taxes, environmental protection, employment protection provisions and working conditions

1. The contracting authority may state in the contract documents, or be obliged by a Member State to do so, the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to the employment protection provisions and to the working conditions which are in force in the Member State, region or locality in which the works are to be carried out or services are to be provided and which shall be applicable to the works carried out on site or to the services provided during the performance of the contract.

2. The contracting authority which supplies the information referred to in paragraph 1 shall request the tenderers or candidates in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the works are to be carried out or the service is to be provided.

The first subparagraph shall be without prejudice to the application of the provisions of Article 55 concerning the examination of abnormally low tenders.

CHAPTER V

Procedures

Article 28

Use of open, restricted and negotiated procedures and of competitive dialogue

In awarding their public contracts, the contracting authorities shall apply the national procedures adjusted for the purposes of this Directive.

They shall award these public contracts by applying the open or restricted procedure. In the specific circumstances expressly provided for in Article 29, the contracting authorities may award their public contracts by means of the competitive dialogue. In the specific cases and circumstances referred to expressly in Articles 30 and 31, they may apply a negotiated procedure, with or without publication of the contract notice.

Article 29

Competitive dialogue

1. Member States may provide that where contracting authorities consider that the use of the open or restricted procedure will not allow the award of the contract, the latter may make use of the competitive dialogue in accordance with this Article:

- (a) where they are not objectively able to define the technical means in accordance with Article 23(3)(b), (c) or (d), capable of satisfying their needs or objectives, and/or
- (b) where they are not objectively able to specify the legal and/or financial make-up of a project.

A public contract shall be awarded on the sole basis of the award criterion for the most economically advantageous tender.

2. The contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and/or in a descriptive document.

3. The contracting authorities shall open, with the candidates selected in accordance with the relevant provisions of Articles 44 to 52, a dialogue the aim of which shall be to identify and define the means best fitted to satisfy their needs. They may discuss all aspects of the contract with the chosen candidates during this dialogue.

During the dialogue, the contracting authorities shall ensure equality of treatment among all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

The contracting authorities may not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without his/her agreement.

4. The contracting authorities may provide for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria in the contract notice or the descriptive document. The contract notice or the descriptive document shall indicate that recourse may be had to this option.

5. The contracting authority shall continue such dialogue until it can identify the solution or solutions, if necessary after comparing them, which are capable of meeting its needs.

6. Having declared that the dialogue is concluded and having so informed the participants, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project.

These tenders may be clarified and specified at the request of the contracting authority. However, such clarification, specification or additional information may not involve changes to the basic features of the tender or the call for tender, variations in which are likely to distort competition or have a discriminatory effect.

7. Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or the descriptive document and shall choose the most economically advantageous tender in accordance with Article 53.

At the request of the contracting authority, the tenderer identified as having submitted the most economically advantageous tender may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the call for tender and does not risk distorting competition or causing discrimination.

8. The contracting authorities may specify prices or payments to the participants in the dialogue.

*Article 30***Cases justifying use of the negotiated procedure with prior publication of a contract notice**

1. Contracting authorities may award their public contracts by negotiated procedure, after publication of a contract notice, in the following cases:

- (a) in the event of irregular tenders or the submission of tenders which are unacceptable under national provisions compatible with Articles 4, 24, 25, 27 and Chapter VII, in response to an open or restricted procedure or a competitive dialogue insofar as the original terms of the contract are not substantially altered.

Contracting authorities need not publish a contract notice where they include in the negotiated procedure all of, and only, the tenderers which satisfy the criteria of Articles 45 to 52 and which, during the prior open or restricted procedure or competitive dialogue, have submitted tenders in accordance with the formal requirements of the tendering procedure;

- (b) in exceptional cases, when the nature of the works, supplies, or services or the risks attaching thereto do not permit prior overall pricing;
- (c) in the case of services, *inter alia* services within category 6 of Annex II A, and intellectual services such as services involving the design of works, insofar as the nature of the services to be provided is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures;
- (d) in respect of public works contracts, for works which are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs.

2. In the cases referred to in paragraph 1, contracting authorities shall negotiate with tenderers the tenders submitted by them in order to adapt them to the requirements which they have set in the contract notice, the specifications and additional documents, if any, and to seek out the best tender in accordance with Article 53(1).

3. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

4. Contracting authorities may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice or the specifications.

The contract notice or the specifications shall indicate whether recourse has been had to this option.

*Article 31***Cases justifying use of the negotiated procedure without publication of a contract notice**

Contracting authorities may award public contracts by a negotiated procedure without prior publication of a contract notice in the following cases:

- 1. for public works contracts, public supply contracts and public service contracts:

- (a) when no tenders or no suitable tenders or no applications have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered and on condition that a report is sent to the Commission if it so requests;

- (b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;

- (c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, the time-limit for the open, restricted or negotiated procedures with publication of a contract notice as referred to in Article 30 cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

- 2. for public supply contracts:

- (a) when the products involved are manufactured purely for the purpose of research, experiment, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;

- (b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts as well as that of recurrent contracts may not, as a general rule, exceed three years;

- (c) for supplies quoted and purchased on a commodity market;

(d) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national laws or regulations;

3. for public service contracts, when the contract concerned follows a design contest and must, under the applicable rules, be awarded to the successful candidate or to one of the successful candidates, in the latter case, all successful candidates must be invited to participate in the negotiations;

4. for public works contracts and public service contracts:

(a) for additional works or services not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the economic operator performing such works or services:

— when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities,

or

— when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion.

However, the aggregate value of contracts awarded for additional works or services may not exceed 50 % of the amount of the original contract;

(b) for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to whom the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to the open or restricted procedure.

As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities when they apply the provisions of Article 7.

This procedure may be used only during the three years following the conclusion of the original contract.

Article 32

Framework agreements

1. Member States may provide that contracting authorities may conclude framework agreements.

2. For the purpose of concluding a framework agreement, contracting authorities shall follow the rules of procedure referred to in this Directive for all phases up to the award of contracts based on that framework agreement. The parties to the framework agreement shall be chosen by applying the award criteria set in accordance with Article 53.

Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in paragraphs 3 and 4. Those procedures may be applied only between the contracting authorities and the economic operators originally party to the framework agreement.

4. Those procedures may be applied only between the contracting authorities and the economic operators originally party to the framework agreement.

When awarding contracts based on a framework agreement, the parties may under no circumstances make substantial amendments to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

The term of a framework agreement may not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

Contracting authorities may not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement.

For the award of those contracts, contracting authorities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

4. Where a framework agreement is concluded with several economic operators, the latter must be at least three in number, insofar as there is a sufficient number of economic operators to satisfy the selection criteria and/or of admissible tenders which meet the award criteria.

Contracts based on framework agreements concluded with several economic operators may be awarded either:

— by application of the terms laid down in the framework agreement without reopening competition, or

— where not all the terms are laid down in the framework agreement, when the parties are again in competition on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:

- (a) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of executing the subject of the contract;
- (b) contracting authorities shall fix a time-limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract and the time needed to send in tenders;
- (c) tenders shall be submitted in writing, and their content shall remain confidential until the stipulated time-limit for reply has expired;
- (d) contracting authorities shall award each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

Article 33

Dynamic purchasing systems

1. Member States may provide that contracting authorities may use dynamic purchasing systems.

2. In order to set up a dynamic purchasing system, contracting authorities shall follow the rules of the open procedure in all its phases up to the award of the contracts to be concluded under this system. All the tenderers satisfying the selection criteria and having submitted an indicative tender which complies with the specification and any possible additional documents shall be admitted to the system; indicative tenders may be improved at any time provided that they continue to comply with the specification. With a view to setting up the system and to the award of contracts under that system, contracting authorities shall use solely electronic means in accordance with Article 42(2) to (5).

3. For the purposes of setting up the dynamic purchasing system, contracting authorities shall:

- (a) publish a contract notice making it clear that a dynamic purchasing system is involved;
- (b) indicate in the specification, amongst others, the nature of the purchases envisaged under that system, as well as all the necessary information concerning the purchasing

system, the electronic equipment used and the technical connection arrangements and specifications;

- (c) offer by electronic means, on publication of the notice and up to the expiry of the system, unrestricted, direct and full access to the specification and to any additional documents and shall indicate in the notice the internet address at which such documents may be consulted.

4. Contracting authorities shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting an indicative tender and of being admitted to the system under the conditions referred to in paragraph 2. They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime.

The contracting authority shall inform the tenderer referred to in the first subparagraph at the earliest possible opportunity of its admittance to the dynamic purchasing system or of the rejection of its indicative tender.

5. Each specific contract must be the subject of an invitation to tender. Before issuing the invitation to tender, contracting authorities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, in accordance with paragraph 4, within a time-limit that may not be less than 15 days from the date on which the simplified notice was sent. Contracting authorities may not proceed with tendering until they have completed evaluation of all the indicative tenders received by that deadline.

6. Contracting authorities shall invite all tenderers admitted to the system to submit a tender for each specific contract to be awarded under the system. To that end they shall set a time-limit for the submission of tenders.

They shall award the contract to the tenderer which submitted the best tender on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation referred to in the first subparagraph.

7. A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

Contracting authorities may not resort to this system to prevent, restrict or distort competition.

No charges may be billed to the interested economic operators or to parties to the system.

*Article 34***Public works contracts: particular rules on subsidised housing schemes**

In the case of public contracts relating to the design and construction of a subsidised housing scheme the size and complexity of which, and the estimated duration of the work involved require that planning be based from the outset on close collaboration within a team comprising representatives of the contracting authorities, experts and the contractor to be responsible for carrying out the works, a special award procedure may be adopted for selecting the contractor most suitable for integration into the team.

In particular, contracting authorities shall include in the contract notice as accurate as possible a description of the works to be carried out so as to enable interested contractors to form a valid idea of the project. Furthermore, contracting authorities shall, in accordance with the qualitative selection criteria referred to in Articles 45 to 52, set out in such a contract notice the personal, technical, economic and financial conditions to be fulfilled by candidates.

Where such a procedure is adopted, contracting authorities shall apply Articles 2, 35, 36, 38, 39, 41, 42, 43 and 45 to 52.

CHAPTER VI

Rules on advertising and transparency

Section 1

Publication of notices

*Article 35***Notices**

1. Contracting authorities shall make known, by means of a prior information notice published by the Commission or by themselves on their 'buyer profile', as described in point 2(b) of Annex VIII:

- (a) where supplies are concerned, the estimated total value of the contracts or the framework agreements by product area which they intend to award over the following twelve months, where the total estimated value, taking into account Articles 7 and 9, is equal to or greater than EUR 750 000.

The product area shall be established by the contracting authorities by reference to the CPV nomenclature;

- (b) where services are concerned, the estimated total value of the contracts or the framework agreements in each of the categories of services listed in Annex II A which they intend to award over the following twelve months, where such estimated total value, taking into account the

provisions of Articles 7 and 9, is equal to or greater than EUR 750 000;

- (c) where works are concerned, the essential characteristics of the contracts or the framework agreements which they intend to award, the estimated value of which is equal to or greater than the threshold specified in Article 7, taking into account Article 9.

The notices referred to in (a) and (b) shall be sent to the Commission or published on the buyer profile as soon as possible after the beginning of the budgetary year.

The notice referred to in (c) shall be sent to the Commission or published on the buyer profile as soon as possible after the decision approving the planning of the works contracts or the framework agreements that the contracting authorities intend to award.

Contracting authorities who publish the prior information notice on their buyer profiles shall send the Commission, electronically, a notice of the publication of the prior information notice on a buyer profile, in accordance with the format and modalities for sending notices indicated in point 3 of Annex VIII.

The publication of the notices referred to in (a), (b) and (c) shall be compulsory only where the contracting authorities take the option of shortening the time-limits for the receipt of tenders as laid down in Article 38(4).

This paragraph shall not apply to negotiated procedures without the prior publication of a contract notice.

2. Contracting authorities which wish to award a public contract or a framework agreement by open, restricted or, under the conditions laid down in Article 30, negotiated procedure with the publication of a contract notice or, under the conditions laid down in Article 29, a competitive dialogue, shall make known their intention by means of a contract notice.

3. Contracting authorities which wish to set up a dynamic purchasing system shall make known their intention by means of a contract notice.

Contracting authorities which wish to award a contract based on a dynamic purchasing system shall make known their intention by means of a simplified contract notice.

4. Contracting authorities which have awarded a public contract or concluded a framework agreement shall send a notice of the results of the award procedure no later than 48 days after the award of the contract or the conclusion of the framework agreement.

In the case of framework agreements concluded in accordance with Article 32 the contracting authorities are not bound to send a notice of the results of the award procedure for each contract based on that agreement.

Contracting authorities shall send a notice of the result of the award of contracts based on a dynamic purchasing system within 48 days of the award of each contract. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 48 days of the end of each quarter.

In the case of public contracts for services listed in Annex II B, the contracting authorities shall indicate in the notice whether they agree to its publication. For such services contracts the Commission shall draw up the rules for establishing statistical reports on the basis of such notices and for the publication of such reports in accordance with the procedure laid down in Article 77(2).

Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where release of such information would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

Article 36

Form and manner of publication of notices

1. The notices shall include the information mentioned in Annex VII A and, where appropriate, any other information deemed useful by the contracting authority in the format of standard forms adopted by the Commission in accordance with the procedure referred to in Article 77(2).

2. Notices sent by contracting authorities to the Commission shall be sent either by electronic means in accordance with the format and modalities of transmission indicated in Annex VIII, paragraph 3, or by other means. In the event of recourse to the accelerated procedure set out in Article 38(8), notices must be sent either by telefax or by electronic means, in accordance with the format and modalities of transmission indicated in point 3 of Annex VIII.

The notices shall be published in accordance with the technical characteristics for publication set out in point 1(a) and (b) of Annex VIII.

3. Notices drawn up and transmitted by electronic means in accordance with the format and modalities of transmission indicated in point 3 of Annex VIII, shall be published no later than five days after they are sent.

Notices which are not transmitted by electronic means in accordance with the format and modalities of transmission

indicated in point 3 of Annex VIII, shall be published not later than twelve days after they are sent, or in the case of accelerated procedure referred to in Article 38(8), not later than five days after they are sent.

4. Contract notices shall be published in full in an official language of the Community as chosen by the contracting authority, this original language version constituting the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages.

The costs of publication of such notices by the Commission shall be borne by the Community.

5. The notices and their contents may not be published at national level before the date on which they are sent to the Commission.

Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission or published on a buyer profile in accordance with the first subparagraph of Article 35(1), but shall mention the date of dispatch of the notice to the Commission or its publication on the buyer profile.

Prior information notices may not be published on a buyer profile before the dispatch to the Commission of the notice of their publication in that form; they shall mention the date of that dispatch.

6. The content of notices not sent by electronic means in accordance with the format and modalities of transmission indicated in point 3 of Annex VIII, shall be limited to approximately 650 words.

7. The contracting authorities shall be able to supply proof of the dates on which notices are dispatched.

8. The Commission shall give the contracting authority confirmation of the publication of the information sent, mentioning the date of that publication. Such confirmation shall constitute proof of publication.

Article 37

Non-mandatory publication

Contracting authorities may publish in accordance with Article 36 notices of public contracts which are not subject to the publication requirement laid down in this Directive.

Section 2

Time-limits

Article 38

Time-limits for receipt of requests to participate and for receipt of tenders

1. When fixing the time-limits for the receipt of tenders and requests to participate, contracting authorities shall take account in particular of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time-limits set by this Article.

2. In the case of open procedures, the minimum time-limit for the receipt of tenders shall be 52 days from the date on which the contract notice was sent.

3. In the case of restricted procedures, negotiated procedures with publication of a contract notice referred to in Article 30 and the competitive dialogue

(a) the minimum time-limit for receipt of requests to participate shall be 37 days from the date on which the contract notice was sent;

(b) in the case of restricted procedures, the minimum time-limit for the receipt of tenders shall be 40 days from the date on which the invitation was sent.

4. When contracting authorities have published a prior information notice, the minimum time-limit for the receipt of tenders under paragraphs 2 and 3(b) may, as a general rule, be shortened to 36 days, but under no circumstances to less than 22 days.

The time-limit shall run from the date on which the contract notice was sent in open procedures, and from the date on which the invitation to tender was sent in restricted procedures.

The shortened time-limits referred to in the first subparagraph shall be permitted, provided that the prior information notice has included all the information required for the contract notice in Annex VII A, insofar as that information is available at the time the notice is published and that prior information notice was sent for publication between no less than 52 days and no more than twelve months before the date on which the contract notice was sent.

5. Where notices are drawn up and transmitted by electronic means in accordance with the format and modalities of transmission indicated in point 3 of Annex VIII, the time-limits for the receipt of tenders referred to in paragraphs 2 and 4 in open procedures, and the time-limit for the receipt of the requests to participate referred to in paragraph 3(a), in restricted and negotiated procedures and the competitive dialogue, may be shortened by seven days.

6. The time-limits for receipt of tenders referred to in paragraphs 2 and 3(b) may be reduced by five days where the contracting authority offers unrestricted and full direct access by electronic means to the contract documents and any supplementary documents from the date of publication of the notice in accordance with Annex VIII, specifying in the text of the notice the internet address at which this documentation is accessible.

This reduction may be added to that referred to in paragraph 5.

7. If, for whatever reason, the specifications and the supporting documents or additional information, although requested in good time, are not supplied within the time-limits set in Articles 39 and 40, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time-limits for the receipt of tenders shall be extended so that all economic operators concerned may be aware of all the information needed to produce tenders.

8. In the case of restricted procedures and negotiated procedures with publication of a contract notice referred to in Article 30, where urgency renders impracticable the time-limits laid down in this Article, contracting authorities may fix:

(a) a time-limit for the receipt of requests to participate which may not be less than 15 days from the date on which the contract notice was sent, or less than 10 days if the notice was sent by electronic means, in accordance with the format and procedure for sending notices indicated in point 3 of Annex VIII;

(b) and, in the case of restricted procedures, a time-limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender.

Article 39

Open procedures: Specifications, additional documents and information

1. In open procedures, where contracting authorities do not offer free and full direct access by electronic means in accordance with Article 38(6) to the specifications and any supporting documents, the specifications and supplementary documents shall be sent to economic operators within six days of receipt of the request to participate, provided that the request was made in good time before the deadline for submission of tenders.

2. Provided that it has been requested in good time, additional information relating to the specifications and any supporting documents shall be supplied by the contracting authorities or competent departments not later than six days before the deadline fixed for receipt of tenders.

Section 3

Information content and means of transmission

Article 40

Invitations to submit a tender, participate in the dialogue or negotiate

1. In restricted procedures, competitive dialogue procedures and negotiated procedures with publication of a contract notice within the meaning of Article 30, the contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate or, in the case of a competitive dialogue, to take part in the dialogue.

2. The invitation to the candidates shall include either:

- a copy of the specifications or of the descriptive document and any supporting documents, or
- a reference to accessing the specifications and the other documents indicated in the first indent, when they are made directly available by electronic means in accordance with Article 38(6).

3. Where an entity other than the contracting authority responsible for the award procedure has the specifications, the descriptive document and/or any supporting documents, the invitation shall state the address from which those specifications, that descriptive document and those documents may be requested and, if appropriate, the deadline for requesting such documents, and the sum payable for obtaining them and any payment procedures. The competent department shall send that documentation to the economic operator without delay once the request has been received.

4. The additional information on the specifications, the descriptive document or the supporting documents shall be sent by the contracting authority or the competent department not less than six days before the deadline fixed for the receipt of tenders, provided that they were requested in good time. In the event of a restricted or an accelerated procedure, that period shall be four days.

5. In addition, the invitation to submit a tender, to participate in the dialogue or to negotiate must contain at least:

- (a) a reference to the contract notice published;
- (b) the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up;

(c) in the case of competitive dialogue the date and the address set for the start of consultation and the language or languages used;

(d) a reference to any possible adjoining documents to be submitted, either in support of verifiable declarations by the tenderer in accordance with Article 44, or to supplement the information referred to in that Article, and under the conditions laid down in Articles 47 and 48;

(e) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if they are not given in the contract notice, the specifications or the descriptive document.

However, in the case of contracts awarded in accordance with the rules laid down in Article 29, the information referred to in (b) above shall not appear in the invitation to participate in the dialogue but it shall appear in the invitation to submit a tender.

Article 41

Informing candidates and tenderers

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure or implement a dynamic purchasing system; that information shall be given in writing upon request to the contracting authorities.

2. The contracting authority shall as quickly as possible inform any eliminated candidate or tenderer so requesting of the reasons for the rejection of his application or his tender, and any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement. Those time-limits may in no circumstances exceed fifteen days from the receipt of the written request.

3. However, contracting authorities may decide to withhold certain information referred to in paragraph 1, regarding the contract award, the conclusion of framework agreements or admittance to a dynamic purchasing system where release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.

Section 4

Communication

Article 42

Rules applicable to communication

1. All communication and information exchange referred to in this Title may be performed by post, by fax, by electronic means in accordance with paragraphs 4 and 5, by telephone in the cases and circumstances referred to in paragraph 6, or by a combination of those means, according to the choice of the contracting authority.

2. The means of communication chosen must be generally available and thus not restrict economic operators' access to the tendering procedure.

3. Communication and the exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the contracting authorities examine the content of tenders and requests to participate only after the time-limit set for submitting them has expired.

4. The tools to be used for communicating by electronic means, as well as their technical characteristics, must be non-discriminatory, generally available and interoperable with the information and communication technology products in general use.

5. The following rules are applicable to devices for the electronic receipt of tenders and requests to participate:

- (a) information regarding the specifications necessary for the electronic submission of tenders and requests to participate, including encryption, must be available to interested parties. Moreover, the devices for the electronic receipt of tenders and requests to participate must conform to the requirements of Annex X;
- (b) Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for these devices;
- (c) tenderers or candidates shall undertake to submit, before expiry of the time-limit laid down for submission of tenders or requests to participate, the documents, certificates, attestations and declarations referred to in Articles 45 to 50 and Article 52 if they do not exist in electronic format.

6. The following rules shall apply to the transmission of requests to participate:

- (a) requests to participate in procedures for the award of public contracts may be made in writing or by telephone;
- (b) where requests to participate are made by telephone, a written confirmation must be sent before expiry of the time-limit set for their receipt;

- (c) contracting authorities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the time-limit for sending confirmation by post or electronic means, must be stated by the contracting authority in the contract notice.

Section 5

Reports

Article 43

Content of reports

For every contract, framework agreement, and every establishment of a dynamic purchasing system, the contracting authorities shall draw up a written report which shall include at least the following:

- (a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;
- (b) the names of the successful candidates or tenderers and the reasons for their selection;
- (c) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (d) the reasons for the rejection of tenders found to be abnormally low;
- (e) the name of the successful tenderer and the reasons why his tender was selected and, if known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties;
- (f) for negotiated procedures, the circumstances referred to in Articles 30 and 31 which justify the use of these procedures;
- (g) as far as the competitive dialogue is concerned, the circumstances as laid down in Article 29 justifying the use of this procedure;
- (h) if necessary, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system.

The contracting authorities shall take appropriate steps to document the progress of award procedures conducted by electronic means.

The report, or the main features of it, shall be communicated to the Commission if it so requests.

CHAPTER VII

Conduct of the procedure

Section 1

General provisions

Article 44

Verification of the suitability and choice of participants and award of contracts

1. Contracts shall be awarded on the basis of the criteria laid down in Articles 53 and 55, taking into account Article 24, after the suitability of the economic operators not excluded under Articles 45 and 46 has been checked by contracting authorities in accordance with the criteria of economic and financial standing, of professional and technical knowledge or ability referred to in Articles 47 to 52, and, where appropriate, with the non-discriminatory rules and criteria referred to in paragraph 3.

2. The contracting authorities may require candidates and tenderers to meet minimum capacity levels in accordance with Articles 47 and 48.

The extent of the information referred to in Articles 47 and 48 and the minimum levels of ability required for a specific contract must be related and proportionate to the subject-matter of the contract.

These minimum levels shall be indicated in the contract notice.

3. In restricted procedures, negotiated procedures with publication of a contract notice and in the competitive dialogue procedure, contracting authorities may limit the number of suitable candidates they will invite to tender, to negotiate or to conduct a dialogue with, provided a sufficient number of suitable candidates is available. The contracting authorities shall indicate in the contract notice the objective and non-discriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite and, where appropriate, the maximum number.

In restricted procedure the minimum shall be five. In the negotiated procedure with publication of a contract notice and the competitive dialogue procedure the minimum shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.

The contracting authorities shall invite a number of candidates at least equal to the minimum number set in advance. Where the number of candidates meeting the selection criteria and the

minimum levels of ability is below the minimum number, the contracting authority may continue the procedure by inviting the candidate(s) with the required capabilities. In the context of this same procedure, the contracting authority may not include other economic operators who did not request to participate, or candidates who do not have the required capabilities.

4. Where the contracting authorities exercise the option of reducing the number of solutions to be discussed or of tenders to be negotiated, as provided for in Articles 29(4) and 30(4), they shall do so by applying the award criteria stated in the contract notice, in the specifications or in the descriptive document. In the final stage, the number arrived at shall make for genuine competition insofar as there are enough solutions or suitable candidates.

Section 2

Criteria for qualitative selection

Article 45

Personal situation of the candidate or tenderer

1. Any candidate or tenderer who has been the subject of a conviction by definitive judgment of which the contracting authority is aware for one or more of the reasons listed below shall be excluded from participation in a public contract:

- (a) participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA ⁽¹⁾;
- (b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 ⁽²⁾ and Article 3(1) of Council Joint Action 98/742/JHA ⁽³⁾ respectively;
- (c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities ⁽⁴⁾;
- (d) money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering ⁽⁵⁾.

Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

They may provide for a derogation from the requirement referred to in the first subparagraph for overriding requirements in the general interest.

⁽¹⁾ OJ L 351, 29.12.1998, p. 1.

⁽²⁾ OJ C 195, 25.6.1997, p. 1.

⁽³⁾ OJ L 358, 31.12.1998, p. 2.

⁽⁴⁾ OJ C 316, 27.11.1995, p. 48.

⁽⁵⁾ OJ L 166, 28.6.1991, p. 77. Directive as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 (OJ L 344, 28.12.2001, p. 76).

For the purposes of this paragraph, the contracting authorities shall, where appropriate, ask candidates or tenderers to supply the documents referred to in paragraph 3 and may, where they have doubts concerning the personal situation of such candidates or tenderers, also apply to the competent authorities to obtain any information they consider necessary on the personal situation of the candidates or tenderers concerned. Where the information concerns a candidate or tenderer established in a State other than that of the contracting authority, the contracting authority may seek the cooperation of the competent authorities. Having regard for the national laws of the Member State where the candidates or tenderers are established, such requests shall relate to legal and/or natural persons, including, if appropriate, company directors and any person having powers of representation, decision or control in respect of the candidate or tenderer.

2. Any economic operator may be excluded from participation in a contract who:

- (a) is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities or who is in any analogous situation arising from a similar procedure under national laws and regulations;
- (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;
- (c) has been convicted by a judgment which has the force of *res judicata* in accordance with the legal provisions of the country of any offence concerning his professional conduct;
- (d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (g) is guilty of serious misrepresentation in supplying the information required under this Section or has not supplied such information.

Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

3. Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in paragraphs 1 or 2(a), (b), (c), (e) or (f) applies to the economic operator:

- (a) as regards paragraphs 1 and 2(a), (b) and (c), the production of an extract from the 'judicial record' or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country whence that person comes showing that these requirements have been met;
- (b) as regards paragraph 2(e) and (f), a certificate issued by the competent authority in the Member State concerned.

Where the country in question does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1 and 2(a), (b) and (c), they may be replaced by a declaration on oath or, in Member States where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes.

4. Member States shall designate the authorities and bodies competent to issue the documents, certificates or declarations referred to in paragraph 3 and shall inform the Commission thereof. Such notification shall be without prejudice to data protection law.

Article 46

Suitability to pursue the professional activity

Any economic operator wishing to take part in a public contract may be requested to prove its enrolment, as prescribed in his Member State of establishment, on one of the professional or trade registers or to provide a declaration on oath or a certificate as described in Annex IX A for public works contracts, in Annex IX B for public supply contracts and in Annex IX C for public service contracts.

In procedures for the award of public service contracts, insofar as candidates or tenderers have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.

Article 47

Economic and financial standing

1. Proof of the economic operator's economic and financial standing may, as a general rule, be furnished by one or more of the following references:

- (a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- (b) the presentation of balance-sheets or extracts from the balance-sheets, where publication of the balance-sheet is required under the law of the country in which the economic operator is established;
- (c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.

2. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect.

3. Under the same conditions, a group of economic operators as referred to in Article 4 may rely on the capacities of participants in the group or of other entities.

4. Contracting authorities shall specify, in the contract notice or in the invitation to tender, which reference or references mentioned in paragraph 1 they have chosen and which other references must be provided.

5. If, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.

Article 48

Technical and/or professional ability

1. The technical and/or professional abilities of the economic operators shall be assessed and examined in accordance with paragraphs 2 and 3.

2. Evidence of the economic operators' technical capability may be furnished by one or more of the following means according to the nature, quantity or importance, and use of the works, supplies or services:

- (a) (i) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed. Where appropriate, the competent authority shall submit these certificates to the contracting authority direct;
- (ii) a list of the principal deliveries effected or the main services provided in the past three years, with the sums, dates and recipients, whether public or private, involved. Evidence of delivery and services provided shall be given:
 - where the recipient was a contracting authority, in the form of certificates issued or countersigned by the competent authority;
 - where the recipient was a private purchaser, by the purchaser's certification or, failing this, simply by a declaration by the economic operator;

(b) indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of public works contracts, which the contractor can call upon for carrying out the work;

(c) a description of the technical facilities and measures used by the supplier or service provider for ensuring quality and the undertaking's study and research facilities;

(d) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the service provider and, if necessary, on the means of study and research which are available to it and the quality control measures it will operate;

(e) the educational and professional qualifications of the service provider or contractor and/or those of the undertaking's managerial staff and, in particular, those of the person or persons responsible for providing the services or managing the work;

- (f) for public works contracts and public services contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;
 - (g) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;
 - (h) a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract;
 - (i) an indication of the proportion of the contract which the services provider intends possibly to subcontract;
 - (j) with regard to the products to be supplied:
 - (i) samples, descriptions and/or photographs, the authenticity of which must be certified if the contracting authority so requests;
 - (ii) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.
3. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the execution of the contract, for example, by producing an undertaking by those entities to place the necessary resources at the disposal of the economic operator.
4. Under the same conditions a group of economic operators as referred to in Article 4 may rely on the capacities of participants in the group or in other entities.
5. In the procedures for awarding public contracts having as their object supplies requiring siting or installation work, the provision of services and/or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated in particular with regard to their skills, efficiency, experience and reliability.
6. The contracting authority shall specify, in the notice or in the invitation to tender, which references under paragraph 2 it wishes to receive.

Article 49

Quality assurance standards

Should they require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

Article 50

Environmental management standards

Should contracting authorities, in the cases referred to in Article 48(2)(f), require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

Article 51

Additional documentation and information

The contracting authority may invite the economic operators to supplement or clarify the certificates and documents submitted pursuant to Articles 45 to 50.

Article 52

Official lists of approved economic operators and certification by bodies established in public or private law

1. Member States may introduce either official lists of approved contractors, suppliers or service providers or certification by certification bodies established in public or private law.

Member States shall adapt the conditions for registration on these lists and for the issue of certificates by certification bodies to the provisions of Article 45(1), Article 45(2)(a) to (d) and (g), Article 46, Article 47(1), (4) and (5), Article 48(1), (2), (5) and (6), Article 49 and, where appropriate, Article 50.

Member States shall also adapt them to Article 47(2) and Article 48(3) as regards applications for registration submitted by economic operators belonging to a group and claiming resources made available to them by the other companies in the group. In such case, these operators must prove to the authority establishing the official list that they will have these resources at their disposal throughout the period of validity of the certificate attesting to their being registered in the official list and that throughout the same period these companies continue to fulfil the qualitative selection requirements laid down in the Articles referred to in the second subparagraph on which operators rely for their registration.

2. Economic operators registered on the official lists or having a certificate may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority or the certificate issued by the competent certification body. The certificates shall state the references which enabled them to be registered in the list/to obtain certification and the classification given in that list.

3. Certified registration on official lists by the competent bodies or a certificate issued by the certification body shall not, for the purposes of the contracting authorities of other Member States, constitute a presumption of suitability except as regards Articles 45(1) and (2)(a) to (d) and (g), Article 46, Article 47(1)(b) and (c), and Article 48(2)(a)(i), (b), (e), (g) and (h) in the case of contractors, (2)(a)(i), (b), (c), (d) and (j) in the case of suppliers and 2(a)(ii) and (c) to (i) in the case of service providers.

4. Information which can be deduced from registration on official lists or certification may not be questioned without justification. With regard to the payment of social security contributions and taxes, an additional certificate may be required of any registered economic operator whenever a contract is offered.

The contracting authorities of other Member States shall apply paragraph 3 and the first subparagraph of this paragraph only in favour of economic operators established in the Member State holding the official list.

5. For any registration of economic operators of other Member States in an official list or for their certification by the bodies referred to in paragraph 1, no further proof or statements can be required other than those requested of national economic operators and, in any event, only those provided for under Articles 45 to 49 and, where appropriate, Article 50.

However, economic operators from other Member States may not be obliged to undergo such registration or certification in order to participate in a public contract. The contracting authorities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other equivalent means of proof.

6. Economic operators may ask at any time to be registered in an official list or for a certificate to be issued. They must be informed within a reasonably short period of time of the decision of the authority drawing up the list or of the competent certification body.

7. The certification bodies referred to in paragraph 1 shall be bodies complying with European certification standards.

8. Member States which have official lists or certification bodies as referred to in paragraph 1 shall be obliged to inform the Commission and the other Member States of the address of the body to which applications should be sent.

Section 3

Award of the contract

Article 53

Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which the contracting authorities shall base the award of public contracts shall be either:

(a) when award is made to the tender most economically advantageous for the contracting authorities, various criteria justified by the subject of the public contract in question: for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion or

(b) the lowest price only.

2. Without prejudice to the provisions of the third subparagraph, in the case referred to in paragraph 1(a) the contracting authority shall specify in the contract notice or in the contract documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

That weighting can be expressed by providing for a range with an appropriate maximum spread.

Where, in the opinion of the contracting authority, weighting is not possible for demonstrable reasons, it shall indicate in the contract notice or contract documents or, in the case of a competitive dialogue, in the descriptive document, the criteria in descending order of importance.

Article 54

Use of electronic auctions

1. Member States may provide that contracting authorities may use electronic auctions.

2. In open, restricted or negotiated procedures in the case referred to in Article 30(1)(a), the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the contract specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in the second indent of the second subparagraph of Article 32(4) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 33.

The electronic auction shall be based:

- either solely on prices when the contract is awarded to the lowest price;
- or on prices and/or on the new values of the features of the tenders indicated in the specification when the contract is awarded to the most economically advantageous tender.

3. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice.

The specifications shall include, *inter alia*, the following details:

- (a) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- (d) the relevant information concerning the electronic auction process;
- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;

(f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

4. Before proceeding with the electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criterion/criteria set and with the weighting fixed for them.

All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

5. When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of the full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 53(2).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic rerankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the contract notice or in the specifications; for that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

6. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

7. The contracting authorities shall close an electronic auction in one or more of the following manners:

- (a) in the invitation to take part in the auction they shall indicate the date and time fixed in advance;

(b) when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting authorities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction;

(c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

When the contracting authorities have decided to close an electronic auction in accordance with subparagraph (c), possibly in combination with the arrangements laid down in subparagraph (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

8. When they have closed an electronic auction the contracting authorities shall award the contract in accordance with Article 53 on the basis of the results of the electronic auction.

The contracting authorities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject of the contract, as put up for tender in the published contract notice and defined in the specification.

Article 55

Abnormally low tenders

1. If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant.

Those details may relate in particular to:

(a) the economics of the construction method, the manufacturing process or the services provided;

(b) the technical solutions chosen and/or the exceptionally favourable conditions available to the tenderer for the execution of the work, for the supply of the goods or services;

(c) the originality of the work, supplies or services proposed by the tenderer;

(d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;

(e) the possibility of the tenderer obtaining State aid.

2. The contracting authority shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.

3. Where a contracting authority establishes that a tender is abnormally low on grounds that the tenderer has obtained a State aid, the tender can only be rejected on those grounds alone after consultation with the tenderer where the latter is unable to prove, within a sufficient time-limit fixed by the contracting authority, that the aid in question was granted legally. Where the contracting authority rejects a tender in these circumstances, it shall inform the Commission of that fact.

TITLE III

RULES ON PUBLIC WORKS CONCESSIONS

CHAPTER I

Rules governing public works concessions

Article 56

Scope

This Chapter shall apply to all public works concession contracts concluded by the contracting authorities where the value of the contracts is equal to or greater than EUR 6 242 000.

The value shall be calculated in accordance with the rules applicable to public works contracts defined in Article 9.

Article 57

Exclusions from the scope

This Title shall not apply to public works concessions which are awarded:

(a) in the same cases referred to in Articles 13, 14 and 15 of this Directive in respect of public works contracts;

(b) by contracting authorities exercising one or more of the activities referred to in Articles 3 to 7 of Directive 2003/.../EC where those concessions are awarded for carrying out those activities.

However, this Directive shall continue to apply to public works concessions awarded by contracting authorities carrying out one or more of the activities referred to in Article 6 of Directive 2003/.../EC and awarded for those activities, insofar as the Member State concerned takes advantage of the option referred to in the second subparagraph of Article 71 thereof to defer its application.

Article 58

Publication of the notice concerning public works concessions

1. Contracting authorities which wish to award a public works concession contract shall make known their intention by means of a notice.
2. Notices of public works concessions shall contain the information referred to in Annex VII C and, where appropriate, any other information deemed useful by the contracting authority, in accordance with the standard forms adopted by the Commission pursuant to the procedure in Article 77(2).
3. Notices shall be published in accordance with Article 36(2) to (8).
4. Article 37 on the publication of notices shall also apply to public works concessions.

Article 59

Time limit

When contracting authorities resort to a public works concession, the time limit for the presentation of applications for the concession shall be not less than 52 days from the date of dispatch of the notice, except where Article 38(5) applies.

Article 38(7) shall apply.

Article 60

Subcontracting

The contracting authority may either:

- (a) require the concessionaire to award contracts representing a minimum of 30 % of the total value of the work for which the concession contract is to be awarded, to third parties, at the same time providing the option for candidates to increase this percentage, this minimum percentage being specified in the concession contract, or
- (b) request the candidates for concession contracts to specify in their tenders the percentage, if any, of the total value of the work for which the concession contract is to be awarded which they intend to assign to third parties.

Article 61

Awarding of additional works to the concessionaire

This Directive shall not apply to additional works not included in the concession project initially considered or in the initial contract but which have, through unforeseen circumstances, become necessary for the performance of the work described therein, which the contracting authority has awarded to the concessionaire, on condition that the award is made to the economic operator performing such work:

- when such additional works cannot be technically or economically separated from the initial contract without major inconvenience to the contracting authorities, or
- when such works, although separable from the performance of the initial contract, are strictly necessary for its completion.

However, the aggregate value of contracts awarded for additional works may not exceed 50 % of the amount of the original works concession contract.

CHAPTER II

Rules on contracts awarded by concessionaires which are contracting authorities

Article 62

Rules applicable

Where the concessionaire is a contracting authority as referred to in Article 1(9), it shall comply with the provisions laid down by this Directive for public works contracts in the case of works to be carried out by third parties.

CHAPTER III

Rules applicable to contracts awarded by concessionaires which are not contracting authorities

Article 63

Advertising rules: threshold and exceptions

1. The Member States shall take the necessary measures to ensure that public works concessionaires which are not contracting authorities apply the advertising rules defined in Article 64 when awarding works contracts to third parties where the value of such contracts is equal to or greater than EUR 6 242 000.

Advertising shall not, however, be required where a works contract satisfies the conditions listed in Article 31.

The values of contracts shall be calculated in accordance with the rules applicable to public works contracts laid down in Article 9.

2. Groups of undertakings which have been formed to obtain the concession or undertakings related to them shall not be considered third parties.

'Related undertaking' shall mean any undertaking over which the concessionaire can exert a dominant influence, whether directly or indirectly, or any undertaking which can exert a dominant influence on the concessionaire or which, as the concessionaire, is subject to the dominant influence of another undertaking as a result of ownership, financial participation or the rules which govern it. A dominant influence on the part of an undertaking is presumed when, directly or indirectly in relation to another undertaking, it:

- (a) holds a majority of the undertaking's subscribed capital,
- (b) controls a majority of the votes attached to the shares issued by the undertaking, or
- (c) can appoint more than half of the undertaking's administrative, management or supervisory body.

The exhaustive list of such undertakings shall be included in the application for the concession. That list shall be brought up to date following any subsequent changes in the relationship between the undertakings.

Article 64

Publication of the notice

1. Works concessionaires which are not contracting authorities and which wish to award works contracts to a third party shall make known their intention by way of a notice.
2. Notices shall contain the information referred to in Annex VII C and, where appropriate, any other information deemed useful by the works concessionaire, in accordance with the standard form adopted by the Commission in accordance with the procedure in Article 77(2).
3. The notice shall be published in accordance with Article 36(2) to (8).
4. Article 37 on the voluntary publication of notices shall also apply.

Article 65

Time limit for the receipt of requests to participate and receipt of tenders

In works contracts awarded by a works concessionaire which is not a contracting authority, the time limit for the receipt of requests to participate, fixed by the concessionaire, shall be not less than 37 days from the date on which the contract notice was dispatched and the time limit for the receipt of tenders not less than 40 days from the date on which the contract notice or the invitation to tender was dispatched.

Article 38(5), (6) and (7) shall apply.

TITLE IV

RULES GOVERNING DESIGN CONTESTS

Article 66

General provisions

1. The rules for the organisation of design contests shall be in conformity with Articles 66 to 74 and shall be communicated to those interested in participating in the contest.
2. The admission of participants to design contests shall not be limited:
 - (a) by reference to the territory or part of the territory of a Member State;
 - (b) on the grounds that, under the law of the Member State in which the contest is organised, they would have been required to be either natural or legal persons.

Article 67

Scope

1. In accordance with this Title, design contests shall be organised by:
 - (a) contracting authorities which are listed as central government authorities in Annex IV, starting from a threshold equal to or greater than EUR 162 000;
 - (b) contracting authorities not listed in Annex IV, starting from a threshold equal to or greater than EUR 249 000;

(c) by all the contracting authorities, starting from a threshold equal to or greater than EUR 249 000 where contests concern services in category 8 of Annex II A, category 5 telecommunications services, the positions of which in the CPV are equivalent to reference Nos CPC 7524, 7525 and 7526 and/or services listed in Annex II B.

2. This Title shall apply to:

(a) design contests organised as part of a procedure leading to the award of a public service contract;

(b) design contests with prizes and/or payments to participants.

In the cases referred to in (a) the threshold refers to the estimated value net of VAT of the public services contract, including any possible prizes and/or payments to participants.

In the cases referred to in (b), the threshold refers to the total amount of the prizes and payments, including the estimated value net of VAT of the public services contract which might subsequently be concluded under Article 31(3) if the contracting authority does not exclude such an award in the contest notice.

Article 68

Exclusions from the scope

This Title shall not apply to:

(a) design contests within the meaning of Directive 2003/.../EC which are organised by contracting authorities exercising one or more of the activities referred to in Articles 3 to 7 of that Directive and are organised for the pursuit of such activities; nor shall it apply to contests excluded from the scope of this Directive;

However, this Directive shall continue to apply to design contests awarded by contracting authorities carrying out one or more of the activities referred to in Article 6 of Directive 2003/.../EC and awarded for those activities, insofar as the Member State concerned takes advantage of the option referred to in the second subparagraph of Article 71 thereof to defer its application.

(b) contests which are organised in the same cases as those referred to in Articles 13, 14 and 15 of this Directive for public service contracts.

Article 69

Notices

1. Contracting authorities which wish to carry out a design contest shall make known their intention by means of a contest notice.

2. Contracting authorities which have held a design contest shall send a notice of the results of the contest in accordance with Article 36 and must be able to prove the date of dispatch.

Where the release of information on the outcome of the contest would impede law enforcement, be contrary to the public interest, prejudice the legitimate commercial interests of a particular enterprise, whether public or private, or might prejudice fair competition between service providers, such information need not be published.

3. Article 37 concerning publication of notices shall also apply to contests.

Article 70

Form and manner of publication of notices of contests

1. The notices referred to in Article 69 shall contain the information referred to in Annex VII D in accordance with the standard model notices adopted by the Commission in accordance with the procedure in Article 77(2).

2. The notices shall be published in accordance with Article 36(2) to (8).

Article 71

Means of communication

1. Article 42(1), (2) and (4) shall apply to all communications relating to contests.

2. Communications, exchanges and the storage of information shall be such as to ensure that the integrity and the confidentiality of all information communicated by the participants in a contest are preserved and that the jury ascertains the contents of plans and projects only after the expiry of the time limit for their submission.

3. The following rules shall apply to the devices for the electronic receipt of plans and projects:

(a) the information relating to the specifications which is necessary for the presentation of plans and projects by electronic means, including encryption, shall be available to the parties concerned. In addition, the devices for the electronic receipt of plans and projects shall comply with the requirements of Annex X;

(b) the Member States may introduce or maintain voluntary arrangements for accreditation intended to improve the level of the certification service provided for such devices.

*Article 72***Selection of competitors**

Where design contests are restricted to a limited number of participants, the contracting authorities shall lay down clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

*Article 73***Composition of the jury**

The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.

*Article 74***Decisions of the jury**

1. The jury shall be autonomous in its decisions or opinions.

2. It shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.

3. It shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points which may need clarification.

4. Anonymity must be observed until the jury has reached its opinion or decision.

5. Candidates may be invited, if need be, to answer questions which the jury has recorded in the minutes to clarify any aspects of the projects.

6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.

TITLE V**STATISTICAL OBLIGATIONS, EXECUTORY POWERS AND FINAL PROVISIONS***Article 75***Statistical obligations**

In order to permit assessment of the results of applying this Directive, Member States shall forward to the Commission a statistical report, prepared in accordance with Article 76, separately addressing public supply, services and works contracts awarded by contracting authorities during the preceding year, by no later than 31 October of each year.

*Article 76***Content of statistical report**

1. For each contracting authority listed in Annex IV, the statistical report shall detail at least:

- (a) the number and value of awarded contracts covered by this Directive;
- (b) the number and total value of contracts awarded pursuant to derogations to the Agreement.

As far as possible, the data referred to in point (a) of the first subparagraph shall be broken down by:

(a) the contract award procedures used, and

(b) for each of these procedures, works as given in Annex I and products and services as given in Annex II identified by category of the CPV nomenclature.

(c) the nationality of the economic operator to which the contract was awarded.

Where the contracts have been concluded according to the negotiated procedure, the data referred to in point (a) of the first subparagraph shall also be broken down according to the circumstances referred to in Articles 30 and 31 and shall specify the number and value of contracts awarded, by Member State and third country of the successful contractor.

2. For each category of contracting authority which is not given in Annex IV, the statistical report shall detail at least:

(a) the number and value of the contracts awarded, broken down in accordance with the second subparagraph of paragraph 1;

(b) the total value of contracts awarded pursuant to derogations to the Agreement.

3. The statistical report shall set out any other statistical information which is required under the Agreement.

The information referred to in the first subparagraph shall be determined pursuant to the procedure under Article 77(2).

Article 77

Advisory Committee

1. The Commission shall be assisted by the Advisory Committee for Public Contracts set up by Article 1 of Decision 71/306/EEC⁽¹⁾ (hereinafter referred to as 'the Committee').

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, in compliance with Article 8 thereof.

3. The Committee shall adopt its rules of procedure.

Article 78

Revision of the thresholds

1. The Commission shall verify the thresholds established in Article 7 every two years from the entry into force of this Directive and shall, if necessary, revise them in accordance with the procedure laid down in Article 77(2).

The calculation of the value of these thresholds shall be based on the average daily value of the euro, expressed in SDRs, over the 24 months terminating on the last day of August preceding the revision with effect from 1 January. The value of the thresholds thus revised shall, where necessary, be rounded down to the nearest thousand euro so as to ensure that the thresholds in force provided for by the Agreement, expressed in SDRs, are observed.

2. At the same time as the revision under paragraph 1, the Commission, in accordance with the procedure under Article 77(2), shall align:

- (a) the thresholds established in (a) of the first subparagraph of Article 8, in Article 56 and in the first subparagraph of Article 63(1) on the revised threshold applying to public works contracts;
- (b) the thresholds established in (b) of the first subparagraph of Article 8, and in Article 67(1)(a) on the revised threshold applying to public service contracts concluded by the contracting authorities referred to in Annex IV;
- (c) the threshold established in Article 67(1)(b) and (c) on the revised threshold applying to public service contracts

awarded by the contracting authorities not included in Annex IV.

3. The value of the thresholds set pursuant to paragraph 1 in the national currencies of the Member States which are not participating in monetary union is normally to be adjusted every two years from 1 January 2004 onwards. The calculation of such value shall be based on the average daily values of those currencies expressed in euro over the 24 months terminating on the last day of August preceding the revision with effect from 1 January.

4. The revised thresholds referred to in paragraph 1 and their corresponding values in the national currencies referred to in paragraph 3 shall be published by the Commission in the *Official Journal of the European Union* at the beginning of the month of November following their revision.

Article 79

Amendments

In accordance with the procedure referred to in Article 77(2), the Commission may amend:

- (a) the technical procedures for the calculation methods set out in the second subparagraph of Article 78(1) and in Article 78(3);
- (b) the procedures for the drawing-up, transmission, receipt, translation, collection and distribution of the notices referred to in Articles 35, 58, 64 and 69 and the statistical reports provided for in the fourth subparagraph of Article 35(4), and in Articles 75 and 76;
- (c) procedures for specific reference to specific positions in the CPV nomenclature in the notices;
- (d) the lists of bodies and categories of bodies governed by public law in Annex III, when, on the basis of the notifications from the Member States, these prove necessary;
- (e) the lists of central government authorities in Annex IV, following the adaptations necessary to give effect to the Agreement;
- (f) the reference numbers in the nomenclature set out in Annex I, insofar as this does not change the material scope of this Directive, and the procedures for reference to particular positions of this nomenclature in the notices;
- (g) the reference numbers in the nomenclature set out in Annex II, insofar as this does not change the material scope of this Directive, and the procedures for reference in the notices to particular positions in this nomenclature within the categories of services listed in the Annex;

⁽¹⁾ OJ L 185, 16.8.1971, p. 15. Decision as amended by Decision 77/63/EEC (OJ L 13, 15.1.1977, p. 15).

(h) the procedure for sending and publishing data referred to in Annex VIII, on grounds of technical progress or for administrative reasons;

(i) the technical details and characteristics of the devices for electronic receipt referred to in points (a), (f) and (g) of Annex X.

Article 80

Implementation

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than ... (*). They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 81

Repeals

Directive 92/50/EEC, except for Article 41 thereof, and Directives 93/36/EEC and 93/37/EEC shall be repealed with effect from the date shown in Article 80, without prejudice to the obligations of the Member States concerning the deadlines for transposition and application set out in Annex XI.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex XII.

Article 82

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 83

Addressees

This Directive is addressed to the Member States.

Done at ...

For the European Parliament

The President

For the Council

The President

(*) 21 months after the entry into force of this Directive.

ANNEX I

LIST OF THE ACTIVITIES REFERRED TO IN ARTICLE 1(2), POINT (b) ⁽¹⁾

NACE ⁽¹⁾					CPV code
Section F			Construction		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	<p>This class includes:</p> <ul style="list-style-type: none">— demolition of buildings and other structures— clearing of building sites— earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc.— site preparation for mining:<ul style="list-style-type: none">— overburden removal and other development and preparation of mineral properties and sites <p>This class also includes:</p> <ul style="list-style-type: none">— building site drainage— drainage of agricultural or forestry land	45110000
		45.12	Test drilling and boring	<p>This class includes:</p> <ul style="list-style-type: none">— test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes <p>This class excludes:</p> <ul style="list-style-type: none">— drilling of production oil or gas wells, see 11.20— water well drilling, see 45.25— shaft sinking, see 45.25— oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000

⁽¹⁾ In the event of any difference of interpretation between the CPV and the NACE, the NACE nomenclature will apply.

NACE ⁽¹⁾					CPV code
Section F			Construction		
Division	Group	Class	Subject	Notes	
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <p>construction of all types of buildings</p> <p>construction of civil engineering constructions:</p> <p>bridges, including those for elevated highways, viaducts, tunnels and subways</p> <p>long-distance pipelines, communication and power lines</p> <p>urban pipelines, urban communication and powerlines;</p> <p>ancillary urban works</p> <p>assembly and erection of prefabricated constructions on the site</p> <p>This class excludes:</p> <p>service activities incidental to oil and gas extraction, see 11.20</p> <p>erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28</p> <p>construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23</p> <p>building installation, see 45.3</p> <p>building completion, see 45.4</p> <p>architectural and engineering activities, see 74.20</p> <p>project management for construction, see 74.20</p>	45210000
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <p>erection of roofs</p> <p>roof covering</p> <p>waterproofing</p>	45220000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <p>construction of highways, streets, roads, other vehicular and pedestrian ways</p> <p>construction of railways</p> <p>construction of airfield runways</p> <p>construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations</p> <p>painting of markings on road surfaces and car parks</p> <p>This class excludes:</p> <p>preliminary earth moving, see 45.11</p>	45230000

NACE ⁽¹⁾					CPV code
Section F			Construction		
Division	Group	Class	Subject	Notes	
		45.24	Construction of water projects	<p>This class includes:</p> <p>construction of: waterways, harbour and river works, pleasure ports (marinas), locks, etc.</p> <p>dams and dykes</p> <p>dredging</p> <p>subsurface work</p>	45240000
		45.25	Other construction work involving special trades	<p>This class includes:</p> <p>construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment:</p> <p>construction of foundations, including pile driving</p> <p>water well drilling and construction, shaft sinking</p> <p>erection of non-self-manufactured steel elements</p> <p>steel bending</p> <p>bricklaying and stone setting</p> <p>scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms</p> <p>erection of chimneys and industrial ovens</p> <p>This class excludes:</p> <p>renting of scaffolds without erection and dismantling, see 71.32</p>	45250000
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <p>electrical wiring and fittings</p> <p>telecommunications systems</p> <p>electrical heating systems</p> <p>residential antennas and aerials</p> <p>fire alarms</p> <p>burglar alarm systems</p> <p>lifts and escalators</p> <p>lightning conductors, etc.</p>	45310000

NACE ⁽¹⁾					CPV code
Section F			Construction		
Division	Group	Class	Subject	Notes	
		45.32	Insulation work activities	<p>This class includes:</p> <p>installation in buildings or other construction projects of thermal, sound or vibration insulation</p> <p>This class excludes:</p> <p>waterproofing, see 45.22</p>	45320000
		45.33	Plumbing	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <p>plumbing and sanitary equipment</p> <p>gas fittings</p> <p>heating, ventilation, refrigeration or air-conditioning equipment and ducts</p> <p>sprinkler systems</p> <p>This class excludes:</p> <p>installation of electrical heating systems, see 45.31</p>	45330000
		45.34	Other building installation	<p>This class includes:</p> <p>installation of illumination and signalling systems for roads, railways, airports and harbours</p> <p>installation in buildings or other construction projects of fittings and fixtures n.e.c.</p>	45340000
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes:</p> <p>application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials</p>	45410000
		45.42	Joinery installation	<p>This class includes:</p> <p>installation of non-self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials</p> <p>interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</p> <p>This class excludes:</p> <p>laying of parquet and other wood floor coverings, see 45.43</p>	45420000

NACE ⁽¹⁾					CPV code
Section F			Construction		
Division	Group	Class	Subject	Notes	
		45.43	Floor and wall covering	<p>This class includes:</p> <p>laying, tiling, hanging or fitting in buildings or other construction projects of:</p> <p>ceramic, concrete or cut stone wall or floor tiles</p> <p>parquet and other wood floor coverings</p> <p>carpets and linoleum floor coverings, including of rubber or plastic</p> <p>terrazzo, marble, granite or slate floor or wall coverings</p> <p>wallpaper</p>	45430000
		45.44	Painting and glazing	<p>This class includes:</p> <p>interior and exterior painting of buildings</p> <p>painting of civil engineering structures</p> <p>installation of glass, mirrors, etc</p> <p>This class excludes:</p> <p>Installation of windows, see 45.42</p>	45440000
		45.45	Other building completion	<p>This class includes:</p> <p>installation of private swimming pools</p> <p>steam cleaning, sand blasting and similar activities for building exteriors</p> <p>other building completion and finishing work n.e.c.</p> <p>This class excludes:</p> <p>interior cleaning of buildings and other structures, see 74.70</p>	45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	<p>This class excludes:</p> <p>renting of construction or demolition machinery and equipment without operators, see 71.32</p>	

⁽¹⁾ Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1), Regulation as amended by Commission Regulation (EC) No 29/2002 of 24 March 1993 (OJ L 6, 10.1.2002, p. 3).

ANNEX II

SERVICES REFERRED TO IN ARTICLE 1(2)(d)

ANNEX II A ⁽¹⁾

Category No	Subject	CPC Reference No ⁽¹⁾	CPV Reference No
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000 to 50982000 (except for 50310000 to 50324200 and 50116510-9, 50190000-3, 50229000-6, 50243000-0)
2	Land transport services ⁽²⁾ , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 60112000-6 to 60129300-1 (except 60121000 to 60121600, 60122200-1, 60122230-0), and from 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 62100000-3 to 62300000-5 (except 62121000-6, 62221000-7)
4	Transport of mail by land ⁽³⁾ and by air	71235, 7321	60122200-1, 60122230-0 62121000-6, 62221000-7
5	Telecommunications services	752	From 64200000-8 to 64228200-2, 72318000-7, and from 72530000-9 to 72532000-3
6	Financial services: (a) Insurances services (b) Banking and investment services ⁽⁴⁾	ex 81, 812, 814	From 66100000-1 to 66430000-3 and from 67110000-1 to 67262000-1 ⁽⁴⁾
7	Computer and related services	84	From 50300000-8 to 50324200-4, from 72100000-6 to 72591000-4 (except 72318000-7 and from 72530000-9 to 72532000-3)
8	Research and development services ⁽⁵⁾	85	From 73000000-2 to 73300000-5 (except 73200000-4, 73210000-7, 73220000-0)
9	Accounting, auditing and bookkeeping services	862	From 74121000-3 to 74121250-0
10	Market research and public opinion polling services	864	From 74130000-9 to 74133000-0, and 74423100-1, 74423110-4
11	Management consulting services ⁽⁶⁾ and related services	865, 866	From 73200000-4 to 73220000-0, from 74140000-2 to 74150000-5 (except 74142200-8), and 74420000-9, 74421000-6, 74423000-0, 74423200-2, 74423210-5, 74871000-5, 93620000-0

⁽¹⁾ In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply.

Category No	Subject	CPC Reference No ⁽¹⁾	CPV Reference No
12	Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	867	From 74200000-1 to 74276400-8, and from 74310000-5 to 74323100-0, and 74874000-6
13	Advertising services	871	From 74400000-3 to 74422000-3 (except 74420000-9 and 74421000-6)
14	Building-cleaning services and property management services	874, 82201 to 82206	From 70300000-4 to 70340000-6, and from 74710000-9 to 74760000-4
15	Publishing and printing services on a fee or contract basis	88442	From 78000000-7 to 78400000-1
16	Sewage and refuse disposal services; sanitation and similar services	94	From 90100000-8 to 90320000-6, and 50190000-3, 50229000-6, 50243000-0

⁽¹⁾ CPC Nomenclature (provisional version), used to define the scope of Directive 92/50/EEC.

⁽²⁾ Except for rail transport services covered by category 18.

⁽³⁾ Except for rail transport services covered by category 18.

⁽⁴⁾ Except financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services.

Also excluded: services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial services supplied at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive.

⁽⁵⁾ Except research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority.

⁽⁶⁾ Except arbitration and conciliation services.

ANNEX II B

Category No	Subject	CPC Reference No	CPV Reference No
17	Hotel and restaurant services	64	From 55000000-0 to 55524000-9, and from 93400000-2 to 93411000-2
18	Rail transport services	711	60111000-9, and from 60121000-2 to 60121600-8
19	Water transport services	72	From 61000000-5 to 61530000-9, and from 63370000-3 to 63372000-7
20	Supporting and auxiliary transport services	74	62400000-6, 62440000-8, 62441000-5, 62450000-1, from 63000000-9 to 63600000-5 (except 63370000-3, 63371000-0, 63372000-7), and 74322000-2, 93610000-7
21	Legal services	861	From 74110000-3 to 74114000-1
22	Personnel placement and supply services ⁽¹⁾	872	From 74500000-4 to 74540000-6 (except 74511000-4), and from 95000000-2 to 95140000-5
23	Investigation and security services, except armoured car services	873 (except 87304)	From 74600000-5 to 74620000-1
24	Education and vocational education services	92	From 80100000-5 to 80430000-7
25	Health and social services	93	74511000-4, and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services ⁽²⁾	96	From 74875000-3 to 74875200-5, and from 92000000-1 to 92622000-7 (except 92230000-2)
27	Other services ⁽¹⁾ ⁽²⁾		

⁽¹⁾ Except employment contracts.

⁽²⁾ Except contracts for the acquisition, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time.

ANNEX III

LIST OF BODIES AND CATEGORIES OF BODIES GOVERNED BY PUBLIC LAW AS REFERRED TO IN THE SECOND SUBPARAGRAPH OF ARTICLE 1(9)

I. BELGIUM

Bodies

A

- Agence fédérale pour l'Accueil des demandeurs d'Asile — Federaal Agentschap voor Opvang van Asielzoekers
- Agence fédérale pour la Sécurité de la Chaîne alimentaire — Federaal Agentschap voor de Veiligheid van de Voedselketen
- Agence fédérale de Contrôle nucléaire — Federaal Agentschap voor nucleaire Controle
- Agence wallonne à l'Exportation
- Agence wallonne des Télécommunications
- Agence wallonne pour l'Intégration des Personnes handicapées
- Aquafin
- Arbeitsamt der Deutschsprachigen Gemeinschaft
- Archives générales du Royaume et Archives de l'État dans les Provinces — Algemeen Rijksarchief en Rijksarchief in de Provinciën Astrid

B

- Banque nationale de Belgique — Nationale Bank van België
- Belgisches Rundfunk- und Fernsehzentrum der Deutschsprachigen Gemeinschaft
- Berlaymont 2000
- Bibliothèque royale Albert I^{er} — Koninklijke Bibliotheek Albert I
- Bruxelles-Propreté — Agence régionale pour la Propreté — Net-Brussel — Gewestelijke Agentschap voor Netheid
- Bureau d'Intervention et de Restitution belge — Belgisch Interventie — en Restitutiebureau
- Bureau fédéral du Plan — Federaal Planbureau

C

- Caisse auxiliaire de Paiement des Allocations de Chômage — Hulpkas voor Werkloosheidsuitkeringen
- Caisse auxiliaire d'Assurance Maladie-Invalidité — Hulpkas voor Ziekte — en Invaliditeitsverzekeringen
- Caisse de Secours et de Prévoyance en Faveur des Marins — Hulp — en Voorzorgskas voor Zeevarenden
- Caisse de Soins de Santé de la Société Nationale des Chemins de Fer Belges — Kas der geneeskundige Verzorging van de Nationale Maatschappij der Belgische Spoorwegen
- Caisse nationale des Calamités — Nationale Kas voor Rampenschade
- Caisse spéciale de Compensation pour Allocations familiales en Faveur des Travailleurs occupés dans les Entreprises de Batellerie — Bijzondere Verrekenkas voor Gezinsvergoedingen ten Bate van de Arbeiders der Ondernemingen voor Binnenscheepvaart
- Caisse spéciale de Compensation pour Allocations familiales en Faveur des Travailleurs occupés dans les Entreprises de Chargement, Déchargement et Manutention de Marchandises dans les Ports, Débarcadères, Entrepôts et Stations (appelée habituellement 'Caisse spéciale de Compensation pour Allocations familiales des Régions maritimes') — Bijzondere Verrekenkas voor Gezinsvergoedingen ten Bate van de Arbeiders gebezigd door Ladings- en Lossings-ondernemingen en door de Stuwadoors in de Havens, Losplaatsen, Stapelplaatsen en Stations (gewoonlijk genoemd 'Bijzondere Compensatiekas voor Kindertoeslagen van de Zeevaartgewesten')
- Centre d'Etude de l'Energie nucléaire — Studiecentrum voor Kernenergie
- Centre de recherches agronomiques de Gembloux
- Centre hospitalier de Mons

- Centre hospitalier de Tournai
- Centre hospitalier universitaire de Liège
- Centre informatique pour la Région de Bruxelles-Capitale — Centrum voor Informatica voor het Brusselse Gewest
- Centre pour l'Egalité des Chances et la Lutte contre le Racisme — Centrum voor Gelijkheid van Kansen en voor Racismebestrijding
- Centre régional d'Aide aux Communes
- Centrum voor Bevolkings- en Gezinsstudien
- Centrum voor landbouwkundig Onderzoek te Gent
- Comité de Contrôle de l'Electricité et du Gaz — Controlecomité voor Elektriciteit en Gas
- Comité national de l'Energie — Nationaal Comité voor de Energie
- Commissariat général aux Relations internationales
- Commissariaat-Generaal voor de Bevordering van de lichamelijke Ontwikkeling, de Sport en de Openlucht recreatie
- Commissariat général pour les Relations internationales de la Communauté française de Belgique
- Conseil central de l'Economie — Centrale Raad voor het Bedrijfsleven
- Conseil économique et social de la Région wallonne
- Conseil national du Travail — Nationale Arbeidsraad
- Conseil supérieur de la Justice — Hoge Raad voor de Justitie
- Conseil supérieur des Indépendants et des petites et moyennes Entreprises — Hoge Raad voor Zelfstandigen en de kleine en middelgrote Ondernemingen
- Conseil supérieur des Classes moyennes
- Coopération technique belge — Belgische technische Coöperatie

D

- Dienststelle der Deutschsprachigen Gemeinschaft für Personen mit einer Behinderung
- Dienst voor de Scheepvaart
- Dienst voor Infrastructuurwerken van het gesubsidieerd Onderwijs
- Domus Flandria

E

- Entreprise publique des Technologies nouvelles de l'Information et de la Communication de la Communauté française
- Export Vlaanderen

F

- Financieringsfonds voor Schuldaufbouw en Eenmalige Investeringsuitgaven
- Financieringsinstrument voor de Vlaamse Visserij- en Aquicultuursector
- Fonds bijzondere Jeugdbijstand
- Fonds communautaire de Garantie des Bâtiments scolaires
- Fonds culturele Infrastructuur
- Fonds de Participation
- Fonds de Vieillessement — Zilverfonds
- Fonds d'Aide médicale urgente — Fonds voor dringende geneeskundige Hulp
- Fonds de Construction d'Institutions hospitalières et médico-sociales de la Communauté française
- Fonds de Pension pour les Pensions de Retraite du Personnel statutaire de Belgacom — Pensioenfondsen voor de Rustpensioenen van het statutair Personeel van Belgacom
- Fonds des Accidents du Travail — Fonds voor Arbeidsongevallen

- Fonds des Maladies professionnelles — Fonds voor Beroepsziekten
- Fonds d'Indemnisation des Travailleurs licenciés en cas de Fermeture d'Entreprises — Fonds tot Vergoeding van de in geval van Sluiting van Ondernemingen ontslagen Werknemers
- Fonds du Logement des Familles nombreuses de la Région de Bruxelles-Capitale — Woningfonds van de grote Gezinnen van het Brusselse hoofdstedelijk Gewest
- Fonds du Logement des Familles nombreuses de Wallonie
- Fonds Film in Vlaanderen
- Fonds national de Garantie des Bâtiments scolaires — Nationaal Warborgfonds voor Schoolgebouwen
- Fonds national de Garantie pour la Réparation des Dégâts houillers — Nationaal Waarborgfonds inzake Kolenmij-nenschade
- Fonds piscicole de Wallonie
- Fonds pour le Financement des Prêts à des Etats étrangers — Fonds voor Financiering van de Leningen aan Vreemde Staten
- Fonds pour la Rémunération des Mousses — Fonds voor Scheepsjongens
- Fonds régional bruxellois de Refinancement des Trésoreries communales — Brussels gewestelijk Herfinancierings-fonds van de gemeentelijke Thesaurieën
- Fonds voor flankerend economisch Beleid
- Fonds wallon d'Avances pour la Réparation des Dommages provoqués par des Pompages et des Prises d'Eau souterraine

G

- Garantiefonds der Deutschsprachigen Gemeinschaft für Schulbauten
- Grindfonds

H

- Herplaatsingfonds
- Het Gemeenschapsonderwijs
- Hulpfonds tot financieel Herstel van de Gemeenten

I

- Institut belge de Normalisation — Belgisch Instituut voor Normalisatie
- Institut belge des Services postaux et des Télécommunications — Belgisch Instituut voor Postdiensten en Telecom-municatie
- Institut bruxellois francophone pour la Formation professionnelle
- Institut bruxellois pour la Gestion de l'Environnement — Brussels Instituut voor Milieubeheer
- Institut d'Aéronomie spatiale — Instituut voor Ruimte — aëronomie
- Institut de Formation permanente pour les Classes moyennes et les petites et moyennes Entreprises
- Institut des Comptes nationaux — Instituut voor de nationale Rekeningen
- Institut d'Expertise vétérinaire — Instituut voor veterinaire Keuring
- Institut du Patrimoine wallon
- Institut für Aus- und Weiterbildung im Mittelstand und in kleinen und mittleren Unternehmen
- Institut géographique nationale — Nationaal geografisch Instituut
- Institution pour le Développement de la Gazéification souterraine — Instelling voor de ontwikkeling van -onder-grondse vergassing
- Institution royale de Messine — Koninklijke Gesticht van Mesen
- Institutions universitaires de droit public relevant de la Communauté flamande — Universitaire instellingen van publiek recht afangende van de Vlaamse Gemeenschap

- Institutions universitaires de droit public relevant de la Communauté française — Universitaire instellingen van publiek recht afhankelijk van de Franse Gemeenschap
- Institut national d'Assurance Maladie-Invalidité — Rijksinstituut voor Ziekte — en Invaliditeitsverzekering
- Institut national d'Assurances sociales pour Travailleurs indépendants — Rijksinstituut voor de sociale Verzekeringen der Zelfstandigen
- Institut national des Industries extractives — Nationaal Instituut voor de Extractiebedrijven
- Institut national de Recherche sur les Conditions de Travail — Nationaal Onderzoeksinstituut voor Arbeidsomstandigheden
- Institut national des Invalides de Guerre, anciens Combattants et Victimes de Guerre — Nationaal Instituut voor Oorlogsinvaliden, Oudstrijders en Oorlogsslachtoffers
- Institut national des Radioéléments — Nationaal Instituut voor Radio-Elementen
- Institut national pour la Criminalistique et la Criminologie — Nationaal Instituut voor Criminalistiek en Criminologie
- Institut pour l'Amélioration des Conditions de Travail — Instituut voor Verbetering van de Arbeidsvoorwaarden
- Institut royal belge des Sciences naturelles — Koninklijk Belgisch Instituut voor Natuurwetenschappen
- Institut royal du Patrimoine culturel — Koninklijk Instituut voor het Kunstpatrimonium
- Institut royal météorologique de Belgique — Koninklijk meteorologisch Instituut van België
- Institut scientifique de Service public en Région wallonne
- Institut scientifique de la Santé publique — Louis Pasteur — Wetenschappelijk Instituut Volksgezondheid — Louis Pasteur
- Instituut voor de Aanmoediging van Innovatie door Wetenschap en Technologie in Vlaanderen
- Instituut voor Bosbouw en Wildbeheer
- Instituut voor het archeologisch Patrimonium
- Investeringsdienst voor de Vlaamse autonome Hogescholen
- Investeringsfonds voor Grond- en Woonbeleid voor Vlaams-Brabant

J

- Jardin botanique national de Belgique — Nationale Plantentuin van België

K

- Kind en Gezin
- Koninklijk Museum voor schone Kunsten te Antwerpen

L

- Loterie nationale — Nationale Loterij

M

- Mémorial national du Fort de Breendonk — Nationaal Gedenkteken van het Fort van Breendonk
- Musée royal de l'Afrique centrale — Koninklijk Museum voor Midden-Afrika
- Musées royaux d'Art et d'Histoire — Koninklijke Musea voor Kunst en Geschiedenis
- Musées royaux des Beaux-Arts de Belgique — Koninklijke Musea voor schone Kunsten van België

O

- Observatoire royal de Belgique — Koninklijke Sterrenwacht van België
- Office central d'Action sociale et culturelle du Ministère de la Défense — Centrale Dienst voor sociale en culturele Actie van het Ministerie van Defensie
- Office communautaire et régional de la Formation professionnelle et de l'Emploi

- Office de Contrôle des Assurances — Controledienst voor de Verzekeringen
- Office de Contrôle des Mutualités et des Unions nationales de Mutualités — Controledienst voor de Ziekenfondsen en de Landsbonden van Ziekenfondsen
- Office de la Naissance et de l'Enfance
- Office de Promotion du Tourisme
- Office de Sécurité sociale d'Outre-Mer — Dienst voor de overzeese sociale Zekerheid
- Office for Foreign Investors in Wallonia
- Office national d'Allocations familiales pour Travailleurs salariés — Rijksdienst voor Kinderbijslag voor Werknemers
- Office national de l'Emploi — Rijksdienst voor Arbeidsvoorziening
- Office national de Sécurité sociale — Rijksdienst voor sociale Zekerheid
- Office national de Sécurité sociale des Administrations provinciales et locales — Rijksdienst voor sociale Zekerheid van de provinciale en plaatselijke Overheidsdiensten
- Office national des Pensions — Rijksdienst voor Pensioenen
- Office national des Vacances annuelles — Rijksdienst voor jaarlijkse Vakantie
- Office national du Ducroire — Nationale Delcrederedienst
- Office régional bruxellois de l'Emploi — Brusselse gewestelijke Dienst voor Arbeidsbemiddeling
- Office régional de Promotion de l'Agriculture et de l'Horticulture
- Office régional pour le Financement des Investissements communaux
- Office wallon de la Formation professionnelle et de l'Emploi
- Openbaar psychiatrisch Ziekenhuis-Geel
- Openbaar psychiatrisch Ziekenhuis-Rekem
- Openbare Afvalstoffenmaatschappij voor het Vlaams Gewest
- Orchestre national de Belgique — Nationaal Orkest van België
- Organisme national des Déchets radioactifs et des Matières fissiles — Nationale Instelling voor radioactief Afval en Splijtstoffen

P

- Palais des Beaux-Arts — Paleis voor schone Kunsten
- Participatiemaatschappij Vlaanderen
- Pool des Marins de la Marine marchande — Pool van de Zeelieden der Koopvaardij

R

- Radio et Télévision belge de la Communauté française
- Régie des Bâtiments — Regie der Gebouwen
- Reproductiefonds voor de Vlaamse Musea

S

- Service d'Incendie et d'Aide médicale urgente de la Région de Bruxelles-Capitale — Brusselse hoofdstedelijk Dienst voor Brandweer en dringende medische Hulp
- Société belge d'Investissement pour les pays en développement — Belgische Investeringsmaatschappij voor Ontwikkelingslanden
- Société d'Assainissement et de Rénovation des Sites industriels dans l'Ouest du Brabant wallon
- Société de Garantie régionale
- Sociaal economische Raad voor Vlaanderen
- Société du Logement de la Région bruxelloise et sociétés agréées — Brusselse Gewestelijke Huisvestingsmaatschappij en erkende maatschappijen
- Société publique d'Aide à la Qualité de l'Environnement

- Société publique d'Administration des Bâtiments scolaires bruxellois
- Société publique d'Administration des Bâtiments scolaires du Brabant wallon
- Société publique d'Administration des Bâtiments scolaires du Hainaut
- Société publique d'Administration des Bâtiments scolaires de Namur
- Société publique d'Administration des Bâtiments scolaires de Liège
- Société publique d'Administration des Bâtiments scolaires du Luxembourg
- Société publique de Gestion de l'Eau
- Société wallonne du Logement et sociétés agréées
- Sofibail
- Sofibru
- Sofico

T

- Théâtre national
- Théâtre royal de la Monnaie — De Koninklijke Muntscouwburg
- Toerisme Vlaanderen
- Tunnel Liefkenshoek

U

- Universitair Ziekenhuis Gent

V

- Vlaams Commissariaat voor de Media
- Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding
- Vlaams Egalisatie Rente Fonds
- Vlaamse Hogescholenraad
- Vlaamse Huisvestingsmaatschappij en erkende maatschappijen
- Vlaamse Instelling voor technologisch Onderzoek
- Vlaamse interuniversitaire Raad
- Vlaamse Landmaatschappij
- Vlaamse Milieuholding
- Vlaamse Milieumaatschappij
- Vlaamse Onderwijsraad
- Vlaamse Opera
- Vlaamse Radio — en Televisieomroep
- Vlaamse Reguleringsinstantie voor de Elektriciteit — en Gasmarkt
- Vlaamse Stichting voor Verkeerskunde
- Vlaams Fonds voor de Lastendelging
- Vlaams Fonds voor de Letteren
- Vlaams Fonds voor de sociale Integratie van Personen met een Handicap
- Vlaams Informatiecentrum over Land — en Tuinbouw
- Vlaams Infrastructuurfonds voor Persoonsgebonden Aangelegenheden
- Vlaams Instituut voor de Bevordering van het wetenschappelijk- en technologisch Onderzoek in de Industrie
- Vlaams Instituut voor Gezondheidspromotie

- Vlaams Instituut voor het Zelfstandig ondernemen
- Vlaams Landbouwinvesteringsfonds
- Vlaams Promotiecentrum voor Agro — en Visserijmarketing
- Vlaams Zorgfonds
- Vlaams Woningsfonds voor de grote Gezinnen

II. DENMARK

Bodies

Danmarks Radio
Det landsdækkende TV2
Danmarks Nationalbank
Sund og Bælt Holding A/S
A/S Storebælt
A/S Øresund
Øresundskonsortiet
Ørestadsselskabet I/S
Byfornyelsesselskabet København
Hovedstadsområdets Sygehusfællesskab
Statens og Kommunernes Indkøbsservice
Post Danmark
Arbejdsmarkedets Tillægspension
Arbejdsmarkedets Feriefond
Lønmodtagernes Dyrtidsfond
Naviair

Categories

- De Almene Boligorganisationer (social housing organisations)
- Lokale kirkelige myndigheder (local church administrations)
- Andre forvaltningssubjekter (other public administrative bodies)

III. GERMANY

1. Categories

Authorities, establishments and foundations governed by public law and created by Federal, State or local authorities particularly in the following fields:

1.1. Authorities

- Wissenschaftliche Hochschulen und verfasste Studentenschaften (universities and established student bodies)
- Berufsständige Vereinigungen (Rechtsanwalts-, Notar-, Steuerberater-, Wirtschaftsprüfer-, Architekten-, Ärzte- und Apothekerkammern) [professional associations representing lawyers, notaries, tax consultants, accountants, architects, medical practitioners and pharmacists]
- Wirtschaftsvereinigungen (Landwirtschafts-, Handwerks-, Industrie- und Handelskammern, Handwerksinnungen, Handwerkerschaften) [business and trade associations: agricultural and craft associations, chambers of industry and commerce, craftsmen's guilds, tradesmen's associations]
- Sozialversicherungen (Krankenkassen, Unfall- und Rentenversicherungsträger) [social security institutions: health, accident and pension insurance funds]
- Kassenärztliche Vereinigungen (associations of panel doctors)
- Genossenschaften und Verbände (cooperatives and other associations)

1.2. Establishments and foundations

Non-industrial and non-commercial establishments subject to State control and operating in the general interest, particularly in the following fields:

- Rechtsfähige Bundesanstalten (Federal institutions having legal capacity)
- Versorgungsanstalten und Studentenwerke (pension organisations and students' unions)
- Kultur-, Wohlfahrts- und Hilfsstiftungen (cultural, welfare and relief foundations)

2. Legal persons governed by private law

Non-industrial and non-commercial establishments subject to State control and operating in the general interest, including kommunale Versorgungsunternehmen (municipal utilities), particularly in the following fields:

- Gesundheitswesen (Krankenhäuser, Kurmittelbetriebe, medizinische Forschungseinrichtungen, Untersuchungs- und Tierkörperbeseitigungsanstalten) [health: hospitals, health resort establishments, medical research institutes, testing and carcase-disposal establishments]
- Kultur (öffentliche Bühnen, Orchester, Museen, Bibliotheken, Archive, zoologische und botanische Gärten) [culture: public theatres, orchestras, museums, libraries, archives, zoological and botanical gardens]
- Soziales (Kindergärten, Kindertagesheime, Erholungseinrichtungen, Kinder- und Jugendheime, Freizeiteinrichtungen, Gemeinschafts- und Bürgerhäuser, Frauenhäuser, Altersheime, Obdachlosenunterkünfte) (social welfare: nursery schools, children's playschools, rest-homes, children's homes, hostels for young people, leisure centres, community and civic centres, homes for battered wives, old people's homes, accommodation for the homeless)
- Sport (Schwimmbäder, Sportanlagen und -einrichtungen) (sport: swimming baths, sports facilities)
- Sicherheit (Feuerwehren, Rettungsdienste) (safety: fire brigades, other emergency services)
- Bildung (Umschulungs-, Aus-, Fort- und Weiterbildungseinrichtungen, Volkshochschulen) [education: training, further training and retraining establishments, adult evening classes]
- Wissenschaft, Forschung und Entwicklung (Großforschungseinrichtungen, wissenschaftliche Gesellschaften und Vereine, Wissenschaftsförderung) (science, research and development: large-scale research institutes, scientific societies and associations, bodies promoting science)
- Entsorgung (Straßenreinigung, Abfall- und Abwasserbeseitigung) (refuse and garbage disposal services: street cleaning, waste and sewage disposal)
- Bauwesen und Wohnungswirtschaft (Stadtplanung, Stadtentwicklung, Wohnungsunternehmen, Wohnraumvermittlung) (building, civil engineering and housing: town planning, urban development, housing enterprises (insofar as they operate in the general interest), housing agency services)
- Wirtschaft (Wirtschaftsförderungsgesellschaften) (economy: organizations promoting economic development)
- Friedhofs- und Bestattungswesen (cemeteries and burial services)
- Zusammenarbeit mit den Entwicklungsländern (Finanzierung, technische Zusammenarbeit, Entwicklungshilfe, Ausbildung) (cooperation with developing countries: financing, technical cooperation, development aid, training)

IV. GREECE

Categories

- a) Public enterprises and public entities
- b) Legal persons governed by private law which are State-owned or which regularly receive at least 50 % of their annual budget in the form of State subsidies, pursuant to the rules applicable, or in which the State has a capital holding of at least 51 %.
- c) Legal persons governed by private law which are owned by legal persons governed by public law, by local authorities of any level, including the Greek Central Association of Local Authorities (K.E.Δ.K.E.), by local associations of 'communes', (local administrative areas) or by public enterprises or entities, or by legal persons as referred to in b) or which regularly receive at least 50 % of their annual budget in the form of subsidies from such legal persons, pursuant to the rules applicable or to their own articles of association, or legal persons as referred to above which have a capital holding of at least 51 % in such legal persons governed by public law.

V. SPAIN

Categories

- Bodies and entities governed by public law which are subject to the 'Ley de Contratos de las Administraciones Públicas' (Spanish State legislation on procurement) other than those which are part of the Administración General del Estado (general national administration).
- Bodies and entities governed by public law which are subject to the 'Ley de Contratos de las Administraciones Públicas', other than those which are part of the Administración de las Comunidades Autónomas (administration of the autonomous regions).
- Bodies and entities governed by public law which are subject to the 'Ley de Contratos de las Administraciones Públicas', other than those which are part of the Corporaciones Locales (local authorities).
- Entidades Gestoras y los Servicios Comunes de la Seguridad Social (administrative entities and common services of the health and social services)

VI. FRANCE

Bodies

- Collège de France
- Conservatoire national des arts et métiers
- Observatoire de Paris
- Institut national d'histoire de l'art (INHA)
- Centre national de la recherche scientifique (CNRS)
- Institut national de la recherche agronomique (INRA)
- Institut national de la santé et de la recherche médicale (INSERM)
- Institut de recherche pour le développement (IRD)
- Agence nationale pour l'emploi (ANPE)
- Caisse nationale des allocations familiales (CNAF)
- Caisse nationale d'assurance maladie des travailleurs salariés (CNAMTS)
- Caisse nationale d'assurance vieillesse des travailleurs salariés (CNAVTS)
- Compagnies et établissements consulaires: chambres de commerce et d'industrie (CCI), chambres des métiers et chambres d'agriculture
- Office national des anciens combattants et victimes de guerre (ONAC)

Categories1. *National public bodies*

- Agences de l'eau (water supply agencies)
- Écoles d'architecture (schools of architecture)
- Universités (universities)
- Instituts universitaires de formation des maîtres (IUFM) (Higher Education Teacher Training Institutes)

2. *Administrative public bodies at regional, departmental and local level*

- Collèges (secondary schools)
- Lycées (secondary schools)
- Établissements publics hospitaliers (public hospitals)
- Offices publics d'habitations à loyer modéré (OPHLM) (public offices for low-cost housing)

3. *Groupings of territorial authorities*

- Établissements publics de coopération intercommunale (public establishments for cooperation between local authorities)
- Institutions interdépartementales et interrégionales (institutions common to more than one Département and interregional institutions).

VII. IRELAND

Bodies

- Enterprise Ireland (marketing, technology and enterprise development)
- Forfás (policy and advice for enterprise, trade, science, technology and innovation)
- Industrial Development Authority
- Enterprise Ireland
- FÁS (Industrial and employment training)
- Health and Safety Authority
- Bord Fáilte Éireann (tourism development)
- CERT (training in hotel, catering and tourism industries)

Irish Sports Council

National Roads Authority

Údarás na Gaeltachta (authority for Gaelic speaking regions)

Teagasc (agricultural research, training and development)

An Bord Bia (food industry promotion)

An Bord Glas (horticulture industry promotion)

Irish Horseracing Authority

Bord na gCon (greyhound racing support and development)

Marine Institute

Bord Iascaigh Mhara (fisheries Development)

Equality Authority

Legal Aid Board

Categories

Regional Health Boards

Hospitals and similar institutions of a public character

Vocational Education Committees

Colleges and educational institutions of a public character

Central and Regional Fisheries Boards

Regional Tourism Organisations

National Regulatory and Appeals bodies (such as in the telecommunications, energy, planning etc. areas)

Agencies established to carry out particular functions or meet needs in various public sectors (e.g. Healthcare Materials Management Board, Health Sector Employers Agency, Local Government Computer Services Board, Environmental Protection Agency, National Safety Council, Institute of Public Administration, Economic and Social Research Institute, National Standards Authority, etc.)

Other public bodies falling within the definition of a body governed by public law in accordance with Article 1(7) of this Directive.

VIII. ITALY

Bodies

Società 'Stretto di Messina'

Ente autonomo mostra d'oltremare e del lavoro italiano nel mondo

Ente nazionale per l'aviazione civile — ENAC

Ente nazionale per l'assistenza al volo — ENAV

Categories

— Enti portuali e aeroportuali (port and airport authorities)

— Consorzi per le opere idrauliche (consortia for water engineering works)

— Università statali, gli istituti universitari statali, i consorzi per i lavori interessanti le università (State universities, State university institutes, consortia for university development work)

— Istituzioni pubbliche di assistenza e di beneficenza (public welfare and benevolent institutions)

- Istituti superiori scientifici e culturali, osservatori astronomici, astrofisici, geofisici o vulcanologici (higher scientific and cultural institutes, astronomical, astrophysical, geophysical or vulcanological observatories)
- Enti di ricerca e sperimentazione (organizations conducting research and experimental work)
- Enti che gestiscono forme obbligatorie di previdenza e di assistenza (agencies administering compulsory social security and welfare schemes)
- Consorzi di bonifica (land reclamation consortia)
- Enti di sviluppo e di irrigazione (development and irrigation agencies)
- Consorzi per le aree industriali (associations for industrial areas)
- Comunità montane (groupings of municipalities in mountain areas)
- Enti preposti a servizi di pubblico interesse (organisations providing services in the public interest)
- Enti pubblici preposti ad attività di spettacolo, sportive, turistiche e del tempo libero (public bodies engaged in entertainment, sport, tourism and leisure activities)
- Enti culturali e di promozione artistica (organisations promoting culture and artistic activities).

IX. LUXEMBOURG

Categories

- Établissements publics de l'État placés sous la surveillance d'un membre du gouvernement (public establishments of the State placed under the supervision of a member of the Government)
- Établissements publics placés sous la surveillance des communes (public establishments placed under the supervision of the 'communes') (local authorities)
- Syndicats de communes créés en vertu de la loi du 23 février 2001 concernant les syndicats de communes (associations of local authorities created under the law of 23 February 2001 on associations of 'communes').

X. NETHERLANDS

Bodies

Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (Ministry of the Interior and Kingdom Relations)

- Nederlands Instituut voor Brandweer en rampenbestrijding (NIBRA) (Netherlands Institute for the Fire Service and for Combating Emergencies)
- Nederlands Bureau Brandweer Examens (NBBE) (Netherlands Fire Service Examination Board)
- Landelijk Selectie- en Opleidingsinstituut Politie (LSOP) (National Institute for Selection and Education of Policemen)
- 25 afzonderlijke politieregio's (25 individual police regions)
- Stichting ICTU (ICTU Foundation)

Ministry of Economic Affairs

- Stichting Syntens (Syntens)
- Van Swinden Laboratorium B.V. (NMI van Swinden Laboratory)
- Nederlands Meetinstituut B.V. (NMI Institute for Metrology and Technology)
- Nederlands Instituut voor Vliegtuigontwikkeling en Ruimtevaart (NIVR) (Netherlands Agency for Aerospace Programmes)
- Stichting Toerisme Recreatie Nederland (TRN) (Netherlands Board of Tourism)
- Samenwerkingsverband Noord Nederland (SNN) (Cooperative Body of the provincial governments of the Northern Netherlands)
- Gelderse Ontwikkelingsmaatschappij (GOM) (Gelderland Development Company)
- Overijsselse Ontwikkelingsmaatschappij (OOM) (OOM International Business Development)

- LIOF (Limburg Investment Development Company LIOF)
- Noordelijke Ontwikkelingsmaatschappij (NOM) (NOM Investment Development)
- Brabantse Ontwikkelingsmaatschappij (BOM) (Brabant Development Agency)
- Onafhankelijke Post en Telecommunicatie Autoriteit (Independent Post and Telecommunications Authority)

Ministry of Finance

- De Nederlandse Bank N.V. (Netherlands Central Bank)
- Autoriteit Financiële Markten (Netherlands Authority for the Financial Markets)
- Pensioen- & Verzekeringskamer (Pensions and Insurance Supervisory Authority of the Netherlands)

Ministry of Justice

- Stichting Reclassering Nederland (SRN) (Netherlands Rehabilitation Agency)
- Stichting VEDIVO (VEDIVO Agency, Association for Managers in the (Family) Guardianship)
- Voogdij- en gezinsvoogdij instellingen (Guardianship and Family Guardianship Institutions)
- Stichting Halt Nederland (SHN) (Netherlands Halt (the alternative) Agency)
- Particuliere Internaten (Private Boarding Institutions)
- Particuliere Jeugdinrichtingen (Penal Institutions for Juvenile Offenders)
- Schadefonds Geweldsmisdrijven (Damages Fund for Violent Crimes)
- Centraal orgaan Opvang Asielzoekers (COA) (Agency for the Reception of Asylum Seekers)
- Landelijk Bureau Inning Onderhoudsbijdragen (LBIO) (National Support and Maintenance Agency)
- Landelijke organisaties slachtofferhulp (National Victim Compensation Organisations)
- College Bescherming Persoongegevens (Netherlands Data Protection Authority)
- Stichting Studiecentrum Rechtspleging (SSR) (Administration of Justice Study Centre Agency)
- Raden voor de Rechtsbijstand (Legal Assistance Councils)
- Stichting Rechtsbijstand Asiel (Asylum Seekers Legal Advice Centres)
- Stichtingen Rechtsbijstand (Legal Assistance Agencies)
- Landelijk Bureau Racisme bestrijding (LBR) (National Bureau against Racial Discrimination)
- Clara Wichman Instituut (Clara Wichman Institute)
- Tolken centra (Interpreting Centres)

Ministry of Agriculture, Nature Management and Fisheries

- Bureau Beheer Landbouwgronden (Land Management Service)
- Faunafonds (Fauna Fund)
- Staatsbosbeheer (National Forest Service)
- Stichting Voorlichtingsbureau voor de Voeding (Netherlands Bureau for Food and Nutrition Education)
- Universiteit Wageningen (Wageningen University and Research Centre)
- Stichting DLO (Agricultural Research Department)
- (Hoofd) productschappen (Commodity Boards)

Ministry of Education, Cultural Affairs and Science

A. General descriptions

- public schools or publicly funded private schools for primary education within the meaning of the Wet op het primair onderwijs (Law on Primary Education)

- public or publicly funded schools for special education, secondary special education or institutions for special and secondary education within the meaning of the Wet op de expertisecentra (Law on Resource Centres)
- public schools or publicly funded private schools or institutions for secondary education within the meaning of the Wet op het Voortgezet Onderwijs (Law on Secondary Education)
- public institutions or publicly funded private institutions within the meaning of the Wet Educatie en Beroepsonderwijs (Law on Education and Vocational Education)
- public schools or publicly funded private schools within the meaning of the Experimentenwet Onderwijs (Law on Experimental Education)
- publicly funded universities and higher education institutions, the Open University, and the university hospitals, within the meaning of the Wet op het hoger onderwijs en wetenschappelijk onderzoek (Law on Higher Education and Scientific Research), and institutions for international education where more than 50 % of their budget comes from public funds
- schools advisory services within the meaning of the Wet op het primair onderwijs (Law on Primary Education) or the Wet op de expertisecentra (Law on Resource Centres)
- national teachers' centres within the meaning of the Wet subsidiëring landelijke onderwijsondersteunende activiteiten (Law on Subsidies for National Educational Support Activities)
- broadcasting organisations within the meaning of the Mediawet (Media Law)
- funds within the meaning of the Wet op het Specifiek Cultuurbeleid (Law on Specific Cultural Policy)
- national bodies for vocational education
- foundations within the meaning of the Wet Verzelfstandiging Rijksmuseum Diensten (Law on Privatisation of National Museum Services)
- other museums which receive more than 50 % of their funds from the Ministry of Education, Cultural Affairs and Science
- other organisations and institutions in the field of education, culture and science which receive more than 50 % of their funds from Ministry of Education, Cultural Affairs and Science

B. List of names

- Informatie Beheer Groep
- Stichting Participatiefonds voor het Onderwijs
- Stichting Uitvoering Kinderopvangregelingen/Kintent
- Stichting voor Vluchteling-Studenten UAF
- Koninklijke Nederlandse Academie van Wetenschappen
- Nederlandse organisatie voor internationale samenwerking in het hoger onderwijs (Nuffic)
- Stichting Nederlands Interdisciplinair Demografisch Instituut
- Nederlandse Organisatie voor Wetenschappelijk Onderzoek
- Nederlandse Organisatie voor toegepast-natuurwetenschappelijk onderzoek
- College van Beroep voor het hoger Onderwijs
- Vereniging van openbare bibliotheken NBLC
- Koninklijke Bibliotheek
- Stichting Muziek Centrum van de Omroep
- Stichting Ether Reclame
- Stichting Radio Nederland Wereldomroep
- Nederlandse Programma Stichting
- Nederlandse Omroep Stichting
- Commissariaat voor de Media
- Stichting Stimuleringsfonds Nederlandse Culturele Omroepproducties
- Stichting Lezen
- Dienst Omroepbijdragen
- Centrum voor innovatie en opleidingen

- Bedrijfsfonds voor de Pers
- Centrum voor innovatie van opleidingen
- Instituut voor Toetsontwikkeling (Cito)
- Instituut voor Leerplanontwikkeling
- Landelijk Dienstverlenend Centrum voor Studie- en Beroepskeuzevoorlichting
- Max Goote Kenniscentrum voor Beroepsonderwijs en Volwasseneneducatie
- Stichting Vervangingsfonds en Bedrijfsgezondheidszorg voor het Onderwijs
- BVE-Raad
- Colo, Vereniging kenniscentra beroepsonderwijs bedrijfsleven
- Stichting kwaliteitscentrum examinering beroepsonderwijs
- Vereniging Jongerenorganisatie Beroepsonderwijs
- Combo Stichting Combinatie Onderwijsorganisatie
- Stichting Financiering Struktureel Vakbondsverlof Onderwijs
- Stichting Samenwerkende Centrales in het COPWO
- Stichting SoFoKles
- Europees Platform
- Stichting mobiliteitsfonds HBO
- Nederlands Audiovisueel Archiefcentrum
- Stichting minderheden Televisie Nederland
- Stichting omroep allochtonen
- Stichting multiculturele Activiteiten Utrecht
- School der Poëzie
- Nederlands Perscentrum
- Nederlands Letterkundig Museum en documentatiecentrum
- Bibliotheek voor varenden
- Christelijke bibliotheek voor blinden en slechtzienden
- Federatie van Nederlandse Blindenbibliotheken
- Nederlandse luister- en braillebibliotheek
- Federatie Slechtzienden- en Blindenbelang
- Bibliotheek Le Sage Ten Broek
- Doe Maar Dicht Maar
- ElHizjra
- Fonds Bijzondere Journalistieke Projecten
- Fund for Central and East European Book Projects
- Jongeren Onderwijs Media

Ministry of Social Affairs and Employment

- Sociale Verzekeringsbank (Social Insurance Bank)
- Arbeidsvoorzieningsorganisatie (Employment Service)
- Stichting Silicose Oud Mijnwerkers (Foundation for Former Miners suffering from Silicosis)
- Stichting Pensioen- & Verzekeringskamer (Pensions and Insurance Supervisory Authority of the Netherlands)
- Sociaal Economische Raad (SER) (Social and Economic Council in the Netherlands)

- Raad voor Werk en Inkomen (RWI) (Council for Work and Income)
- Centrale organisatie voor werk en inkomen (Central Organisation for Work and Income)
- Uitvoeringsinstituut werknemersverzekeringen (Implementing body for employee insurance schemes)

Ministry of Transport, Communications and Public Works

- RDW Voertuig informatie en toelating (Vehicle information and administration service)
- Luchtverkeersbeveiligingsorganisatie (LVB) (Air Traffic Control Agency)
- Nederlandse Loodsencorporatie (NLC) (Netherlands maritime pilots association)
- Regionale Loodsencorporatie (RLC) (Regional maritime pilots association)

Ministry of Housing, Planning and the Environment

- Kadaster (Public Registers Agency)
- Centraal Fonds voor de Volkshuisvesting (Central Housing Fund)
- Stichting Bureau Architectenregister (Architects Register)

Ministry of Health, Welfare and Sport

- Commissie Algemene Oorlogsongevallenregeling Indonesië (COAR)
- College ter beoordeling van de Geneesmiddelen (CBG) (Medicines Evaluation Board)
- Commissies voor gebiedsaanwijzing
- College sanering Ziekenhuisvoorzieningen (National Board for Redevelopment of Hospital Facilities)
- Zorgonderzoek Nederland (ZON) (Health Research and Development Council)
- Inspection bodies under the Wet medische hulpmiddelen (Law on Medical Appliances)
 - N.V. KEMA/Stichting TNO Certification (KEMA/TNO Certification)
 - College Bouw Ziekenhuisvoorzieningen (CBZ) (National Board for Hospital Facilities)
- College voor Zorgverzekeringen (CVZ) (Health Care Insurance Board)
- Nationaal Comité 4 en 5 mei (National 4 and 5 May Committee)
- Pensioen- en Uitkeringsraad (PUR) (Pension and Benefit Board)
- College Tarieven Gezondheidszorg (CTG) (Health Service Tariff Tribunal)
- Stichting Uitvoering Omslagregeling Wet op de Toegang Ziektekostenverzekering (SUO)
- Stichting tot bevordering van de Volksgezondheid en Milieuhygiëne (SVM) (Foundation for the Advancement of Public Health and Environment)
- Stichting Facilitair Bureau Gemachtigden Bouw VWS
- Stichting Sanquin Bloedvoorziening (Sanquin Blood Supply Foundation)
- College van Toezicht op de Zorgverzekeringen organen ex artikel 14, lid 2c, Wet BIG (Supervisory Board of Health Care Insurance Committees for registration of professional health care practices)
- Ziekenfondsen (Health Insurance Funds)
- Nederlandse Transplantatiestichting (NTS) (Netherlands Transplantation Foundation)
- Regionale Indicatieorganen (RIO's) (Regional bodies for Need Assessment).

XI. AUSTRIA

All bodies under the budgetary control of the 'Rechnungshof' (Court of Auditors) except those of an industrial or commercial nature.

XII. PORTUGAL

Categories

- Institutos públicos sem carácter comercial ou industrial (public institutions without commercial or industrial character)
- Serviços públicos personalizados (public services having legal personality)
- Fundações públicas (public foundations)
- Estabelecimentos públicos de ensino, investigação científica e saúde (public institutions for education, scientific research and health)

XIII. FINLAND

Public or publicly controlled bodies and undertakings except those of an industrial or commercial nature.

XIV. SWEDEN

All non-commercial bodies whose public contracts are subject to supervision by the National Board for Public Procurement.

XV. UNITED KINGDOM

Bodies

- Design Council
- Health and Safety Executive
- National Research Development Corporation
- Public Health Laboratory Service Board
- Advisory, Conciliation and Arbitration Service
- Commission for the New Towns
- National Blood Authority
- National Rivers Authority
- Scottish Enterprise
- Scottish Homes
- Welsh Development Agency

Categories

- Maintained schools
 - Universities and colleges financed for the most part by other contracting authorities
 - National Museums and Galleries
 - Research Councils
 - Fire Authorities
 - National Health Service Strategic Health Authorities
 - Police Authorities
 - New Town Development Corporations
 - Urban Development Corporations
-

ANNEX IV

CENTRAL GOVERNMENT AUTHORITIES ⁽¹⁾

BELGIUM

— l'État	— de Staat	— the State
— les communautés	— de gemeenschappen	— the communities
— les commissions communautaires	— de gemeenschapscommissies	— the community commissions
— les régions	— de gewesten	— the regions
— les provinces	— de provincies	— the provinces
— les communes	— de gemeenten	— the communes
— les centres publics d'aide sociale	— de openbare centra voor maatschappelijk welzijn	— public centres for social assistance
— les fabriques d'églises et les organismes chargés de la gestion du temporel des autres cultes reconnus	— de kerkfabrieken en de instellingen die belast zijn met het beheer van de temporalien van de erkende erediensten	— church councils and organisations responsible for managing the assets of other recognised religious orders
— les sociétés de développement régional	— de gewestelijke ontwikkeling-smaatschappijen	— regional development companies
— les polders et wateringues	— de polders en wateringén	— the polders and water boards
— les comités de remembrement des biens ruraux	— de ruilverkavelingscomités	— land-consolidation committees
— les zones de police	— de politiezones	— police zones
— les associations formées par plusieurs des pouvoirs adjudicateurs ci-dessus.	— de verenigingen gevormd door een of meerdere aanbestedende overheden hierboven.	— associations formed by several of the above awarding authorities.

DENMARK

1. Folketinget — The Danish Parliament	Rigsrevisionen — The National Audit Office
2. Statsministeriet — The Prime Minister's Office	
3. Udenrigsministeriet — Ministry of Foreign Affairs	
4. Beskæftigelsesministeriet — Ministry of Employment	5 styrelser og institutioner — 5 agencies and institutions
5. Domstolsstyrelsen — The Court Administration	
6. Finansministeriet — Ministry of Finance	5 styrelser og institutioner — 5 agencies and institutions
7. Forsvarsministeriet — Ministry of Defence	Adskillige institutioner — Several institutions
8. Indenrigs- og Sundhedsministeriet — Ministry of the Interior and Health	Adskillige styrelser og institutioner, herunder Statens Serum Institut — Several agencies and institutions, including Statens Serum Institut
9. Justitsministeriet — Ministry of Justice	Rigspolitichefen, 2 direktorater samt et antal styrelser — Commissioner of Police, 2 directorates and a number of agencies
10. Kirkeministeriet — Ministry of Ecclesiastical Affairs	10 stiftsøvrigheder — 10 diocesan authorities
11. Kulturministeriet — Ministry of Culture	Departement samt et antal statsinstitutioner — A department and a number of institutions
12. Miljøministeriet — Ministry of the Environment	6 styrelser — 6 agencies

⁽¹⁾ For the purposes of this Directive 'central government authorities' means the authorities that are listed by way of indication in this Annex and, insofar as corrections or amendments have been made at national level, their successor entities.

- | | |
|---|---|
| 13. Ministeriet for Flygtninge, Invandrere og Integration — Ministry for Refugee, Immigration and Integration Affairs | 1 styrelse — 1 agency |
| 14. Ministeriet for Fødevarer, Landbrug og Fiskeri — Ministry of Food, Agriculture and Fisheries | 9 direktorater og institutioner — 9 directorates and institutions |
| 15. Ministeriet for Videnskab, Teknologi og herunder Udvikling — Ministry of Science, Technology and Innovation | Adskillige styrelser og institutioner, Forskningscenter Risø og Statens uddannelsesbygninger — Several agencies and institutions, including Risø National Laboratory and Danish National Research and Education Buildings |
| 16. Skatteministeriet — Ministry of Taxation | 1 styrelse og institutioner — 1 agency and several institutions |
| 17. Socialministeriet — Ministry of Social Affairs | 3 styrelser og institutioner — 3 agencies and several institutions |
| 18. Trafikministeriet — Ministry of Transport | 12 styrelser og institutioner, herunder Øresundsbrokonsortiet — 12 agencies and institutions, including Øresundsbrokonsortiet |
| 19. Undervisningsministeriet — Ministry of Education | 3 styrelser, 4 undervisningsinstitutioner og 5 andre institutioner — 3 agencies, 4 educational establishments, 5 other institutions |
| 20. Økonomi- og Erhvervsministeriet — Ministry of Economic and Business Affairs | Adskillige styrelser og institutioner — Several agencies and institutions |

GERMANY

- | | |
|---|--|
| Auswärtiges Amt | Federal Ministry for Foreign Affairs (Federal Foreign Office) |
| Bundesministerium des Innern (nur zivile Güter) | Federal Ministry of the Interior (only civil goods) |
| Bundesministerium der Justiz | Federal Ministry of Justice |
| Bundesministerium der Finanzen | Federal Ministry of Finance |
| Bundesministerium für Wirtschaft und Technologie | Federal Ministry of Economics and Technology |
| Bundesministerium für Verbraucherschutz, Ernährung und Landwirtschaft | Federal Ministry of Consumer Protection, Food and Agriculture |
| Bundesministerium für Arbeit und Sozialordnung | Federal Ministry of Labour and Social Affairs |
| Bundesministerium der Verteidigung (keine militärischen Güter) | Federal Ministry of Defence (no military goods) |
| Bundesministerium für Familie, Senioren, Frauen und Jugend | Federal Ministry for Family Affairs, Senior Citizens, Women and Youth |
| Bundesministerium für Gesundheit | Federal Ministry for Health |
| Bundesministerium für Verkehr, Bau- und Wohnungswesen | Federal Ministry of Transport, Building and Housing |
| Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit | Federal Ministry for the Environment, Nature Conservation and Nuclear Safety |
| Bundesministerium für Bildung und Forschung | Federal Ministry of Education and Research |
| Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung | Federal Ministry for Economic Cooperation and Development |

GREECE

- | | |
|--|--|
| 1. Υπουργείο Εσωτερικών, Δημόσιας Διοίκησης και Αποκέντρωσης | Ministry of the Interior, Public Administration and Decentralization |
| 2. Υπουργείο Εξωτερικών | Ministry of Foreign Affairs |
| 3. Υπουργείο Οικονομίας και Οικονομικών | Ministry of Economy and Finance |
| 4. Υπουργείο Ανάπτυξης | Ministry of Development |
| 5. Υπουργείο Δικαιοσύνης | Ministry of Justice |
| 6. Υπουργείο Εθνικής Παιδείας και Θρησκευμάτων | Ministry of Education and Religion |
| 7. Υπουργείο Πολιτισμού | Ministry of Culture |

8. Υπουργείο Υγείας — Πρόνοιας	Ministry of Health and Welfare
9. Υπουργείο Περιβάλλοντος, Χωροταξίας και Δημοσίων Έργων	Ministry of Environment, Physical Planning and Public Works
10. Υπουργείο Εργασίας και Κοινωνικών Ασφαλίσεων	Ministry of Labour and Social Security
11. Υπουργείο Μεταφορών και Επικοινωνιών	Ministry of Transport and Communications
12. Υπουργείο Γεωργίας	Ministry of Agriculture
13. Υπουργείο Εμπορικής Ναυτιλίας	Ministry of Merchant Marine
14. Υπουργείο Μακεδονίας-Θράκης	Ministry of Macedonia and Thrace
15. Υπουργείο Αιγαίου	Ministry of the Aegean
16. Υπουργείο Τύπου και Μέσων Μαζικής Ενημέρωσης	Ministry of Press
17. Γενική Γραμματεία Νέας Γενιάς	General Secretariat for Youth
18. Γενική Γραμματεία Ισότητας	General Secretariat of Equality
19. Γενική Γραμματεία Κοινωνικών Ασφαλίσεων	General Secretariat for Social Security
20. Γενική Γραμματεία Απόδημου Ελληνισμού	General Secretariat for Greeks Living Abroad
21. Γενική Γραμματεία Βιομηχανίας	General Secretariat for Industry
22. Γενική Γραμματεία Έρευνας και Τεχνολογίας	General Secretariat for Research and Technology
23. Γενική Γραμματεία Αθλητισμού	General Secretariat for Sports
24. Γενική Γραμματεία Δημοσίων Έργων	General Secretariat for Public Works
25. Γενική Γραμματεία Εθνικής Στατιστικής Υπηρεσίας Ελλάδος	National Statistical Service
26. Εθνικός Οργανισμός Κοινωνικής Φροντίδας	National Welfare Organisation
27. Οργανισμός Εργατικής Κατοικίας	Workers' Housing Organisation
28. Εθνικό Τυπογραφείο	National Printing Office
29. Γενικό Χημείο του Κράτους	General State Laboratory
30. Ταμείο Εθνικής Οδοποιίας	Greek Highway Fund
31. Εθνικό Καποδιστριακό Πανεπιστήμιο Αθηνών	University of Athens
32. Αριστοτέλειο Πανεπιστήμιο Θεσσαλονίκης	University of Thessaloniki
33. Δημοκρίτειο Πανεπιστήμιο Θράκης	University of Thrace
34. Πανεπιστήμιο Αιγαίου	University of Aegean
35. Πανεπιστήμιο Ιωαννίνων	University of Ioannina
36. Πανεπιστήμιο Πατρών	University of Patras
37. Πανεπιστήμιο Μακεδονίας	University of Macedonia
38. Πολυτεχνείο Κρήτης	Polytechnic School of Crete
39. Σιβιτανίδειος Δημόσια Σχολή Τεχνών και Επαγγελμάτων	Sivitanidios Technical School
40. Αιγινήτειο Νοσοκομείο	Eginitio Hospital
41. Αρεταίειο Νοσοκομείο	Areteio Hospital
42. Εθνικό Κέντρο Δημόσιας Διοίκησης	National Centre of Public Administration
43. Οργανισμός Διαχείρισης Δημοσίου Υλικού ΑΕ	Public Material Management Organisation
44. Οργανισμός Γεωργικών Ασφαλίσεων	Farmers' Insurance Organisation
45. Οργανισμός Σχολικών Κτιρίων	School Building Organisation

46. Γενικό Επιτελείο Στρατού ⁽¹⁾	Army General Staff
47. Γενικό Επιτελείο Ναυτικού ⁽²⁾	Navy General Staff
48. Γενικό Επιτελείο Αεροπορίας ⁽³⁾	Airforce General Staff
49. Ελληνική Επιτροπή Ατομικής Ενέργειας	Greek Atomic Energy Commission
50. Γενική Γραμματεία Εκπαίδευσης Ενηλίκων	General Secretariat for Further Education

⁽¹⁾ Non-warlike materials covered by Annex V.

⁽²⁾ Non-warlike materials covered by Annex V.

⁽³⁾ Non-warlike materials covered by Annex V.

SPAIN

Presidencia del Gobierno	Office of the Prime Minister
Ministerio de Asuntos Exteriores	Ministry of Foreign Affairs
Ministerio de Justicia	Ministry of Justice
Ministerio de Defensa	Ministry of Defence
Ministerio de Hacienda	Ministry of Finance
Ministerio de Interior	Ministry of the Interior
Ministerio de Fomento	Ministry of Internal Development
Ministerio de Educación, Cultura y Deportes	Ministry of Education, Culture and Sport
Ministerio de Trabajo y Asuntos Sociales	Ministry of Labour and Social Affairs
Ministerio de Agricultura, Pesca y Alimentación	Ministry of Agriculture, Fisheries and Food
Ministerio de la Presidencia	Ministry of the Office of the Prime Minister
Ministerio de Administraciones Públicas	Ministry of Public Administration
Ministerio de Sanidad y Consumo	Ministry of Health and Consumer Affairs
Ministerio de Economía	Ministry of Economic Affairs
Ministerio de Medio Ambiente	Ministry of the Environment
Ministerio de Ciencia y Tecnología	Ministry of Science and Technology

FRANCE

1. Ministries

— Services du Premier ministre	— Office of the Prime Minister
— Ministère des affaires étrangères	— Ministry of Foreign Affairs
— Ministère des affaires sociales, du travail et de la solidarité	— Ministry of Social Affairs, Labour and Solidarity
— Ministère de l'agriculture, de l'alimentation, de la pêche et des affaires rurales	— Ministry of Agriculture, Food, Fisheries and Rural Affairs
— Ministère de la culture et de la communication	— Ministry of Culture and Communication
— Ministère de la défense ⁽¹⁾	— Ministry of Defence
— Ministère de l'écologie et du développement durable	— Ministry of Ecology and Sustainable Development
— Ministère de l'économie, des finances et de l'industrie	— Ministry of Economic Affairs, Finance and Industry

— Ministère de l'équipement, des transports, du logement, du tourisme et de la mer	— Ministry of Infrastructure, Transport, Housing, Tourism and the Sea
— Ministère de la fonction publique, de la réforme de l'Etat et de l'aménagement du territoire	— Ministry of the Civil Service, State Reform and Regional Planning
— Ministère de l'intérieur, de la sécurité intérieure et des libertés locales	— Ministry of the Interior, Internal Security and Local Freedoms
— Ministère de la justice	— Ministry of Justice
— Ministère de la jeunesse, de l'éducation nationale et de la recherche	— Ministry of Youth, Education and Research
— Ministère de l'outre-mer	— Ministry of Overseas Territories
— Ministère de la santé, de la famille et des personnes handicapées	— Ministry of Health, the Family and Disabled Persons
— Ministère des sports	— Ministry of Sport

2. National public establishments

— Académie de France à Rome	— Academy of France in Rome
— Académie de marine	— Naval Academy
— Académie des sciences d'outre-mer	— Overseas Academy of Sciences
— Agence centrale des organismes de sécurité sociale (ACOSS)	— Central Agency for Social Security Bodies
— Agence nationale pour l'amélioration des conditions de travail (ANACT)	— National Agency for the Improvement of Working Conditions
— Agence nationale pour l'amélioration de l'habitat (ANAH)	— National Agency for the Improvement of the Habitat
— Agence nationale pour l'indemnisation des français d'outre-mer (ANIFOM)	— National Agency for Compensation of French Overseas Nationals
— Assemblée permanente des chambres d'agriculture (APCA)	— Permanent Assembly of the Regional Chambers of Agriculture
— Bibliothèque nationale de France	— National Library of France
— Bibliothèque nationale et universitaire de Strasbourg	— National and University Library of Strasbourg
— Bibliothèque publique d'information	— Public Information Library
— Caisse des dépôts et consignations	— Deposits and Consignments Fund
— Caisse nationale des autoroutes (CNA)	— National Highways Fund
— Caisse nationale militaire de sécurité sociale (CNMSS)	— National Social Security Fund for the Military
— Centre des monuments nationaux (CMN)	— National Monuments Centre
— Caisse de garantie du logement locatif social	— Social Housing Guarantee Fund
— Casa de Velasquez	— Casa de Velázquez
— Centre d'enseignement zootechnique	— Centre for Zootechnical Studies
— Centre d'études du milieu et de pédagogie appliquée du ministère de l'agriculture	— Ministry of Agriculture's Centre for Environmental Studies and Applied Teaching
— Centre d'études supérieures de sécurité sociale	— Centre for Higher Social Security Studies

— Centres de formation professionnelle agricole	— Agricultural Training Centres
— Centre national d'art et de culture Georges Pompidou	— Georges Pompidou National Centre of Art and Culture
— Centre national de la cinématographie	— National Cinematography Centre
— Centre national d'études et de formation pour l'enfance inadaptée	— National Study and Training Centre for Professionals working with Children with Adaptation Difficulties
— Centre national d'études et d'expérimentation du machinisme agricole, du génie rural, des eaux et des forêts (CEMAGREF)	— National Institute for Agricultural and Environmental Engineering
— Centre national des lettres	— National Literary Arts Centre
— Centre national de documentation pédagogique	— National Teaching Documentation Centre
— Centre national des oeuvres universitaires et scolaires (CNOUS)	— National Centre for Assistance to School and University Students
— Centre hospitalier des Quinze-Vingts	— Quinze-Vingts Hospital
— Centre national de promotion rurale de Marmilhat	— Marmilhat National Rural Development Centre
— Centres d'éducation populaire et de sport (CREPS)	— Adult Education and Sports Centres
— Centres régionaux des œuvres universitaires (CROUS)	— Regional Centres for Assistance to University Students
— Centres régionaux de la propriété forestière	— Regional Forest Property Centres
— Centre de sécurité sociale des travailleurs migrants	— Social Security Centre for Migrant Workers
— Commission des opérations de bourse	— Stock Exchange Operations Commission
— Conseil supérieur de la pêche	— Fisheries Council
— Conservatoire de l'espace littoral et des rivages lacustres	— Coast and Lakeshore Conservation Agency
— Conservatoire national supérieur de musique de Paris	— Paris Higher National Music Conservatoire
— Conservatoire national supérieur de musique de Lyon	— Lyon Higher National Music Conservatoire
— Conservatoire national supérieur d'art dramatique	— National Drama School
— École centrale — Lyon	— National College of Engineering and Research, Lyon
— École centrale des arts et manufactures	— National College of Engineering and Science, Paris
— Ecole du Louvre	— Ecole du Louvre Art
— École française d'archéologie d'Athènes	— French School of Archaeology in Athens
— École française d'Extrême-Orient	— French School of Far East Studies
— École française de Rome	— French School in Rome
— École des hautes études en sciences sociales	— College of Advanced Studies in Social Sciences
— École nationale d'administration	— National Public Administration College
— École nationale de l'aviation civile (ENAC)	— National Civil Aviation College
— École nationale des Chartres	— Chartres National College
— École nationale d'équitation	— National Equitation College
— École nationale du génie rural des eaux et des forêts (ENGREF)	— National College of Rural, Water and Forestry Engineering

— Écoles nationales d'ingénieurs	— National Engineering Colleges
— École nationale d'ingénieurs des techniques des industries agricoles et alimentaires	— National College for Agro-Food Industry Engineers
— Écoles nationales d'ingénieurs des travaux agricoles	— National College of Agricultural Engineers
— Ecole nationale du génie de l'eau et de l'environnement de Strasbourg	— Strasbourg National College of Water and Environmental Engineering
— École nationale de la magistrature	— National College for the Judiciary
— Écoles nationales de la marine marchande	— National Merchant Navy Colleges
— École nationale de la santé publique (ENSP)	— National Public Health College
— École nationale de ski et d'alpinisme	— National Skiing and Mountaineering College
— École nationale supérieure agronomique — Montpellier	— Montpellier National Higher College of Agronomy
— École nationale supérieure agronomique — Rennes	— National Higher College of Agronomy, Rennes
— École nationale supérieure des arts décoratifs	— National Higher College of the Decorative Arts
— École nationale supérieure des arts et industries — Strasbourg	— National Higher College of Arts and Industries, Strasbourg
— École nationale supérieure des arts et industries textiles — Roubaix	— National Higher College of Arts and Textile Industries, Roubaix
— Écoles nationales supérieures d'arts et métiers	— National Higher Colleges of Engineering
— École nationale supérieure des beaux-arts	— National Higher College of Fine Arts
— École nationale supérieure des bibliothécaires	— National Higher College for Librarians
— École nationale supérieure de céramique industrielle	— National Higher College of Industrial Ceramics
— École nationale supérieure de l'électronique et de ses applications (ENSEA)	— National Higher College of Electronics and Electrical Engineering
— École nationale supérieure des industries agricoles alimentaires	— National Higher College for the Agri-Food Industries
— École nationale supérieure du paysage	— National Higher College of Landscape Design
— Écoles nationales vétérinaires	— National Colleges of Veterinary Medicine
— École nationale de voile	— National Sailing College
— Écoles normales nationales d'apprentissage	— National Teacher Training Colleges
— Écoles normales supérieures	— Higher Teacher Training Colleges
— École polytechnique	— Polytechnical College
— École technique professionnelle agricole et forestière de Meymac (Corrèze)	— Meymac Agricultural and Forestry Training College (Corrèze)
— École de sylviculture — Croigny (Aube)	— Croigny Forestry College (Aube)
— École de viticulture et d'oenologie de la Tour-Blanche (Gironde)	— Tour Blanche College of Viticulture and Oenology (Gironde)
— École de viticulture — Avize (Marne)	— Avize Viticulture College (Marne)
— Hôpital national de Saint-Maurice	— Saint-Maurice National Hospital
— Établissement national des invalides de la marine (ENIM)	— National Social Security Institute for Disabled Sea Workers

— Établissement national de bienfaisance Koenigswarter	— Koenigswarter National Charitable Organisation
— Établissement de maîtrise d'ouvrage des travaux culturels (EMOC)	— Corporation for Supervision of Work on State-Owned Buildings of Cultural or Educational Interest
— Établissement public du musée et du domaine national de Versailles	— Public Corporation for the Museum and National Domain of Versailles
— Fondation Carnegie	— Carnegie Foundation
— Fondation Singer-Polignac	— Singer-Polignac Foundation
— Fonds d'action et de soutien pour l'intégration et la lutte contre les discriminations	— Action and Support Fund for Integration and the Fight against Discrimination
— Institut de l'élevage et de médecine vétérinaire des pays tropicaux (IEMVPT)	— Institute for Stockfarming and Veterinary Medicine in Tropical Countries
— Institut français d'archéologie orientale du Caire	— French Eastern Archaeology Institute in Cairo
— Institut français de l'environnement	— French Environmental Institute
— Institut géographique national	— National Geographical Institute
— Institut industriel du Nord	— Industrial Institute of the Nord Region
— Institut national agronomique de Paris-Grignon	— Paris-Grignon National Agronomics Institute,
— Institut national des appellations d'origine (INAO)	— National Institute for Designations of Origin
— Institut national d'astronomie et de géophysique (INAG)	— National Astronomy and Geophysics Institute
— Institut national de la consommation (INC)	— National Consumption Institute
— Institut national d'éducation populaire (INEP)	— National Adult Education Institute
— Institut national d'études démographiques (INED)	— National Institute of Demographic Studies
— Institut national des jeunes aveugles — Paris	— National Institute for Young Blind People, Paris
— Institut national des jeunes sourds — Bordeaux	— National Institute for Young Deaf People, Bordeaux
— Institut national des jeunes sourds — Chambéry	— National Institute for Young Deaf People, Chambéry
— Institut national des jeunes sourds — Metz	— National Institute for Young Deaf People, Metz
— Institut national des jeunes sourds — Paris	— National Institute for Young Deaf People, Paris
— Institut national du patrimoine	— French National Heritage Institute
— Institut national de physique nucléaire et de physique des particules (IN2.P3)	— National Institute of Nuclear Physics and Particle Physics
— Institut national de la propriété industrielle	— National Intellectual Property Institute
— Institut national de recherches archéologiques préventives	— National Institute for Preventive Archaeological Research
— Institut national de recherche pédagogique (INRP)	— National Institute for Educational Research
— Institut national des sports et de l'éducation physique	— National Institute for Sport and Physical Education
— Instituts nationaux polytechniques	— National Polytechnical Colleges
— Instituts nationaux des sciences appliquées	— National Institutes of Applied Sciences
— Institut national supérieur de chimie industrielle de Rouen	— Rouen Higher National Institute of Industrial Chemistry

— Institut national de recherche en informatique et en automatique (INRIA)	— National Institute for Computer Science and Control Research
— Institut national de recherche sur les transports et leur sécurité (INRETS)	— National Institute for Transport and Safety Research
— Instituts régionaux d'administration	— Regional Public Administration Colleges
— Institut supérieur des matériaux et de la construction mécanique de Saint-Ouen	— Saint-Ouen Higher Institute of Materials and Mechanical Construction
— Musée Auguste-Rodin	— Auguste-Rodin Museum
— Musée de l'armée	— Military Museum
— Musée Gustave-Moreau	— Gustave-Moreau Museum
— Musée du Louvre	— Louvre Museum
— Musée du quai Branly	— Quai Branly Museum
— Musée national de la marine	— Naval Museum
— Musée national J.-J.-Henner	— National J.J. Henner Museum
— Musée national de la Légion d'honneur	— National Museum of the Legion of Honour
— Muséum national d'histoire naturelle	— National Natural History Museum
— Office de coopération et d'accueil universitaire	— University Cooperation and Reception Office
— Office français de protection des réfugiés et apatrides	— French Office for the Protection of Refugees and Stateless Persons
— Office national de la chasse et de la faune sauvage	— National Office for Hunting and Wild Fauna
— Office national d'information sur les enseignements et les professions (ONISEP)	— National Office for Information on Higher Education and Careers
— Office des migrations internationales (OMI)	— International Migration Office
— Office universitaire et culturel français pour l'Algérie	— French University and Cultural Office for Algeria
— Palais de la découverte	— Discovery Museum
— Parcs nationaux	— National Parks
— Syndicat des transports parisiens d'Ile-de-France	— Ile-de-France and Paris Transport Authority
— Thermes nationaux — Aix-les-Bains	— National Thermal Baths at Aix-les-Bains

3. Autre organisme public national

— Union des groupements d'achats publics (UGAP)

3. Other national public bodies

— Public Procurement Department

⁽¹⁾ Non-warlike materials.

IRELAND

President's Establishment

Houses of the Oireachtas [Parliament] and European Parliament

Department of the Taoiseach [Prime Minister]

Central Statistics Office

Department of Finance

Office of the Comptroller and Auditor General

Office of the Revenue Commissioners

Office of Public Works

State Laboratory

Office of the Attorney General

Office of the Director of Public Prosecutions

Valuation Office

Civil Service Commission

Office of the Ombudsman

Chief State Solicitor's Office

Department of Justice, Equality and Law Reform

Courts Service

Prisons Service

Office of the Commissioners of Charitable Donations and Bequests

Department of the Environment and Local Government

Department of Education and Science

Department of Communications, Marine and Natural Resources

Department of Agriculture and Food

Department of Transport

Department of Health and Children

Department of Enterprise, Trade and Employment

Department of Arts, Sports and Tourism

Department of Defence

Department of Foreign Affairs

Department of Social and Family Affairs

Department of Community, Rural and Gaeltacht [Gaelic speaking regions] Affairs

Arts Council

National Gallery.

ITALY

1. **Purchasing bodies**

1. Presidenza del Consiglio dei Ministri	Presidency of the Council of Ministers
2. Ministero degli Affari Esteri	Ministry of Foreign Affairs
3. Ministero dell'Interno	Ministry of Interior
4. Ministero della Giustizia	Ministry of Justice
5. Ministero della Difesa	Ministry of Defence ⁽¹⁾
6. Ministero dell'Economia e delle Finanze	Ministry of Economy and Finance (former Ministry of Treasury and Ministry of Finance)
7. Ministero delle Attività Produttive	Ministry of Productive Activities (former Ministry of Industry, trade, handicraft tourism and Ministry of foreign trade)
8. Ministero delle Comunicazioni	Ministry of Communications (former Ministry of posts and telecommunications)
9. Ministero delle Politiche agricole e forestali	Ministry of Agricultural and Forestal Policies (former Ministry of agricultural resources)
10. Ministero dell'Ambiente e tutela del Territorio	Ministry of Environment and defence of Territory (former Ministry of environment)
11. Ministero delle Infrastrutture e Trasporti	Ministry of Infrastructures and Transports (former Ministry of transports and Ministry of Public works)
12. Ministero del Lavoro e delle politiche sociali	Ministry of Employment and social policies (former Ministry of employment and social security)
13. Ministero della Salute	Ministry of Health
14. Ministero dell'Istruzione, Università e Ricerca	Ministry of Education, University and scientific Research
15. Ministero per i Beni e le attività culturali	Ministry for Cultural heritage and activities

2. **Other national public body:**

ONSIP SPA (Concessionnaire of Public Informatic Services) ⁽²⁾ CONSIP (Concessionaria Servizi Informatici Pubblici)

⁽¹⁾ Non-warlike materials.

⁽²⁾ Acts as the central purchasing entity for all the Ministries and, at request, for other public entities on the basis of a concession or framework agreement.

LUXEMBOURG

1. Ministère de l'Agriculture, de la Viticulture et du Développement rural: Administration des services techniques de l'agriculture	Ministry of Agriculture, Viticulture and Rural Development: Administration of Agricultural Technical Departments
2. Ministère des Affaires étrangères, du Commerce extérieur, de la Coopération et de la Défense: Armée	Ministry of Foreign Affairs, Foreign Trade, Cooperation and Defence: Army
3. Ministère de l'Education nationale, de la Formation professionnelle et des Sports: Lycées d'enseignement secondaire et d'enseignement secondaire technique	Ministry of Education, Vocational Training and Sport: Secondary Schools and Secondary Technical Schools
4. Ministère de l'Environnement: Administration de l'environnement	Ministry of the Environment: Environment Administration
5. Ministère d'Etat, département des Communications: Entreprise des P et T (Postes seulement)	Ministry of the State, Communications Department: Postal Services and Telecommunications Company (Post division only)
6. Ministère de la Famille, de la Solidarité sociale et de la Jeunesse: Maisons de retraite de l'Etat, Homes d'enfants	Ministry of the Family, Social Solidarity and Youth: State retirement homes, children's homes
7. Ministère de la Fonction publique et de la Réforme administrative: Centre informatique de l'Etat, Service central des imprimés et des fournitures de bureau de l'Etat	Ministry of the Civil Service and Administrative Reform: State Computer Science Centre, Central Department for State Printed Matter and Office Supplies
8. Ministère de la Justice: Etablissements pénitentiaires	Ministry of Justice: Penitentiary Institutions

- | | |
|--|---|
| 9. Ministère de l'Intérieur: Police grand-ducale, Service national de la protection civile | Ministry of the Interior: National Police Service, National Civil Protection Office |
| 10. Ministère des Travaux publics: Administration des bâtiments publics; Administration des ponts et chaussées | Ministry of Public Works: Public Buildings Administration; Bridges and Roads Administration |

NETHERLANDS

Ministerie van Algemene Zaken (Ministry of General Affairs)

- Bestuursdepartement (Central policy and staff departments)
- Bureau van de Wetenschappelijke Raad voor het Regeringsbeleid (Advisory Council on Government Policy)
- Rijksvoorlichtingsdienst: (The Netherlands Government Information Service)

Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (Ministry of the Interior)

- Bestuursdepartement (Central policy and staff departments)
- Agentschap Informatievoorziening Overheidspersoneel (IVOP) (Agency for Government Personnel Information)
- Centrale Archiefselectiedienst (CAS) (Central Records Selection Service)
- Algemene Inlichtingen- en Veiligheidsdienst (AIVD) (General Intelligence and Security Service)
- Beheerorganisatie GBA (Personnel Records and Travel Documents Agency)
- Organisatie Informatie- en communicatietechnologie OOV (ITO) (Information and Communication Technology Organisation)
- Korps Landelijke Politiediensten (National Police Services Agency)

Ministerie van Buitenlandse Zaken (Ministry of Foreign Affairs)

- Directoraat Generaal Regiobeleid en Consulaire Zaken (DGRC) (Directorate-General for Regional Policy and Consular Affairs)
- Directoraat Generaal Politieke Zaken (DGPZ) (Directorate-General for Political Affairs)
- Directoraat Generaal Internationale Samenwerking (DGIS) (Directorate-General for International Cooperation)
- Directoraat Generaal Europese Samenwerking (DGES) (Directorate-General for European Cooperation)
- Centrum tot Bevordering van de Import uit Ontwikkelingslanden (CBI) (Centre for the Promotion of Imports from Developing Countries)
- Centrale diensten ressorterend onder P/PlvS (support services falling under the Secretary-General and Deputy Secretary-General)
- Buitenlandse Posten (ieder afzonderlijk) (the various Foreign Missions)

Ministerie van Defensie (Ministry of Defence)

- Bestuursdepartement (Central policy and staff departments)
- Staf Defensie Interservice Commando (DICO) (Staff Defence Interservice Command for Support Services)
- Defensie Telematica Organisatie (DTO) (Defence Telematics Organisation)
- Centrale directie van de Dienst Gebouwen, Werken en Terreinen (Defence Infrastructure Agency, Central Directorate)
- De afzonderlijke regionale directies van de Dienst Gebouwen, Werken en Terreinen (Defence Infrastructure Agency, Regional Directorates)

- Directie Materieel Koninklijke Marine (Directorate of Material Royal Netherlands Navy)
- Directie Materieel Koninklijke Landmacht (Directorate of Material Royal Netherlands Army)
- Directie Materieel Koninklijke Luchtmacht (Directorate of Material Royal Netherlands Air Force)
- Landelijk Bevoorradingsbedrijf Koninklijke Landmacht (LBBKL) (Royal Netherlands Army National Supply Agency)
- Defensie Pijpleiding Organisatie (DPO) (Defence Pipeline Organisation)
- Logistiek Centrum Koninklijke Luchtmacht (Logistic Centre Royal Netherlands Air Force)
- Koninklijke Marine, Marinebedrijf (Royal Netherlands Navy, Maintenance Establishment)

Ministerie van Economische Zaken (Ministry of Economic Affairs)

- Bestuursdepartement (Central policy and staff departments)
- Centraal Bureau voor de Statistiek (CBS) (Netherlands Central Bureau of Statistics)
- Centraal Planbureau (CPB) (Central Plan Bureau)
- Bureau voor de Industriële Eigendom (BIE) (Industrial Property Office)
- Senter (Senter)
- Staatstoezicht op de Mijnen (SodM) (State Supervision of Mines)
- Nederlandse Mededingingsautoriteit (NMa) (Netherlands Competition Authority)
- Economische Voorlichtingsdienst (EVD) (Netherlands Foreign Trade Agency)
- Nederlandse Onderneming voor Energie en Milieu BV (Novem) (Agency for Energy and Environment)
- Agentschap Telecom (Telecom Agency)

Ministerie van Financiën (Ministry of Finance)

- Bestuursdepartement (Central policy and staff departments)
- Belastingdienst Automatiseringscentrum (Tax and Custom Computer and Software Centre)
- Belastingdienst (Tax and Customs Administration):
 - de afzonderlijke Directies der Rijksbelastingen (the various Divisions of the Tax and Customs Administration throughout the Netherlands)
 - Fiscale Inlichtingen- en Opsporingsdienst (incl. Economische Controle dienst (ECD) (Fiscal Information and Investigation Service (the Economic Investigation Service included)))
 - Belastingdienst Opleidingen (Tax and Customs Training Centre)
- Dienst der Domeinen (State Property Service)

Ministerie van Justitie (Ministry of Justice)

- Bestuursdepartement (Central policy and staff departments)
- Dienst Justitiële Inrichtingen (Correctional Institutions Agency)
- Raad voor de Kinderbescherming (Child Care and Protection Agency)
- Centraal Justitie Incasso Bureau (Central Fine Collection Agency)
- Openbaar Ministerie (Public Prosecution Service)

- Immigratie en Naturalisatiedienst (Immigration and Naturalisation Service)
- Nederlands Forensisch Instituut (Netherlands Forensic Institute)
- Raad voor de Rechtspraak (Judicial Management and Advisory Board)

Ministerie van Landbouw, Natuurbeheer en Visserij (Ministry of Agriculture, Nature Management and Fisheries)

- Bestuursdepartement (Central policy and staff departments)
- Agentschap Landelijke Service bij Regelingen (LASER) (National Service for the Implementation of Regulations (Agency))
- Agentschap Plantenziekte kundige Dienst (PD) (Plant Protection Service (Agency))
- Algemene Inspectiedienst (AID) (General Inspection Service)
- De afzonderlijke Regionale Beleidsdirecties (Regional Policy departments)
- Agentschap Bureau Heffingen (Levies Office (Agency))
- Dienst Landelijk Gebied (DLG) (Government Service for Sustainable Rural Development)
- De afzonderlijke Regionale Beleidsdirecties

Ministerie van Onderwijs, Cultuur en Wetenschappen (Ministry of Education, Culture and Science)

- Bestuursdepartement (Central policy and staff departments)
- Inspectie van het Onderwijs (Inspectorate of Education)
- Inspectie Cultuurbezit (Inspectorate of cultural heritage)
- Centrale Financiën Instellingen (Central Funding of Institutions Agency)
- Nationaal archief (National Archives)
- Rijksdienst voor de archeologie (State inspectorate for archaeology)
- Rijksarchiefinspectie (Public Records Inspectorate)
- Adviesraad voor Wetenschaps- en Technologiebeleid (Advisory Council for Science and Technology Policy)
- Onderwijsraad (Education Council)
- Rijksinstituut voor Oorlogsdocumentatie
- Instituut Collectie Nederland (Netherlands Institute for Cultural Heritage)
- Raad voor Cultuur (Council for Culture)
- Rijksdienst voor de Monumentenzorg (Netherlands Department for Conservation of Monuments)
- Rijksdienst Oudheidkundig Bodemonderzoek (National Service for archaeological heritage)

Ministerie van Sociale Zaken en Werkgelegenheid (Ministry of Social Affairs and Employment)

- Bestuursdepartement (Central policy and staff departments)

Ministerie van Verkeer en Waterstaat (Ministry of Transport, Public Works and Watermanagement)

- Bestuursdepartement (Central policy and staff departments)
- Directoraat-Generaal Luchtvaart (Directorate-General for Civil Aviation)

- Directoraat-Generaal Goederenvervoer (Directorate-General for Freight Transport)
- Directoraat-Generaal Personenvervoer (Directorate-General for Passenger Transport)
- Directoraat-Generaal Rijkswaterstaat (Directorate-General of Public Works and Water Management)
- Hoofdkantoor Directoraat-Generaal Rijks Waterstaat (Public Works and Water Management Head Office)
- De afzonderlijke regionale directies van Rijkswaterstaat (Each individual regional department of the Directorate-General of Public Works and Water Management)
- De afzonderlijke specialistische diensten van Rijkswaterstaat (Each individual specialist service of the Directorate-General of Public Works and Water Management)
- Directoraat-Generaal Water (Directorate-General for Water Affairs)
- Inspecteur-Generaal, Inspectie Verkeer en Waterstaat (Inspector-General, Transport and Water Management Inspectorate)
- Divisie Luchtvaart van de Inspecteur-Generaal, Inspectie Verkeer en Waterstaat (Civil Aviation Authority of the Inspector-General, Transport and Water Management Inspectorate)
- Divisie Vervoer van de Inspecteur-Generaal, Inspectie Verkeer en Waterstaat (Transport Inspectorate of the Inspector-General, Transport and Water Management Inspectorate)
- Divisie Scheepvaart van de Inspecteur-Generaal, Inspectie Verkeer en Waterstaat (Shipping Inspectorate Netherlands of the Inspector-General, Transport and Water Management Inspectorate)
- Centrale Diensten (Central Services)
- Koninklijk Nederlands Meteorologisch Instituut (KNMI) (Royal Netherlands Meteorological Institute)

Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (Ministry for Housing, Spatial Planning and the Environment)

- Bestuursdepartement (Central policy and staff departments)
- Directoraat-Generaal Wonen (Directorate General for Housing)
- Directoraat-Generaal Ruimte (Directorate General for Spatial Policy)
- Directoraat General Milieubeheer (Directorate General for Environmental Protection)
- Rijksgebouwendienst (Government Buildings Agency)
- VROM inspectie (Inspectorate)

Ministerie van Volksgezondheid, Welzijn en Sport (Ministry of Health, Welfare Sports)

- Bestuursdepartement (Central policy and staff departments)
- Inspectie Gezondheidsbescherming, Waren en Veterinaire Zaken (Inspectorate for Health Protection and Veterinary Public Health)
- Inspectie Gezondheidszorg (Health Care Inspectorate)
- Inspectie Jeugdhulpverlening en Jeugdbescherming (Youth Services and Youth Protection Inspectorate)
- Rijksinstituut voor de Volksgezondheid en Milieu (RIVM) (National Institute of Public Health and Environment)
- Sociaal en Cultureel Planbureau (Social and Cultural Planning Office)
- Agentschap t.b.v. het College ter Beoordeling van Geneesmiddelen (Medicines Evaluation Board Agency)

Tweede Kamer der Staten-Generaal (Second Chamber of the States General)

Eerste Kamer der Staten-Generaal (First Chamber of the States General)

Raad van State (Council of State)

Algemene Rekenkamer (Netherlands Court of Audit)

Nationale Ombudsman (National Ombudsman)

Kanselarij der Nederlandse Orden (Chancellery of the Netherlands Order)

Kabinet der Koningin (Queen's Cabinet)

AUSTRIA

1. Bundeskanzleramt	Federal Chancellery
2. Bundesministerium für auswärtige Angelegenheiten	Federal Ministry for Foreign Affairs
3. Bundesministerium für Bildung, Wissenschaft und Kultur	Federal Ministry for Education, Science and Culture
4. Bundesministerium für Finanzen	Federal Ministry of Finance
5. Bundesministerium für Inneres	Federal Ministry of Internal Affairs
6. Bundesministerium für Justiz	Federal Ministry of Justice
7. Bundesministerium für Landesverteidigung	Federal Ministry of Defence
8. Bundesministerium für Land- und Forstwirtschaft, Umweltschutz und Wasserwirtschaft	Federal Ministry for Agriculture and Forestry, Environment Protection and Water Management
9. Bundesministerium für öffentliche Leistung und Sport	Federal Ministry for Public Performance and Sports
10. Bundesministerium für soziale Sicherheit und Generationen	Federal Ministry for Social Security and Generations
11. Bundesministerium für Verkehr, Innovation und Technologie	Federal Ministry for Transport, Innovation and Technology
12. Bundesministerium für Wirtschaft und Arbeit	Federal Ministry for Economic Affairs and Employment
13. Bundesamt für Eich- und Vermessungswesen	Federal Office for Calibration and Measurement
14. Österreichische Forschungs- und Prüfzentrum Arsenal Gesellschaft m.b.H	Austrian Research and Test Centre Arsenal Ltd
15. Bundesprüfanstalt für Kraftfahrzeuge	Federal Testing Institute for Automobiles
16. Bundesbeschaffung GmbH	Federal Procurement Ltd
17. Bundesrechenzentrum GmbH	Federal Data Processing Centre Ltd

PORTUGAL

— Presidência do Conselho de Ministros	Presidency of the Council of Ministers
— Ministério das Finanças	Ministry of Finance
— Ministério da Defesa Nacional ⁽¹⁾	Ministry of Defence

— Ministério dos Negócios Estrangeiros e das Comunidades Portuguesas	Ministry of Foreign Affairs and Portuguese Communities
— Ministério da Administração Interna	Ministry of Internal Affairs
— Ministério da Justiça	Ministry of Justice
— Ministério da Economia	Ministry of Economy
— Ministério da Agricultura, Desenvolvimento Rural e Pescas	Ministry of Agriculture, Rural Development and Fishing
— Ministério da Educação	Ministry of Education
— Ministério da Ciência e do Ensino Superior	Ministry of Science and University Education
— Ministério da Cultura	Ministry of Culture
— Ministério da Saúde	Ministry of Health
— Ministério da Segurança Social e do Trabalho	Ministry of Social Security and Labour
— Ministério das Obras Públicas, Transportes e Habitação	Ministry of Public Works, Transport and Housing
— Ministério das Cidades, Ordenamento do Território e Ambiente	Ministry of Cities, Land Management and Environment

(³) Non-warlike materials covered by Annex V.

FINLAND

Oikeuskanslerinvirasto – Justitiekanslersämbetet	Office of the Chancellor of Justice
Kauppa- ja teollisuusministeriö – Handels- och industriministeriet	Ministry of Trade and Industry
Kuluttajavirasto – Konsumentverket	Finnish Consumer Agency
Kilpailuvirasto – Konkurrensverket	Finnish Competition Authority
Kuluttajavalituslautakunta – Konsumentklagonämnden	Consumer Complaint Board
Patentti- ja rekisterihallitus – Patent- och registerstyrelsen	National Board of Patents and Registration
Liikenne- ja viestintäministeriö – Kommunikationsministeriet	Ministry of Transport and Communications
Viestintävirasto – Kommunikationsverket	Finnish Communications Regulatory Authority
Maa- ja metsätalousministeriö – Jord- och skogsbruksministeriet	Ministry of Agriculture and Forestry
Elintarvikevirasto – Livsmedelsverket	National Food Agency
Maanmittauslaitos – Lantmäteriverket	National Land Survey of Finland
Oikeusministeriö – Justitieministeriet	Ministry of Justice
Tietosuojavaltuutetun toimisto – Dataombudsmannens byrå	Office of the Data Protection Ombudsman
Tuomioistuimet – domstolar	Courts of Law
Korkein oikeus – Högsta domstolen	Supreme Court
Korkein hallinto-oikeus – Högsta förvaltningsdomstolen	Supreme Administrative Court
Hovioikeudet – hovrätter	Courts of Appeal
Käräjäoikeudet – tingsrätter	District Courts
Hallinto-oikeudet – förvaltningsdomstolar	Administrative Courts

Markkinaoikeus – Marknadsdomstolen	Market Court
Työtuomioistuin – Arbetsdomstolen	Labour Court
Vakuutusoiikeus – Försäkringsdomstolen	Insurance Court
Vankeinhoitolaitos – Fängsvårdsväsendet	Prison Service
Opetusministeriö – Undervisningsministeriet	Ministry of Education
Opetushallitus – Utbildningsstyrelsen	National Board of Education
Valtion elokuvataarkastamo – Statens filmgranskningsbyrå	Finnish Board of Film Classification
Puolustusministeriö – Försvarsministeriet	Ministry of Defence
Puolustusvoimat ⁽¹⁾ – Försvarsmakten	Finnish Defence Forces
Sisäasiainministeriö – Inrikesministeriet	Ministry of the Interior
Väestörekisterikeskus – Befolkningsregistercentralen	Population Register Centre
Keskusrikospoliisi – Centralkriminalpolisen	National Bureau of Investigation
Liikkuva poliisi – Rörliga polisen	National Traffic Police
Rajavartiolaitos ⁽¹⁾ – Gränsbevakningsväsendet	Frontier Guard
Sosiaali- ja Terveysministeriö	Ministry of Social Affairs and Health
Työttömyysturvalautakunta – Arbetslöshetsnämnden	Unemployment Appeal Board
Tarkastuslautakunta – Prövningsnämnden	Appeal Tribunal
Lääkelaitos – Läkemedelsverket	National Agency for Medicines
Terveystenhuollon oikeusturvakeskus – Rättsskyddscen- tralen för hälsovården	National Authority for Medicolegal Affairs
Tapaturmavirasto – Olycksfallsverket	State Accident Compensation Office
Säteilyturvakeskus – Strålsäkerhetscentralen	Radiation and Nuclear Safety Authority
Työministeriö – Arbetsministeriet	Ministry of Labour
Valtakunnansovittelijain toimisto – Riksförliknings- männens byrå	National Conciliators' Office
Valtion turvapaikanhakijoiden vastaanottokeskukset – Statliga förläggningar för asylsökande	Reception Centres
Työneuvosto – Arbetsrådet i Finland	Labour Council
Ulkoasiainministeriö – Utrikesministeriet	Ministry for Foreign Affairs
Valtiovarainministeriö – Finansministeriet	Ministry of Finance
Valtionalouden tarkastusvirasto – Statens revisionsverk	State Audit Office
Valtiokonttori – Statskontoret	State Treasury
Valtion työmarkkinalaitos – Statens arbetsmarknadsverk	State Employer's Office
Verohallinto – Skatteförvaltningen	Tax Administration
Tullilaitos – Tullverket	Customs
Valtion vakuusrahasto – Statsgarantifonden	Government Guarantee Fund
Ympäristöministeriö – Miljöministeriet	Ministry of Environment

⁽¹⁾ Non-warlike materials.

SWEDEN

A

Akademien för de fria konsterna	Royal Academy of Fine Arts
Alkoholinspektionen	National Alcohol Board
Alkoholsortimentsnämnden	Alcoholic Beverages Product Range Board
Allmänna pensionsfonden	National Swedish Pension Fund
Allmänna reklamationsnämnd	National Board for Consumer Complaints
Ambassader	Embassies
Arbetsdomstolen	Labour Court
Arbetsgivarverk, statens	National Agency for Government Employers
Arbetslivsfonden	Working Lives Fund
Arbetslivsinstitutet	National Institute for Working Life
Arbetsmarknadsstyrelsen	National Labour Market Board
Arbetsmiljöfonden	Work Environment Fund
Arbetsmiljöinstitutet	National Institute of Occupational Health
Arbetsmiljönämnd, statens	Board of Occupational Safety and Health for Government Employees
Arbetsmiljöverket	Swedish Work Environment Authority
Arkitekturmuseet	Swedish Museum of Architecture
Arrendenämnder (12)	Regional Tenancies Tribunals (12)

B

Banverket	National Rail Administration
Barnombudsmannen	Office of the Children's Ombudsman
Beredning för utvärdering av medicinsk metodik, statens	Swedish Council on Technology Assessment in Health Care
Besvärnämnden för rättshjälp	Legal Aid Appeals Commission
Biografbyrå, statens	National Board of Film Censors
Biografiskt lexikon, svenskt	Dictionary of Swedish Biography
Birgittaskolan	Birgitta School
Blekinge tekniska högskola	Blekinge Institute of Technology
Bokföringsnämnden	Swedish Accounting Standards Board
Bostadskreditnämnd, statens (BKN)	National Housing Credit Guarantee Board
Boverket	National Board of Housing, Building and Planning
Brottsförebyggande rådet	National Council for Crime Prevention
Brottsoffermyndigheten	Criminal Victim Compensation and Support Authority
Brottskadenämnden	Criminal Injuries Compensation Board
Byggforskningsrådet	Council for Building Research

C

Centrala försöksdjursnämnden	Central Committee for Laboratory Animals
Centrala studiestödsnämnden	National Board of Student Aid
Centralnämnden för fastighetsdata	Central Board for Real-Estate Data

D

Danshögskolan	University Collage of Dance
Datainspektionen	Data Inspection Board
Delegationen för utländska investeringar Sverige, ISA	Invest in Sweden Agency
Departementen	Ministries (Government Departments)
Domstolsverket	National Courts Administration
Dramatiska institutet	University Collage of Film, Radio, Television and Theatre

E

Ekeskolan	Eke School
Ekobrottsmyndigheten	Economic Crimes Bureau
Ekonomistyrningsverket	National Financial Management Authority
Elsäkerhetsverket	National Electrical Safety Board
Energimyndigheten, statens	Swedish National Energy Administration
EU/FoU-rådet	Swedish EU-R&D Council
Exportkreditnämnden	Export Credits Guarantee Board
Exportråd, Sveriges	Swedish Trade Council

F

Fastighetsmäklarnämnden	Board of Supervision of Estate Agents
Fastighetsverk, statens	National Property Board
Fideikommissnämnden	Entailed Estates Council
Finansinspektionen	Financial Supervisory Authority
Fiskeriverket	National Board of Fisheries
Flygmedicincentrum	Aero Medical Centre
Flygtekniska försöksanstalten	Aeronautical Research Institute
Folkhälsoinstitut, statens	Institute of Public Health
Fonden för fukt- och mögelskador	National Organisation for Aid to Owners of Private Small Houses
Forskningsrådet för miljö, areella näringar och samhällsbyggande, Formas	Swedish Research Council for Environment, Agricultural Sciences and Spatial Planning
Fortifikationsverket	National Fortifications Administration
Förlkningsmannaexpedition, statens	National Conciliators' Office
Försvarets forskningsanstalt	National Defence Research Establishment
Försvarets materielverk	Defence Matériel Administration
Försvarets radioanstalt	National Defence Radio Establishment
Försvarshistoriska museer, statens	National Swedish Museums of Military History

Försvarshögskolan	National Defence College
Försvarsmakten	Swedish Armed Forces
Försäkringskassorna (21)	Social Insurance Offices (21)
G	
Gentekniknämnden	Swedish Gene Technology Advisory Board
Geologiska undersökning, Sveriges	Geological Survey of Sweden
Geotekniska institut, statens	Swedish Geotechnical Institute
Giftinformationscentralen	Swedish Poisons Information Centre
Glesbygdsverket	National Rural Area Development Agency
Grafiska institutet och institutet för högre kommunikation- och reklamutbildning	Graphic Institute and the Graduate School of Communications
Granskningsnämnden för radio och TV	Swedish Broadcasting Commission
Göteborgs universitet	Göteborg University
H	
Handelsflottans kultur- och fritidsråd	Swedish Government Seamen's Service
Handelsflottans pensionsanstalt	Merchant Pensions Institute
Handikappombudsmannen	Office of the Disability Ombudsman
Handikappråd, statens	National Council for the Disabled
Haverikommission, statens	Board of Accident Investigation
Historiska museer, statens	National Historical Museums
Hjälpmedelinstitutet	Swedish Handicap Institute
Hovrätterna (6)	Courts of Appeal (6)
Hyresnämnder (12)	Regional Rent Tribunals (12)
Häktena (30)	Remand Prisons (30)
Hälso- och sjukvårdens ansvarsnämnd	Committee on Medical Responsibility
Högskolan Dalarna	Dalarna University College
Högskolan i Borås	University College of Borås
Högskolan i Gävle	University College of Gävle
Högskolan i Halmstad	University College of Halmstad
Högskolan i Kalmar	University College of Kalmar
Högskolan i Karlskrona/Ronneby	University College of Karlskrona/Ronneby
Högskolan i Kristianstad	Kristianstad University College
Högskolan i Skövde	University College of Skövde
Högskolan i Trollhättan/Uddevalla	University College of Trollhättan/Uddevalla
Högskolan på Gotland	Gotland University College
Höskoleverket	National Agency for Higher Education
Högsta domstolen	Supreme Court

I

Idrottshögskolan i Stockholm	Stockholm University College of Physical Education and Sports
Inspektionen för strategiska produkter	National Inspectorate of Strategic Products
Institut för byggnadsforskning, statens	Council for Building Research
Institut för ekologisk hållbarhet, statens	Swedish Institute for Ecological Sustainability
Institut för kommunikationsanalys, statens	Swedish Institute for Transport and Communications Analysis
Institut för psykosocial miljömedicin, statens	National Institute for Psycho-Social Factors and Health
Institut för särskilt utbildningsstöd	Swedish National Attendants' Service
Institutet för arbetsmarknadspolitisk utvärdering	Office of Labour Market Policy Evaluation
Institutet för rymdfysik	Swedish Institute of Space Physics
Institutionsstyrelse, Statens	National Board of Institutional Care
Insättningsgarantinämnden	Deposit Guarantee Board
Integrationsverket	Swedish Integration Board
Internationella adoptionsfrågor, Statens nämnd för	National Board for Intercountry Adoptions
Internationella programkontoret för utbildningsområdet	International Programme Office for Education and Training

J

Jordbruksverk, statens	Swedish Board of Agriculture
Justitiekanslern	Office of the Chancellor of Justice
Jämställdhetsombudsmannen	Office of the Equal Opportunities Ombudsman

K

Kammarkollegiet	Legal, Financial and Administrative Services Agency
Kammarrätterna (4)	Administrative Courts of Appeal (4)
Karlstads universitet	Karlstad University
Karolinska Institutet	Karolinska Institutet
Kemikalieinspektionen	National Chemicals Inspectorate
Kommerskollegium	National Board of Trade
Koncessionsnämnden för miljöskydd	National Franchise Board for Environment Protection
Konjunkturinstitutet	National Institute of Economic Research
Konkurrensverket	Swedish Competition Authority
Konstfack	College of Arts, Crafts and Design
Konsthögskolan	College of Fine Arts
Konstmuseer, statens	National Art Museums
Konstnärsnämnden	Arts Grants Committee
Konstråd, statens	National Art Council
Konsulat	Consulates
Konsumentverket	Swedish Consumer Agency
Kriminaltekniska laboratorium, statens	National Laboratory of Forensic Science
Kriminalvårdens regionkanslier (4)	Correctional Region Offices (4)

Kriminalvårdsanstalterna (35)	National/Local Institutions (35)
Kriminalvårdsstyrelsen	National Prison and Probation Administration
Kristinaskolan	Kristina School
Kronofogdemyndigheterna (10)	Enforcement Services (10)
Kulturråd, statens	National Council for Cultural Affairs
Kungl. Biblioteket	Royal Library
Kungl. Konsthögskolan	Royal University Collage of Fine Arts
Kungl. Musikhögskolan	Royal University Collage of Music in Stockholm
Kungl. Tekniska högskolan	Royal Institute of Technology
Kustbevakningen	Swedish Coast Guard
Kvalitets- och kompetensråd, statens	National Council for Quality and Development
Kärnkraftinspektion, statens	Swedish Nuclear Power Inspectorate
L	
Lagrådet	Council on Legislation
Lantbruksuniversitet, Sveriges	Swedish University of Agricultural Sciences
Lantmäteriverket	National Land Survey
Linköpings universitet	Linköping University
Livrustkammaren, Skoklosters slott och Hallwylska museet	Royal Armoury
Livsmedelsverk, statens	National Food Administration
Ljud- och bildarkiv, statens	National Archive of Recorded Sound and Moving Images
Lotteriinspektionen	National Gaming Board
Luftfartsverket	Civil Aviation Administration
Luleå tekniska universitet	Luleå University of Technology
Lunds universitet	Lund University
Läkemedelsverket	Medical Products Agency
Länsarbetsnämnderna (20)	County Labour Boards (20)
Länsrätterna (23)	County Administrative Courts (23)
Länsstyrelserna (21)	County Administrative Boards (21)
Lärarhögskolan i Stockholm	Stockholm Institute of Education
M	
Malmö högskola	Malmö University
Manillaskolan	Manilla School, Special School for Deaf and Hard-of-Hearing Children
Marknadsdomstolen	Market Court
Medlingsinstitutet	National Mediation Office
Meteorologiska och hydrologiska institut, Sveriges	Swedish Meteorological and Hydrological Institute
Migrationsverket	Swedish Migration Board
Militärhögskolor	Military Academies
Mitthögskolan	Mid Sweden University
Moderna museet	Modern Museum

Museer för världskultur, statens	National Museums of World Culture
Musiksamlingar, statens	Music Library of Sweden
Myndigheten för kvalificerad yrkesutbildning	Swedish Agency for Advanced Vocational Education
Myndigheten för Sveriges nätuniversitet	Swedish Agency for Distance Education
Mälardalens högskola	University Collage of Mälardalen
N	
Nationalmuseum	National Museum of Fine Arts
Nationellt centrum för flexibelt lärande	National Agency for Flexible Learning
Naturhistoriska riksmuseet	Museum of Natural History
Naturvårdsverket	Swedish Environmental Protection Agency
Nordiska Afrikainstitutet	Nordic Africa Institute
Notarienämnden	Recorders Committee
Nämnden för offentlig upphandling	National Board for Public Procurement
O	
Ombudsmannen mot diskriminering på grundav sexuell läggning	Office of the Ombudsman against Discrimination on the grounds of Sexual Orientation
Ombudsmannen mot etnisk diskriminering	Office of the Ethnic Discrimination Ombudsman
Operahögskolan i Stockholm	University Collage of Opera, Stockholm
P	
Patent- och registreringsverket	Patents and Registration Office
Patentbesvärslätten	Court of Patent Appeals
Pensionsverk, statens	The National Government Employee Pensions Board
Person- och adressregisternämnd, statens	Co-ordinated Population and Address Register
Pliktverk, Totalförsvarets	National Service Administration
Polarforskningssekreteriatet	Swedish Polar Research Secretariat
Polismyndigheter (21)	Police authorities (21)
Post- och telestyrelsen	National Post and Telecoms Agency
Premiepensionsmyndigheten	Premium Pension Authority
Presstödsnämnden	Press Subsidies Council
R	
Radio- och TV-verket	Radio and TV Authority
Regeringskansliet	Government Offices
Regeringsrätten	Supreme Administrative Court
Revisorsnämnden	Supervisory Board of Public Accountants
Riksantikvarieämbetet	Central Board of National Antiquities
Riksarkivet	National Archives
Riksbanken	Bank of Sweden

Riksdagens förvaltningskontor	Administration Department of the Swedish Parliament
Riksdagens ombudsmän	The Parliamentary Ombudsmen
Riksdagens revisorer	The Parliamentary Auditors
Riksförsäkringsverket	National Social Insurance Board
Riksgäldskontoret	National Debt Office
Rikspolisstyrelsen	National Police Board
Riksrevisionsverket	National Audit Bureau
Riksskatteverket	National Tax Board
Rikstrafiken	The National Public Transport Agency
Riksutställningar, Stiftelsen	Travelling Exhibitions Service
Riksåklagaren	Office of the Prosecutor-General
Rymdstyrelsen	National Space Board
Råd för byggnadsforskning, statens	Council for Building Research
Rådet för grundläggande högskoleutbildning	Council for Renewal of Undergraduate Education
Räddningsverk, statens	Swedish Rescue Services Agency
Rättshjälpsmyndigheten	National Legal Aid Authority
Rättsmedicinalverket	National Board of Forensic Medicine
S	
Sameskolstyrelsen och sameskolor	Sami School Board and Sami Schools
Sametinget	Sami Parliament
Sjöfartsverket	Swedish Maritime Administration
Sjöhistoriska museer, statens	National Maritime Museums
Skattemyndigheterna (10)	Tax Offices (10)
Skogsstyrelsen	National Board of Forestry
Skolverk, statens	National Agency for Education
Smittskyddsinstitutet	Swedish Institute for Infectious Disease Control
Socialstyrelsen	National Board of Health and Welfare
Specialpedagogiska institutet	Swedish Institute for Special Needs Education
Specialskolemyndigheten	National Agency for Special Schools for the Deaf and Hard-of-Hearing
Språk- och folkminnesinstitutet	Institute for Dialectology, Onomastics and Folklore Research
Sprängämnesinspektionen	National Inspectorate of Explosives and Flammables
Statens personregisternämnd, SPAR-nämnden	Swedish Population Address Register Board
Statistiska centralbyrån	Statistics Sweden
Statskontoret	The Swedish Agency for Public Management
Stockholms universitet	Stockholm University
Strålskyddsinstitut, statens	Swedish Radiation Protection Authority
Styrelsen för ackreditering och teknisk kontroll	Swedish Board for Accreditation and Conformity Assessment
Styrelsen för internationell utvecklingssamarbete, SIDA	Swedish International Development Cooperation Authority

Styrelsen för psykologiskt försvar	National Board of Psychological Defence
Svenska institutet	Swedish Institute
Säkerhetspolisen	Swedish Security Service
Södertörns högskola	University College of South Stockholm
T	
Talboks- och punktskriftsbiblioteket	Library of Talking Books and Braille Publications
Teaterhögskolan	University College of Acting
Tekniska museet, stiftelsen	National Museum of Science and Technology
Tingsrätterna (72)	District and City Courts (72)
Tjänsteförslagsnämnden för domstolsväsendet	Judges Nomination Proposal Committee
Totalförsvarets forskningsinstitut	Swedish Defence Research Agency
Transportforskningsberedningen	Transport Research Board
Transportrådet	Board of Transport
Tullverket	Customs Administration
Turistdelegationen	Swedish Tourist Authority
U	
Umeå universitet	Umeå University
Ungdomsstyrelsen	National Board for Youth Affairs
Uppsala universitet	Uppsala University
Utlänningsnämnden	Aliens Appeals Board
Utsädeskontroll, statens	Swedish Seed Testing and Certification Institute
V	
Valmyndigheten	Election Authority
Vatten- och avloppsnämnd, statens	National Water Supply and Sewage Tribunal
Vattenöverdomstolen	Water Rights Court of Appeal
Verket för högskoleservice (VHS)	National Agency for Higher Education
Verket för innovationssystem (VINNOVA)	Swedish Agency for Innovation Systems
Verket för näringslivsutveckling (NUTEK)	Swedish Business Development Agency
Vetenskapsrådet	Swedish Research Council
Veterinärmedicinska anstalt, statens	National Veterinary Institute
Vägverket	Swedish National Road Administration
Vänerskolan	Väner School
Växjö universitet	Växjö University
Växsortsnämnd, statens	National Plant Variety Board

Å

Åklagarmyndigheterna

Regional Public Prosecution Offices (6)

Åsbackaskolan

Åsbacka School

Ö

Örebro universitet

Örebro University

Östervångsskolan

Östervång School

Överbefälhavaren

Supreme Commander of the Armed Forces

Överstyrelsen för civil beredskap

Swedish Agency for Civil Emergency Planning

UNITED KINGDOM

— Cabinet Office

Civil Service College

Office of the Parliamentary Counsel

— Central Office of Information

— Charity Commission

— Crown Prosecution Service

— Crown Estate Commissioners (Vote Expenditure Only)

— HM Customs and Excise

— Department for Culture, Media and Sport

British Library

British Museum

Historic Buildings and Monuments Commission for England (English Heritage)

Imperial War Museum

Museums and Galleries Commission

National Gallery

National Maritime Museum

National Portrait Gallery

Natural History Museum

Royal Commission on Historical Manuscripts

Royal Commission on Historical Monuments of England

Royal Fine Art Commission (England)

Science Museum

Tate Gallery

Victoria and Albert Museum

Wallace Collection

- Department for Education and Skills
 - Higher Education Funding Council for England
- Department for Environment, Food and Rural Affairs
 - Agricultural Dwelling House Advisory Committees
 - Agricultural Land Tribunals
 - Agricultural Wages Board and Committees
 - Cattle Breeding Centre
 - Countryside Agency
 - Plant Variety Rights Office
 - Royal Botanic Gardens, Kew
 - Royal Commission on Environmental Pollution
- Department of Health
 - Central Council for Education and Training in Social Work
 - Dental Practice Board
 - National Board for Nursing, Midwifery and Health Visiting for England
 - National Health Service Strategic Health Authorities and Trusts
 - Prescription Pricing Authority
 - Public Health Service Laboratory Board
 - UK Central Council for Nursing, Midwifery and Health Visiting
- Department for International Development
- Department for National Savings
- Department for Transport
 - Maritime and Coastguard Agency
- Department for Work and Pensions
 - Disability Living Allowance Advisory Board
 - Independent Tribunal Service
 - Medical Boards and Examining Medical Officers (War Pensions)
 - Occupational Pensions Regulatory Authority
 - Regional Medical Service
 - Social Security Advisory Committee
- Department of the Procurator General and Treasury Solicitor
 - Legal Secretariat to the Law Officers

- Department of Trade and Industry
 - Central Transport Consultative Committees
 - Competition Commission
 - Electricity Committees
 - Employment Appeal Tribunal
 - Employment Tribunals
 - Gas Consumers' Council
 - National Weights and Measures Laboratory
 - Office of Manpower Economics
 - Patent Office
- Export Credits Guarantee Department
- Foreign and Commonwealth Office
 - Wilton Park Conference Centre
- Government Actuary's Department
- Government Communications Headquarters
- Home Office
 - Boundary Commission for England
 - Gaming Board for Great Britain
 - Inspectors of Constabulary
 - Parole Board and Local Review Committees
- House of Commons
- House of Lords
- Inland Revenue, Board of
- Lord Chancellor's Department
 - Circuit Offices and Crown, County and Combined Courts (England and Wales)
 - Combined Tax Tribunal
 - Council on Tribunals
 - Court of Appeal — Criminal
 - Immigration Appellate Authorities
 - Immigration Adjudicators
 - Immigration Appeals Tribunal
 - Lands Tribunal
 - Law Commission
 - Legal Aid Fund (England and Wales)
 - Office of the Social Security Commissioners
 - Pensions Appeal Tribunals

- Public Trust Office
- Supreme Court Group (England and Wales)
- Transport Tribunal
- Ministry of Defence
 - Meteorological Office
 - Defence Procurement Agency
- National Assembly for Wales
 - Higher Education Funding Council for Wales
 - Local Government Boundary Commission for Wales
 - Royal Commission for Ancient and Historical Monuments in Wales
 - Valuation Tribunals (Wales)
 - Welsh National Health Service Authorities and Trusts
 - Welsh Rent Assessment Panels
 - Welsh National Board for Nursing, Midwifery and Health Visiting
- National Audit Office
- National Investment and Loans Office
- Northern Ireland Assembly Commission
- Northern Ireland Court Service
 - Coroners Courts
 - County Courts
 - Court of Appeal and High Court of Justice in Northern Ireland
 - Crown Court
 - Enforcement of Judgements Office
 - Legal Aid Fund
 - Magistrates Courts
 - Pensions Appeals Tribunals
- Northern Ireland, Department for Employment and Learning
- Northern Ireland, Department for Regional Development
- Northern Ireland, Department for Social Development
- Northern Ireland, Department of Agriculture and Rural Development
- Northern Ireland, Department of Culture, Arts and Leisure
- Northern Ireland, Department of Education
- Northern Ireland, Department of Enterprise, Trade and Investment
- Northern Ireland, Department of the Environment
- Northern Ireland, Department of Finance and Personnel
- Northern Ireland, Department of Health, Social Services and Public Safety
- Northern Ireland, Department of Higher and Further Education, Training and Employment
- Northern Ireland, Office of the First Minister and Deputy First Minister
- Northern Ireland Office

- Crown Solicitor's Office
- Department of the Director of Public Prosecutions for Northern Ireland
- Forensic Science Agency of Northern Ireland
- Office of Chief Electoral Officer for Northern Ireland
- Police Service of Northern Ireland
- Probation Board for Northern Ireland
- State Pathologist Service
- Office of Fair Trading
- Office for National Statistics
 - National Health Service Central Register
 - Office of the Parliamentary Commissioner for Administration and Health Service Commissioners
- Office of the Deputy Prime Minister
 - Rent Assessment Panels
- Paymaster General's Office
- Postal Business of the Post Office
- Privy Council Office
- Public Record Office
- Royal Commission on Historical Manuscripts
- Royal Hospital, Chelsea
- Royal Mint
- Rural Payments Agency
- Scotland, Auditor-General
- Scotland, Crown Office and Procurator Fiscal Service
- Scotland, General Register Office
- Scotland, Queen's and Lord Treasurer's Remembrancer
- Scotland, Registers of Scotland
- The Scotland Office
- The Scottish Executive Corporate Services
- The Scottish Executive Education Department
 - National Galleries of Scotland
 - National Library of Scotland
 - National Museums of Scotland
 - Scottish Higher Education Funding Council
- The Scottish Executive Development Department
- The Scottish Executive Enterprise and Lifelong Learning Department
- The Scottish Executive Finance
- The Scottish Executive Health Department
 - Local Health Councils
 - National Board for Nursing, Midwifery and Health Visiting for Scotland

- Scottish Council for Postgraduate Medical Education
 - Scottish National Health Service Authorities and Trusts
 - The Scottish Executive Justice Department
 - Accountant of Court's Office
 - High Court of Justiciary
 - Court of Session
 - HM Inspectorate of Constabulary
 - Lands Tribunal for Scotland
 - Parole Board for Scotland and Local Review Committees
 - Pensions Appeal Tribunals
 - Scottish Land Court
 - Scottish Law Commission
 - Sheriff Courts
 - Scottish Criminal Record Office
 - Scottish Crime Squad
 - Scottish Fire Service Training Squad
 - Scottish Police College
 - Social Security Commissioners' Office
 - The Scottish Executive Rural Affairs Department
 - Crofters Commission
 - Red Deer Commission
 - Rent Assessment Panel and Committees
 - Royal Botanic Garden, Edinburgh
 - Royal Commission on the Ancient and Historical Monuments of Scotland
 - Royal Fine Art Commission for Scotland
 - The Scottish Executive Secretariat
 - The Scottish Parliamentary Body Corporate
 - Scottish Record Office
 - HM Treasury
 - Office of Government Commerce
 - The Wales Office (Office of the Secretary of State for Wales)
-

ANNEX V

LIST OF PRODUCTS REFERRED TO IN ARTICLE 7 WITH REGARD TO CONTRACTS AWARDED BY CONTRACTING AUTHORITIES IN THE FIELD OF DEFENCE ⁽¹⁾

- Chapter 25: Salt, sulphur, earths and stone, plastering materials, lime and cement
- Chapter 26: Metallic ores, slag and ash
- Chapter 27: Mineral fuels, mineral oils and products of their distillation, bituminous substances, mineral waxes
except:
ex 27.10: special engine fuels
- Chapter 28: Inorganic chemicals, organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes
except:
ex 28.09: explosives
ex 28.13: explosives
ex 28.14: tear gas
ex 28.28: explosives
ex 28.32: explosives
ex 28.39: explosives
ex 28.50: toxic products
ex 28.51: toxic products
ex 28.54: explosives
- Chapter 29: Organic chemicals
except:
ex 29.03: explosives
ex 29.04: explosives
ex 29.07: explosives
ex 29.08: explosives
ex 29.11: explosives
ex 29.12: explosives
ex 29.13: toxic products
ex 29.14: toxic products
ex 29.15: toxic products
ex 29.21: toxic products
ex 29.22: toxic products
ex 29.23: toxic products
ex 29.26: explosives
ex 29.27: toxic products
ex 29.29: explosives

⁽¹⁾ The only text applicable for the purpose of this Directive is that within Annex 1, point 3 of the Agreement.

- Chapter 30: Pharmaceutical products
- Chapter 31: Fertilisers
- Chapter 32: Tanning and dyeing extracts, tannings and their derivatives, dyes, colours, paints and varnishes, putty, fillers and stoppings, inks
- Chapter 33: Essential oils and resinoids, perfumery, cosmetic or toilet preparations
- Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'
- Chapter 35: Albuminoidal substances, glues, enzymes
- Chapter 37: Photographic and cinematographic goods
- Chapter 38: Miscellaneous chemical products,
except:
ex 38.19: toxic products
- Chapter 39: Artificial resins and plastic materials, celluloses esters and ethers, articles thereof,
except:
ex 39.03: explosives
- Chapter 40: Rubber, synthetic rubber, factice, and articles thereof,
except:
ex 40.11: bullet-proof tyres
- Chapter 41: Raw hides and skins (other than furskins) and leather
- Chapter 42: Articles of leather, saddlery and harness, travel goods, handbags and similar containers, articles of animal gut (other than silk-worm gut)
- Chapter 43: Furskins and artificial fur, manufactures thereof
- Chapter 44: Wood and articles of wood, wood charcoal
- Chapter 45: Cork and articles of cork
- Chapter 46: Manufactures of straw of esparto and of other plaiting materials, basketware and wickerwork
- Chapter 47: Paper-making material
- Chapter 48: Paper and paperboard, articles of paper pulp, of paper or of paperboard
- Chapter 49: Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans
- Chapter 65: Headgear and parts thereof
- Chapter 66: Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
- Chapter 67: Prepared feathers and down and articles made of feathers or of down, artificial flowers, articles of human hair
- Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
- Chapter 69: Ceramic products
- Chapter 70: Glass and glassware

- Chapter 71: Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
- Chapter 73: Iron and steel and articles thereof
- Chapter 74: Copper and articles thereof
- Chapter 75: Nickel and articles thereof
- Chapter 76: Aluminium and articles thereof
- Chapter 77: Magnesium and beryllium and articles thereof
- Chapter 78: Lead and articles thereof
- Chapter 79: Zinc and articles thereof
- Chapter 80: Tin and articles thereof
- Chapter 81: Other base metals employed in metallurgy and articles thereof
- Chapter 82: Tools, implements, cutlery, spoons and forks, of base metal, parts thereof,
except:
ex 82.05: tools
ex 82.07: tools, parts
- Chapter 83: Miscellaneous articles of base metal
- Chapter 84: Boilers, machinery and mechanical appliances, parts thereof,
except:
ex 84.06: engines
ex 84.08: other engines
ex 84.45: machinery
ex 84.53: automatic data-processing machines
ex 84.55: parts of machines under heading No 84.53
ex 84.59: nuclear reactors
- Chapter 85: Electrical machinery and equipment, parts thereof,
except:
ex 85.13: telecommunication equipment
ex 85.15: transmission apparatus
- Chapter 86: Railway and tramway locomotives, rolling-stock and parts thereof, railway and tramway tracks fixtures and fittings, traffic signalling equipment of all kinds (not electrically powered),
except:
ex 86.02: armoured locomotives, electric
ex 86.03: other armoured locomotives
ex 86.05: armoured wagons
ex 86.06: repair wagons
ex 86.07: wagons

- Chapter 87: Vehicles, other than railway or tramway rolling-stock, and parts thereof,
except:
ex 87.08: tanks and other armoured vehicles
ex 87.01: tractors
ex 87.02: military vehicles
ex 87.03: breakdown lorries
ex 87.09: motorcycles
ex 87.14: trailers
- Chapter 89: Ships, boats and floating structures,
except:
ex 89.01A: warships
- Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical
instruments and apparatus, parts thereof,
except:
ex 90.05: binoculars
ex 90.13: miscellaneous instruments, lasers
ex 90.14: telemeters
ex 90.28: electrical and electronic measuring instruments
ex 90.11: microscopes
ex 90.17: medical instruments
ex 90.18: mechano-therapy appliances
ex 90.19: orthopaedic appliances
ex 90.20: X-ray apparatus
- Chapter 91: Manufacture of watches and clocks
- Chapter 92: Musical instruments, sound recorders or reproducers, television image and sound recorders or
reproducers, parts and accessories of such articles
- Chapter 94: Furniture and parts thereof, bedding, mattresses, mattress supports, cushions and similar stuffed
furnishings,
except:
ex 94.01A: aircraft seats
- Chapter 95: Articles and manufactures of carving or moulding material
- Chapter 96: Brooms, brushes, powder-puffs and sieves
- Chapter 98: Miscellaneous manufactured articles
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ANNEX VI

DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive:

1. (a) 'technical specification', in the case of public works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These characteristics shall include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling and production processes and methods. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
 - (b) 'technical specification', in the case of public supply or service contracts, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures;
 2. 'standard' means a technical specification approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:
 - international standard: a standard adapted by an international standards organisation and made available to the general public,
 - European standard: a standard adopted by a European standards organisation and made available to the general public,
 - national standard: a standard adopted by a national standards organisation and made available to the general public;
 3. 'European technical approval' means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State;
 4. 'Common technical specification' means a technical specification laid down in accordance with a procedure recognised by the Member States which has been published in the *Official Journal of the European Union*;
 5. 'technical reference': any product produced by European standardisation bodies, other than official standards, according to procedures adopted for the development of market needs.
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ANNEX VII

INFORMATION TO BE INCLUDED IN NOTICES

ANNEX VII A

INFORMATION WHICH MUST BE INCLUDED IN PUBLIC CONTRACT NOTICES

NOTICE OF THE PUBLICATION OF A PRIOR INFORMATION NOTICE ON A BUYER PROFILE

1. Country of the contracting authority.
2. Name of the contracting authority.
3. Internet address of the 'buyer profile' (URL).
4. CPV Nomenclature reference No(s).

PRIOR INFORMATION NOTICE

1. The name, address, fax number, email address of the contracting authority and, if different, of the service from which additional information may be obtained.
2. Where appropriate, indicate whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes.
3. In the case of public works contracts: the nature and extent of the works and the place of execution; if the work is to be subdivided into several lots, the essential characteristics of those lots by reference to the work; if available, an estimate of the range of the cost of the proposed works; Nomenclature reference No(s).

In the case of public supply contracts: the nature and quantity or value of the products to be supplied, Nomenclature reference No(s).

In the case of public services contracts: the total value of the proposed purchases in each of the service categories in Annex II A; Nomenclature reference No(s).

4. Estimated date for initiating the award procedures in respect of the contract or contracts, in the case of public service contracts by category.
5. Where appropriate, indicate whether a framework agreement is involved.
6. Where appropriate, other information.
7. Date of dispatch of the notice or of dispatch of the notice of the publication of the prior information notice on the buyer profile.
8. Indicate whether the contract is covered by the Agreement.

CONTRACT NOTICES

Open and restricted procedures, competitive dialogues, procedures, negotiated procedures

1. Name, address, telephone and fax number, email address of the contracting authority.
2. Where appropriate, indicate whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes.
3. (a) The award procedure chosen;
(b) Where appropriate, the reasons for use of the accelerated procedure (in restricted and negotiated procedures);
(c) Where appropriate, indicate whether a framework agreement is involved;

- (d) Where appropriate, indicate whether a dynamic purchasing system is involved;
 - (e) Where appropriate, the holding of an electronic auction (in the event of open, restricted or negotiated procedures, in the situation covered by Article 30(1)(a)).
4. Form of the contract.
5. Place of execution/performance of the works, for delivery of products or of the provision of services.
6. (a) Public works contracts:
- nature and extent of the works and general nature of the work. Indication in particular of options concerning supplementary works, and, if known, the provisional timetable for recourse to these options as well as the number of possible renewals, if any. If the work or the contract is subdivided into several lots, the size of the different lots; Nomenclature reference number(s),
 - information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects,
 - in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the works for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded.
- (b) Public supply contracts:
- nature of the products to be supplied, indicating in particular whether tenders are requested with a view to purchase, lease rental, hire or hire purchase or a combination of these, nomenclature reference number. Quantity of products to be supplied, indicating in particular options concerning supplementary purchases and, if known, the provisional timetable for recourse to these options as well as the number of renewals, if any. Nomenclature reference number(s),
 - in the case of regular or renewable contracts during the course of a given period, indicate also, if known, the timetable for subsequent contracts for purchase of intended supplies,
 - in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the supplies for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded,
- (c) Public service contracts:
- category and description of service. Nomenclature reference number(s). Quantity of services to be provided. Indicate in particular options concerning supplementary purchases and, if known, the provisional timetable for recourse to these options as well as the number of renewals, if any. In the case of renewable contracts over a given period, an estimate of the time frame, if known, for subsequent public contracts for purchase of intended services.

In the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the services for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded.
 - indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.

Reference to the law, regulation or administrative provision.
 - indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
7. If the contracts are subdivided into lots, indication of the possibility of tendering for one, for several or for all the lots.
8. Any time-limit for completion of works/supplies/services or duration of the works/supply/services contract; where possible any time-limit by which works will begin or any time limit by which delivery of supplies or services will begin.
9. Admission or prohibition of variants.
10. Where applicable particular conditions to which the performance of the contract is subject.

11. In the case of open procedures:
 - (a) name, address, telephone and telefax number and electronic address of the service from which contract documents and additional documents can be requested;
 - (b) where appropriate, time-limit for submission of such requests;
 - (c) where appropriate, cost of and payment conditions for obtaining these documents.
12. (a) Time limit for receipt of tenders or indicative tenders where a dynamic purchasing system is being used (open procedures);
 - (b) time-limit for receipt of request to participate (restricted and negotiated procedures);
 - (c) address where these have to be transmitted;
 - (d) the language or languages in which they must be drawn up.
13. In the case of open procedures:
 - (a) persons authorised to be present at the opening of tenders;
 - (b) date, time and place for such opening.
14. Where appropriate any deposit and guarantees required.
15. Main terms concerning financing and payment and/or references to the texts in which these are contained.
16. Where applicable, the legal form to be taken by the grouping of economic operators to whom the contract is to be awarded.
17. Selection criteria regarding the personal situation of economic operators that may lead to their exclusion, and required information proving that they do not fall within the cases justifying exclusion. Selection criteria and information concerning the economic operators' personal situation, information and any necessary formalities for assessment of the minimum economic and technical standards required of the economic operator. Minimum level(s) of standards possibly required.
18. Where there is a framework agreement: the number and, where appropriate, proposed maximum number of economic operators who will be members of it, the duration of the framework agreement provided for, stating, if appropriate, the reasons for any duration exceeding four years.
19. In the case of a competitive dialogue or a negotiated procedure with the publication of a contract notice, indicate, if appropriate, recourse to a staged procedure in order gradually to reduce the number of solutions to be discussed or tenders to be negotiated.
20. In the case of a restricted procedure, a competitive dialogue or a negotiated procedure with the publication of a contract notice, when recourse is had to the option of reducing the number of candidates to be invited to submit tenders, to engage in dialogue or to negotiate: minimum and, if appropriate, proposed maximum number of candidates and objective criteria to be used to choose that number of candidates.
21. Time frame during which the tenderer must maintain its tender (open procedures).
22. Where appropriate, names and addresses of economic operators already selected by the contracting authority (negotiated procedures).
23. Criteria referred to in Article 53 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting shall be mentioned where they do not appear in the specifications or, in the event of a competitive dialogue, in the descriptive document.

24. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
25. Date(s) of publication of the prior information notice in accordance with the technical specifications of publication indicated in Annex VIII or statement that no such publication was made.
26. Date of dispatch of the notice.
27. Indicate whether the contract is covered by the Agreement.

SIMPLIFIED CONTRACT NOTICE FOR USE IN A DYNAMIC PURCHASING SYSTEM

1. Country of contracting authority.
2. Name and e-mail address of contracting authority.
3. Publication reference of the contract notice for the dynamic purchasing system.
4. E-mail address at which the technical specification and additional documents relating to the dynamic purchasing system are available.
5. Subject of contract: description by reference number(s) of 'CPV' nomenclature and quantity or extent of the contract to be awarded.
6. Timeframe for submitting indicative tenders.

CONTRACT AWARD NOTICES

1. Name and address of the contracting authority.
 2. Award procedures chosen. In the case of negotiated procedure without prior publication of a contract notice (Article 28), justification.
 3. Public works contracts: nature and extent of the contract, general characteristics of the work.

Public supply contracts: nature and quantity of products supplied, where appropriate, by the supplier; nomenclature reference number.

Public service contracts: category and description of the service; nomenclature reference number; quantity of services bought.
 4. Date of contract award.
 5. Contract award criteria.
 6. Number of tenders received.
 7. Name and address of the successful economic operators.
 8. Price or range of prices (minimum/maximum) paid.
 9. Value of the tender (tenders) retained or the highest tender and lowest tender taken into consideration for the contract award.
 10. Where appropriate, value and proportion of contract likely to be subcontracted to third parties.
 11. Date of publication of the tender notice in accordance with the technical specifications for publication in Annex VIII.
 12. Date of dispatch of the notice.
 13. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
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ANNEX VII B**INFORMATION WHICH MUST APPEAR IN PUBLIC WORKS CONCESSION NOTICES**

1. Name, address, fax number and email address of the contracting authority.
2. (a) Place of execution.
(b) Subject of the concession; nature and extent of the services.
3. (a) Time limit for the submission of applications.
(b) Address to which they must be sent.
(c) Language(s) in which they must be written.
4. Personal, technical and financial conditions to be met by the candidates.
5. Criteria which will be applied in the award of the contract.
6. If appropriate, the minimum proportion of the works which will be contracted out.
7. Date of dispatch of the notice.
8. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

ANNEX VII C**INFORMATION WHICH MUST APPEAR IN WORKS CONTRACT NOTICES OF CONCESSIONNAIRES WHO ARE NOT CONTRACTING AUTHORITIES**

1. (a) Place of execution.
(b) Nature and extent of the services, general characteristics of the works.
 2. Any time-limit for completion imposed.
 3. Name and address of the body from whom the specifications and the additional documents may be requested.
 4. (a) Time-limit for the receipt of applications to participate and/or the receipt of tenders.
(b) Address to which they must be sent.
(c) Language(s) in which they must be written.
 5. Any deposits or guarantees required.
 6. Economic and technical conditions to be met by the contractor.
 7. Criteria which will be applied in the award of the contract.
 8. Date of dispatch of the notice.
-

ANNEX VII D

INFORMATION WHICH MUST APPEAR IN DESIGN CONTEST NOTICES

CONTEST NOTICES

1. Name, address, fax number and email address of the contracting authority and those of the service from which the additional documents may be obtained.
2. Description of the project.
3. Type of contest: open or restricted.
4. In the event of an open contest: time limit for the submission of projects.
5. In the event of a restricted contest:
 - (a) number of participants contemplated;
 - (b) names of the participants already selected, if any;
 - (c) criteria for the selection of participants;
 - (d) time limit for requests to participate.
6. If appropriate, indicate that the participation is restricted to a specified profession.
7. Criteria which will be applied in the evaluation of the projects.
8. Names of any members of the jury who have already been selected.
9. Indicate whether the jury's decision is binding on the contracting authority.
10. Number and value of any prizes.
11. Payments to be made to all participants, if any.
12. Indicate whether any contracts following the contest will or will not be awarded to the winner or winners of the contest.
13. Date of dispatch of the notice.

NOTICE OF THE RESULTS OF A CONTEST

1. Name, address, fax number and email address of the contracting authority.
 2. Description of the project.
 3. Total number of participants.
 4. Number of foreign participants.
 5. Winner(s) of the contest.
 6. Any prizes.
 7. Reference of the contest notice.
 8. Date of dispatch of the notice.
-

ANNEX VIII

FEATURES CONCERNING PUBLICATION

1. Publication of notices

- (a) Notices referred to in Articles 35, 58, 64 and 69 are sent by the contracting authorities to the Office for Official Publications of the European Communities in the format required by Commission Directive 2001/78/EC of 13 September 2001 on the use of standard forms in the publication of public contract notices ⁽¹⁾. The prior information notices referred to in Article 35(1), first subparagraph, published on a buyer profile as described in point 2(b), must also use that format, as must the notice of such publication.
- (b) Notices referred to in Articles 35, 58, 64 and 69 are published by the Office for Official Publications of the European Communities or by the contracting authorities in the event of a prior information notice published on a buyer profile in accordance with Article 35(1), first subparagraph.

In addition, contracting authorities may publish this information on the Internet on a 'buyer profile' as referred to in point 2(b).

- (c) The Office for Official Publications of the European Communities will give the contracting authority the confirmation referred to in Article 36(8).

2. Publication of complementary or additional information

- (a) Contracting authorities are encouraged to publish the specifications and the additional documents in their entirety on the Internet.
- (b) The buyer profile may include prior information notices as referred to in Article 35(1), first subparagraph, information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address.

3. Format and modalities for sending notices electronically

The format and procedure for sending notices electronically are accessible at the Internet address 'http://simap.eu.int'.

⁽¹⁾ OJ L 285, 29.10.2001, p. 1.

ANNEX IX

REGISTERS ⁽¹⁾

⁽¹⁾ For the purposes of Article 46, 'professional and trade registers' means those listed in this Annex and, where changes have been made at national level, the registers which have replaced them.

ANNEX IX A

PUBLIC WORKS CONTRACTS

The professional registers and corresponding declarations and certificates for each Member State are:

- in Belgium, the 'Registre du commerce'/'Handelsregister';
 - in Denmark, the 'Handelsregistret', 'Aktieselskabesregistret' and 'Erhvervsregistret';
 - in Germany, the 'Handelsregister' and the 'Handwerksrolle';
 - in Greece, the 'Μητρώο Εργοληπτικών Επιχειρήσεων — ΜΕΕΠ' of the Ministry for Environment, Town and Country Planning and Public Works (ΥΠΕΧΩΔΕ);
 - in Spain, the 'Registro Oficial de Contratistas del Ministerio de Industria, Comercio y Turismo';
 - in France, the 'Registre du commerce' and the 'Répertoire des métiers';
 - in Italy, the 'Registro della Camera di commercio, industria, agricoltura e artigianato';
 - in Luxembourg, the 'Registre aux firmes' and the 'Rôle de la chambre des métiers';
 - in the Netherlands, the 'Handelsregister';
 - in Austria, the 'Firmenbuch', the 'Gewerberegister', the 'Mitgliederverzeichnisse der Landeskammern';
 - in Portugal, the 'Comissão de Alvarás de Empresas de Obras Públicas e Particulares' (CAEOPP);
 - in Finland, the 'Kaupparekisteri' and 'Handelsregistret';
 - in Sweden, 'aktiebolags-, handels- eller föreningsregistren';
 - in the United Kingdom and Ireland, the contractor may be requested to provide a certificate from the Registrar of Companies or, in the case of Ireland, the Registrar of Friendly Societies or, if this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name.
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ANNEX IX B

PUBLIC SUPPLY CONTRACTS

The relevant professional or trade registers and the corresponding declarations and certificates are:

- in Belgium, the 'Registre du commerce/Handelsregister';
 - in Denmark, 'Aktieselskabsregistret', 'Foreningsregistret' and 'Handelsregistret';
 - in Germany, the 'Handelsregister' and 'Handwerksrolle';
 - in Greece, the 'Βιοτεχνικό ή Βιομηχανικό ή Εμπορικό Επιμελητήριο';
 - in Spain, the 'Registro Mercantil' or, in the case of non-registered individuals, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question;
 - in France, the 'Registre du commerce' and 'Répertoire des métiers';
 - in Italy, the 'Registro della Camera di commercio, industria, agricoltura e artigianato', and 'Registro delle commissioni provinciali per l'artigianato';
 - in Luxembourg, the 'Registre aux firmes' and 'Rôle de la chambre des métiers';
 - in the Netherlands, the 'Handelsregister';
 - in Austria, the 'Firmenbuch', the 'Gewerberegister', the 'Mitgliederverzeichnisse der Landeskammern';
 - in Portugal, the 'Registro Nacional das Pessoas Colectivas';
 - in Finland, the 'Kaupparekisteri' and 'Handelsregistret';
 - in Sweden, 'aktiebolags-, handels- eller föreningsregistren';
 - in the United Kingdom and Ireland, the supplier may be requested to provide a certificate from the Registrar of Companies or, in the case of Ireland, the Registrar of Friendly Societies, that he is certified as incorporated or registered or, if he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established in a specific place under a given business name and under a specific trading name.
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ANNEX IX C

PUBLIC SERVICE CONTRACTS

The relevant professional and trade registers or declarations or certificates are:

- in Belgium, the 'Registre du commerce/Handelsregister' and the 'Ordres professionnels/Beroepsorden';
 - in Denmark, 'Erhvervs- og Selskabstilsynet';
 - in Germany, the 'Handelsregister', the 'Handwerksrolle' and the 'Vereinsregister';
 - in Greece, the service provider may be asked to provide a declaration on the exercise of the profession concerned made on oath before a notary; in the cases provided for by existing national legislation, for the provision of research services as mentioned in Annex I A, the professional register 'Μητρώο Μελετητών' and 'Μητρώο Γραφείων Μελετών';
 - in Spain, the 'Registro Central de Empresas Consultoras y de Servicios del Ministerio de Economía y Hacienda';
 - in France, the 'Registre du commerce' and the 'Répertoire des métiers';
 - in Italy, the 'Registro della Camera di commercio, industria, agricoltura e artigianato', the 'Registro delle commissioni provinciali per l'artigianato' or the 'Consiglio nazionale degli ordini professionali';
 - in Luxembourg, the 'Registre aux firmes' and the 'Rôle de la chambre des métiers';
 - in the Netherlands, the 'Handelsregister';
 - in Austria, the 'Firmenbuch', the 'Gewerberegister', the 'Mitgliederverzeichnisse der Landeskammern';
 - in Portugal, the 'Registro nacional das Pessoas Colectivas';
 - in Finland, the 'Kaupparekisteri' and 'Handelsregistret';
 - in Sweden, 'aktiebolags-, handels- eller föreningsregistren'.
 - in the United Kingdom and Ireland, the service provider may be requested to provide a certificate from the Registrar of Companies or, in the case of Ireland, the Registrar of Friendly Societies or, if he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established in a specific place under a given business name.
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ANNEX X

REQUIREMENTS RELATING TO DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS FOR PARTICIPATION AND PLANS AND PROJECTS IN CONTESTS

Devices for the electronic receipt of tenders, requests for participation and plans and projects in contests must at least guarantee, through technical means and appropriate procedures, that:

- (a) electronic signatures relating to tenders, requests to participate and the forwarding of plans and projects comply with national provisions adopted pursuant to Directive 1999/93/EC;
 - (b) the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely;
 - (c) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
 - (d) if that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
 - (e) only authorised persons may set or change the dates for opening data received;
 - (f) during the different stages of the contract award procedure or of the contest access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;
 - (g) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;
 - (h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith.
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ANNEX XI

DEADLINES FOR TRANSPOSITION AND APPLICATION (Article 80)

Directives	Deadlines for transposition and application
92/50/CEE (OJ L 209, 24.7.1992, p. 1)	1 July 1993
Austria, Finland, Sweden ⁽¹⁾	1 January 1995
93/36/EEC (OJ L 199, 9.8.1993, p. 1)	13 June 1994
Austria, Finland, Sweden ⁽¹⁾	1 January 1995
93/37/EEC (OJ L 199, 9.8.1993, p. 54)	
consolidation of directives:	
— 71/305/EEC (OJ L 185, 16.8.1971, p. 5):	
— EC of 6	30 July 1972
— DK, IRL, UK	1 January 1973
— Greece	1 January 1981
— Spain, Portugal	1 January 1986
— Austria, Finland, Sweden ⁽¹⁾	1 January 1995
— 89/440/EEC (OJ L 210, 21.7.1989, p. 1):	
— EC of 9	19 July 1990
— Greece, Spain, Portugal	1 March 1992
— Austria, Finland, Sweden ⁽¹⁾	1 January 1995
97/52/EC (OJ L 328, 28.11.1997, p. 1)	13 October 1998

⁽¹⁾ EEA: 1 January 1994.

ANNEX XII

CORRELATION TABLE ⁽¹⁾

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 1, par. 1	Art. 1, first line, adapted	Art. 1, first line, adapted	Art. 1, first line, adapted		
Art. 1, par. 2, point (a)	Art. 1, point (a), first part of sentence	Art. 1, point (a), first and last parts of first sentence	Art. 1, point a)		Amended
Art. 1, par. 2, point (b)	Art. 1, point (a) and point (c), adapted	—	—		
Art. 1, par. 2, point (c), first subparagraph	—	Art. 1, point (a), second part of the first sentence and second sentence, adapted	—		
Art. 1, par. 2, point (c), second subparagraph	—	Art. 1, point (a), adapted	—		
Art. 1, par. 2, point (d), first subparagraph	—	—	—		New
Art. 1, par. 2, point (d), second subparagraph	—	—	Art. 2, adapted		
Art. 1, par. 2, point (d), third subparagraph	—	—	16th recital adapted		
Art. 1, par. 3	Art. 1, point (d)	—	—		
Art. 1, par. 4	—	—	—		New
Art. 1, par. 5	—	—	—		New
Art. 1, par. 6	—	—	—		New
Art. 1, par. 7	—	—	—		New
Art. 1, par. 8, first subparagraph	—	—	Art. 1, point (c), first sentence adapted		
Art. 1, par. 8, second subparagraph	—	—	—		New
Art. 1, par. 8, third subparagraph	Art. 1, point (h)	Art. 1, point (c)	Art. 1, point (c), second sentence		Amended
Art. 1, par. 9	Art. 1, point (b), adapted	Art. 1 point (b), adapted	Art. 1, point (b), adapted		
Art. 1, par. 10	—	—	—		New

⁽¹⁾ 'Adapted' means that the wording of the text was changed, while the meaning of the repealed directives was preserved. Changes to the meaning of the provisions of the repealed directives are indicated by the term 'amended'. This term appears in the last column when the amendment concerns the provisions of the three repealed directives. When the amendment affects only one or two of these directives, the term 'amended' is included in the column of the directives concerned.

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 1, par. 11, first subparagraph	Art. 1, point (e), adapted	Art. 1, point (d), adapted	Art. 1, point (d), adapted		
Art. 1, par. 11, second subparagraph	Art. 1, point (f), adapted	Art. 1, point (e), adapted	Art. 1, point (e), adapted		
Art. 1, par. 11, third subparagraph	—	—	—		New
Art. 1, par. 11, fourth subparagraph	Art. 1, point (g), adapted	Art. 1, point (f), adapted	Art. 1, point (f), adapted		
Art. 1, par. 11, fifth subparagraph	—	—	Art. 1, point (g), adapted		
Art. 1, par. 12	—	—	—		New
Art. 1, par. 13	—	—	—		New
Art. 1, par. 14	—	—	—		New
Art. 1, par. 15	—	—	—		New
Art. 2	Art. 6, par. 6	Art. 5, par. 7	Art. 3, par. 2		Amended
Art. 3	—	Art. 2, par. 2	—		
Art. 4, par. 1	New	New	Art. 26, par. 2 and 3, adapted		
Art. 4, par. 2	Art. 21 amended	Art. 18 adapted	Art. 26, par. 1 amended		
Art. 5	Art. 33a adapted	Art. 28 amended	Art. 38a adapted		
Art. 6	—	Art. 15, par. 2	—		Amended
Art. 7, points (a) and (b)	—	Art. 5, par. 1, point (a), adapted	Art. 7, par. 1, point (a), adapted		
Art. 7, point (c)	Art. 6, par. 1, point (a), adapted	—	—		
Art. 8	Art. 2 and Art. 6, par. 1, point (b), adapted	—	Art. 3, par. 3 and Art. 7, par. 1, point (a), adapted		
Art. 9, par. 1, first subparagraph	—	Art. 5, par. 5	Art. 7, par. 2 and 7		Amended
Art. 9, par. 1, second subparagraph	—	—	—		New
Art. 9, par. 2	—	Art. 5, par. 1, point (b)	—		Amended
Art. 9, par. 3	Art. 6, par. 4	Art. 5, par. 6	Art. 7, par. 3, second clause		
Art. 9, par. 4	Art. 6, par. 5, adapted				

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 9, par. 5, point (a)	Art. 6, par. 3, adapted	—	Art. 7, par. 4, third subparagraph, adapted		
Art. 9, par. 5, point (b)	—	Art. 5, par. 4	—		Amended
Art. 9, par. 6	—	Art. 5, par. 2	—		
Art. 9, par. 7	—	Art. 5, par. 3	Art. 7, par. 6		
Art. 9, par. 8, point (a)	—	—	Art. 7, par. 4,		Amended
Art. 9, par. 8, point (b)	—	—	Art. 7, par. 5,		Amended
Art. 9, par. 9	—	—	—		New
Art. 10	New	Art. 3 adapted	Art. 4, par. 1 adapted		
Art. 11	—	—	—		New
Art. 12	Art. 4, point (a)	Art. 2, point (a)	Art. 1, point (a) (ii)		Amended
Art. 13	—	—	—		New
Art. 14	Art. 4, point (b)	Art. 2, par. 1, point (b)	Art. 4, par. 2		
Art. 15, point (a)	Art. 5, point (a) adapted	Art. 4, point (a) adapted	Art. 5, point (a) adapted		
Art. 15, points (b) and (c)	Art. 5, points (b) and (c)	Art. 4, points (b) and (c)	Art. 5, points (b) and (c)		
Art. 16	—	—	Art. 1, point (a), (iii) to (ix), adapted		
Art. 17	—	—	—		New
Art. 18	—	—	Art. 6		Amended
Art. 19	—	—	—		New
Art. 20	—	—	Art. 8		
Art. 21			Art. 9		
Art. 22	—	—	Art. 10		
Art. 23	Art. 10	Art. 8	Art. 14		Amended
Art. 24, par. 1 to 4, first subparagraph	Art. 19	Art. 16, par. 1,	Art. 24, par. 1		Amended
Art. 24, par. 4, second subparagraph	—	Art. 16, par. 2, adapted	Art. 24, par. 2, adapted		

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 25, first paragraph	Art. 20, first paragraph	Art. 17, first paragraph	Art. 25, first paragraph		Amended
Art. 25, second paragraph	Art. 20, second paragraph	Art. 17, second paragraph	Art. 25, second paragraph		
Art. 26	—	—	—		New
Art. 27, first paragraph	Art. 23, par. 1	—	Art. 28, par. 1		Amended
Art. 27, second and third paragraphs	Art. 23, par. 2	—	Art. 28, par. 2		
Art. 28, first paragraph	Art. 7, par. 1 adapted	Art. 6, par. 1 adapted	Art. 11, par. 1 adapted		
Art. 28, second paragraph	Art. 7, par. 4	Art. 6, par. 4	Art. 11, par. 4		Amended
Art. 29	—	—	—		New
Art. 30, par. 1, point (a)	Art. 7, par. 2, point (a)	Art. 6, par. 2	Art. 11, par. 2, point (a)		
Art. 30, par 1, point (b)	Art. 7, par. 2, point (c)	New	Art. 11, par. 2, point (b)		
Art. 30, par. 1, point (c)		—	Art. 11, par. 2, point (c)		
Art. 30, par. 1, point (d)	Art. 7, par. 2, point (b)	—	—		
Art. 30, paragraphs 2, 3 and 4	—	—	—		New
Art. 31, point (1), point (a)	Art. 7, par. 3 point (a)	Art. 6, par. 3, point (a)	Art. 11, par. 3, point (a)		
Art. 31, point (1), point (b)	Art. 7, par. 3, point (b)	Art. 6, par. 3, point (c)	Art. 11, par. 3, point (b)		
Art. 31, point (1), point (c)	Art. 7, par. 3, point (c)	Art. 6, par. 3, point (d)	Art. 11, par. 3, point (d)		
Art. 31, point (2), point (a)	—	Art. 6, par. 3, point (b)	—		
Art. 31, point (2), point (b)	—	Art. 6, par. 3, point (e)	—		
Art. 31, point (2), point (c)	—	New	—		
Art. 31, point (2), point (d)	—	New	—		
Art. 31, point (3)	—	—	Art. 11, par. 3, point (c)		
Art. 31, point (4), point (a)	Art. 7, par. 3, point (d)	—	Art. 11, par. 3, point (e)		
Art. 31, point (4), point (b)	Art. 7, par. 3, point (e)	—	Art. 11, par. 3, point (f)		
Art. 32	—	—	—		New

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 33	—	—	—		New
Art. 34, first and second paragraphs	Art. 9, first and second paragraphs	—	—		
Art. 34, third paragraph	Art. 9, third paragraph				Amended
Art. 35, par. 1, first subparagraph, point (a), first subparagraph	—	Art. 9, par. 1, first subparagraph	—		
Art. 35, par. 1, first subparagraph, point (a), second subparagraph	—	Art. 9, par. 1, second subparagraph, first sentence	—		Amended
Art. 35, par. 1, first subparagraph, point (b)	—	—	Art. 15, par. 1		
Art. 35, par. 1, first subparagraph, point (c)	Art. 11, par. 1	—	—		
Art. 35, par. 1, second subparagraph	—	Art. 9, par. 5, second subparagraph	Art. 17, par. 2, second subparagraph		Amended
Art. 35, par. 1, third subparagraph	Art. 11, par. 7, second subparagraph	—	—		Amended
Art. 35, par. 1, fourth, fifth and sixth subparagraphs	—	—	—		New
Art. 35, par. 2	Art. 11, par. 2	Art. 9, par. 2	Art. 15, par. 2		Amended
Art. 35, par. 3	—	—	—		New
Art. 35, par. 4, first subparagraph	Art. 11, par. 5, first sentence	Art. 9, par. 3, first sentence	Art. 16, par. 1		Amended
Art. 35, par. 4, second and third subparagraphs	—	—	—		New
Art. 35, par. 4, fourth subparagraph			Art. 16, par. 3 and 4		
Art. 35, par. 4, fifth subparagraph	Art. 11, par. 5, second sentence	Art. 9, par. 3, second sentence	Art. 16, par. 5		Amended
Art. 36, par. 1	Art. 11, par. 6, first subparagraph, adapted	Art. 9, par. 4, first sentence, adapted	Art. 17, par. 1, first sentence, adapted		
Art. 36, par. 2, first subparagraph	Art. 11, par. 7, first sentence	Art. 9, par. 5, first subparagraph	Art. 17, par. 2, first subparagraph		Amended
Art. 36, par. 2, second subparagraph	—	—	—		New
Art. 36, par. 3	Art. 11, par. 10	Art. 9, par. 8	Art. 17, par. 5		Amended
Art. 36, par. 4	Art. 11, par. 8 and 13	Art. 9, par. 6 and 11	Art. 17, par. 4 and 8		Amended
Art. 36, par. 5	Art. 11, par. 11, adapted	Art. 9, par. 9, adapted	Art. 17, par. 6, adapted		

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 36, par. 6	Art. 11, par. 13, second sentence	Art. 9, par. 11, second sentence	Art. 17, par. 8, second sentence		Amended
Art. 36, par. 7, first subparagraph	Art. 11, par. 12	Art. 9, par. 10	Art. 17, par. 7		
Art. 36, par. 7, second subparagraph	—	—	—		New
Art. 37	Art. 17	Art. 13	Art. 21		Amended
Art. 38, par. 1	—	—	—		New
Art. 38, par. 2	Art. 12, par. 2, adapted	Art. 10, par. 1, adapted	Art. 18, par. 1, adapted		
Art. 38, par. 3	Art. 13, par. 1 and 3, adapted	Art. 11, par. 1 and 3, adapted	Art. 19, par. 1 and 3, adapted		Amended
Art. 38, par. 4	Art. 12, par. 2 and Art. 13, par. 4, adapted	Art. 10, par. 1a and Art. 11, par. 3a, adapted	Art. 18, par. 2 and Art. 19, par. 4, adapted		
Art. 38, par. 5 and 6	—	—	—		New
Art. 38, par. 7	Art. 12, par. 5	Art. 10, par. 4	Art. 18, par. 5		Amended
Art. 38, par. 8	Art. 14, par. 1	Art. 12, par. 1	Art. 20, par. 1		Amended
Art. 39	Art. 12, par. 3 and 4, Art. 13, par. 6, and Art. 14, par. 2 adapted	Art. 10, par. 2 and 3, Art. 11, par. 5, and Art. 12, par. 2 adapted	Art. 18, par. 3 and 4, Art. 19, par. 6 and Art. 20, par. 2 adapted		
Art. 40	Art. 13, par. 2, and Art. 14, par. 3	Art. 11, par. 2, and Art. 12, par. 3	Art. 19, par. 2, and Art. 20, par. 3		Amended
Art. 41, par. 1	Art. 8, par. 2, first sentence, adapted	Art. 7, par. 2, first sentence, adapted	Art. 12, par. 2, first sentence, adapted		
Art. 41, par. 2	Art. 8, par. 1, first subparagraph, adapted	Art. 7, par. 1, first subparagraph, adapted	Art. 12, par. 1, first subparagraph, adapted		
Art. 41, par. 3	Art. 8, par. 1, second subparagraph, adapted	Art. 7, par. 1, second subparagraph, adapted	Art. 12, par. 1, second subparagraph, adapted		
	Art. 8, par. 2, last sentence	Art. 7, par. 2, last sentence	Art. 12, par. 2, last sentence		Deleted
Art. 42, par. 1, 3 and 6	Art. 13, par. 5, and Art. 18, par. 2	Art. 11, par. 4, and Art. 15, par. 3	Art. 19, par. 5, and Art. 23, par. 2		Amended
Art. 42, par. 2, 4 and 5	—	—	—		New
Art. 43	Art. 8, par. 3	Art. 7, par. 3	Art. 12, par. 3		Amended
Art. 44, par. 1	Art. 18, par. 1 adapted	Art. 15, par. 1 adapted	Art. 23, par. 1 adapted		Amended

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 44, par. 2	—	—	—		New
Art. 44, par. 3	Art. 22	Art. 23, par. 3	Art. 32, par. 4		Amended
Art. 44, par. 4	—	—	—		New
Art. 45, par. 1	—	—	—		New
Art. 45, par. 2, first subparagraph	Art. 24, first paragraph, adapted	Art. 20, par. 1, adapted	Art. 29, first paragraph, adapted		
Art. 45, par. 2, second subparagraph	—	—	—		New
Art. 45, par. 3	Art. 24, second and third paragraphs, adapted	Art. 20, par. 2 and 3 adapted	Art. 29, second and third paragraphs, adapted		
Art. 45, par. 4	Art. 24, fourth paragraph	Art. 20, par. 4	Art. 29, fourth paragraph		Amended
Art. 46, first paragraph	Art. 25, first sentence amended	Art. 21, par. 1 and par. 2, first sentence, adapted	Art. 30, par. 1 and 3, first sentence, adapted		
Art. 46, second paragraph	—	—	Art. 30, par. 2		
Art. 47, par. 1, points (a) and (b)	Art. 26, par. 1, points (a) and (b), adapted	Art. 22, par. 1, points (a) and (b), adapted	Art. 31, par. 1, points (a) and (b), adapted		
Art. 47, par. 1, point (c)	Art. 26, par. 1, point (c)	Art. 22, par. 1, point (c)	Art. 31, par. 1, point (c)		Amended
Art. 47, par. 2 and 3	—	—	—		New
Art. 47, par. 4 and 5	Art. 26, par. 2 and 3, adapted	Art. 22, par. 2 and 3, adapted	Art. 31, par. 2 and 3, adapted		Amended
Art. 48, par. 1 and par. 2, points (a) to (e) and (g) to (j)	Art. 27, par. 1, adapted	Art. 23, par. 1, adapted	Art. 32, par. 2, adapted		
Art. 48, par. 2, point (f)	—		—		New
Art. 48, par. 3 and 4	—	—	—		New
Art. 48, par. 5	New	New	Art. 32, par. 1, adapted		
Art. 48, par. 6	Art. 27, par. 2	Art. 23, par. 2	Art. 32, par. 3		
Art. 49	New	New	Art. 33		Amended
Art. 50	—	—	—		New
Art. 51	Art. 28	Art. 24	Art. 34		
Art. 52	Art. 29	Art. 25	Art. 35		Amended
Art. 53, par. 1	Art. 30, par. 1 adapted	Art. 26, par. 1 adapted	Art. 36, par. 1 adapted		

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 53, par. 2	Art. 30, par. 2	Art. 26, par. 2	Art. 36, par. 2		Amended
	Art. 30, par. 3	—	—		Deleted
Art. 54	—	—	—		New
Art. 55	Art. 30, par. 4, first and second subparagraphs	Art. 27, first and second paragraphs	Art. 37, first and second paragraphs		Amended
	Art. 30, par. 4, third subparagraph	Art. 27, third paragraph	Art. 37, third paragraph		Deleted
	Art. 30, par. 4, fourth subparagraph	—	—		Deleted
	Art. 31	—	—		Deleted
	Art. 32	—	—		Deleted
Art. 56	Art. 3, par. 1, adapted				
Art. 57	—				New
Art. 58	Art. 11 par. 3, par. 6 to 11 and par. 13				Amended
Art. 59	Art. 15	—	—		
Art. 60	Art. 3, par. 2	—	—		
Art. 61	New	—	—		
Art. 62	Art. 3, par. 3				
Art. 63	Art. 3, par. 4				Amended
Art. 64	Art. 11, par. 4, par. 6, first subparagraph, par. 7, first subparagraph, and par. 9	—	—		Amended
Art. 65	Art. 16				
Art. 66	—	—	Art. 13, par. 3 and 4		
Art. 67, par. 1	—	—	Art. 13, par. 1, first subparagraph and par. 2, first subparagraph		
Art. 67, par. 2			Art. 13, par. 1, indents 1 to 3 and par. 2, indents 1 to 3		Amended
Art. 68	—	—	New		
Art. 69, par. 1	—	—	Art. 15, par. 3		

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 69, par. 2, first subparagraph	—	—	Art. 16, par. 1 and par. 2, second indent		Amended
Art. 69, par. 2, second subparagraph and par. 3	—	—	New		
Art. 70	—	—	Art. 17, par. 1, par. 2, first and third subparagraphs, par. 3 to 6 and par. 8		Amended
Art. 71	—	—	New		
Art. 72	—	—	Art. 13, par. 5		
Art. 73	—	—	Art. 13, par. 6, first subparagraph		
Art. 74	—	—	Art. 13, par. 6, second subparagraph		Amended
	Art. 33	Art. 30	Art. 38		Deleted
Art. 75	Art. 34, par. 1, adapted	Art. 31, par. 1, adapted	Art. 39, par. 1, adapted		
Art. 76	Art. 34, par. 2	Art. 31, par. 2	Art. 39, par. 2		Amended
			Art. 39, par. 2, point (d), second subparagraph		Deleted
Art. 77, par. 1	—	Art. 32, par. 1	Art. 40, par. 1		
Art. 77, par. 2	Art. 35, par. 3	Art. 32, par. 2	Art. 40, par. 3		Amended
	—	—	Art. 40, par. 2		Deleted
Art. 77, par. 3	—	Art. 32, par. 3	Art. 40, par. 4		Amended
Art. 78, par. 1 and 2					New
Art. 78, par. 3 and 4	Art. 6, par. 2, point (a),	Art. 5, par. 1, point (d)	Art. 7, par. 1, point (c)		Amended
Art. 79, point (a)	Art. 6, par. 1, point (b), adapted	Art. 5, par. 1, point (c), second subparagraph, adapted	Art. 7, par. 1, point (b), second subparagraph, adapted		
Art. 79, point (b)	Art. 35, par. 2	—	Art. 16, par. 4		Amended
Art. 79, point c)	—	—	—		New
Art. 79, point (d)	Art. 35, par. 1, adapted	—	—		
Art. 79, point (e)		Art. 29, par. 3, adapted	—		

This Directive	Directive 93/37/EEC	Directive 93/36/EEC	Directive 92/50/EEC	Other acts	
Art. 79, point (f)	Art. 35, par. 2 adapted	—	—		New
Art. 79, point (g)	—	—	—		
Art. 79, points (h) and (i)	—	—	—		New
Art. 80					
Art. 81					
Art. 82					
Art. 83					
Annex I	Annex II				Amended
Annexes II A and II B	—	—	Annexes I A and I B		Amended
Annex III	Annex I	—	—	Acts on the accession of Austria, Finland and Sweden	Adapted
Annex IV	—	Annex I	—	Acts on the accession of Austria, Finland and Sweden	Adapted
Annex V	—	Annex II	—		Amended
Annex VI	Annex III	Annex III	Annex II		Amended
Annex VII A, B, C and D	Annexes IV, V and VI	Annex IV	Annexes III and IV		Amended
Annex VIII	—	—	—		New
Annex IX					Adapted
Annex IX A	—	Art. 21, par. 2	—	Acts on the accession of Austria, Finland and Sweden	Adapted
Annex IX B	—	—	Art. 30, par. 3	Acts on the accession of Austria, Finland and Sweden	Adapted
Annex IX C	Art. 25, adapted	—	—	Acts on the accession of Austria, Finland and Sweden	Adapted
Annex X					New
Annex XI					New
Annex XII					New

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 11 July 2000, the Commission presented its proposal for a Directive of the European Parliament on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts ⁽¹⁾. The proposal was based on Articles 47(2), 55 and 95 of the Treaty.

The European Parliament delivered its Opinion at first reading on 17 January 2002 ⁽²⁾.

The Economic and Social Committee has given its Opinion on 26 April 2001 ⁽³⁾.

The Committee of the Regions has given its Opinion ⁽⁴⁾ on 13 December 2000.

On 21 May 2002, the Council confirmed a political agreement with a view to the adoption of a common position in accordance with Article 251(2) of the Treaty.

On 20 March 2003 the Council adopted its Common Position as set out in doc. 11029/02 MAP 30 CODEC 922.

II. OBJECTIVE

The objective of the abovementioned proposal is to simplify the existing legal framework by amending and recasting the directives on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts (Directive 92/50/EEC, Directive 93/36/EEC and Directive 93/38/EEC) and by merging the directives into a single text.

In substance, the Commission's proposal adds new procedural requirements and safeguards in order to modernise, simplify and clarify the existing legal framework. In this regard the proposal introduces — inter alia — electronic purchasing mechanisms, a new procedure which permits a 'dialogue' between the contracting authority and the candidates in the case of complex contracts, the possibility for public purchasers of concluding 'framework agreements', on the basis of which contracts can be awarded without applying all the obligations of the Directive, the clarification of provisions relating to technical specifications and several modifications to the provisions on award and selection criteria.

Furthermore, the text aims at diminishing the number of different threshold values. Finally, the substance of the provisions of the 'classical directive' should be aligned with the two other parts of the legislative package, that is the proposal for a common procurement vocabulary (CPV) (Regulation (EC) No 2195/2002) and the proposal for the 'Utilities' Directive (Directive 2003/.../EC), coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

III. ANALYSIS OF THE COUNCIL'S COMMON POSITION ⁽⁵⁾

1. General

The Council's common position maintains the Commission's basic approach, while integrating several of the amendments adopted by the European Parliament. Some of these amendments have also been accepted by the Commission in its modified proposal [COM(2002) 236] ⁽⁶⁾.

⁽¹⁾ OJ C 29 E, 30.1.2001, p. 11.

⁽²⁾ OJ C 271 E, 7.11.2002, p. 176.

⁽³⁾ OJ C 193, 10.7.2001, p. 7.

⁽⁴⁾ OJ C 144, 15.5.2001, p. 23.

⁽⁵⁾ The numbering of Articles refers to the result of the first reading of Parliament (doc. 5307/02) or, where it is indicated ('now ...'), to the common position (doc. 11029/02).

⁽⁶⁾ OJ C 203 E, 27.8.2002, p. 210.

This has been done in order to accommodate several of European Parliament main concerns, to facilitate the practical implementation of the provisions and to introduce options for Member States. In particular, detailed provisions have been replaced by more general clauses. Links to parallel policy fields with important implications for public procurement have been strengthened or introduced, especially through a number of new or modified recitals, and some definitions and provisions have been clarified in order to avoid misunderstandings or inconsistencies.

Moreover, the Council has introduced more detailed provisions on electronic auctions and dynamic acquisition systems, which are now available as methods within the existing procedures. The Council has also sought to clarify the relationship between the classical and the utilities directives by including postal services into the utilities field and adapting the provisions of this proposal accordingly.

2. European Parliament amendments

The Council has accepted several of the European Parliament amendments and incorporated them into the current text. Some of them have been accepted in substance, but not in exact wording. Some other amendments have been rejected by the Council.

2.1. *The following European Parliament amendments have been accepted by the Council and integrated into the text of its common position*

The following amendments have been accepted without modification:

Amendment 5 — New recital 13a), now rec. 14 (Definition of central purchasing bodies)

Amendment 141 — New recital 3c; now rec. 6 (Mentioning of possibility for Member States to take measures according to Treaty Article 3)

Amendment 125 — Recital 31, now recital 45 (Inclusion of engineers)

Amendment 24 — Article 1, paragraph 7, now: paragraph 5 (Definition of framework agreement)

Amendment 34 — Article 12, paragraph 3(a), now Article 9, paragraph 8(a) (Inclusion of other forms of remuneration with regard to insurance contracts)

Amendment 121 — Article 18 b), now: Article 16 b) (Clarification with regard to 'programme material')

This European Parliament amendment seeks to correct an obvious inconsistency in the text, which was present in some language versions of established law. It has been accepted by the Council. Recital 24 gives further explanations.

Amendment 37 — Article 18 d) now: Article 16 d) (Exclusion of some financial contracts)

Amendment 150 — Article 31 (point 4) now: Article 61 (Incorporation of the possibility of awarding additional works)

The Council has incorporated this EP amendment, accepting the obvious advantages in increasing flexibility and facilitating the application of the provisions.

Amendment 88 — Article 46, paragraph 2 point h (deleted) now: Article 45, paragraph 2 (General reference to fraud and illegal activity)

The Council has taken over the objectives of the European Parliament amendment and has deleted the clause since the substance is already covered by Article 45, paragraph 1, point c.

Amendment 94 — Article 49, paragraph 4, now: Article 48, paragraph 5 (Reliability of contractors)

The Council has taken over the substance of the European Parliament amendment but has added further references and explanations.

2.2. *The following European Parliament amendments have been accepted in principle but have been integrated with some modifications*

Amendment 1 — New recital 3a, now: recital 4 (Avoidance of distortions of competition)

This amendment has partly been included in the text of this recital.

Amendment 2 — New recital 3b, now recital 5 (Sustainable development obligation for Community policies)

This amendment has been accepted in part and included in the text of the recital.

Amendment 168 — New recital 13b), now: recital 14 (Simplified decision on acting in accordance with the directive in certain CPB cases)

The amendment has been partly accepted and integrated into recital 14 with several modifications of the wording.

Amendment 142 — New recital 14a) (Supplementary services at works contracts)

The subject of the amendment has been treated in recital 9.

Amendment 7 — New recital 15a, now: recital 9 (Joint or separate award of contracts)

The provision has been inserted, but the Council has preferred to use a wording which gives national legislation even more flexibility.

Amendment 10 — Recital 22, now: recital 31 (Inclusion of non-discriminatory use of environmental criteria)

The amendment has been accepted in principle with some modifications of the wording.

Amendment 11 — New recital 22a), now: recital 32 (Reference to posted workers directive)

The amendment has been accepted in principle with further clarification of the scope of the provision by modifying the wording.

Amendment 170 — New recital 33a), now: recital 41 (Exclusion of certain participants)

Accepted with slight modifications in the wording.

Amendments 171 and 145 — Article 1 paragraph 2) (Special scope of 'works contracts')

The Council has accepted the substance of the amendments with the exception of the mandatory justification for a joint award of conception and execution, but has considered it more appropriate to include the clarification in the recitals.

Amendments 126 and 172 — Article 1, paragraph 5, now paragraph 10) (Inclusion of central purchasing bodies in the definition of contracting authorities)

The Council has acknowledged the need to clarify the relationship between contracting authorities and central purchasing bodies, but has considered that it is more appropriate to add a separate definition of central purchasing bodies in paragraph 10.

Amendment 21 — Article 1, paragraph 5a (new), now paragraph 10) (Definition of central purchasing bodies)

Accepted in principle, see reasoning to amendments 126/172.

Amendment 23 — Article 1, paragraph 6a new, now paragraph 7) (Definition of auctions)

The integration of electronic auctions has been accepted by the Council with further clarifications and detailed provisions.

Amendment 31 — Article 5, now: Article 6 (Clarification of confidentiality of information)

The Council has incorporated the substance of the amendment in the new wording of Article 6.

Amendment 147 — Article 6, paragraph 1a (new) (Principles of transparency and non-discrimination)

The Council has accepted the substance of the amendment, but has considered it as more appropriate to refer to such general and undisputed principles in the recitals and not in the body of the text. The provisions of the articles have no effect on contracts below the thresholds.

Amendment 175 — Article 6a (new), now Article 11 (Central purchasing bodies)

The Council has inserted this general provision on central purchasing bodies in a new and re-structured Article by modifying the wording of the European Parliament amendment.

Amendment 32 — Article 8, lit. a,b,c), now: Article 7, lit. a,b,c) (Threshold amounts)

The Council has agreed on amounts which differ both from the Commission's original proposal and from those in the European Parliament's amendment. The Council has based the amounts on a different method of calculation, taking into account changes in parities since the date when the Commission presented its proposal.

Amendment 35 — Article 12(6) point b), now: Article 9 (Incorporation of the phenomenon of tacit renewals of contracts in the provisions on calculation methods)

This amendment is reflected in substance in Article 9, paragraph 1.

Amendment 36 — Article 15a new, now: Article 19 (Contracts in the framework of a program for sheltered employment)

The Council has taken over the idea of making contracts with institutions of sheltered employment easier to conclude. The wording of the EP amendment has been slightly modified.

Amendment 38 — Article 19, now: Article 18 (Exclusion for contracts given to other contracting authorities)

The Council has accepted the EP amendment partially, but has followed the Commission proposal in denying extension to other than service contracts.

Amendment 45 — Article 24, paragraph 3, now: Article 23, paragraph 6 (European eco-labels as technical specifications)

The Council has accepted the substance of the amendment, but has preferred to lay down the conditions on eco-labels as technical specifications in a new and re-structured paragraph 6.

Amendment 46 — Article 24, paragraph 5, now: Article 23, paragraph 4 (Rejection of tenderers for non-complying with specifications)

The Council has accepted the substance of the amendment in important parts, but has changed the wording in order to increase the functionality of the provision.

Amendments 47 and 123 — Article 24, paragraph 7), now: Article 23, paragraph 8 (Unacceptable references)

The Council has not been able to accept the wording of the EP amendment. However, by re-structuring the introduction of the paragraph and adding a general justification, the wording should now meet some of the preoccupations of Parliament, to allow references to production processes etc. for obvious technical reasons. Moreover, annex VI has also incorporated a reference to 'production processes'.

Amendment 50 — Article 27, title and paragraph 1 (Incorporation of taxation and environmental protection obligations in the informatory list for the tenderer)

The Council has included this amendment as enhancing transparency, but has preferred a different wording giving Member States an option on what to prescribe to contracting authorities.

Amendment 51 — Article 27, paragraphs 1a and 1b (new) (Compliance with social legislation and employment protection provisions)

The Council has acknowledged the substance of the amendment, but has preferred to integrate the concerns into recital 31.

Amendment 57 — Article 29, point 3, now: Article 30, lit. c) (Special provision on some supply or service contracts)

The Council has incorporated some of the substance of the amendment by re-structuring the whole of Article 30.

Amendment 137 — Article 30, now: Article 29 (Competitive dialogue)

The Council has incorporated some of the suggested modifications by a thorough re-structuring of Article 29.

Amendment 65 — Article 32a (new), now Article 54 (Provisions on electronic auctions)

The Council has taken over the concept of e-auctions but agreed on more detailed provisions in Article 54. Quantifiable elements other than price are also introduced as criteria and it has been clarified that electronic auctions should now also be possible in the 'classical' field.

Amendment 161 — Article 37, paragraph 1, now Article 38 (Deletion of general remark on time-limits for tenders)

The Council has accepted a part of the amendment and deleted the first sentence of the paragraph as having no legislative value.

Amendment 74 — Article 42, paragraph 2, now: paragraph 3 (Additional requirement ensuring adequate data protection)

The Council has taken on board part of the amendment by extending the requirement to storage of information.

Amendments 77 and 132 — Article 44 paragraph 6 (Respect of confidentiality with regard to technical or trade secrets)

The Council has acknowledged the substance of the amendment but has preferred to keep the provision in direct relationship to general principles. Therefore most of the relevant wording can be found in Article 6.

Amendment 80 — Article 46(1) point (ca) (new), now Article 45(1) point d) (Inclusion of money laundering as a possible reason for exclusion of tenderers)

The Council has accepted the amendment with a minor editorial modification.

Amendment 85 — Article 46(2) point c), now: Article 45(2) point c) (Precision on the type of judgements referred to (judgements in accordance with national legal provisions))

The Council has acknowledged the substance and objective of the amendment and integrated it with some modifications in the wording.

Amendment 86 — Article 46, paragraph 2, point d), now: Article 45 (Inclusion of violation of labour standards and employment protection provisions as grave professional misconduct)

The Council has not included this provision in Article 45 but has incorporated it as a reason for exclusion in the case of abnormally low tenders in Article 55 and also as a general reference in recital 31.

Amendment 87 — Article 46, paragraph 2, point (ea) (new), now: Article 45 (Failure to fulfil employment protection legislation or collective agreements)

Similar to amendment 86 the Council has considered it sufficient to treat this type of misbehaviour in the context of Article 55 or recital 31.

Amendment 89 — Article 46, paragraph 2, point (ha) (new), now: Article 45 (Failure to fulfil health and safety requirements)

The Council has acknowledged the objectives of this amendment but has considered that the substance of amendments 86, 87 and 89 can be covered by a general clause in recital 31, which specifies what is possible under this directive and/or current law.

Amendment 93 — Article 49, paragraph 3, point (c), now Article 48(2), point (f) (Inclusion of environmental management and the health and safety of workers)

The Council has accepted the substance, but has preferred to integrate a more general point (f) referring only to environmental management.

Amendment 95 — Article 49, paragraph 4, point (ea) now Article 48 paragraph 2 point (f) (Reference to environmental management practices)

The Council considers that the clause in Article 48, paragraph 2, point (f) allows for environmental management measures to be taken into account when relevant to the capacities of a tenderer. This clause is therefore in line with the objectives of amendments 93 and 95.

Amendment 97 — Article 50a (new), now: Article 50 (Inclusion of environmental management standards as point of reference for certification)

The Council has accepted the substance of this amendment with some modifications in the wording and with a reference to the cases described in point (f) of Article 48.

Amendment 153 — Article 52a (new) (Private law bodies)

The Council has integrated the substance of the European Parliament amendment in re-wording the first paragraph of Article 52 in order to cover all relevant cases.

Amendments 15 and 100 — Article 54 and accompanying recital, now: Article 54 and recital 31 (Incorporation of the disregard of employment security provisions as a reason for constituting an abnormally low tender)

The Council has accepted the amendments with some modifications in the wording.

Amendment 103 — Article 61, new paragraph 1a (Reference to requirements on the electronic signature)

The Council has accepted the substance of the amendment, but preferred the clarification in Annex X and in recital 35. The issue of encryption has not been taken on board.

Amendment 104 — Article 61, paragraph 2, now: Article 71, paragraph 2. (Clarification on information exchange and storage)

The Council has accepted a shorter variant of the amendment. The text has to be seen in the context of Article 42, paragraph 3.

Amendment 108 — Article 81a (new) (Monitoring mechanism)

The Council has accepted the objectives of the European Parliament amendment, but has preferred an explanatory recital 18 instead of a detailed provision in the body of the text.

Amendment 109 — Annex VI, point 1 (Precision of the definition of 'technical specification' to include service contracts and environmental aspects)

The Council has accepted most of the substance of the amendment but has preferred to focus on those parameters mentioned in the European Parliament amendment which can be defined à-priori as technical specifications.

Amendments 110, 111, 112, 113 and 114 — Annex VII A (Inclusion of additional items of information about the contract and the contracting authorities in the contract documents)

The Council has only been able to take on board some of the additional informatory requirements demanded by the EP amendments, namely those on the review procedures. As far as the mentioning of competent authorities in health and safety matters is concerned, the Council has noted that according to Article 27 such indication should be inserted in the tender documents and not in the contract notice. Therefore it should not be mentioned in the list of information to be inserted in the contract notices.

2.3. *The following amendments have been rejected and thus have not been integrated into the text:*

Amendment 162 — New recital 1a) (Mentioning of Directive of Environmental Impact Assessment)

The Council has preferred to integrate environmental considerations in a different way.

Amendment 4 — New recital 7a) (Exclusion of contracts given to certain institutions from the scope of the directive)

The Council has not been in a position to agree on a reference to the cases described in a separate recital. This rejection follows from the rejection of amendment 40 below.

Amendment 8 — Recital 17 (Possibility for the contracting authority to prescribe national standards)

The Council has considered the general reference to the possibility of prescribing a national standard in the absence of European or international standards to be sufficient and has not taken over a longer explanatory sentence as suggested by the European Parliament amendment. This rejection also follows the partial rejection of the last sentence of amendment 45.

Amendment 9 — Recital 18 (End of negotiations in negotiated procedure)

The Council has not been in a position to accept this amendment. It has agreed on inserting a new procedure instead of creating a new case for the negotiated procedure with prior publication. The Council has however inserted rules into this new procedure to monitor the dialogue in order to avoid inequality of treatment (see also new recital 29).

Amendment 13 — New recital 30a) (Procedures for application and implementation of the directive)

The Council has considered that the suggested reference to national jurisdiction might be misleading in certain cases.

Amendment 15 — New recital 31a) (Rejections of tenders which are abnormally low because of disregard of social protection provisions)

The Council has considered it to be sufficient to include this special case of abnormally low tenders in the relevant parts of Article 27(2) and Article 55.

Amendment 17 — New recital 34a) Demand to the Commission to examine the possibility of a directive on concessions and project financing

The Council has considered this demand to be too specific with regard to the needs of future legislative initiatives, given that the current Directive excludes service concessions.

Amendment 173 — Article 1, paragraph 5a (new) (Exceptionally Complex Contract)

The Council has not been in a position to take up the concept of defining 'exceptionally complex contracts', that had been suggested where design contests are not regarded as a suitable means by the contracting authorities. The reason is that such a definition would no longer be coherent with the way in which the Council text has modified the provisions on the 'competitive dialogue'.

Amendment 25 — Article 1, paragraph 7a (new) (Framework agreements in the area of interpretation and translation services)

The Council has not considered it to be indispensable to add a special definition for this area, given that the services in question are not submitted to all the procedural rules of the Directive.

Amendment 29 — Article 1, paragraph 9, now paragraph 8, fifth indent (Design contests with and/or without prizes)

The Council has not considered a mandatory payment in design contests to be applicable.

Amendment 30 — Article 3, paragraph 1, now Article 4, paragraph 2 (Requirements for groups of economic operators)

The Council does not regard it as enhancing the level of reassurance to the contracting authority if the members of a group of tenderers would be allowed to fulfil the requirements of the directive cumulatively.

Amendment 40 — Article 19b (new) (Contracts given to bodies created by the contracting authorities)

The Council has taken the view that the cases described would be sufficiently regulated within the existing provisions.

Amendment 127 — Article 23, paragraph 3 (Additional requirements in accordance with non-discrimination principle)

The Council has considered it to be sufficient to refer to such general principles as non-discrimination and transparency in article 2 and in the recitals.

Amendment 159 — Article 26, now: Article 25 (Requirement for subcontractors to comply with Articles 46-49 of the directive)

The Council has preferred to maintain most of the text of the Commission's proposal, but has introduced an option for Member States.

Amendment 49 — Article 26, new paragraph 1a, now: Article 25 (Application of requirements to subcontractors)

See reasoning regarding amendment 159.

Amendment 54 — Article 28, paragraph 3a (new) (Reverse auction)

The Council has considered the amendment to be unnecessarily detailed and in danger of leading to misunderstandings on what is permitted or excluded in the context of e-auctions. However, the Directive does not exclude the possibility of reverse auctions.

Amendment 138 — Article 30a (new) (Exclusive dialogue)

The Council has decided not to include another procedure as this would not enhance transparency. However, the provisions on the 'Competitive Dialogue' have been aligned in such a way as to make it possible to include some of the cases described. (see also reasoning regarding amendment 9).

Amendment 151 — Article 32, paragraph 2a (new), now: Article 31 (Setting up of a qualification system)

The Council does not see the necessity of the proposed provision and considers that it could risk leading to further complicated obligations for tenderers. However, the provisions for dynamic purchasing systems, having been integrated into a different part of the text, can be seen as serving the same purposes as the 'qualification systems', but in a more transparent way.

Amendment 63 — Article 32, paragraph 3a (new) (Exclusion for intellectual services and special provisions for services)

The Council has not considered this special provision to be adequate, given that the services in question are not submitted to all the procedural rules of the Directive.

Amendment 139 — Article 32, paragraph 3b (new) (Limitation to framework agreements to supplies and services)

The Council does not consider that framework agreements should be restricted to services and supplies, since they also serve a useful purpose for works contracts.

Amendment 66 — Article 33 title and paragraph 1, now: Article 34 (Special rules on public-private cooperation)

The Council has preferred to maintain the wording of the Commission's proposal which contains special rules only for subsidized housing schemes, since complex procurements and project financing are already dealt with in other provisions.

Amendment 68 — Article 34, paragraph 2, now: Article 35 (Inclusion of qualification systems as cases requiring a contract notice)

The rejection of this amendment is consequential to the rejection of amendment 151.

Amendment 69 — Article 35, paragraph 1, sub-paragraph 1, now: Article 36, paragraph 1, sub-paragraph 1 (Publication of contract notices in the Official Journal)

The Council has considered that the provisions on publication are sufficiently described in Article 36(4) and Annex VIII.

Amendment 70 — Article 37, paragraphs 3 to 7, now: Article 38, paragraphs 3 to 7 (Unified minimum time-limit of 40 days)

The Council has decided to follow more closely the original Commission proposal and has therefore not incorporated a unified time-limit of 40 days.

Amendment 71 — Article 40, point 4 (g) (Non-discrimination between tenderers)

The Council has not taken over this amendment since the substance is already addressed in Article 2 which applies to the whole directive.

Amendment 72 — Article 41a (new) (Completion of award procedure)

The Council considers the provisions of the original Commission proposal to be sufficiently clear.

Amendment 131 — Article 42, paragraph 1 (Choice of the communication method)

The Council has rejected the amendment as presenting no obvious improvement in the practical application.

Amendment 73 — Article 42, paragraph 1, sub-paragraph 2a (new) (Communication methods for tenderers)

The Council has rejected the amendment as being unnecessarily detailed and difficult to implement. The objective of the amendment can be met since the contracting authorities may determine the range of possible communication methods.

Amendment 75 — Article 42, paragraph 4a (new) (Certification of measures to safeguard confidentiality)

The Council considers the proposed provision as too difficult to handle in practice.

Amendment 76 — Article 44, paragraph 2 (Compensation for lack of experience)

The Council does not see an additional value in adding the specific sentence concerned. On the contrary, the addition could lead to legal uncertainty since the specific capacities are not defined.

Amendment 78 — Article 45a (new) (Qualification systems)

The rejection of this amendment is consequential to the rejection of amendments 68 and 151. The provisions on dynamic purchasing systems can be seen as serving the same purposes as the 'qualification systems', but in a more transparent way.

Amendment 81 — Article 46, paragraph 1, point (cb) (new), now: Article 45(1) (Exclusion for the reason of fraudulent or dishonest anti-competitive behaviour)

The Council has rejected the amendment as it would add little legal substance to the list of reasons for exclusions already contained in Article 45, paragraph 2 (see also new recital 41).

Amendment 82 — Article 46, paragraph 1, point (cc) (new), now: Article 45(1) (Exclusion for the reason of non-compliance with rules and collective agreements)

The Council has not been in a position to take over this amendment. The underlying objective of the amendment is, however, partly reflected in recitals 31 and 32, which clarify the possibilities for exclusion provided for in Article 45, paragraph 2.

Amendment 83 — Article 46, paragraph 1, point (cd) (new), now: Article 45(1) (Exclusions for the reason of drugs-related offences)

The Council rejects this amendment since the underlying objective would be difficult to integrate into the rules of public procurement and since the definitions of the offences described are not harmonised throughout the EU.

Amendments 84 and 90 — Article 46, paragraph 2a, now: Article 45 (Exclusion for reasons of bankruptcy or similar situations)

The Council has preferred to maintain the exclusion of certain tenderers as an option instead of a strict obligation. A mandatory exclusion might lead to a systematic exclusion of tenderers who have entered into an arrangement with creditors and condemn them to bankruptcy. The decision to grant a contract or not to such tenderers should be left to contracting authorities.

Amendment 92 — Article 49, paragraph 2, points (b) and (c), now: Article 48 (Inclusion of environmental protection, environmental management and compliance with health and safety rules in the criteria for 'technical capability')

The Council has rejected the broadening of the scope of the term 'technical capability' in the way suggested in the amendment. See however reasoning regarding amendment 93.

Amendment 176 — Article 53, paragraph 1, point b), now: point a) (Inclusion of benefits for third parties in contract award criteria)

The Council has preferred to follow the Commission's proposal to clarify that 'economic advantage' is to be considered from the point of view of 'advantage for the contracting authorities' and can therefore not accept the amendment. It also considers that the term 'justified by' is more appropriate than 'linked' or 'directly linked'. Recital 31 provides further explanation as to how this term shall be interpreted.

Amendment 99 — Article 53, paragraph 2 (Weighting of criteria)

The Council has rejected the amendment and has kept the substance of the Commission's proposal regarding the weighting of criteria. In duly justified cases the weighting could be expressed a posteriori (recital 44).

Amendment 102 — Article 61, paragraph 1 (Choice of communication means by the contracting authority)

See reasoning regarding Amendment 131.

Amendment 107 — Article 78, paragraph 1, now: Article 79; paragraph 1 (Scope of modifications possible through the advisory committee procedure)

The Council has rejected the restriction of the scope of the comitology procedure as endangering the practicability of the overall framework.

Amendment 115 — Annex VIII, point 1, new indent (da) (Clarification on web-site information)

The Council considers the existing provisions on the form of web-site information to be sufficient for the purpose.

Amendments 117 and 116 — new annexes IXa and IXb (New annex information on electronic systems and labour standards)

The Council has rejected the European Parliament amendments as the suggested form of the new annexes would not fit into the framework established by the directive.

3. Important changes agreed by Council in comparison with the original Commission proposal

Dynamic purchasing systems and electronic auctions — Article 32a/Article 53a

By introducing detailed provisions regarding electronic purchasing systems the Council has acknowledged the need to provide all parties concerned with rules on new techniques in order to keep the public procurement framework in line with new developments.

Environmental management standards — Article 50a; Environmental criteria as technical specifications — Article 24 (paragraph 5a)

By introducing these provisions the Council wishes to contribute to a clarification of the use of environmental technical specifications in general and certificates in particular with the aim of giving Member States a greater degree of flexibility and in order to respond to the practical demands.

Decisions of the jury — Article 63a

The streamlining of the conditions for jury decisions has been deemed necessary in order to safeguard anonymity as a precondition of fair competition.

Annex X

This new annex sets out essential requirements for operating e-procurement. The main concept has been acknowledged in an EP amendment. The Council has agreed on a text which clarifies this issue further.

4. Conclusion

The common position aims at providing a clear legal framework for public procurement with due regard to the need for a high degree of practicability for all parties concerned. It maintains the original concept and objective of the Commission's proposal. At the same time the Council has decided to integrate a number of European Parliament amendments, at least in substance, in an effort to meet Parliament's concerns and to provide additional clarity on a number of important points.

COMMON POSITION (EC) No 34/2003**adopted by the Council on 20 March 2003****with a view to adopting Directive 2003/.../EC of the European Parliament and of the Council of
... coordinating the procurement procedures of entities operating in the water, energy, transport
and postal services sectors**

(2003/C 147 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) and Article 55 and Article 95 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the Opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure set out in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

(1) On the occasion of new amendments being made to Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ⁽⁵⁾, which are necessary to meet requests for simplification and modernisation made by contracting entities and economic operators alike in their responses to the Green Paper adopted by the Commission on 27 November 1996, the Directive should, in the interests of clarity, be recast.

(2) One major reason for the introduction of rules coordinating procedures for the award of contracts in these sectors is the variety of ways in which national authorities

can influence the behaviour of these entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies.

(3) Another main reason why it is necessary to coordinate procurement procedures applied by the entities operating in these sectors is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the service concerned.

(4) Community legislation, and in particular Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector ⁽⁶⁾ and Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector ⁽⁷⁾, is designed to introduce more competition between carriers providing air transport services to the public. It is therefore not appropriate to include such entities in the scope of this Directive. In view of the competitive position of Community shipping, it would also be inappropriate to make the contracts awarded in this sector subject to the rules of this Directive.

(5) The scope of Directive 98/38/EEC covers, at present, certain contracts awarded by contracting entities operating in the telecommunications sector. A legislative framework, as mentioned in the Fourth report on the implementation of the telecommunications regulations of 25 November 1998, has been adopted to open this sector. One of its consequences has been the introduction of effective competition, both *de jure* and *de facto*, in this sector. For information purposes, and in the light of this situation, the Commission has published a list of telecommunications services ⁽⁸⁾ which may already be excluded from the scope of that Directive by virtue of Article 8 thereof. Further progress has been confirmed in the Seventh report on the implementation of telecommunications regulations of 26 November 2001. It is therefore no longer necessary to regulate purchases by entities operating in this sector.

⁽¹⁾ OJ C 29 E, 30.1.2001, p. 112 and OJ C 203 E, 27.8.2002, p. 183.

⁽²⁾ OJ C 193, 10.7.2001, p. 1.

⁽³⁾ OJ C 144, 16.5.2001, p. 23.

⁽⁴⁾ Opinion of the European Parliament of 17 January 2002 (OJ C 271 E, 7.11.2002, p. 29), Council Common Position of 20 March 2003 and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁵⁾ OJ L 199, 9.8.1993, p. 84. Directive as last amended by Directive 98/4/EC of the European Parliament and of the Council (OJ L 101, 1.4.1998, p. 1).

⁽⁶⁾ OJ L 374, 31.12.1987, p. 1. Regulation as last amended by Regulation (EEC) No 2410/92 (OJ L 240, 28.4.1992, p. 18).

⁽⁷⁾ OJ L 374, 31.12.1987, p. 9. Regulation as last amended by the 1994 Act of Accession.

⁽⁸⁾ OJ C 156, 3.6.1999, p. 3.

- (6) It is therefore no longer appropriate to maintain the Advisory Committee on Telecommunications Procurement set up by Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ⁽¹⁾.
- (7) Nevertheless, it is appropriate to continue to monitor developments in the telecommunications sector and to reconsider the situation if it is established that there is no longer effective competition in that sector.
- (8) Directive 93/38/EEC excludes from its scope purchases of voice telephony, telex, mobile telephone, paging and satellite services. Those exclusions were introduced to take account of the fact that the services in question could frequently be provided only by one service provider in a given geographical area because of the absence of effective competition and the existence of special or exclusive rights. The introduction of effective competition in the telecommunications sector removes the justification for these exclusions. It is therefore necessary to include the procurement of such telecommunications services in the scope of this Directive.
- (9) The procedures for the award of contracts which are applied by entities operating in the water, energy, transport and postal services sectors call for coordination based on the requirements inferable from Articles 14, 28 and 49 of the Treaty and from Article 97 of the Euratom Treaty, namely the principles of equal treatment, of which the principle of non-discrimination is no more than a specific expression, the principle of mutual recognition, the principle of proportionality, the principle of transparency, and the opening up of public procurement to competition. While safeguarding the application of those principles, this coordination should establish a framework for sound commercial practice and should allow a maximum of flexibility.
- (10) To ensure a real opening up of the market and a fair balance in the application of procurement rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 295 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.
- (11) Member States should ensure that the participation of a body governed by public law as a tenderer in a procedure for the award of a contract does not cause any distortion of competition in relation to private tenderers.
- (12) Under Article 6 of the Treaty, environmental protection requirements are to be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of that Treaty, in particular with a view to promoting sustainable development. This Directive therefore clarifies how the contracting entities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts.
- (13) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public morality, public policy, public security, health, human and animal life or the preservation of plant life, in particular with a view to sustainable development, provided that these measures are in conformity with the Treaty.
- (14) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) ⁽²⁾, approved in particular the WTO Agreement on Government Procurement (hereinafter referred to as the 'Agreement'), the aim of which is to establish a multilateral framework of balanced rights and obligations relating to public contracts with the aim of achieving the liberalisation and expansion of world trade. In view of the international rights and commitments devolving on the Community as a result of the acceptance of the Agreement, the arrangements to be applied to tenderers and products from signatory third countries are those defined by the Agreement. The Agreement does not have direct effect. The contracting entities covered by the Agreement which comply with this Directive and which apply the latter to economic operators of third countries which are signatories to the Agreement should therefore be in conformity with the Agreement. It is also appropriate that this Directive should guarantee for Community economic operators conditions for participation in public procurement which are just as favourable as those reserved for economic operators of third countries which are signatories to the Agreement.
- (15) Before launching a procurement procedure, contracting entities may, using a technical dialogue, seek or accept advice which may be used in the preparation of the specifications, provided, however, that such advice does not have the effect of precluding competition.
- (16) In view of the diversity of works contracts, contracting entities should be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. It is not the intention of this Directive to prescribe either joint or separate contract awards. The decision to award contracts separately or jointly should be determined by qualitative and economic criteria, which may be defined by national law.

⁽¹⁾ OJ L 297, 29.10.1990, p. 1. Directive as last amended by Directive 94/22/EC of the European Parliament and of the Council (OJ L 164, 30.6.1994, p. 3).

⁽²⁾ OJ L 336, 23.12.1994, p. 1.

A contract may be considered to be a works contract only if its subject-matter specifically covers the execution of activities listed in Annex XII, even if the contract covers the provision of other services necessary for the execution of such activities. Service contracts, in particular in the sphere of property management services, may in certain circumstances include works. However, insofar as such works are incidental to the principal subject-matter of the contract, and are a possible consequence thereof or a complement thereto, the fact that such works are included in the contract does not justify the qualification of the contract as a works contract.

For the purpose of calculating the estimated value of a works contract it is appropriate to take as a basis the value of the works themselves as well as the estimated value of supplies and services, if any, that the contracting entities place at the disposal of contractors, insofar as these services or supplies are necessary for the execution of the works in question. It should be understood that, for the purposes of this paragraph, the services concerned are those rendered by the contracting entities through their own personnel. On the other hand, calculation of the value of services contracts, whether or not to be placed at the disposal of a contractor for the subsequent execution of works, follows the rules applicable to service contracts.

- (17) The field of services is best delineated, for the purpose of applying the procedural rules of this Directive and for monitoring purposes, by subdividing it into categories corresponding to particular headings of a common classification and by bringing them together in two Annexes, XVII A and XVII B, according to the regime to which they are subject. As regards services in Annex XVII B, the relevant provisions of this Directive should be without prejudice to the application of Community rules specific to the services in question.
- (18) As regards service contracts, full application of this Directive should be limited, for a transitional period, to contracts where its provisions will permit the full potential for increased cross-frontier trade to be realised. Contracts for other services need to be monitored during this transitional period before a decision is taken on the full application of this Directive. In this respect, the mechanism for such monitoring needs to be defined. This mechanism should, at the same time, enable interested parties to have access to the relevant information.
- (19) Obstacles to the free provision of services should be avoided. Therefore, service providers may be either natural or legal persons. This Directive should not, however, prejudice the application, at national level, of rules concerning the conditions for the pursuit of an

activity or a profession, provided that they are compatible with Community law.

- (20) Certain new electronic purchasing techniques are continuously being developed. Such techniques help to increase competition and streamline public purchasing, particularly in terms of the savings in time and money which their use will allow. Contracting entities may make use of electronic purchasing techniques, provided that such use complies with the rules of this Directive and the principles of equal treatment, non-discrimination and transparency. To that extent, a tender submitted by a tenderer, in particular under a framework agreement or where a dynamic purchasing system is being used, may take the form of that tenderer's electronic catalogue if the latter uses the means of communication chosen by the contracting entity in accordance with Article 48.
- (21) In view of the rapid expansion of electronic purchasing systems, appropriate rules should now be introduced to enable contracting entities to take full advantage of the possibilities afforded by these systems. Against this background, it is necessary to define a completely electronic dynamic purchasing system for commonly used purchases and to lay down specific rules for setting up and operating such a system in order to ensure the fair treatment of any economic operator who wishes to join. Any economic operator which submits an indicative tender in accordance with the specification and meets the selection criteria should be allowed to join such a system. This purchasing technique allows the contracting entity, through the establishment of a list of tenderers already selected and the opportunity given to new tenderers to join, to have a particularly broad range of tenders, as a result of the electronic facilities available, and hence to ensure optimum use of funds through broad competition.
- (22) Since use of the technique of electronic auctions is likely to increase, such auctions should be given a Community definition and governed by specific rules in order to ensure that they operate fully in accordance with the principles of equal treatment, non-discrimination and transparency. To that end, provision should be made for such electronic auctions to deal only with contracts for works, supplies or services for which the specifications can be determined with precision. With the same objective, it should also be possible to establish the respective ranking of the tenderers at any stage of the electronic auction. Recourse to electronic auctions enables contracting entities to ask tenderers to submit new prices, revised downwards, and, when the contract is awarded to the most economically advantageous tender, also to improve elements of the tenders other than prices. However, in order to guarantee compliance with the principle of transparency, only the elements suitable for automatic evaluation by electronic means, without any intervention by the contracting entity, may be improved. To this end, such elements should be quantifiable so that they can be expressed in figures or percentages.

- (23) Certain centralised purchasing techniques have been developed in Member States. Several contracting authorities are responsible for making acquisitions or awarding contracts/framework agreements for contracting entities. In view of the large volumes purchased, those techniques help increase competition and streamline public purchasing. Provision should therefore be made for a Community definition of central purchasing bodies used by contracting entities. A definition should also be given of the conditions under which, in accordance with the principles of non-discrimination and equal treatment, contracting entities purchasing works, supplies and/or services through a central purchasing body may be deemed to have complied with this Directive.
- (24) In order to take account of the different circumstances obtaining in Member States, Member States should be allowed to choose whether contracting entities may use central purchasing bodies, dynamic purchasing systems or electronic auctions, as defined and regulated by this Directive.
- (25) There has to be an appropriate definition of the concept of special or exclusive rights. The consequence of the definition is that the fact that, for the purpose of constructing networks or port or airport facilities, an entity may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over the public highway will not in itself constitute exclusive or special rights within the meaning of this Directive. Nor does the fact that an entity supplies drinking water, electricity, gas or heat to a network which is itself operated by an entity enjoying special or exclusive rights granted by a competent authority of the Member State concerned in itself constitute an exclusive or special right within the meaning of this Directive. Nor may rights granted by a Member State to a limited number of undertakings on the basis of objective, proportionate and non-discriminatory criteria that allow any interested party fulfilling those criteria to enjoy those rights be considered special or exclusive rights.
- (26) It is appropriate for the contracting entities to apply common procurement procedures in respect of their activities relating to water and for such rules also to apply where contracting authorities within the meaning of this Directive award contracts in respect of their projects in the field of hydraulic engineering, irrigation, land drainage or the disposal and treatment of sewage. However, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area in which it will be used.
- (27) Certain entities providing bus transport services to the public were already excluded from the scope of Directive 93/38/EEC; such entities should also be excluded from the scope of this Directive. In order to forestall the existence of a multitude of specific arrangements applying to certain sectors only, the general procedure that permits the effects of opening up to competition to be taken into account should also apply to all entities providing bus transport services that are not excluded from the scope of Directive 93/38/EEC pursuant to Article 2(4) thereof.
- (28) Taking into account the further opening of Community postal services to competition and the fact that such services are provided through a network by contracting authorities, public undertakings and other undertakings, contracts awarded by contracting entities providing postal services should be subject to the rules of this Directive, including those in Article 30 thereof, which, safeguarding the application of the principles referred to in recital 9, create a framework for sound commercial practice and allow greater flexibility than is offered by Directive 2002/000/EC of the European Parliament and of the Council of ... on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽¹⁾. For a definition of the activities in question, it is necessary to take into account the definitions of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service ⁽²⁾.
- Whatever their legal status, entities providing postal services are not currently subject to the rules set out in Directive 93/38/EEC. The adjustment of contract award procedures to this Directive could therefore take longer to implement for such entities than for entities already subject to those rules which will merely have to adapt their procedures to the amendments made by this Directive. It should therefore be permissible to defer application of this Directive to accommodate the additional time required for this adjustment. Given the varying situations of such entities, Member States should have the option of providing for a transitional period for the application of this Directive to contracting entities operating in the postal services sector.
- (29) Contracts may be awarded for the purpose of meeting the requirements of several activities, possibly subject to different legal regimes. It should be clarified that the legal regime applicable to a single contract intended to cover several activities should be subject to the rules applicable to the activity for which it is principally intended. Determination of the activity for which the contract is principally intended may be based on an analysis of the requirements which the specific contract must meet, carried out by the contracting entity for the
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- ⁽¹⁾ See page 1 of this Official Journal.
- ⁽²⁾ OJ L 15, 21.1.1998, p. 14. Directive as last amended by Directive 2002/39/EC (OJ L 176, 5.7.2002, p. 21).

purposes of estimating the contract value and drawing up the tender documents. In certain cases, such as the purchase of a single piece of equipment for the pursuit of activities for which information allowing an estimation of the respective rates of use would be unavailable, it might be objectively impossible to determine for which activity the contract is principally intended. The rules applicable to such cases should be indicated.

- (30) Without prejudice to the international commitments of the Community, it is necessary to simplify the implementation of this Directive, particularly by simplifying the thresholds and by rendering applicable to all contracting entities, regardless of the sector in which they operate, the provisions regarding the information to be given to participants concerning decisions taken in relation to contract award procedures and the results thereof. Furthermore, in the context of Monetary Union such thresholds should be established in euro in such a way as to simplify the application of these provisions while at the same time ensuring compliance with the thresholds laid down in the Agreement, which are expressed in special drawing rights (SDR). In this context, provision should also be made for periodic reviews of the thresholds expressed in euro so as to adjust them, where necessary, in line with possible variations in the value of the euro in relation to the SDR. In addition, the thresholds applicable to design contests should be identical to those applicable to service contracts.
- (31) Provision should be made for cases in which it is impossible to apply the measures for coordinating procedures on grounds relating to State security or secrecy, or because specific rules on the awarding of contracts which derive from international agreements, relating to the stationing of troops, or which are specific to international organisations are applicable.
- (32) It is appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity the provision of such services, supply or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of links between these joint ventures and the contracting entities of which they are composed.
- (33) In the context of services, contracts for the acquisition or rental of immovable property or rights to such property have particular characteristics which make the application of procurement rules inappropriate.
- (34) Arbitration and conciliation services are usually provided by bodies or individuals designated or selected in a manner which cannot be governed by procurement rules.
- (35) In accordance with the Agreement, the financial services covered by this Directive do not include contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments; in particular, transactions by the contracting entities to raise money or capital are not covered.
- (36) This Directive should cover the provision of services only where based on contracts.
- (37) Pursuant to Article 163 of the Treaty, the encouragement of research and technological development is a means of strengthening the scientific and technological basis of Community industry, and the opening up of service contracts contributes to this end. This Directive should not cover the cofinancing of research and development programmes: research and development contracts other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity, are therefore not covered by this Directive.
- (38) (*) To forestall the proliferation of specific arrangements applicable to certain sectors only, the current special arrangements created by Article 3 of Directive 93/38/EEC and Article 12 of Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons⁽¹⁾ governing entities exploiting a geographical area for the purpose of exploring for or extracting oil, gas, coal or other solid fuels should be replaced by the general procedure allowing for exemption of sectors directly exposed to competition. It has to be ensured, however, that this will be without prejudice to Commission Decision 93/676/EC of 10 December 1993 establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the Netherlands an activity defined by Article 2(2)(b)(i) of Council Directive 90/531/EEC and that entities carrying on such an activity are not to be

(*) To be updated should other decisions pursuant to Article 3 be adopted before this Directive is adopted.

(1) OJ L 164, 30.6.1994, p. 3.

considered in the Netherlands as operating under special or exclusive rights within the meaning of Article 2(3)(b) of the Directive ⁽¹⁾, Commission Decision 97/367/EC of 30 May 1997 establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the United Kingdom an activity defined by Article 2(2)(b)(i) of Council Directive 93/38/EEC and that entities carrying on such an activity are not to be considered in the United Kingdom as operating under special or exclusive rights within the meaning of Article 2(3)(b) of the Directive ⁽²⁾ and Commission Decision 2002/205/EC of 4 March 2002 following a request by Austria applying for the special regime provided for in Article 3 of Directive 93/38/EEC ⁽³⁾.

- (39) This Directive should apply neither to contracts intended to permit the performance of an activity referred to by Articles 3 to 7 nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to introduce a procedure, applicable to all sectors covered by this Directive, that will enable the effects of current or future opening to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time-limits, uniform application of Community law in this area.
- (40) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. The implementation and application of appropriate Community legislation opening a given sector, or a part of it, will be considered to provide sufficient grounds for assuming there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. Where free access to a given market does not result from the implementation of appropriate Community legislation, it should be demonstrated that, *de jure* and *de facto*, such access is free. For this purpose, application by a Member State of a Directive, such as Directive 94/22/EC opening a given sector to competition, to another sector, such as the coal sector, is a circumstance to be taken into account for the purposes of Article 30.
- (41) The technical specifications drawn up by purchasers should allow public procurement to be opened up to competition. To this end, it should be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it should be possible to draw up the technical specifications in terms of functional performance and requirements and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on other equivalent arrangements which meet the requirements of the

contracting entities and are equivalent in terms of safety should be considered by the contracting entities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Contracting entities should be able to provide a reason for any decision that equivalence does not exist in a given case.

Contracting entities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics and/or specific environmental effects of product groups or services. They may, but are not obliged to, use appropriate specifications that are defined in eco-labels, such as the European Eco-label, (multi-) national eco-labels or any other eco-label provided that the requirements for the label are drawn up and adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and provided that the label is accessible and available to all interested parties.

- (42) In order to encourage the involvement of small and medium-sized undertakings in the public contracts procurement market, it is advisable to include provisions on subcontracting.
- (43) Contract performance conditions are compatible with the Directive provided that they are not directly or indirectly discriminatory and are indicated in the notice used to make the call for competition, or in the specifications. They may in particular be intended to encourage on-site vocational training, the employment of people experiencing particular difficulty in integration, the fight against unemployment or the protection of the environment. For example, mention may be made of the requirements — applicable during the performance of the contract — to recruit long-term job-seekers or to implement training measures for the unemployed or for young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation.
- (44) The laws, regulations and collective agreements, at both national and Community level, which are in force in the areas of social protection and health and safety apply during the performance of a contract, provided that such rules, and their application, comply with Community law. In cross-border situations where workers from one Member State provide services in another Member State for the purpose of performing a contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ⁽⁴⁾ lays down the minimum conditions which must be observed by the host country in respect of such posted workers.

⁽¹⁾ OJ L 316, 17.12.1993, p. 41.

⁽²⁾ OJ L 156, 13.6.1997, p. 55.

⁽³⁾ OJ L 68, 12.3.2002, p. 31.

⁽⁴⁾ OJ L 18, 21.1.1997, p. 1.

If national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a contract.

(45) In view of new developments in information and telecommunications technology, and the simplifications these can bring in terms of publicising contracts and the efficiency and transparency of procurement procedures, electronic means should be put on a par with traditional means of communication and information exchange. As far as possible, the means and technology chosen should be compatible with the technologies used in the other Member States.

(46) The use of electronic means leads to savings in time. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Community level. However, it is necessary to ensure that the cumulative effect of reductions of time-limits does not lead to excessively short time-limits.

(47) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures ⁽¹⁾ and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ⁽²⁾ should, in the context of this Directive, apply to the transmission of information by electronic means. The public procurement procedures and the rules applicable to service contests require a level of security and confidentiality higher than that required by those Directives. Accordingly, the devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects, should comply with specific additional requirements. Moreover, the existence of voluntary accreditation schemes 'can' constitute a favourable framework for enhancing the level of certification service provision for such devices.

(48) It is appropriate that the participants in an award procedure are informed of decisions to conclude a framework agreement or to award a contract or to abandon the procedure within time-limits that are sufficiently short so as not to render the lodging of requests for review impossible; this information should therefore be given as soon as possible and in general within 15 days following the decision.

(49) It should be clarified that contracting entities which establish selection criteria in an open procedure should do so in accordance with objective rules and criteria, just as the selection criteria in restricted and negotiated procedures should be objective. These objective rules and criteria, just as the selection criteria, do not necessarily imply weightings.

(50) It is important to take into account Court of Justice case-law in cases where an economic operator claims the economic, financial or technical capabilities of other entities, whatever the legal nature of the link between itself and those entities, in order to meet the selection criteria or, in the context of qualification systems, in support of its application for qualification. In the latter case, it is for the economic operator to prove that those resources will actually be available to it throughout the period of validity of the qualification. For the purposes of that qualification, a contracting entity may therefore determine the level of requirements to be met and in particular, for example where the operator lays claim to the financial standing of another entity, it may require that that entity be held liable, if necessary jointly and severally.

Qualification systems should be operated in accordance with objective rules and criteria, which, at the contracting entities' choice, may concern the capacities of the economic operators and/or the characteristics of the works, supplies or services covered by the system. For the purposes of qualification, contracting entities may conduct their own tests in order to evaluate the characteristics of the works, supplies or services concerned, in particular in terms of compatibility and safety.

(51) The relevant Community rules on mutual recognition of diplomas, certificates or other evidence of formal qualifications apply when evidence of a particular qualification is required for participation in a procurement procedure or a design contest.

(52) In appropriate cases, in which the nature of the works and/or services justifies applying environmental management measures or schemes during the performance of a contract, the application of such measures or schemes may be required. Environmental management schemes, whether or not they are registered under Community instruments such as Regulation (EC) No 761/2001 (EMAS) ⁽³⁾, can demonstrate that the economic operator has the technical capability to perform the contract. Moreover, a description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence.

⁽¹⁾ OJ L 13, 19.1.2000, p. 12.

⁽²⁾ OJ L 178, 17.7.2000, p. 1.

⁽³⁾ Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing a voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 114, 24.4.2001, p. 1).

- (53) The award of public contracts to economic operators who have participated in a criminal organisation or who have been found guilty of corruption or of fraud to the detriment of the financial interests of the European Communities or of money laundering should be avoided. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice whether or not to apply the exclusion criteria listed in Article 45(1) of Directive 2003/.../EC to these contracting entities. The obligation to apply Article 45(1) should therefore be limited only to contracting entities that are contracting authorities.

Where appropriate, the contracting entities should ask applicants for qualification, candidates or tenderers to supply relevant documents and, where they have doubts concerning the personal situation of these economic operators, they may seek the cooperation of the competent authorities of the Member State concerned. The exclusion of such economic operators should take place as soon as the contracting authority has knowledge of a judgment concerning such offences rendered in accordance with national law that has the force of *res judicata*.

If national law contains provisions to this effect, non-compliance with environmental legislation or legislation on unlawful agreements in contracts which has been the subject of a definitive judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.

- (54) The contract must be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in conditions of effective competition. As a result, it is appropriate to allow the application of two award criteria only: 'the lowest price' and 'the most economically advantageous tender'.

To ensure compliance with the principle of equal treatment in the award of contracts, it is appropriate to lay down an obligation — established by case-law — to ensure the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied to identify the most economically advantageous tender. It is therefore the responsibility of contracting entities to indicate the criteria for the award of the contract and the relative weighting given to each of those criteria in sufficient time for tenderers to be aware of them when preparing their tenders. Contracting entities may derogate from indicating the weighting of the criteria for the award of the contract in duly justified cases for which they must be able to give reasons, where the weighting cannot be established in advance, in particular on account of the complexity of the contract. In such cases, they must indicate the descending order of importance of the criteria.

Where the contracting entities choose to award a contract to the most economically advantageous tender, they should assess the tenders in order to determine which one offers the best value for money. In order to do this, they should determine the economic and quality criteria which, taken as a whole, must make it possible to determine the most economically advantageous tender for the contracting entity. The determination of these criteria depends on the object of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the object of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. In order to guarantee equal treatment, the criteria for the award of the contract must enable tenders to be compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, may enable the contracting entity to meet the needs of the public concerned, as expressed in the specifications of the contract. Under the same conditions, a contracting entity may use criteria aiming to meet social requirements, in particular in response to the needs — defined in the specifications of the contract — of particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong.

- (55) The award criteria should not affect the application of national provisions on the remuneration of certain services, such as the services provided by architects, engineers or lawyers.
- (56) Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time-limits ⁽¹⁾ should apply to the calculation of the time-limits contained in this Directive.
- (57) This Directive should be without prejudice to the existing international obligations of the Community or of the Member States and should not prejudice the application of the provisions of the Treaty, in particular Articles 81 and 86 thereof.
- (58) This Directive should not prejudice the time-limits set out in Annex XXIV, within which Member States are required to transpose and apply Directive 93/38/EEC.
- (59) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.

HAVE ADOPTED THIS DIRECTIVE:

⁽¹⁾ OJ L 124, 8.6.1971, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

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TITLE I

GENERAL PROVISIONS APPLICABLE TO CONTRACTS AND DESIGN CONTESTS

CHAPTER I

Basic terms

Article 1

Definitions

1. For the purposes of this Directive, the definitions set out in this Article shall apply.
2. (a) 'supply, works and service contracts' means contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in Article 2(2), and one or more contractors, suppliers, or service providers;
- (b) 'works contracts' means contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex XII or a work, or the realisation by

whatever means of a work corresponding to the requirements specified by the contracting entity. A 'work' means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function;

- (c) 'supply contracts' means contracts other than those referred to in (b) having as their object the purchase, lease, rental or hire-purchase, with or without the option to buy, of products.

A contract having as its object the supply of products, which also covers, as an incidental matter, the siting and installation operations shall be considered to be a 'supply contract';

- (d) 'service contracts' means contracts other than works or supply contracts having as their object the provision of services referred to in Annex XVII.

A contract having as its object both products and services within the meaning of Annex XVII shall be considered to be a 'service contract' if the value of the services in question exceeds that of the products covered by the contract.

A contract having as its object services within the meaning of Annex XVII and including activities within the meaning of Annex XII that are only incidental to the principal object of the contract shall be considered to be a service contract.

3. (a) 'Works concession' means a contract of the same type as a works contract except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the work or in that right together with payment;

(b) 'service concession' means a contract of the same type as a service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in that right together with payment.

4. 'Framework agreement' means an agreement between one or more contracting entities referred to in Article 2(2) and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.

5. 'Dynamic purchasing system' means a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting entity, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

6. 'Electronic auction' means a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which is held after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

7. 'Contractor', 'supplier' or 'service provider' means either a natural or a legal person, or a contracting entity within the meaning of Article 2(2)(a) or (b), or a group of such persons and/or entities which offers on the market, respectively, the execution of works and/or a work, products or services.

'Economic operator' shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interests of simplification.

'Tenderer' means an economic operator who submits a tender, and 'candidate' means one who has sought an invitation to take part in a restricted or negotiated procedure.

8. 'Central purchasing body' means a contracting authority within the meaning of Article 2(1)(a) or a contracting authority within the meaning of Article 1(9) of Directive 2003/.../EC which:

— acquires supplies and/or services intended for contracting entities; or

— awards public contracts or concludes framework agreements for works, supplies or services intended for contracting entities.

9. 'Open, restricted and negotiated procedures' means the procurement procedures applied by contracting entities, whereby:

(a) in the case of open procedures, any interested economic operator may submit a tender;

(b) in the case of restricted procedures, any economic operator may request to participate and only candidates invited by the contracting entity may submit a tender;

(c) in the case of negotiated procedures, the contracting entity consults the economic operators of its choice and negotiates the terms of the contract with one or more of these;

(d) 'design contests' means those procedures which enable the contracting entity to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after having been put out to competition with or without the award of prizes.

10. 'Written' or 'in writing' means any expression consisting of words or figures that can be read, reproduced and subsequently communicated. It may include information transmitted and stored by electronic means.

11. 'Electronic means' means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

12. 'Common Procurement Vocabulary (CPV)' means the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) ⁽¹⁾ while ensuring equivalence with the other existing nomenclatures.

⁽¹⁾ OJ L 340, 16.12.2002, p. 1.

In the event of varying interpretations of the scope of this Directive, owing to possible differences between the CPV and NACE nomenclatures listed in Annex XII or between the CPV and CPC (provisional version) nomenclatures listed in Annex XVII, the NACE or the CPC nomenclature respectively shall take precedence.

CHAPTER II

Definition of the activities and entities covered

Section 1

Entities

Article 2

Contracting entities

1. For the purposes of this Directive,

- (a) 'contracting authorities' means the State, regional or local authorities, bodies governed by public law, associations formed by one or several such authorities or one or several of such bodies governed by public law.

'A body governed by public law' means any body:

— established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character,

— having legal personality and

— financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;

- (b) 'public undertaking' means any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.

A dominant influence on the part of the contracting authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

— hold the majority of the undertaking's subscribed capital, or

— control the majority of the votes attaching to shares issued by the undertaking, or

— can appoint more than half of the undertaking's administrative, management or supervisory body.

2. This Directive shall apply to contracting entities:

- (a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 3 to 7;

- (b) which, when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 3 to 7, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

3. For the purposes of this Directive, 'special or exclusive rights' mean rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Articles 3 to 7 to one or more entities, and which substantially affects the ability of other entities to carry out such activity.

Section 2

Activities

Article 3

Gas, heat and electricity

1. As far as gas and heat are concerned, this Directive shall apply to the following activities:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat; or

- (b) the supply of gas or heat to such networks.

2. The supply of gas or heat to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where:

- (a) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraphs 1 or 3 of this Article or in Articles 4 to 7; and

- (b) supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover having regard to the average for the preceding three years, including the current year.

3. As far as electricity is concerned, this Directive shall apply to the following activities:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity; or
- (b) the supply of electricity to such networks.

4. The supply of electricity to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 3 where:

- (a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraphs 1 or 3 of this Article or in Articles 4 to 7; and
- (b) supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of energy, having regard to the average for the preceding three years, including the current year.

Article 4

Water

1. This Directive shall apply to the following activities:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water; or
- (b) the supply of drinking water to such networks.

2. This Directive shall also apply to contracts or design contests awarded or organised by entities which pursue an activity referred to in paragraph 1 and which:

- (a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations, or
- (b) are connected with the disposal or treatment of sewage.

3. The supply of drinking water to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where:

- (a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 3 to 7; and

- (b) supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, having regard to the average for the preceding three years, including the current year.

Article 5

Transport services

1. This Directive shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

2. This Directive shall not apply to entities providing bus transport services to the public which were excluded from the scope of Directive 93/38/EEC pursuant to Article 2(4) thereof.

Article 6

Postal services

1. This Directive shall apply to activities relating to the provision of reserved postal services, other postal services or, on the conditions set out in paragraph 2(d), ancillary postal services.

2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:

- (a) 'postal item' means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;
- (b) 'reserved postal services' means services consisting of the clearance, sorting, routing and delivery of postal items which are or may be reserved on the basis of Article 7 of Directive 97/67/EC;
- (c) 'other postal services' means services other than those listed in (b) consisting of the clearance, sorting, routing and delivery of postal items; and
- (d) 'ancillary postal services' means services provided in the following areas:
 - mail service management services (services both preceding and subsequent to despatch, such as 'mailroom management services');

- added-value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);
- services concerning postal items not included in point (a), such as direct mail bearing no address;
- financial services, as defined in category 6 of Annex XVII A and in Article 24(c) and including in particular postal money orders and postal giro transfers;
- philatelic services; and
- logistics services (services combining physical delivery and/or warehousing with other non-postal functions),

on condition that such services are provided by an entity which also provides postal services within the meaning of points (b) or (c) and provided that the conditions set out in Article 30(1) are not satisfied in respect of the services falling within those points.

Article 7

Exploration for, or extraction of, oil, gas, coal or other solid fuels, as well as ports and airports.

This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of:

- (a) exploring for or extracting oil, gas, coal or other solid fuels, or
- (b) the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

Article 8

Lists of contracting entities

The non-exhaustive lists of contracting entities within the meaning of this Directive are contained in Annexes I to X.

Member States shall notify the Commission periodically of any changes to their lists.

Article 9

Contracts covering several activities

1. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.

However, the choice between awarding a single contract and awarding a number of separate contracts may not be made with the objective of excluding it from the scope of this Directive or, where applicable, Directive 2003/.../EC.

2. If one of the activities for which the contract is intended is subject to this Directive and the other to the abovementioned Directive 2003/.../EC and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with the abovementioned Directive 2003/.../EC.

3. If one of the activities for which the contract is intended is subject to this Directive and the other is not subject to either this Directive or the abovementioned Directive 2003/.../EC, and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with this Directive.

CHAPTER III

General principles

Article 10

Principles of awarding contracts

Contracting entities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

TITLE II

RULES APPLICABLE TO CONTRACTS

CHAPTER I

General provisions

Article 11

Economic operators

1. Candidates or tenderers who, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on

the ground that, under the law of the Member State in which the contract is awarded, they would have been required to be either natural or legal persons.

However, in the case of service and works contracts as well as for supply contracts covering in addition services and/or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

2. Groups of economic operators may submit tenders or put themselves forward as candidates. In order to submit a tender or a request to participate, these groups may not be required by the contracting entities to assume a specific legal form; however, the group selected may be required to do so when it has been awarded the contract, to the extent to which this change is necessary for the satisfactory performance of the contract.

Article 12

Conditions relating to agreements concluded within the World Trade Organisation

For the purposes of the award of contracts by contracting entities, Member States shall apply in their relations conditions as favourable as those which they grant to economic operators of third countries in implementation of the Agreement. Member States shall, to this end, consult one another within the Advisory Committee for Public Contracts on the measures to be taken pursuant to the Agreement.

Article 13

Confidentiality

1. In the context of provision of technical specifications to interested economic operators, of qualification and selection of economic operators and of award of contracts, contracting entities may impose requirements with a view to protecting the confidential nature of information which they make available.

2. This Directive shall not limit the right of economic operators to require a contracting entity, in accordance with the national law to which it is subject, to respect the confidential nature of information which they make available; such information may include, in particular, technical or trade secrets and the confidential aspects of tenders.

Article 14

Framework agreements

1. Contracting entities may regard a framework agreement as a contract within the meaning of Article 1(2) and award it in accordance with this Directive.

2. Where contracting entities have awarded a framework agreement in accordance with this Directive, they may avail themselves of point (i) of Article 40(3) when awarding contracts based on that framework agreement.

3. Where a framework agreement has not been awarded in accordance with this Directive, contracting entities may not avail themselves of point (i) of Article 40(3).

4. Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.

Article 15

Dynamic purchasing systems

1. Member States may provide that contracting entities may use dynamic purchasing systems.

2. In order to set up a dynamic purchasing system, contracting entities shall follow the rules of the open procedure in all its phases up to the award of the contracts to be concluded under this system. All tenderers who satisfy the selection criteria and have submitted an indicative tender which complies with the specification and any possible additional documents shall be admitted to the system; indicative tenders may be improved at any time provided that they continue to comply with the specification. With a view to setting up the system and to the award of contracts under that system, contracting entities shall use solely electronic means in accordance with Article 48(2) to (5).

3. For the purposes of setting up the dynamic purchasing system, contracting entities shall:

- (a) publish a contract notice making it clear that a dynamic purchasing system is involved;
- (b) indicate in the specification, amongst other matters, the nature of the purchases envisaged under that system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;
- (c) offer by electronic means, on publication of the notice and until the system expires, unrestricted, direct and full access to the specification and to any additional documents and shall indicate in the notice the internet address at which such documents may be consulted.

4. Contracting entities shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting an indicative tender and of being admitted to the system under the conditions referred to in paragraph 2. They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime.

The contracting entities shall inform the tenderer referred to in the first subparagraph at the earliest possible opportunity of its admittance to the dynamic purchasing system or of the rejection of its indicative tender.

5. Each specific contract shall be the subject of an invitation to tender. Before issuing the invitation to tender, contracting entities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, in accordance with paragraph 4, within a time-limit that may not be less than 15 days from the date on which the simplified notice was sent. Contracting entities may not proceed with tendering until they have completed evaluation of all the indicative tenders received within that time-limit.

6. Contracting entities shall invite all tenderers admitted to the system to submit a tender for each specific contract to be awarded under the system. To that end, they shall set a time-limit for the submission of tenders.

They shall award the contract to the tenderer which submitted the best tender on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation referred to in the first subparagraph.

7. A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

Contracting entities may not resort to this system to prevent, restrict or distort competition.

No charges may be billed to the interested economic operators or to parties to the system.

CHAPTER II

Thresholds and exclusion provisions

Section 1

Thresholds

Article 16

Contract thresholds

Save where they are ruled out by the exclusions in Articles 19 to 26 or pursuant to Article 30, concerning the pursuit of the activity in question, this Directive shall apply to contracts which have a value excluding value-added tax (VAT) estimated to be no less than the following thresholds:

- (a) EUR 499 000 in the case of supply and service contracts;
- (b) EUR 6 242 000 in the case of works contracts.

Article 17

Methods of calculating the estimated value of contracts, framework agreements and dynamic purchasing systems

1. The calculation of the estimated value of a contract shall be based on the total amount payable, net of VAT, as estimated by the contracting entity. This calculation shall take account of the estimated total amount, including any form of option and any renewals of the contract.

Where the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.

2. Contracting entities may not circumvent this Directive by splitting works projects or proposed purchases of a certain quantity of supplies and/or services or by using special methods for calculating the estimated value of contracts.

3. With regard to framework agreements and dynamic purchasing systems, the estimated value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the agreement or system.

4. For the purposes of Article 16, contracting entities shall include in the estimated value of a works contract both the cost of the works and the value of any supplies or services necessary for the execution of the works, which they make available to the contractor.

5. The value of supplies or services which are not necessary for the execution of a particular works contract may not be added to the value of the works contract when to do so would result in removing the procurement of those supplies or services from the scope of this Directive.

6. (a) Where a proposed work or purchase of services may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 16, this Directive shall apply to the awarding of each lot.

However, the contracting entities may waive such application in respect of lots the estimated value of which, net of VAT, is less than EUR 80 000 for services or EUR 1 million for works, provided that the aggregate cost of those lots does not exceed 20 % of the aggregate value of the lots as a whole.

(b) Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying Article 16.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 16, this Directive shall apply to the awarding of each lot.

However, the contracting entities may waive such application in respect of lots, the estimated value of which, net of VAT, is less than EUR 80 000, provided that the aggregate cost of those lots does not exceed 20 % of the aggregate value of the lots as a whole.

7. In the case of supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:

- (a) either the total actual value of the successive contracts of the same type awarded during the preceding twelve months or financial year, if possible adjusted to take account of the changes in quantity or value which would occur in the course of the twelve months following the initial contract;
- (b) or the total estimated value of the successive contracts awarded during the twelve months following the first delivery, or during the financial year if that is longer than twelve months.

8. The basis for calculating the estimated value of a contract including both supplies and services shall be the total value of the supplies and services, regardless of their respective shares. The calculation shall include the value of the siting and installation operations.

9. With regard to supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

- (a) in the case of fixed-term contracts, if that term is less than or equal to twelve months, the total estimated value for the term of the contract or, if the term of the contract is greater than twelve months, the total value including the estimated residual value;
- (b) in the case of contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

10. For the purposes of calculating the estimated contract value of service contracts, the following amounts shall, where appropriate, be taken into account:

- (a) the premium payable, and other forms of remuneration, in the case of insurance services;
- (b) fees, commissions, interest and other modes of remuneration, in the case of banking and other financial services;

- (c) fees, commissions payable and other forms of remuneration, in the case of contracts involving design tasks.

11. In the case of service contracts which do not indicate a total price, the value to be used as the basis for calculating the estimated contract value shall be:

- (a) in the case of fixed-term contracts, if that term is less than or equal to 48 months: the total value for their full term;
- (b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.

Section 2

Contracts and concessions and contracts subject to special arrangements

SUBSECTION 1

Article 18

Works and service concessions

This Directive shall not apply to works and service concessions which are awarded by contracting entities carrying out one or more of the activities referred to in Articles 3 to 7, where those concessions are awarded for carrying out those activities.

SUBSECTION 2

Exclusions applicable to all contracting entities and to all types of contract

Article 19

Contracts awarded for purposes of resale or lease to third parties

1. This Directive shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.

2. The contracting entities shall notify the Commission at its request of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the *Official Journal of the European Union*, for information purposes, lists of the categories of products and activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information.

Article 20

Contracts awarded for purposes other than the pursuit of an activity covered or for the pursuit of such an activity in a third country

1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 3 to 7 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Community.

2. The contracting entities shall notify the Commission at its request of any activities which they regard as excluded under paragraph 1. The Commission may periodically publish in the *Official Journal of the European Union* for information purposes, lists of the categories of activities which it considers to be covered by this exclusion. In so doing, the Commission shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.

Article 21

Contracts which are secret or require particular security measures

This Directive shall not apply to contracts when they are declared to be secret by a Member State, when their execution must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned, or when the protection of the basic security interests of that State so requires.

Article 22

Contracts awarded pursuant to international rules

This Directive shall not apply to contracts governed by different procedural rules and awarded:

- (a) pursuant to an international agreement concluded in accordance with the Treaty between a Member State and one or more third countries and covering supplies, works, services or design contests intended for the joint implementation or exploitation of a project by the signatory States; all agreements shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 68;
- (b) pursuant to a concluded international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- (c) pursuant to the particular procedure of an international organisation.

Article 23

Contracts awarded to an affiliated undertaking, to a joint venture or to a contracting entity forming part of a joint venture

1. For the purposes of this Article, 'affiliated undertaking' means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 44(2)(g) of the Treaty on consolidated accounts ⁽¹⁾ ⁽²⁾, or, in the case of entities not subject to that Directive, any undertaking over which the contracting entity may exercise, directly or indirectly, a dominant influence within the meaning of Article 2(1)(b) or which may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

2. Provided that the conditions in paragraph 3 are met, this Directive shall not apply to contracts awarded:

- (a) by a contracting entity to an affiliated undertaking, or
 - (b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 3 to 7, to an undertaking which is affiliated with one of these contracting entities.
3. Paragraph 2 shall apply:
- (a) to service contracts provided that at least 80 % of the average turnover of the affiliated undertaking with respect to services for the preceding three years derives from the provision of such services to undertakings with which it is affiliated;
 - (b) to supplies contracts provided that at least 80 % of the average turnover of the affiliated undertaking with respect to supplies for the preceding three years derives from the provision of such supplies to undertakings with which it is affiliated;
 - (c) to works contracts provided that at least 80 % of the average turnover of the affiliated undertaking with respect to works for the preceding three years derives from the provision of such works to undertakings with which it is affiliated.

⁽¹⁾ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

⁽²⁾ The title of the Directive has been adjusted to take account of the renumbering of the Articles of the Treaty in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 54(3)(g) of the Treaty.

When, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in points (a), (b) or (c) is credible, particularly by means of business projections.

Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

4. This Directive shall not apply to contracts awarded:

- (a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 3 to 7, to one of these contracting entities, or
- (b) by a contracting entity to such a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period.

5. The contracting entities shall notify to the Commission, at its request, the following information regarding the application of paragraphs 2, 3 and 4:

- (a) the names of the undertakings or joint ventures concerned,
- (b) the nature and value of the contracts involved,
- (c) such proof as may be deemed necessary by the Commission that the relationship between the undertaking or joint venture to which the contracts are awarded and the contracting entity complies with the requirements of this Article.

SUBSECTION 3

Exclusions applicable to all contracting entities, but to service contracts only

Article 24

Contracts relating to certain services excluded from the scope of this Directive

This Directive shall not apply to service contracts for:

- (a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;
- (b) arbitration and conciliation services;
- (c) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting entities to raise money or capital;
- (d) employment contracts;
- (e) research and development services other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity.

Article 25

Service contracts awarded on the basis of an exclusive right

This Directive shall not apply to service contracts awarded to an entity which is itself a contracting authority within the meaning of Article 2(1)(a) or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

SUBSECTION 4

Exclusions applicable to certain contracting entities only

Article 26

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

This Directive shall not apply:

- (a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities referred to in Article 4(1).
- (b) to contracts for the supply of energy or of fuels for the production of energy, if awarded by contracting entities engaged in an activity referred to in Article 3(1), Article 3(3) or Article 7(a).

SUBSECTION 5

Contracts subject to special arrangements, provisions concerning central purchasing bodies and the general procedure in case of direct exposure to competition

Article 27 (*)

Contracts subject to special arrangements

Without prejudice to Article 30 the Kingdom of the Netherlands, the United Kingdom and the Republic of Austria shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decisions 93/676/EEC ⁽¹⁾, 97/367/EC ⁽²⁾ and 2002/205/EC ⁽³⁾:

- (a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions;
- (b) communicates to the Commission, under the conditions defined in Commission Decision 93/327/EEC ⁽⁴⁾, information relating to the award of contracts.

Article 28

Reserved contracts

Member States may reserve the right to participate in contract award procedures to sheltered workshops or provide for such contracts to be executed in the context of sheltered employment programmes where most of the employees concerned are handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions.

The notice used to make the call for competition shall make reference to this Article.

Article 29

Contracts and framework agreements awarded by central purchasing bodies

- 1. Member States may prescribe that contracting entities may purchase works, supplies and/or services from or through a central purchasing body.
- 2. Contracting entities which purchase works, supplies and/or services from or through a central purchasing body in

(*) To be updated should other decisions pursuant to Article 3 be adopted before this Directive is adopted.

⁽¹⁾ OJ L 316, 17.12.1993, p. 41.

⁽²⁾ OJ L 156, 13.6.1997, p. 55.

⁽³⁾ OJ L 68, 12.3.2002, p. 31.

⁽⁴⁾ OJ L 129, 27.5.1993, p. 25.

the cases set out in Article 1(8) shall be deemed to have complied with this Directive insofar as the central purchasing body has complied with it or, where appropriate, with Directive 2003/.../EC.

Article 30

Procedure for establishing whether a given activity is directly exposed to competition

1. Contracts intended to enable an activity mentioned in Articles 3 to 7 to be carried out shall not be subject to this Directive if, in the Member State in which the activity is performed, it is directly exposed to competition on markets to which access is not restricted.

2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the Treaty provisions on competition, such as the characteristics of the goods or services concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or services in question.

3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the Member State has implemented and applied the provisions of Community legislation mentioned in Annex XI.

If free access to a given market cannot be presumed on the basis of the first subparagraph, it shall be demonstrated that access to the market in question is free *de facto* and *de jure*.

4. When a Member State considers that, in compliance with paragraphs 2 and 3, paragraph 1 is applicable to a given activity, it shall notify the Commission and inform it of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in paragraph 1, where appropriate together with the position adopted by an independent national authority that is competent in relation to the activity concerned.

Contracts intended to enable the activity concerned to be carried out shall no longer be subject to this Directive if the Commission:

- has adopted a Decision establishing the applicability of paragraph 1 in accordance with paragraph 6 and within the period it provides for, or
- has not adopted a Decision concerning such applicability within that period.

However, where free access to a given market is presumed on the basis of the first subparagraph of paragraph 3, and where an independent national authority that is competent in the activity concerned has established the applicability of paragraph 1, contracts intended to enable the activity concerned to be carried out shall no longer be subject to this Directive if the Commission has not established the inapplicability of paragraph 1 by a Decision adopted in conformity with paragraph 6 and within the period it provides for.

5. When the legislation of the Member State concerned provides for it, the contracting entities may ask the Commission to establish the applicability of paragraph 1 to a given activity by a Decision in conformity with paragraph 6. In such a case, the Commission shall immediately inform the Member State concerned.

That Member State shall, taking account of paragraphs 2 and 3, inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in paragraph 1, where appropriate together with the position adopted by an independent national authority that is competent in the activity concerned.

The Commission may also begin the procedure for adoption of a Decision establishing the applicability of paragraph 1 to a given activity on its own initiative. In such a case, the Commission shall immediately inform the Member State concerned.

If, at the end of the period laid down in paragraph 6, the Commission has not adopted a Decision concerning the applicability of paragraph 1 to a given activity, paragraph 1 shall be deemed to be applicable.

6. For the adoption of a Decision under this Article, in accordance with the procedure under Article 68(2), the Commission shall be allowed a period of three months commencing on the first working day following the date on which it receives the notification or the request. However, this period may be extended once by a maximum of three months in duly justified cases, in particular if the information contained in the notification or the request or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. This extension shall be limited to one month where an independent national authority that is competent in the activity concerned has established the applicability of paragraph 1 in the cases provided for under the third subparagraph of paragraph 4.

When an activity in a given Member State is already the subject of a procedure under this Article, further requests concerning the same activity in the same Member State before the expiry of the period opened in respect of the first request shall not be

considered as new procedures and shall be treated in the context of the first request.

The Commission shall adopt detailed rules for applying paragraphs 4, 5 and 6 in accordance with the procedure under Article 68(2).

These rules shall include at least:

- (a) the publication in the Official Journal, for information, of the date on which the three-month period referred to in the first subparagraph begins, and, in case this period is prolonged, the date of prolongation and the period by which it is prolonged;
- (b) publication of the possible applicability of paragraph 1 in accordance with the second or third subparagraph of paragraph 4 or in accordance with the fourth subparagraph of paragraph 5; and
- (c) the arrangements for forwarding positions adopted by an independent authority that is competent in the activity concerned, regarding questions relevant to paragraphs 1 and 2.

CHAPTER III

Rules applicable to service contracts

Article 31

Service contracts listed in Annex XVII A

Contracts which have as their object services listed in Annex XVII A shall be awarded in accordance with Articles 34 to 59.

Article 32

Service contracts listed in Annex XVII B

Contracts which have as their object services listed in Annex XVII B shall be governed only by Articles 34 and 43.

Article 33

Mixed contracts including services listed in Annexes XVII A and services listed in Annex XVII B

Contracts which have as their subject matter services listed both in Annex XVII A and in Annex XVII B shall be awarded in accordance with the provisions of Articles 34 to 59 where the value of the services listed in Annex XVII A is greater than the value of the services listed in Annex XVII B. In other cases, contracts shall be governed by Articles 34 and 43.

CHAPTER IV

Specific rules governing specifications and contract documents*Article 34***Technical specifications**

1. The technical specifications as defined in point 1 of Annex XXI shall be set out in the contract documentation, such as contract notices, contract documents or additional documents.

2. Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the opening of public procurement to competition.

3. Without prejudice to legally binding national technical rules, to the extent that they are compatible with Community law, the technical specifications shall be formulated:

- (a) either by reference to technical specifications defined in Annex XXI and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when these do not exist — national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied by the words 'or equivalent';
- (b) or in terms of performance or functional requirements; the latter may include environmental characteristics. However, such parameters must be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;
- (c) or in terms of performance or functional requirements as mentioned in subparagraph (b), with reference to the specifications mentioned in subparagraph (a) as a means of presuming conformity with such performance or functional requirements;
- (d) or by referring to the specifications mentioned in subparagraph (a) for certain characteristics, and by referring to the performance or functional requirements mentioned in subparagraph (b) for other characteristics.

4. Where a contracting entity makes use of the option of referring to the specifications mentioned in paragraph 3(a), it cannot reject a tender on the ground that the products and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in his tender to the satisfaction of the contracting entity, by whatever appropriate means, that the solutions which he proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

An appropriate means might be constituted by a technical dossier from the manufacturer or a test report from a recognised body.

5. Where a contracting entity uses the option provided for in paragraph 3 of laying down performance or functional requirements, it may not reject a tender for products, services or works which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard, or a technical reference system established by a European standardisation body, if these specifications address the performance or functional requirements which it has laid down.

In his tender, the tenderer shall prove to the satisfaction of the contracting entity and by any appropriate means that the product, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.

An appropriate means might be constituted by a technical dossier from the manufacturer or a test report from a recognised body.

6. Where contracting entities lay down environmental characteristics in terms of performance or functional requirements as referred to in paragraph 3(b) they may use the detailed specifications, or, if necessary, parts thereof, as defined by European or (multi-) national eco-labels, or by any other eco-label, provided that:

- those specifications are appropriate to define the characteristics of the supplies or services that are the object of the contract,
- the requirements for the label are drawn up on the basis of scientific information,
- the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and
- they are accessible to all interested parties.

The contracting entities may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents; they must accept any other appropriate means of proof, such as a technical dossier from the manufacturer or a test report from a recognised body.

7. 'Recognised bodies', within the meaning of this Article, are test and calibration laboratories, and certification and inspection bodies which comply with applicable European standards.

Contracting entities shall accept certificates from recognised bodies established in other Member States.

8. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraphs 3 and 4 is not possible; such reference shall be accompanied by the words 'or equivalent'.

Article 35

Communication of technical specifications

1. Contracting entities shall make available on request to economic operators interested in obtaining a contract the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts covered by periodic indicative notices within the meaning of Article 41(1).

2. Where the technical specifications are based on documents available to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

Article 36

Variants

1. Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting entities may take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

The contracting entities shall indicate in the specifications whether or not they authorise variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation.

2. In the procedures for awarding supply or service contracts, contracting entities which have authorised variants pursuant to paragraph 1 may not reject a variant on the sole ground that it would, if successful, lead either to a service contract rather than a supply contract, or to a supply contract rather than a service contract.

Article 37

Subcontracting

In the contract documents, the contracting entity may ask, or may be required by a Member State to ask, the tenderer to indicate in his tender any share of the contract he intends to subcontract to third parties and any proposed subcontractors.

This indication shall be without prejudice to the question of the principal economic operator's liability.

Article 38

Conditions for performance of contracts

Contracting entities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the notice used as a means of calling for competition or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.

Article 39

Obligations relating to taxes, environmental protection, employment protection provisions and working conditions

1. The contracting entity may state in the contract documents, or be required by a Member State so to do, from which body or bodies a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to protection provisions and to the working conditions which are in force in the Member State, region or locality in which the services are to be provided and which shall be applicable to the works carried out on site or to the services provided during the performance of the contract.

2. The contracting entity which supplies the information referred to in paragraph 1 shall request the tenderers or candidates in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the service is to be provided.

The first subparagraph shall be without prejudice to the application of Article 57.

CHAPTER V

Procedures

Article 40

Use of open, restricted and negotiated procedures

1. When awarding supply, works or service contracts, contracting entities shall apply the procedures adjusted for the purposes of this Directive.

2. Contracting entities may choose any of the procedures described in Article 1(9)(a), (b) or (c), provided that, subject to paragraph 3, a call for competition has been made in accordance with Article 42.

3. Contracting entities may use a procedure without prior call for competition in the following cases:

- (a) when no tenders or no suitable tenders or no applications have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of contract are not substantially altered;
- (b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;
- (c) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be executed only by a particular economic operator;
- (d) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting entities, the time-limits laid down for open procedures, restricted procedures and negotiated procedures with a prior call for competition cannot be adhered to;
- (e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- (f) for additional works or services which were not included in the project initially awarded or in the contract first concluded but have, through unforeseen circumstances, become necessary to the performance of the contract, on condition that the award is made to the contractor or service provider executing the original contract:
 - when such additional works or services cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities; or
 - when such additional works or services, although separable from the performance of the original contract, are strictly necessary to its later stages;
- (g) in the case of works contracts, for new works consisting in the repetition of similar works assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded after a call for competition; as soon as the first project is put up for tender, notice shall be given that this procedure might be

adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting entities when they apply the provisions of Articles 16 and 17;

- (h) for supplies quoted and purchased on a commodity market;
- (i) for contracts to be awarded on the basis of a framework agreement, provided that the condition referred to in Article 14(2) is fulfilled;
- (j) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;
- (k) for purchases of supplies under particularly advantageous conditions from either a supplier definitively winding up his business activities or the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure under national laws or regulations;
- (l) when the service contract concerned is part of the follow-up to a design contest organised in accordance with the provisions of this Directive and shall, in accordance with the relevant rules, be awarded to the winner or to one of the winners of that contest; in the latter case, all the winners shall be invited to participate in the negotiations.

CHAPTER VI

Rules on publication and transparency

Section 1

Publication of notices

Article 41

Periodic indicative notices and notices on the existence of a system of qualification

1. Contracting entities shall make known, at least once a year, by means of a periodic indicative notice as referred to in Annex XV A, published by the Commission or by themselves on their 'buyer profile', as described in point 2(b) of Annex XX:

- (a) where supplies are concerned, the estimated total value of the contracts or the framework agreements by product area which they intend to award over the following 12 months, where the total estimated value, taking into account the provisions of Articles 16 and 17, is equal to or greater than EUR 750 000.

The product area shall be established by the contracting entities by reference to the CPV nomenclature;

- (b) where services are concerned, the estimated total value of the contracts or the framework agreements in each of the categories of services listed in Annex XVII A which they intend to award over the following 12 months, where such estimated total value, taking into account the provisions of Articles 16 and 17, is equal to or greater than EUR 750 000;
- (c) where works are concerned, the essential characteristics of the works contracts or the framework agreements which they intend to award over the 12 coming months, whose estimated value is equal to or greater than the threshold specified in Article 16, taking into account the provisions of Article 17.

The notices referred to in (a) and (b) shall be sent to the Commission or published on the buyer profile as soon as possible after the beginning of the budgetary year.

The notice referred to in (c) shall be sent to the Commission or published on the buyer profile as soon as possible after the decision approving the planning of the works contracts or the framework agreements that the contracting entities intend to award.

Contracting entities which publish the periodic indicative notice on their buyer profiles shall transmit to the Commission, electronically, a notice of the publication of the periodic indicative notice on a buyer profile, in accordance with the format and modalities for the electronic transmission of notices indicated in point 3 of Annex XX.

The publication of the notices referred to in (a), (b) and (c) shall be compulsory only where the contracting entities take the option of reducing the time-limits for the receipt of tenders as laid down in Article 45(4).

This paragraph shall not apply to procedures without prior call for competition.

2. Contracting entities may, in particular, publish or arrange for the Commission to publish periodic indicative notices relating to major projects without repeating information previously included in a periodic indicative notice, provided that it is clearly pointed out that these notices are additional ones.

3. Where contracting entities choose to set up a qualification system in accordance with Article 53, the system shall be the subject of a notice as referred to in Annex XIV, indicating the purpose of the qualification system and how to have access to the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.

Article 42

Notices used as a means of calling for competition

1. In the case of supply, works or service contracts, the call for competition may be made:
 - (a) by means of a periodic indicative notice as referred to in Annex XV A; or
 - (b) by means of a notice on the existence of a qualification system as referred to in Annex XIV; or
 - (c) by means of a contract notice as referred to in Annex XIII A, B or C.
2. In the case of dynamic purchasing systems, the system's call for competition shall be by contract notice as referred to in paragraph 1(c), whereas calls for competition for contracts based on such systems shall be by simplified contract notice as referred to in Annex XIII D.
3. When a call for competition is made by means of a periodic indicative notice, the notice shall:
 - (a) refer specifically to the supplies, works or services which will be the subject of the contract to be awarded;
 - (b) indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a notice of a call for competition and invite interested economic operators to express their interest in writing; and
 - (c) have been published in accordance with Annex XX not more than 12 months prior to the date on which the invitation referred to in Article 47(5) is sent. Moreover, the contracting entity shall meet the time-limits laid down in Article 45.

Article 43

Contract award notices

1. Contracting entities which have awarded a contract or a framework agreement shall, within two months of the award of the contract or framework agreement, send a contract award notice as referred to in Annex XVI under conditions to be laid down by the Commission in accordance with the procedure referred to in Article 68(2).

In the case of contracts awarded under a framework agreement within the meaning of Article 14(2), the contracting entities shall not be bound to send a notice of the results of the award procedure for each contract based on that agreement.

Contracting entities shall send a contract award notice based on a dynamic purchasing system within two months after the award of each contract. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within two months after the end of each quarter.

2. The information provided in accordance with Annex XVI and intended for publication shall be published in accordance with Annex XX. In this connection, the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information, concerning the number of tenders received, the identity of economic operators, or prices.

3. Where contracting entities award a research-and-development service contract ('R & D contract') by way of a procedure without a call for competition in accordance with Article 40(3)(b), they may limit to the reference 'research and development services' the information to be provided in accordance with Annex XVI concerning the nature and quantity of the services provided.

Where contracting entities award an R & D contract which cannot be awarded by way of a procedure without a call for competition in accordance with Article 40(3)(b), they may, on grounds of commercial confidentiality, limit the information to be provided in accordance with Annex XVI concerning the nature and quantity of the services supplied.

In such cases, contracting entities shall ensure that any information published under this paragraph is no less detailed than that contained in the notice of the call for competition published in accordance with Article 42(1).

If they use a qualification system, contracting entities shall ensure in such cases that such information is no less detailed than the category referred to in the list of qualified service providers drawn up in accordance with Article 53(7).

4. In the case of contracts awarded for services listed in Annex XVII B, the contracting entities shall indicate in the notice whether they agree to publication.

5. Information provided in accordance with Annex XVI and marked as not being intended for publication shall be published only in simplified form and in accordance with Annex XX for statistical purposes.

Article 44

Form and manner of publication of notices

1. The notices shall include the information mentioned in Annexes XIII, XIV, XV A, XV B and XVI and, where appropriate, any other information deemed useful by the contracting entity in the format of standard forms adopted by the Commission in accordance with the procedure referred to in Article 68(2).

2. Notices sent by contracting entities to the Commission shall be sent either by electronic means in accordance with the format and modalities of transmission indicated in point 3 of Annex XX, or by other means.

The notices referred to in Articles 41, 42 and 43 shall be published in accordance with the technical characteristics for publication set out in point 1(a) and (b) of Annex XX.

3. Notices drawn up and transmitted by electronic means in accordance with the format and modalities of transmission indicated in point 3 of Annex XX, shall be published no later than five days after they are sent.

Notices which are not transmitted by electronic means in accordance with the format and modalities of transmission indicated in point 3 of Annex XX shall be published not later than 12 days after they are transmitted. However, in exceptional cases, the contract notices referred to in Article 42(1)(c) shall be published within five days in response to a request by the contracting entity, provided that the notice has been sent by fax.

4. Contract notices shall be published in full in an official language of the Community as chosen by the contracting entity, this original language version constituting the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages.

The costs of publication of notices by the Commission shall be borne by the Community.

5. Notices and their contents may not be published at national level before the date on which they are sent to the Commission. (take it back!!)

Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission or published on a buyer profile in accordance with the first subparagraph of Article 41(1), but shall mention the date of dispatch of the notice to the Commission or its publication on the buyer profile.

Periodic indicative notices may not be published on a buyer profile before the dispatch to the Commission of the notice of their publication in that form; they shall mention the date of that dispatch.

6. Contracting entities shall ensure that they are able to supply proof of the dates on which notices are dispatched.

7. The Commission shall give the contracting entity confirmation of the publication of the information sent, mentioning the date of that publication. Such confirmation shall constitute proof of publication.

8. Contracting entities may publish in accordance with paragraphs 1 to 7 contract notices which are not subject to the publication requirement laid down in this Directive.

Section 2

Time-limits

Article 45

Time-limits for receipt of requests to participate and for receipt of tenders

1. When fixing the time-limits for requests to participate and the receipt of tenders, contracting entities shall take particular account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time-limits set by this Article.

2. In the case of open procedures, the minimum time-limit for receipt of tenders shall be 52 days from the date on which the contract notice was sent.

3. In restricted procedures and in negotiated procedures with a prior call for competition, the following arrangements shall apply:

- (a) the time-limit for receipt of requests to participate, in response to a notice published under Article 42(1)(c), or in response to an invitation by the contracting entities under Article 47(5), shall, as a general rule, be fixed at no less than 37 days from the date on which the notice or invitation was sent and may in no case be less than 22 days if the notice is sent for publication by means other than electronic means or fax, and at no less than 15 days if the notice is transmitted by such means;
- (b) the time-limit for receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;
- (c) where it is not possible to reach agreement on the time-limit for receipt of tenders, the contracting entity shall fix a time-limit which shall, as a general rule, be at least 24 days and shall in no case be less than 10 days from the date of the invitation to tender.

4. If the contracting entities have published a periodic indicative notice as referred to in Article 41(1) in accordance with Annex XX, the minimum time-limit for receipt of tenders in open procedures shall, as a general rule, not be less than 36 days, but shall in no case be less than 22 days from the date on which the notice was sent.

These reduced time-limits are permitted, provided that the periodic indicative notice has, besides the information required by Annex XV A, part I, included all the information required by Annex XV A, part II, insofar as the latter information is available at the time the notice is published and that the notice has been sent for publication between no less than 52 days and not longer than 12 months before the date on which the contract notice referred to in Article 42(1)(c) was sent.

5. Where notices are drawn up and transmitted by electronic means in accordance with the format and modalities of transmission indicated in point 3 of Annex XX the time-limits for receipt of requests to participate in restricted and negotiated procedures, and for receipt of tenders in open procedures, may be reduced by seven days.

6. Except in the case of a time-limit set by mutual agreement in accordance with paragraph 3(b), time-limits for receipt of tenders in open, restricted and negotiated procedures may be further reduced by five days where the contracting entity offers unrestricted and full direct access to the contract documents and any supplementary documents by electronic means from the date on which the notice used as a means of calling for competition is published, in accordance with Annex XX. The notice should specify the internet address at which this documentation is accessible.

7. In open procedures, the cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case result in a time-limit for receipt of tenders of less than 15 days from the date on which the contract notice was sent.

However, if the contract notice is not transmitted by fax or electronic means, the cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case result in a time-limit for receipt of tenders in an open procedure of less than 22 days from the date on which the contract notice was transmitted.

8. The cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case result in a time-limit for receipt of requests to participate, in response to a notice published under Article 42(1)(c), or in response to an invitation by the contracting entities under Article 47(5), of less than 15 days from the date on which the contract notice or invitation was sent.

In restricted and negotiated procedures, the cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case, except that of a time-limit set by mutual agreement in accordance with paragraph 3(b), result in a time-limit for receipt of tenders of less than 10 days from the date of the invitation to tender.

9. If, for whatever reason, the contract documents and the supporting documents or additional information, although requested in good time, have not been supplied within the time-limits set in Articles 46 and 47, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time-limits for receipt of tenders shall be extended accordingly, except in the case of a time-limit set by mutual agreement in accordance with paragraph 3(b), so that all economic operators concerned may be aware of all the information needed for the preparation of a tender.

10. A summary table of the time-limits laid down in this Article is given in Annex XXII.

Article 46

Open procedures: specifications, additional documents and information

1. In open procedures, where contracting entities do not offer unrestricted and full direct access to the specifications and any supporting documents by electronic means in accordance with Article 45(6), the specifications and supporting documents shall be sent to economic operators within six days of receipt of the request, provided that the request was made in good time before the time-limit for submission of tenders.

2. Provided that it has been requested in good time, additional information relating to the specifications shall be supplied by the contracting entities or competent departments not later than six days before the time-limit fixed for receipt of tenders.

Article 47

Invitations to submit a tender or to negotiate

1. In restricted procedures and negotiated procedures, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate. The invitation to the candidates shall include:

- either a copy of the specifications and any supporting documents, or
- a reference to accessing the specifications and the supporting documents indicated in the first indent, when they are made directly available by electronic means in accordance with Article 45(6).

2. Where the specifications and/or any supporting documents are held by an entity other than the contracting entity responsible for the award procedure, the invitation shall state the address from which those specifications and documents may be requested and, if appropriate, the closing date for requesting such documents, the sum payable for obtaining them and any payment procedures. The competent department shall send that documentation to the economic operator immediately upon receipt of the request.

3. The additional information on the specifications or the supporting documents shall be sent by the contracting entity or the competent department not less than six days before the final date fixed for receipt of tenders, provided that they were requested in good time.

4. In addition, the invitation shall include at least the following:

- (a) where appropriate, the time-limit for requesting additional documents, as well as the amount and terms of payment of any sum to be paid for such documents;

(b) the final date for receipt of tenders, the address to which they are to be sent, and the language or languages in which they are to be drawn up;

(c) a reference to any published contract notice;

(d) an indication of any documents to be attached;

(e) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition;

(f) the relative weighting of the contract award criteria or, where appropriate, the order of importance of such criteria, if this information is not given in the contract notice, the notice on the existence of a qualification system or the specifications.

5. When a call for competition is made by means of a periodic indicative notice, contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

This invitation shall include at least the following information:

(a) nature and quantity, including all options concerning complementary contracts and, if possible, the estimated time available for exercising these options for renewable contracts, the nature and quantity and, if possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;

(b) type of procedure: restricted or negotiated;

(c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;

(d) the address and closing date for the submission of requests for tender documents and the language or languages in which they are to be drawn up;

(e) the address of the entity which is to award the contract and supply the information necessary for obtaining the specifications and other documents;

(f) economic and technical conditions, financial guarantees and information required from economic operators;

(g) the amount and payment procedures for any sum payable for obtaining tender documents;

(h) form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of these; and

- (i) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, if this information is not given in the indicative notice or the specifications or in the invitation to tender or to negotiate.

Section 3

Communication and information

Article 48

Rules applicable to communication

1. All communication and information exchange referred to in this Title may be carried out by post, by fax, by electronic means in accordance with paragraphs 4 and 5, by telephone in the cases and circumstances referred to in paragraph 6, or by a combination of those means, according to the choice of the contracting entity.

2. The means of communication chosen shall be generally available and thus not restrict economic operators' access to the tendering procedure.

3. Communication and the exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the contracting entities examine the content of tenders and requests to participate only after the time-limit set for submitting them has expired.

4. The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use.

5. The following rules shall apply to devices for the electronic receipt of tenders and requests to participate:

- (a) information regarding the specifications necessary for the electronic submission of tenders and requests to participate, including encryption, shall be available to interested parties. Moreover, the devices for the electronic receipt of tenders and requests to participate shall conform to the requirements of Annex XXIII;
- (b) Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for these devices;
- (c) tenderers or candidates shall undertake to submit, before expiry of the time-limit laid down for submission of tenders or requests to participate, the documents, certificates and declarations mentioned in Articles 52(2), 52(3), 53 and 54 if they do not exist in electronic format.

6. The following rules shall apply to the transmission of requests to participate:

- (a) requests to participate in procedures for the award of contracts may be made in writing or by telephone;

- (b) where requests to participate are made by telephone, a written confirmation must be sent before expiry of the time-limit set for their receipt;

- (c) contracting entities may require that requests for participation made by fax should be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the time-limit for sending confirmation by post or electronic means, should be stated by the contracting entity in the notice used as a means of calling for competition or in the invitation referred to in Article 47(5).

Article 49

Information to applicants for qualification, candidates and tenderers

1. Contracting entities shall as soon as possible inform the economic operators involved of decisions reached concerning the conclusion of a framework agreement, the award of the contract, or admission to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing system; this information shall be provided in writing if the contracting entities are requested to do so.

2. Contracting entities shall, as soon as possible, inform any unsuccessful candidate or tenderer so requesting of the reasons for the rejection of his application or his tender and shall inform any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer or the parties to the framework agreement. The relevant time-limits may under no circumstances exceed 15 days from receipt of the written enquiry.

However, contracting entities may decide that certain information on the contract award or the conclusion of the framework agreement or on admission to a dynamic purchasing system, referred to in the first subparagraph, is to be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.

3. Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a reasonable period.

If the decision will take longer than six months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.

4. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal as soon as possible and under no circumstances more than 15 days later than the date of the decision. The reasons shall be based on the criteria for qualification referred to in Article 53(2).

5. Contracting entities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in Article 53(2). The intention to bring qualification to an end shall be notified in writing to the economic operator beforehand, at least 15 days before the date on which qualification is due to end, together with the reason or reasons justifying the proposed action.

Article 50

Information to be stored concerning awards

1. Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:

- (a) the qualification and selection of economic operators and award of contracts;
- (b) the use of procedures without a prior call for competition by virtue of Article 40(3);
- (c) the non-application of Chapters III to VI of this Title by virtue of the derogations provided for in Chapter II of Title I and in Chapter II of this Title.

Contracting entities shall take appropriate steps to document the progress of award procedures conducted by electronic means.

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if the latter so requests.

CHAPTER VII

Conduct of the procedure

Article 51

General provisions

1. For the purpose of selecting participants in their award procedures:

- (a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with Article 54(1), (2) or (4) shall exclude economic operators which comply with such rules and meet such criteria;

(b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to Article 54;

(c) in restricted procedures and in negotiated procedures with a call for competition, they shall where appropriate reduce in accordance with Article 54 the number of candidates selected pursuant to subparagraphs (a) and (b).

2. When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in award procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:

- (a) qualify economic operators in accordance with the provisions of Article 53;
- (b) apply to such qualified economic operators those provisions of paragraph 1 that are relevant to restricted or negotiated procedures.

3. Contracting entities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in Articles 55 and 57.

Section 1

Qualification and qualitative selection

Article 52

Mutual recognition concerning administrative, technical or financial conditions, and certificates, tests and evidence

1. When selecting participants for a restricted or negotiated procedure, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:

- (a) impose administrative, technical or financial conditions on certain economic operators which would not have been imposed on others;
- (b) require tests or evidence which would duplicate objective evidence already available.

2. Where they request production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, contracting entities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

3. For works and service contracts, and only in appropriate cases, the contracting entities may require, in order to verify the economic operator's technical capacity, an indication of the environmental management measures which the economic operator will be able to apply when carrying out the contract. In such cases, should the contracting entities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the EMAS or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification.

The contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

Article 53

Qualification systems

1. Contracting entities which so wish may establish and operate a system of qualification of economic operators.

Entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.

2. The system under paragraph 1 may involve different qualification stages.

It shall be operated on the basis of objective criteria and rules for qualification to be established by the contracting entity.

Where those criteria and rules include technical specifications, the provisions of Article 34 shall apply. The criteria and rules may be updated as required.

3. The criteria and rules for qualification referred to in paragraph 2 may include the exclusion criteria listed in Article 45 of Directive 2003/.../EC on the terms and conditions set out therein.

Where the contracting entity is a contracting authority within the meaning of Article 2(1)(a), those criteria and rules shall include the exclusion criteria listed in Article 45(1) of Directive 2003/.../EC.

4. Where the criteria and rules for qualification referred to in paragraph 2 include requirements relating to the economic and financial capacity of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that these resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to that effect.

Under the same conditions, a group of economic operators as referred to in Article 11 may rely on the capacity of participants in the group or of other entities.

5. Where the criteria and rules for qualification referred to in paragraph 2 include requirements relating to the technical and/or professional capacity of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to make the necessary resources available to the economic operator.

Under the same conditions, a group of economic operators referred to in Article 11 may rely on the capacity of participants in the group or of other entities.

6. The criteria and rules for qualification referred to in paragraph 2 shall be made available to economic operators on request. The updating of these criteria and rules shall be communicated to the interested economic operators.

Where a contracting entity considers that the qualification system of certain other entities or bodies meets its requirements, it shall communicate to interested economic operators the names of such other entities or bodies.

7. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.

8. When establishing or operating a qualification system, contracting entities shall in particular observe the provisions of Article 41(3) concerning notices on the existence of a system of qualification, of Article 49(3), (4) and (5) concerning the information to be delivered to economic operators having applied for qualification, of Article 51(2) concerning the selection of participants when a call for competition is made by means of a notice on the existence of a qualification system as well as the provisions of Article 52 on mutual recognition concerning administrative, technical or financial conditions, certificates, tests and evidence.

9. When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.

Article 54

Criteria for qualitative selection

1. Contracting entities which establish selection criteria in an open procedure shall do so in accordance with objective rules and criteria which are available to interested economic operators.

2. Contracting entities which select candidates for restricted or negotiated procedures shall do so according to objective rules and criteria which they have established and which are available to interested economic operators.

3. In restricted or negotiated procedures, the criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the procurement procedure with the resources required to conduct it. The number of candidates selected shall, however, take account of the need to ensure adequate competition.

4. The criteria set out in paragraphs 1 and 2 may include the exclusion criteria listed in Article 45 of Directive 2003/.../EC on the terms and conditions set out therein.

Where the contracting entity is a contracting authority within the meaning of Article 2(1)(a), the criteria and rules referred to in paragraphs 1 and 2 of this Article shall include the exclusion criteria listed in Article 45(1) of Directive 2003/.../EC.

5. Where the criteria referred to in paragraphs 1 and 2 include requirements relating to the economic and financial capacity of the economic operator, the latter may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that the necessary resources will be available to it, for example by delivering an undertaking by those entities to that effect.

Under the same conditions, a group of economic operators as referred to in Article 11 may rely on the capacity of participants in the group or of other entities.

6. Where the criteria referred to in paragraphs 1 and 2 include requirements relating to the technical and/or professional capacity of the economic operator, the latter may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that for the execution of that contract those resources will be available to it, for example by delivering an undertaking by those entities to make the necessary resources available to the economic operator.

Under the same conditions, a group of economic operators as referred to in Article 11 may rely on the capacity of participants in the group or of other entities.

Section 2

Awards

Article 55

Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which the contracting entities shall base the award of contracts shall be:

(a) where the contract is awarded on the basis of the most economically advantageous tender for the contracting entities, various criteria justified by the subject-matter of the contract in question, such as delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, environmental characteristics, technical merit, after-sales service and technical assistance, commitments with regard to parts, security of supply, and price; or

(b) the lowest price only.

2. Without prejudice to the provisions of the third subparagraph, in the case referred to in paragraph 1(a), the contracting entity shall specify the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

This weighting can be expressed by providing for a range with an appropriate maximum spread. Where, in the opinion of the contracting entity, weighting is not possible for demonstrable reasons, the contracting entity shall indicate the criteria in descending order of importance.

The relative weighting or order of importance shall be specified, as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm the interest referred to in Article 47(5), in the invitation to tender or to negotiate, or in the specifications.

Article 56

Use of electronic auctions

1. Member States may prescribe that contracting entities may use electronic auctions.

2. In open, restricted or negotiated procedures with prior call for competition, the contracting entities may decide that the award of a contract shall be preceded by an electronic auction when the contract specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 15.

The electronic auction shall be based:

- (a) either solely on prices when the contract is awarded to the lowest price;
- (b) or on prices and/or on the new values of the features of the tenders indicated in the specification, when the contract is awarded to the most economically advantageous tender.

3. Contracting entities which decide to hold an electronic auction shall state that fact in the notice used as a means of calling for competition.

The specifications shall include, *inter alia*, the following details:

- (a) the features whose values will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- (d) the relevant information concerning the electronic auction process;
- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

4. Before proceeding with the electronic auction, contracting entities shall make a full initial evaluation of the tenders in accordance with the award criterion/criteria set and with the weighting fixed for them.

All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

5. When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of the full evaluation of the relevant tender carried out in accordance with the weighting provided for in the first subparagraph of Article 55(2).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic rerankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in the specifications; for that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

6. Throughout each phase of an electronic auction the contracting entities shall instantly communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

7. The contracting entities shall close an electronic auction in one or more of the following manners:

- (a) in the invitation to take part in the auction they shall indicate the date and time fixed in advance;
- (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting entities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
- (c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

When the contracting entities have decided to close an electronic auction in accordance with subparagraph (c), possibly in combination with the arrangements laid down in subparagraph (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

8. When they have closed an electronic auction the contracting entities shall award the contract in accordance with Article 55 on the basis of the results of the electronic auction.

9. The contracting entities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject-matter of the contract, as defined in the notice used as a means of calling for competition and in the specification.

*Article 57***Abnormally low tenders**

1. If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting entity shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant.

Those details may relate in particular to:

- (a) the economics of the manufacturing process, of the services provided and of the construction method;
- (b) the technical solutions chosen and/or the exceptionally favourable conditions available to the tenderer for the supply of the goods or services or for the execution of the work;
- (c) the originality of the supplies, services or work proposed by the tenderer;
- (d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;
- (e) the possibility of the tenderer obtaining State aid.

2. The contracting entity shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.

3. Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained a State aid, the tender can only be rejected on that ground alone after consultation with the tenderer where the latter is unable to prove, within a sufficient time-limit fixed by the contracting entity, that the aid in question was granted legally. Where the contracting entity rejects a tender in these circumstances, it shall inform the Commission of that fact.

Section 3

Tenders comprising products originating in third countries and relations with those countries

*Article 58***Tenders comprising products originating in third countries**

1. This Article shall apply to tenders covering products originating in third countries with which the Community has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Community or its Member States in respect of third countries.

2. Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 ⁽¹⁾, exceeds 50 % of the total value of the products constituting the tender. For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.

3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 55, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

4. For the purposes of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the proportion, referred to in paragraph 2, of products originating in third countries.

5. The Commission shall submit an annual report to the Council, commencing in the second half of the first year following the entry into force of this Directive, on progress made in multilateral or bilateral negotiations regarding access for Community undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.

The Council, acting by a qualified majority on a proposal from the Commission, may amend the provisions of this Article in the light of such developments.

*Article 59***Relations with third countries as regards service contracts**

1. Member States shall inform the Commission of any general difficulties encountered, in law or in fact, by their undertakings in securing the award of service contracts in third countries.

⁽¹⁾ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by European Parliament and Council Regulation (EC) No 955/1999 (OJ L 119, 7.5.1999, p. 1).

2. The Commission shall report to the Council before 31 December ..., and periodically thereafter, on the opening up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the framework of the WTO.

3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:

- (a) does not grant Community undertakings effective access comparable to that granted by the Community to undertakings from that country; or
- (b) does not grant Community undertakings national treatment or the same competitive opportunities as are available to national undertakings; or
- (c) grants undertakings from other third countries more favourable treatment than Community undertakings.

4. In the circumstances referred to in paragraph 3, the Commission may at any time propose that the Council decide to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:

- (a) undertakings governed by the law of the third country in question;
- (b) undertakings affiliated to the undertakings specified in point (a) and having their registered office in the Community but having no direct and effective link with the economy of a Member State;
- (c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.

The Council shall act, by qualified majority, as soon as possible.

The Commission may propose these measures on its own initiative or at the request of a Member State.

5. This Article shall be without prejudice to the commitments of the Community in relation to third countries.

TITLE III

RULES GOVERNING SERVICE DESIGN CONTESTS

Article 60

General provision

1. The rules for the organisation of a design contest shall be in conformity with paragraph 2 of this Article and with Articles 61 and 63 to 66 and shall be made available to those interested in participating in the contest.

2. The admission of participants to design contests shall not be limited:

- (a) by reference to the territory or part of the territory of a Member State;
- (b) on the ground that, under the law of the Member State in which the contest is organised, they would have been required to be either natural or legal persons.

Article 61

Thresholds

1. This Title shall apply to design contests organised as part of a procurement procedure for services whose estimated value, net of VAT, is equal to or greater than EUR 499 000.

For the purposes of this paragraph, 'threshold' means the estimated value net of VAT of the service contract, including any possible prizes and/or payments to participants.

2. This Title shall apply to all design contests where the total amount of contest prizes and payments to participants is equal to or greater than EUR 499 000.

For the purposes of this paragraph, 'threshold' means the total amount of the prizes and payments, including the estimated value net of VAT of the service contract which might subsequently be concluded under Article 40(3) if the contracting entity does not exclude such an award in the contest notice.

Article 62

Design contests excluded

This Title shall not apply to:

- 1. contests which are organised in the same cases as referred to in Articles 20, 21 and 22 for service contracts;
- 2. design contests organised for the pursuit, in the Member State concerned, of an activity to which the applicability of paragraph 1 of Article 30 has been established by a Commission decision or has been deemed applicable pursuant to paragraph 4, second or third subparagraph, or to paragraph 5, fourth subparagraph, of that Article.

*Article 63***Rules on advertising and transparency**

1. Contracting entities which wish to organise a design contest shall call for competition by means of a contest notice. Contracting entities which have held a design contest shall make the results known by means of a notice. The call for competition shall contain the information referred to in Annex XVIII and the notice on the results of a design contest shall contain the information referred to in Annex XIX in accordance with the format of standard forms adopted by the Commission in accordance with the procedure in Article 68(2).

The notice on the results of a design contest shall be forwarded to the Commission within two months of the closure of the design contest and under conditions to be laid down by the Commission in accordance with the procedure referred to in Article 68(2). In this connection, the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information, concerning the number of projects or plans received, the identity of the economic operators and the prices tendered.

2. Article 44(2) to (8) shall also apply to notices relating to design contests.

*Article 64***Means of communication**

1. Article 48(1), (2) and (4) shall apply to all communications relating to contests.

2. Communications, exchanges and the storage of information shall be such as to ensure that the integrity and the confidentiality of all information communicated by the participants in a contest are preserved and that the jury ascertains the contents of plans and projects only after the expiry of the time-limit for their submission.

3. The following rules shall apply to the devices for the electronic receipt of plans and projects:

(a) the information relating to the specifications which is necessary for the presentation of plans and projects by electronic means, including encryption, shall be available to the parties concerned. In addition, the devices for the electronic receipt of plans and projects shall comply with the requirements of Annex XXIII;

(b) Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for such devices.

*Article 65***Rules on the organisation of design contests, the selection of participants and the jury**

1. When organising design contests, contracting entities shall apply procedures which are adapted to the provisions of this Directive.

2. Where design contests are restricted to a limited number of participants, contracting entities shall establish clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

3. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of its members shall have the same qualification or an equivalent qualification.

*Article 66***Decisions of the jury**

1. The jury shall be autonomous in its decisions or opinions.

2. It shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.

3. It shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points which may need clarification.

4. Anonymity must be observed until the jury has reached its opinion or decision.

5. Candidates may be invited, if need be, to answer questions which the jury has recorded in the minutes to clarify any aspects of the projects.

6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.

TITLE IV

STATISTICAL OBLIGATIONS, EXECUTORY POWERS AND FINAL PROVISIONS

Article 67

Statistical obligations

1. Member States shall ensure, in accordance with the arrangements to be laid down under the procedure provided for in Article 68(2), that the Commission receives every year a statistical report concerning the total value, broken down by Member State and by category of activity to which Annexes I to X refer, of the contracts awarded below the thresholds set out in Article 16 but which would be covered by this Directive were it not for those thresholds.

2. As regards the categories of activity to which Annexes II, III, V, IX and X refer, Member States shall ensure that the Commission receives a statistical report on contracts awarded no later than 31 October ... for the previous year, and before 31 October of each year thereafter, in accordance with arrangements to be laid down under the procedure provided for in Article 68(2). The statistical report shall contain the information required to verify the proper application of the Agreement.

The information required under the first subparagraph shall not include information concerning contracts for the R & D services listed in category 8 of Annex XVII A, for telecommunications services listed in category 5 of Annex XVII A whose CPV positions are equivalent to the CPC reference numbers 7524, 7525 and 7526, or for the services listed in Annex XVII B.

3. The arrangements under paragraphs 1 and 2 shall be laid down in such a way as to ensure that:

- (a) in the interests of administrative simplification, contracts of lesser value may be excluded, provided that the usefulness of the statistics is not jeopardised;
- (b) the confidential nature of the information provided is respected.

Article 68

Committee procedure

1. The Commission shall be assisted by the Advisory Committee for Public Contracts instituted by Article 1 of Council Decision 71/306/EEC⁽¹⁾ (hereinafter referred to as 'the Committee').

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. The Committee shall adopt its rules of procedure.

⁽¹⁾ OJ L 185, 16.8.1971, p. 15. Decision as amended by Decision 77/63/EEC (OJ L 13, 15.1.1977, p. 15).

Article 69

Revision of thresholds

1. The Commission shall verify the thresholds established in Article 16 every two years from ... (*), and shall, if necessary with regard to the second subparagraph, revise them in accordance with the procedure provided for in Article 68(2).

The calculation of the value of these thresholds shall be based on the average daily value of the euro, expressed in SDR, over the 24 months terminating on the last day of August preceding the revision with effect from 1 January. The value of the thresholds thus revised shall, where necessary, be rounded down to the nearest thousand euro so as to ensure that the thresholds in force provided for by the Agreement, expressed in SDR, are observed.

2. At the same time as performing the revision under paragraph 1, the Commission shall, in accordance with the procedure provided for in Article 68(2), align the thresholds laid down in Article 61 (design contests) with the revised threshold applicable to service contracts.

The values of the thresholds laid down in accordance with paragraph 1 in the national currencies of Member States not participating in Monetary Union shall, in principle, be revised every two years from 1 January 2004. The calculation of such values shall be based on the average daily values of those currencies, expressed in euro, over the 24 months terminating on the last day of August preceding the revision with effect from 1 January.

3. The revised thresholds referred to in paragraph 1, their values in national currencies and the aligned thresholds referred to in paragraph 2 shall be published by the Commission in the *Official Journal of the European Union* at the beginning of the month of November following their revision.

Article 70

Amendments

1. The Commission may amend, in accordance with the procedure provided for in Article 68(2):

- (a) the list of contracting entities in Annexes I to X so that they fulfil the criteria set out in Articles 2 to 7;
- (b) the procedures for the drawing-up, transmission, receipt, translation, collection and distribution of the notices referred to in Articles 41, 42, 43 and 63;

(*) Date of entry into force of this Directive.

- (c) the procedures for specific references to particular positions in the CPV nomenclature in the notices;
- (d) the reference numbers in the nomenclature set out in Annex XVII, insofar as this does not change the material scope of the Directive, and the procedures for reference in the notices to particular positions in this nomenclature within the categories of services listed in the Annex;
- (e) the reference numbers in the nomenclature set out in Annex XII, insofar as this does not change the material scope of the Directive, and the procedures for reference to particular positions of this nomenclature in the notices;
- (f) Annex XI;
- (g) the procedure for sending and publishing data referred to in Annex XX, on grounds of technical progress or for administrative reasons;
- (h) the technical details and characteristics of the devices for electronic receipt referred to in points (a), (f) and (g) of Annex XXIII;
- (i) in the interests of administrative simplification as provided for in Article 67(3), the procedures for the use, drawing-up, transmission, receipt, translation, collection and distribution of the statistical reports referred to in Article 67(1) and (2);
- (j) the technical procedures for the calculation methods set out in Article 69(1) and (2), second subparagraph.

Article 71

Implementation of the Directive

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (*) at the latest. They shall forthwith inform the Commission thereof.

Member States may avail themselves of an additional period of up to ... months (**) after expiry of the time-limit provided for

in the first subparagraph for the application of the provisions necessary to comply with Article 6 of this Directive.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such references shall be laid down by Member States.

The provisions of Article 30 are applicable from ... (**).

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 72

Repeal

Directive 93/38/EEC is hereby repealed, without prejudice to the obligations of the Member States concerning the time-limits for transposition into national law set out in Annex XXIV.

References to the repealed Directive shall be construed as being made to this Directive and shall be read in accordance with the correlation table in Annex XXV.

Article 73

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 74

Addressees

This Directive is addressed to the Member States.

...

For the European Parliament
The President

For the Council
The President

(*) 21 months after the entry into force of this Directive.

(**) Number of months to be calculated at the entry into force of this Directive so that the deadline will expire 1 January 2009. Thus, if the Directive is adopted on 1 July 2003 the time-limit provided for in the first indent expires on 1 April 2005 and the additional time-limit would be 45 months.

(***) Date of entry into force of this Directive.

ANNEX I

CONTRACTING ENTITIES IN THE SECTORS OF TRANSPORT OR DISTRIBUTION OF GAS OR HEAT**Belgium**

- Distrigaz/NV Distrigaz
- Local authorities, or associations of local authorities, for this part of their activities.

Denmark

- Entities distributing gas or heat on the basis of an authorisation pursuant to § 4 of the lov om varmforsyning, see Consolidation Act No 772 of 24 July 2000
- Entities transporting gas on the basis of a licence pursuant to § 10 of lov nr. 449 om naturgasforsyning of 31 May 2000
- Entities transporting gas on the basis of an authorisation pursuant to bekendtgørelse nr. 141 om rørledningsanlæg på dansk kontinentalsokkelområde til transport af kulbrinter of 13 March 1974

Germany

- Local authorities, public law bodies or associations of public law bodies or State-controlled undertakings supplying gas or heat to others or operating a general supply network pursuant to Article 2(3) of the Gesetz über die Elektrizitäts- und Gasversorgung (Energiewirtschaftsgesetz) of 24 April 1998, as last amended on 10 November 2001.

Greece

- 'Δημόσια Επιχείρηση Αερίου (ΔΕΠ.Α.) ΑΕ', which transports and distributes gas in accordance with Law No 2364/95, as amended by Laws Nos 2528/97, 2593/98 and 2773/99.

Spain

- Enagas, SA
- Bahía de Bizkaia Gas, SL
- Gasoducto Al Andalus, SA
- Gasoducto de Extremadura, SA
- Infraestructuras Gasistas de Navarra, SA
- Regasificadora del Noroeste, SA
- Sociedad de Gas de Euskadi, SA
- Transportista Regional de Gas, SA
- Unión Fenosa de Gas, SA
- Bilbogas, SA
- Compañía Española de Gas, SA
- Distribución y Comercialización de Gas de Extramadura, SA
- Distribuidora Regional de Gas, SA
- Donostigas, SA
- Gas Alicante, SA

- Gas Andalucía, SA
- Gas Aragón, SA
- Gas Asturias, SA
- Gas Castilla — La Mancha, SA
- Gas Directo, SA
- Gas Figueres, SA
- Gas Galicia SDG, SA
- Gas Hernani, SA
- Gas Natural de Cantabria, SA
- Gas Natural de Castilla y León, SA
- Gas Natural SDG, SA
- Gas Natural de Alava, SA
- Gas Natural de La Coruña, SA
- Gas Natural de Murcia SDG, SA
- Gas Navarra, SA
- Gas Pasaia, SA
- Gas Rioja, SA
- Gas y Servicios Mérida, SL
- Gesa Gas, SA
- Meridional de Gas, SAU
- Sociedad del Gas Euskadi, SA
- Tolosa Gas, SA

France

- Société nationale des gaz du Sud-Ouest, transporting gas
- Gaz de France, set up and operated pursuant to loi n° 46-628 sur la nationalisation de l'électricité et du gaz of 8 April 1946, as amended
- Entities distributing electricity mentioned in Article 23 of loi n° 46-628 sur la nationalisation de l'électricité et du gaz of 8 April 1946, as amended
- Compagnie française du méthane, transporting gas
- Local authorities or associations of local authorities, distributing heat.

Ireland

- Bord Gáis Éireann
- Other entities that may be licensed to undertake the activity of natural gas distribution or transmission by the Commission for Energy Regulation pursuant to the provisions of the Gas Acts 1976 to 2002

- Entities licensed under the Electricity Regulation Act 1999 which as operators of 'Combined Heat and Power Plants' are engaged in the distribution of heat

Italy

- SNAM Rete Gas spa, SGM and EDISON T & S, transporting gas
- Entities distributing gas governed by the consolidated text of the laws on the direct assumption of control of public services by local authorities and provinces, approved by Royal Decree No. 2578 of 15 October 1925 and by Presidential Decree No. 902 of 4 October 1986
- Entities distributing heat to the public as referred to in Article 10 of Law No. 308 of 29 May 1982 — Norme sul contenimento dei consumi energici, lo sviluppo delle fonti rinnovabili di energia, l'esercizio di centrali elettriche alimentate con combustibili dagli idrocarburi
- Local authorities, or associations of local authorities, distributing heat to the public

Luxembourg

- Société de transport de gaz SOTEG SA
- Gaswierk Esch-Uelzecht SA
- Service industriel de la Ville de Dudelange
- Service industriel de la Ville de Luxembourg
- Local authorities or associations formed by those local authorities responsible for the distribution of heat

Netherlands

- Entities producing, transporting or distributing gas on the basis of a licence (vergunning) granted by the municipal authorities pursuant to the Gemeentewet
- Municipal or provincial authorities transporting or distributing gas pursuant to the Gemeentewet or the Provinciewet
- Local authorities or associations of local authorities distributing heat to the public

Austria

- Entities authorised to transport or distribute gas pursuant to the Energiewirtschaftsgesetz, dRGBL. I, pp. 1451-1935 or the Gaswirtschaftsgesetz, BGBl. I No 121/2000, as amended
- Entities authorised to transport or distribute heat pursuant to the Gewerbeordnung, BGBl. No 194/1994, as amended

Portugal

- Entities transporting or distributing gas pursuant to Article 1 of Decree-Law No 8/2000 of 8 February 2000, with the exception of subparagraphs (ii) and (iii) of paragraph 3(b) of that Article

Finland

- Public or other entities operating a gas network transport system and transporting or distributing gas under a licence pursuant to Chapter 3(1) or Chapter 6(1) of the maakaasumarkkinalaki/naturgasmarknadslagen (508/2000); and municipal entities or public enterprises producing, transporting or distributing heat or providing heat to networks

Sweden

- Entities transporting or distributing gas or heat on the basis of a concession pursuant to lagen (1978:160) om vissa rörledningar

United Kingdom

- A public gas transporter as defined in section 7(1) of the Gas Act 1986
 - A person declared to be an undertaker for the supply of gas under Article 8 of the Gas (Northern Ireland) Order 1996
 - A local authority which provides or operates a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of heat
 - A person licensed under section 6(1)(a) of the Electricity Act 1989 whose licence includes the provisions referred to in section 10(3) of that Act
 - The Northern Ireland Housing Executive
-

ANNEX II

CONTRACTING ENTITIES IN THE SECTORS OF PRODUCTION, TRANSPORT OR DISTRIBUTION OF ELECTRICITY**Belgium**

- SA Electrabel/NV Electrabel
- Local authorities and associations of local authorities, for this part of their activities
- SA Société de Production d'Electricité/NV Elektriciteitsproductie Maatschappij

Denmark

- Entities producing electricity on the basis of a licence pursuant to § 10 of the lov om elforsyning, see Consolidation Act No 767 of 28 August 2001
- Entities transporting electricity on the basis of a licence pursuant to § 19 of the lov om elforsyning, see Consolidation Act No 767 of 28 August 2001
- Entities undertaking responsibility for the system on the basis of a licence pursuant to § 27 of the lov om elforsyning, see Consolidation Act No 767 of 28 August 2001

Germany

- Local authorities, public law bodies or associations of public law bodies or State undertakings, supplying electricity to other undertakings or operating a general supply network pursuant to Article 2(3) of the Gesetz über die Elektrizitäts- und Gasversorgung (Energiewirtschaftsgesetz) of 24 April 1998, as last amended on 10 November 2001.

Greece

- 'Δημόσια Επιχείρηση Ηλεκτρισμού ΑΕ', set up by Law No 1468/1950 περί ιδρύσεως της ΔΕΗ and operates in accordance with Law No 2773/1999 and Presidential Decree No 333/1999
- The company 'Διαχειριστής ελληνικού συστήματος μεταφοράς ηλεκτρικής ενέργειας ΑΕ' known as 'Διαχειριστής του συστήματος ή ΔΕΣΜΗΕ', set up pursuant to Article 14 of Law No 2773/1999 and Presidential Decree No 328/2000 (Greek Official Gazette 268)

Spain

- Red Eléctrica de España, SA
- Endesa, SA
- Iberdrola, SA
- Unión Fenosa, SA
- Hidroeléctrica del Cantábrico, SA
- Electra del Viesgo, SA
- Otras entidades encargadas de la producción, transporte y distribución de electricidad en virtud de la Ley 54/1997, de 27 de noviembre, del Sector eléctrico y su normativa de desarrollo

France

- Électricité de France, set up and operating pursuant to loi n° 46-628 sur la nationalisation de l'électricité et du gaz of 8 April 1946, as amended.
- Entities distributing electricity and referred to in Article 23 of loi n° 46-628 sur la nationalisation de l'électricité et du gaz of 8 April 1946, as amended.
- Compagnie nationale du Rhône.

Ireland

- The Electricity Supply Board
- ESB Independent Energy (ESBIE — electricity supply)
- Synergen Ltd (electricity generation)
- Viridian Energy Supply Ltd (electricity supply)
- Huntstown Power Ltd (electricity generation)
- Bord Gáis Éireann (electricity supply)
- Electricity Suppliers and Generators licensed under the Electricity Regulation Act 1999

Italy

- Companies in the Gruppo Enel authorised to produce, transmit and distribute electricity within the meaning of Legislative Decree No 79 of 16 March 1999, as subsequently amended and supplemented
- Other undertakings operating on the basis of concessions under Legislative Decree No 79 of 16 March 1999

Luxembourg

- Compagnie grand-ducale d'électricité de Luxembourg (CEGEDEL), producing or distributing electricity pursuant to the convention concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le Grand-Duché du Luxembourg of 11 November 1927, approved by the Law of 4 January 1928
- Local authorities responsible for the transport or distribution of electricity
- Société électrique de l'Our (SEO)
- Syndicat de communes SIDOR

Netherlands

- Entities distributing electricity on the basis of a licence (vergunning) granted by the provincial authorities pursuant to the Provinciewet

Austria

- Entities operating a transmission or distribution network pursuant to the Elektrizitätswirtschafts- und Organisationsgesetz, BGBl. I No 143/1998, as amended, or pursuant to the Elektrizitätswirtschafts(wesen)gesetze of the nine Länder

Portugal

- BASIC LEGISLATION
 - Electricidade de Portugal (EDP), set up pursuant to Decree-Law No 182/95 of 27 July 1995, as amended by Decree-Law No 56/97 of 14 March 1997
 - Empresa Eléctrica dos Açores (EDA), operating pursuant to Regional Legislative Decree No 15/96/A of 1 August 1996
 - Empresa de Electricidade da Madeira (EEM), operating pursuant to Decree-Law No 99/91 and Decree-Law No 100/91, both of 2 March 1991

— PRODUCTION OF ELECTRICITY

- Entities producing electricity pursuant to Decree-Law No 183/95 of 27 July 1995, as amended by Decree-Law No 56/97 of 14 March 1997, as further amended by Decree-Law No 198/2000 of 24 August 2000
- Independent producers of electricity pursuant to Decree-Law No 189/88 of 27 May 1988, as amended by Decree-Laws No 168/99 of 18 May 1999, No 313/95 of 24 November 1995, No 312/2001 of 10 December 2001 and No 339-C/2001 of 29 December 2001

— TRANSPORT OF ELECTRICITY

- Entities transporting electricity pursuant to Decree-Law No 185/95 of 27 July 1995, as amended by Decree-Law No 56/97 of 14 March 1997

— DISTRIBUTION OF ELECTRICITY

- Entities distributing electricity pursuant to Decree-Law No 184/95 of 27 July 1995, as amended by and further to Decree-Laws No 56/97 of 14 March 1997, No 344-B/82 of 19 September 1982 and No 341/90 of 30 October 1990

Finland

- Municipal entities and public enterprises producing electricity and entities responsible for the maintenance of electricity transport or distribution networks and for transporting electricity or for the electricity system under a licence pursuant to Section 4 or 16 of the sähkömarkkinalaki/elmarknadslagen (386/1995)

Sweden

- Entities transporting or distributing electricity on the basis of a concession pursuant to ellagen (1997:857)

United Kingdom

- A person licensed under section 6 of the Electricity Act 1989
 - A person licensed under Article 10(1) of the Electricity (Northern Ireland) Order 1992.
-

ANNEX III

CONTRACTING ENTITIES IN THE SECTORS OF PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER**Belgium**

- Aquinter
- Local authorities and associations of local authorities, for this part of their activities
- Société wallonne des Eaux
- Vlaams Maatschappij voor Watervoorziening

Denmark

- Entities supplying water as defined in § 3(3) of lovbekendtgørelse nr. 130 om vandforsyning m.v. of 26 February 1999

Germany

- Entities producing or distributing water pursuant to the Eigenbetriebsverordnungen or Eigenbetriebsgesetze of the Länder (public utility companies)
- Entities producing or distributing water pursuant to the Gesetze über die kommunale Gemeinschaftsarbeit oder Zusammenarbeit of the Länder
- Entities producing water pursuant to the Gesetz über Wasser- und Bodenverbände of 12 February 1991, as last amended on 15 May 2002
- Publicly-owned companies producing or distributing water pursuant to the Kommunalgesetze, in particular the Gemeindeverordnungen of the Länder
- Undertakings set up pursuant to the Aktiengesetz of 6 September 1965, as last amended on 19 July 2002, or the GmbH-Gesetz of 20 April 1892, as last amended on 19 July 2002, or having the legal status of a Kommanditgesellschaft (limited partnership), producing or distributing water on the basis of a special contract with regional or local authorities

Greece

- 'Εταιρεία Υδρεύσεως και Αποχετεύσεως Πρωτευούσης ΑΕ' ('ΕΥΔΑΠ' or 'ΕΥΔΑΠ ΑΕ'). The legal status of the company is governed by the provisions of Consolidated Law No 2190/1920, Law No 2414/1996 and additionally by the provisions of Law No 1068/80 and Law No 2744/1999
- 'Εταιρεία Υδρευσης και Αποχέτευσης Θεσσαλονίκης ΑΕ' ('ΕΥΑΘ ΑΕ') governed by the provisions of Law No 2937/2001 (Greek Official Gazette 169 Α') and of Law No 2651/1998 (Greek Official Gazette 248 Α')
- 'Δημοτική Επιχείρηση Υδρευσης και Αποχέτευσης Μείζονος Περιοχής Βόλου' ('ΔΕΥΑΜΒ'), which operates pursuant to Law No 890/1979
- 'Δημοτικές Επιχειρήσεις Υδρευσης — Αποχέτευσης', which produce and distribute water pursuant to Law No 1069/80 of 23 August 1980
- 'Σύνδεσμοι Υδρευσης', which operate pursuant to Presidential Decree No 410/1995, in accordance with the Κώδικος Δήμων και Κοινοτήτων
- 'Δήμοι και Κοινότητες', which operate pursuant to Presidential Decree No 410/1995, in accordance with the Κώδικος Δήμων και Κοινοτήτων

Spain

- Mancomunidad de Canales de Taibilla

- Otras entidades públicas integradas o dependientes de las Comunidades Autónomas y de las Corporaciones locales que actúan en el ámbito de la distribución de agua potable.
- Otras entidades privadas que tienen concedidos derechos especiales o exclusivos por las Corporaciones locales en el ámbito de la distribución de agua potable.

France

- Regional or local authorities and public local bodies producing or distributing drinking water

Ireland

- Entities producing or distributing water pursuant to the Local Government (Sanitary Services) Act 1878 to 1964

Italy

- Bodies responsible for managing the various stages of the water distribution service under the consolidated text of the laws on the direct assumption of control of public services by local authorities and provinces, approved by Royal Decree No 2578 of 15 October 1925, Presidential Decree No 902 of 4 October 1986 and Legislative Decree No 267 setting out the consolidated text of the laws on the structure of local authorities, with particular reference to Articles 112 to 116
- Ente Autonomo Acquedotto Pugliese set up by Royal Decree-Law No 2060 of 19 October 1919
- Ente Acquedotti Siciliani set up by Regional Law No 2/2 of 4 September 1979 and Regional Law No 81 of 9 August 1980
- Ente Sardo Acquedotti e Fognature set up by Law No 9 of 5 July 1963

Luxembourg

- Departments of the local authorities responsible for water distribution
- Associations of local authorities producing or distributing water, set up pursuant to the loi concernant la création des syndicats de communes of 23 February 2001, as amended and supplemented by the Law of 23 December 1958 and by the Law of 29 July 1981, and pursuant to the loi ayant pour objet le renforcement de l'alimentation en eau potable du Grand-Duché du Luxembourg à partir du réservoir d'Esch-sur-Sûre of 31 July 1962

Netherlands

- Entities producing or distributing water according to the Waterleidingwet

Austria

- Local authorities and associations of local authorities producing, transporting or distributing drinking water pursuant to the Wasserversorgungsgesetze of the nine Länder

Portugal

- Intermunicipal systems — Undertakings involving the State or other public entities, with a majority shareholding, and private undertakings, pursuant to Decree-Law No 379/93 of 5 November 1993. Direct administration by the State is permissible
- Municipal systems — Local authorities, associations of local authorities, local authority services, undertakings in which all or a majority of the capital is publicly owned or private undertakings pursuant to Decree-Law No 379/93 of 5 November 1993 and Law No 58/98 of 18 August 1998

Finland

- Water supply authorities coming under Section 3 of the vesihuoltolaki/lagen om vattentjänster (119/2001)

Sweden

- Local authorities and municipal companies producing, transporting or distributing drinking water pursuant to lagen (1970:244) om allmänna vatten- och avloppsanläggningar

United Kingdom

- A company holding an appointment as a water undertaker or a sewerage undertaker under the Water Industry Act 1991
 - A water and sewerage authority established by section 62 of the Local Government etc (Scotland) Act 1994
 - The Department for Regional Development (Northern Ireland)
-

ANNEX IV

CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES

Belgium

- Société nationale des Chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen

Denmark

- Danske Statsbaner
- Entities pursuant to lov nr. 1317 om amtskommunernes overtagelse af de statslige ejerandele i privatbanerne of 20 December 2000

Germany

- Deutsche Bahn AG
- Other undertakings providing railway services to the public pursuant to Article 2(1) of the Allgemeines Eisenbahngesetz of 27 December 1993, as last amended on 21 June 2002

Greece

- 'Οργανισμός Σιδηροδρόμων Ελλάδος ΑΕ' ('ΟΣΕ ΑΕ'), pursuant to Law No 2671/98
- 'ΕΠΤΟΣΕ ΑΕ' pursuant to Law No 2366/95

Spain

- Ente público Gestor de Infraestructuras Ferroviarias (GIF)
- Red Nacional de los Ferrocarriles Españoles (RENFE)
- Ferrocarriles de Vía Estrecha (FEVE)
- Ferrocarrils de la Generalitat de Catalunya (FGC)
- Eusko Trenbideak (Bilbao)
- Ferrocarriles de la Generalitat Valenciana (FGV)
- Ferrocarriles de Mallorca

France

- Société nationale des chemins de fer français and other rail networks open to the public, referred to in loi d'orientation des transports intérieurs No 82-1153 of 30 December 1982, Title II, Chapter 1
- Réseau ferré de France, State-owned company set up by Law No 97-135 of 13 February 1997

Ireland

- Iarnród Éireann (Irish Rail)
- Railway Procurement Agency

Italy

- Ferrovie dello Stato Spa
- Trenitalia Spa

- Entities, companies and undertakings providing railway services on the basis of a concession pursuant to Article 10 of Royal Decree No 1447 of 9 May 1912, approving the consolidated text of the laws on le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili
- Entities, companies and undertakings providing railway services on the basis of a concession pursuant to Article 4 of Law No 410 of 4 June 1949 — Concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione
- Entities, companies and undertakings or local authorities providing railway services on the basis of a concession pursuant to Article 14 of Law No 1221 of 2 August 1952 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie di altre linee di trasporto in regime di concessione
- Entities, companies and undertakings providing public transport services pursuant to Articles 8 and 9 of Legislative Decree No 422 of 19 November 1997 — Conferimento alle regioni ed agli enti locali di funzioni e compiti in materia di trasporto pubblico locale, under the terms of Article 4(4) of Law No 9 of 15 March 1997, as amended by Legislative Decree No 400 of 20 September 1999 and by Article 45 of Law No 166 of 1 August 2002

Luxembourg

- Chemins de fer luxembourgeois (CFL)

Netherlands

- Procuring entities in the field of railway services

Austria

- Österreichische Bundesbahn
- Schieneninfrastrukturfinanzierungs-Gesellschaft mbH sowie
- Entities authorised to provide transport services pursuant to Eisenbahngesetz, BGBl. No 60/1957, as amended

Portugal

- CP — Caminhos de Ferro de Portugal, EP, pursuant to Decree-Law No 109/77 of 23 March 1977
- REFER, EP, pursuant to Decree-Law No 104/97 of 29 April 1997
- RAVE, SA, pursuant to Decree-Law No 323-H/2000 of 19 December 2000
- Fertagus, SA, pursuant to Decree-Law No 189-B/99 of 2 June 1999
- Metro do Porto, SA, pursuant to Decree-Law No 394-A/98 of 15 December 1998, as amended by Decree-Law No 261/2001 of 26 September 2001
- Normetro, SA, pursuant to Decree-Law No 394-A/98 of 15 December 1998, as amended by Decree-Law No 261/2001 of 26 September 2001
- Metropolitano Ligeiro de Mirandela, SA, pursuant to Decree-Law No 15/95 of 8 February 1995
- Metro do Mondego, SA, pursuant to Decree-Law No 10/2002 of 24 January 2002
- Metro Transportes do Sul, SA, pursuant to Decree-Law No 337/99 of 24 August 1999
- Local authorities and local authority undertakings providing transport services pursuant to Law No 159/99 of 14 September 1999

- Public authorities and public undertakings providing railway services pursuant to Law No 10/90 of 17 March 1990
- Private undertakings providing railway services pursuant to Law No 10/90 of 17 March 1990, where they hold special or exclusive rights

Finland

- VR Osakeyhtiö/VR Aktiebolag

Sweden

- Public entities operating railway services in accordance with förordningen (1996:734) om statens spåranläggningar and lagen (1990:1157) om järnvägssäkerhet
- Regional and local public entities operating regional or local railway communications pursuant to lagen (1997:734) om ansvar för viss kollektiv persontrafik
- Private entities operating railway services pursuant to an authorisation granted under förordningen (1996:734) om statens spåranläggningar, where such permission complies with Article 2(3) of the Directive

United Kingdom

- Railtrack plc
 - Eurotunnel plc
 - Northern Ireland Transport Holding Company
 - Northern Ireland Railways Company Limited
-

ANNEX V

CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEYBUS OR BUS SERVICES**Belgium**

- Société des Transports intercommunaux de Bruxelles/Maatschappij voor intercommunaal Vervoer van Brussel
- Société régionale wallonne du Transport et ses sociétés d'exploitation (TEC Liège–Verviers, TEC Namur–Luxembourg, TEC Brabant wallon, TEC Charleroi, TEC Hainaut)/Société régionale wallonne du Transport en haar exploitatiemaatschappijen (TEC Liège–Verviers, TEC Namur–Luxembourg, TEC Brabant wallon, TEC Charleroi, TEC Hainaut)
- Vlaamse Vervoermaatschappij (De Lijn)
- Private companies benefiting from special or exclusive rights.

Denmark

- Danske Statsbaner
- Entities providing bus services to the public (ordinary regular services) on the basis of an authorisation pursuant to lovbekendtgørelse nr. 738 om buskørsel of 22 December 1999

Germany

- Undertakings providing, on the basis of an authorisation, short-distance transport services to the public pursuant to the Personenbeförderungsgesetz of 21 March 1961, as last amended on 21 August 2002

Greece

- 'Ηλεκτροκίνητα Λεωφορεία Περιοχής Αθηνών — Πειραιώς ΑΕ' ('ΗΛΠΑΠ ΑΕ'), established and operating pursuant to Legislative Decree No 768/1970 (A' 273), Law No 588/1977 (A' 148) and Law No 2669/1998 (A' 283)
- 'Ηλεκτρικοί Σιδηρόδρομοι Αθηνών — Πειραιώς' ('ΗΣΑΠ ΑΕ'), established and operating pursuant to Laws Nos 352/1976 (A' 147) and 2669/1998 (A' 283)
- 'Όργανισμός Αστικών Συγκοινωνιών Αθηνών ΑΕ' ('ΟΑΣΑ ΑΕ'), established and operating pursuant to Laws Nos 2175/1993 (A' 211) and 2669/1998 (A' 283)
- 'Εταιρεία Θερμικών Λεωφορείων ΑΕ' ('ΕΘΕΛ ΑΕ'), established and operating pursuant to Laws Nos 2175/1993 (A' 211) and 2669/1998 (A' 283)
- 'Αττικό Μετρό ΑΕ', established and operating pursuant to Law No 1955/1991
- 'Όργανισμός Αστικών Συγκοινωνιών Θεσσαλονίκης' ('ΟΑΣΘ'), established and operating pursuant to Decree No 3721/1957, Legislative Decree No 716/1970 and Laws Nos 66/79 and 2898/2001 (A' 71)
- 'Κοινό Ταμείο Είσπραξης Λεωφορείων' ('ΚΤΕΛ'), operating pursuant to Law No 2963/2001 (A' 268)
- 'Δημοτικές Επιχειρήσεις Λεωφορείων Ρόδου και Κω', otherwise known as 'ΡΟΔΑ' and 'ΔΕΑΣ ΚΩ' respectively, operating pursuant to Law No 2963/2001 (A' 268)

Spain

- Entidades que prestan servicios públicos de transporte urbano con arreglo a la Ley 7/1985, de 2 de abril, Reguladora de las Bases de Régimen Local; Real Decreto legislativo 781/1986, de 18 de abril, por el que se aprueba el texto refundido de las disposiciones legales vigentes en materia de régimen local y correspondiente legislación autonómica en su caso
- Entidades que prestan servicios públicos de autobuses con arreglo a la disposición transitoria tercera de la Ley 16/1987, de 30 de julio, de Ordenación de los Transportes Terrestres

France

- Entities providing transport services to the public pursuant to Article 7-II of loi d'orientation des transports intérieurs n° 82-1153 of 30 December 1982
- Régie autonome des transports parisiens, Société nationale des chemins de fer français and other entities providing transport services on the basis of an authorisation granted by the Syndicat des transports d'Ile-de-France, pursuant to Order No 59-151 of 7 January 1959 as amended and the Decrees implementing it with regard to the organisation of passenger transport in the Ile-de-France region
- Réseau ferré de France, State-owned company set up by Law No 97-135 of 13 February 1997

Ireland

- Iarnród Éireann (Irish Rail)
- Railway Procurement Agency
- Luas (Dublin Light Rail)
- Bus Éireann (Irish Bus)
- Bus Átha Cliath (Dublin Bus)
- Entities providing transport services to the public pursuant to the amended Road Transport Act 1932

Italy

- Entities, companies and undertakings providing public transport services by rail, automated system, tramway, trolleybus or bus or managing the relevant infrastructures at national, regional or local level

They include, for example:

- Entities, companies and undertakings providing transport services on the basis of a concession pursuant to Law No 1822 of 28 September 1939 — Disciplina degli autoservizi di linea (autolinee per viaggiatori, bagagli e pacchi agricoli in regime di concessione all'industria privata) — Article 1, as amended by Article 45 of the Presidential Decree No 771 of 28 June 1955
- Entities, companies and undertakings providing transport services to the public pursuant to Article 1(4) or (15) of Royal Decree No 2578 of 15 October 1925 — Approvazione del testo unico della legge sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province
- Entities, companies and undertakings providing transport services to the public pursuant to Legislative Decree No 422 of 19 November 1997 — Conferimento alle regioni ed agli enti locali di funzioni e compiti in materia di trasporto pubblico locale, under the terms of Article 4(4) of Law No 59 of 15 March 1997 — as amended by Legislative Decree No 400 of 20 September 1999, and by Article 45 of Law No 166 of 1 August 2002
- Entities, companies and undertakings providing public transport services pursuant to Article 113 of the consolidated text of the laws on the structure of local authorities, approved by Law No 267 of 18 August 2000 as amended by Article 35 of Law No 448 of 28 December 2001
- Entities, companies and undertakings operating on the basis of a concession pursuant to Article 242 or 256 of Royal Decree No 1447 of 9 May 1912 approving the consolidated text of the laws on le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili
- Entities, companies and undertakings and local authorities operating on the basis of a concession pursuant to Article 4 of Law No 410 of 4 June 1949 — Concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione
- Entities, companies and undertakings operating on the basis of a concession pursuant to Article 14 of Law No 1221 of 2 August 1952 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione

Luxembourg

- Chemins de fer du Luxembourg (CFL)
- Service communal des autobus municipaux de la Ville de Luxembourg
- Transports intercommunaux du canton d'Esch-sur-Alzette (TICE)
- Bus service undertakings operating pursuant to the règlement grand-ducal concernant les conditions d'octroi des autorisations d'établissement et d'exploitation des services de transports routiers réguliers de personnes rémunérées of 3 February 1978

Netherlands

- Entities providing transport services to the public pursuant to chapter II (Openbaar Vervoer) of the Wet Personenvervoer

Austria

- Entities authorised to provide transport services pursuant to the Eisenbahngesetz, BGBl. No 60/1957, as amended, or the Kraftfahrlineingesetz, BGBl. I No 203/1999, as amended

Portugal

- Metropolitano de Lisboa, EP, pursuant to Decree-Law No 439/78 of 30 December 1978
- Local authorities, local authority services and local authority undertakings under Law No 58/98 of 18 August 1998, which provide transport services pursuant to Law No 159/99 of 14 September 1999
- Public authorities and public undertakings providing railway services pursuant to Law No 10/90 of 17 March 1990
- Private undertakings providing railway services pursuant to Law No 10/90 of 17 March 1990, where they hold special or exclusive rights
- Entities providing public transport services pursuant to Article 98 of the Regulamento de Transportes em Automóveis (Decree No 37272 of 31 December 1948)
- Entities providing public transport services pursuant to Law No 688/73 of 21 December 1973
- Entities providing public transport services pursuant to Decree-Law No 38144 of 31 December 1950

Finland

- Entities providing regular coach transport services under a special or exclusive licence pursuant to the laki luovanvaraisesta henkilöliikenteestä tiellä/lagen om tillståndspliktig persontrafik på väg (343/1991) and municipal transport authorities and public enterprises providing public transport services by bus, rail or underground railway, or maintaining a network for the purpose of providing such transport services

Sweden

- Entities operating urban railway or tramway services pursuant to lagen (1997:734) om ansvar för viss kollektiv persontrafik and lagen (1990:1157) om järnvägssäkerhet
- Public or private entities operating a trolley bus or bus service pursuant with lagen (1997:734) om ansvar för viss kollektiv persontrafik and yrkestrafiklagen (1998:490)

United Kingdom

- London Regional Transport
- London Underground Limited

- Transport for London
 - A subsidiary of Transport for London within the meaning of section 424(1) of the Greater London Authority Act 1999
 - Strathclyde Passenger Transport Executive
 - Greater Manchester Passenger Transport Executive
 - Tyne and Wear Passenger Transport Executive
 - Brighton Borough Council
 - South Yorkshire Passenger Transport Executive
 - South Yorkshire Supertram Limited
 - Blackpool Transport Services Limited
 - Conwy County Borough Council
 - A person who provides a London local service as defined in section 179(1) of the Greater London Authority Act 1999 (a bus service) in pursuance of an agreement entered into by Transport for London under section 156(2) of that Act or in pursuance of a transport subsidiary's agreement as defined in section 169 of that Act
 - Northern Ireland Transport Holding Company
 - A person who holds a road service licence under section 4(1) of the Transport Act (Northern Ireland) 1967 which authorises him to provide a regular service within the meaning of that licence
-

ANNEX VI

CONTRACTING ENTITIES IN THE POSTAL SERVICES SECTOR

BELGIUM

De Post/La Poste

DENMARK

Post Danmark, jf. Lov nr. 569 om Post Danmark A/S of 6 June 2002

GERMANY

—

GREECE

Ελληνικά Ταχυδρομεία ΕΛΤΑ established by Legislative Decree No 496/70 and operating pursuant to Law No 2668/98 (ELTA)

SPAIN

Correos y Telégrafos, SA

FRANCE

La Poste

IRELAND

An Post plc

ITALY

Poste Italiane s.p.a.

LUXEMBOURG

Entreprise des Postes et Télécommunications Luxembourg

NETHERLANDS

—

AUSTRIA

Österreichische Post AG

PORTUGAL

CTT — Correios de Portugal

FINLAND

—

SWEDEN

Posten Sverige AB

Posten Logistik AB

BLSI-I AB

DPD Nordic AB

DPD Sverige AB

Falcon Air AB

Hultbergs Inrikes Transporter AB (HIT)

Posten Express AB

Posten Logistik AB

Poståkeriet Sverige AB

SwedeGiro AB

TAB

UNITED KINGDOM

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ANNEX VII

CONTRACTING ENTITIES IN THE SECTORS OF EXPLORATION FOR AND EXTRACTION OF OIL OR GAS**Belgium**

—

Denmark

Entities pursuant to

- Lov om Danmarks undergrund, see Consolidation Act No 526 of 11 June 2002
- Lov om kontinentalsoklen, see Consolidation Act No 182 of 1 May 1979

Germany

- Undertakings pursuant to the Bundesberggesetz of 13 August 1980.

Greece

- 'Ελληνικά Πετρέλαια ΑΕ', pursuant to Law No 2593/98 για την αναδιοργάνωση της ΔΕΠ ΑΕ και των θυγατρικών της εταιρειών, το καταστατικό αυτής και άλλες διατάξεις

Spain

- BG International Limited Quanam, Asesores & Consultores, SA
- Cambria Europe, Inc.
- CNWL oil (España), SA
- Compañía de investigación y explotaciones petrolíferas, SA
- Conoco limited
- Eastern España, SA
- Enagas, SA
- España Canadá resources Inc.
- Fugro — Geoteam, SA
- Galioil, SA
- Hope petróleos, SA
- Locs oil compay of Spain, SA
- Medusa oil Ltd
- Muphy Spain oil company
- Onempm España, SA
- Petroleum oil & gas España, SA
- Repsol Investigaciones petrolíferas, SA
- Sociedad de hidrocarburos de Euskadi, SA
- Taurus petroleum, AN

- Teredo oil limited
- Unión Fenosa gas exploración y producción, SA
- Wintersahl, AG
- YCI España, LC
- Otras entidades que operan en virtud de la Ley 34/1998, de 7 de octubre, del Sector de hidrocarburos y su normativa de desarrollo

France

- Entities responsible for exploration for and the extraction of oil or gas pursuant to the code minier and its implementing rules, particularly Decree No 95-427 of 19 April 1995

Ireland

- Entities granted an authorisation, license, permit or concession to explore for or extract oil and gas pursuant to the following legal provisions:
 - Continental Shelf Act 1968
 - Petroleum and Other Minerals Development Act 1960
 - Licensing Terms for Offshore Oil and Gas Exploration and Development 1992
 - Petroleum (Production) Act (NI) 1964

Italy

- Entities granted an authorisation, permit, licence or concession to explore for or extract oil and gas or to store natural gas underground pursuant to the following legislative provisions:
 - Law No 136 of 10 February 1953
 - Law No 6 of 11 January 1957, as amended by Law No 613 of 21 July 1967
 - Law No 9 of 9 January 1991
 - Legislative Decree No 625 of 25 November 1996
 - Law No 170 of 26 April 1974, as amended by the Legislative Decree No 164 of 23 May 2000

Luxembourg

—

Netherlands

- Entities pursuant to Mijnbouwwet (1 January 2003)

Austria

- Entities authorised to explore for or extract oil or gas pursuant to the Mineralrohstoffgesetz, BGBl. I No 38/1999, as amended

Portugal

Entities pursuant to

- Decree-Law No 109/94 of 26 April 1994 and Portaria (Ministerial Order) No 790/94 of 5 September 1994
- Decree-Law No 82/94 of 24 August 1994 and Despacho (Decision) No A-87/94 of 17 January 1994

Finland

—

Sweden

- Entities holding a concession for exploring for or exploiting oil or gas pursuant to minerallagen (1991:45) or which have been granted an authorisation pursuant to lagen (1966:314) om kontinentalsockeln

United Kingdom

- A person operating by virtue of a licence granted or having effect as if granted under the Petroleum Act 1998
 - A person licensed under the Petroleum (Production) Act (Northern Ireland) 1964
-

ANNEX VIII

CONTRACTING ENTITIES IN THE SECTORS OF EXPLORATION FOR AND EXTRACTION OF COAL AND OTHER SOLID FUELS**Belgium**

—

Denmark

- Entities exploring for or extracting coal or other solid fuels pursuant to Consolidation Act No 569 of 30 June 1997

Germany

- Undertakings exploring for or extracting coal or other solid fuels pursuant to the Bundesberggesetz of 13 August 1980

Greece

- 'Δημόσια Επιχείρηση Ηλεκτρισμού', which prospects for and extracts coal and other solid fuels pursuant to the Mining Code of 1973, as amended by the law of 27 April 1976

Spain

- Alto Bierzo, SA
- Antracitas de Arlanza, SA
- Antracitas de Gillon, SA
- Antracitas de La Granja, SA
- Antracitas de Tineo, SA
- Campomanes Hermanos, SA
- Carbones de Arlanza, SA
- Carbones de Linares, SA
- Carbones de Pedraforca, SA
- Carbones del Puerto, SA
- Carbones el Túnel, SL
- Carbones San Isidro y María, SA
- Carbonífera del Narcea, SA
- Compañía Minera Jove, SA
- Compañía General Minera de Teruel, SA
- Coto minero del Narcea, SA
- Coto minero del Sil, SA
- Empresa Nacional Carbonífera del Sur, SA
- Endesa, SA

- Gonzalez y Diez, SA
- Hijos de Baldomero García, SA
- Hullas del Coto Cortés, SA
- Hullera Vasco-leonesa, SA
- Hulleras del Norte, SA
- Industrial y Comercial Minera, SA
- La Carbonífera del Ebro, SA
- Lignitos de Meirama, SA
- Malaba, SA
- Mina Adelina, SA
- Mina Escobal, SA
- Mina La Camocha, SA
- Mina La Sierra, SA
- Mina Los Compadres, SA
- Minas de Navaleo, SA
- Minas del Principado, SA
- Minas de Valdeloso, SA
- Minas Escucha, SA
- Mina Mora primera bis, SA
- Minas y explotaciones industriales, SA
- Minas y ferrocarriles de Utrillas, SA
- Minera del Bajo Segre, SA
- Minera Martín Aznar, SA
- Minero Siderúrgica de Ponferrada, SA
- Muñoz Sole hermanos, SA
- Promotora de Minas de carbón, SA
- Sociedad Anónima Minera Catalano-aragonesa
- Sociedad minera Santa Bárbara, SA
- Unión Minera del Norte, SA
- Union Minera Ebro Segre, SA
- Viloría Hermanos, SA
- Virgilio Riesco, SA
- Otras entidades que operan en virtud de la Ley 22/1973, de 21 de julio, de Minas y su normativa de desarrollo

France

- Entities exploring for or extracting coal or other solid fuels pursuant to the code minier and its implementing rules, particularly Decree No 95-427 of 19 April 1995

Ireland

- Bord na Mona plc. set up and operating pursuant to the Turf Development Act 1946 to 1998

Italy

- Carbosulcis spa

Luxembourg

—

Netherlands

—

Austria

- Entities authorised to explore for or extract coal or other solid fuels pursuant to the Mineralrohstoffgesetz, BGBl. I No 38/1999, as amended

Portugal

- Empresa Nacional de Urânio

Finland

- Entities benefiting from a special concession for the exploration for or extraction of solid fuels pursuant to the laki oikeudesta luovuttaa valtion kiinteistövarallisuutta/lagn om rätt att överlåta statlig fastighetsförmögenhet (973/2002)

Sweden

- Entities benefitting from a concession for the exploration for or extraction of coal or other solid fuels on the basis of a concession pursuant to minerallagen (1991:45) or lagen (1985:620) om vissa torvfyndigheter, or which have been granted an authorisation pursuant to lagen (1966:314) om kontinentalsockeln

United Kingdom

- Any licensed operator (within the meaning of the Coal Industry Act 1994)
 - The Department of Enterprise, Trade and Investment (Northern Ireland)
 - A person operating by virtue of a prospecting licence, a mining lease, a mining licence or a mining permission as defined by section 57(1) of the Mineral Development Act (Northern Ireland) 1969
-

ANNEX IX

CONTRACTING ENTITIES IN THE FIELD OF MARITIME OR INLAND PORT OR OTHER TERMINAL FACILITIES**Belgium**

- Gemeentelijk Havenbedrijf van Antwerpen
- Havenbedrijf van Gent
- Maatschappij der Brugse Zeevaartinrichtigen
- Port autonome de Charleroi
- Port autonome de Namur
- Port autonome de Liège
- Port autonome du Centre et de l'Ouest
- Société régionale du Port de Bruxelles/Gewestelijk Vennootschap van de Haven van Brussel
- Zeekanaal en Watergebonden Grondbeheer Vlaanderen

Denmark

- Ports as defined in § 1 of lov nr. 326 om havne of 28 May 1999

Germany

- Seaports owned totally or partially by territorial authorities (Länder, Kreise, Gemeinden)
- Inland ports subject to the Hafenordnung pursuant to the Wassergesetze of the Länder

Greece

- 'Όργανισμός Λιμένος Πειραιώς Ανώνυμη Εταιρεία' ('ΟΛΠ ΑΕ'), pursuant to Law No 2688/99
- 'Όργανισμός Λιμένος Θεσσαλονίκης Ανώνυμη Εταιρεία' ('ΟΛΘ ΑΕ'), pursuant to Law No 2688/99
- 'Όργανισμός Λιμένος Αλεξανδρούπολης Ανώνυμη Εταιρεία' ('ΟΛΑ ΑΕ'), pursuant to Law No 2932/01
- 'Όργανισμός Λιμένος Βόλου Ανώνυμη Εταιρεία' ('ΟΛΒ ΑΕ'), pursuant to Law No 2932/01
- 'Όργανισμός Λιμένος Ελευσίνας Ανώνυμη Εταιρεία' ('ΟΛΕ ΑΕ'), pursuant to Law No 2932/01
- 'Όργανισμός Λιμένος Ηγουμενίτσας Ανώνυμη Εταιρεία' ('ΟΛΗΓ ΑΕ'), pursuant to Law No 2932/01
- 'Όργανισμός Λιμένος Ηρακλείου Ανώνυμη Εταιρεία' ('ΟΛΗ ΑΕ'), pursuant to Law No 2932/01
- 'Όργανισμός Λιμένος Καβάλας Ανώνυμη Εταιρεία' ('ΟΛΚ ΑΕ'), pursuant to Law No 2932/01
- 'Όργανισμός Λιμένος Κέρκυρας Ανώνυμη Εταιρεία' ('ΟΛΚΕ ΑΕ'), pursuant to Law No 2932/01
- 'Όργανισμός Λιμένος Λαυρίου Ανώνυμη Εταιρεία' ('ΟΛΛ ΑΕ'), pursuant to Law No 2932/01
- 'Όργανισμός Λιμένος Ραφήνας Ανώνυμη Εταιρεία' ('ΟΛΡ ΑΕ'), pursuant to Law No 2932/01
- Other ports, governed by Presidential Decree No 649/1977. (Εποπτεία, οργάνωση, λειτουργία και διοικητικός έλεγχος λιμένων.)

Spain

- Ente público Puertos del Estado
- Autoridad Portuaria de Alicante
- Autoridad Portuaria de Almería — Motril
- Autoridad Portuaria de Avilés
- Autoridad Portuaria de la Bahía de Algeciras
- Autoridad Portuaria de la Bahía de Cádiz
- Autoridad Portuaria de Baleares
- Autoridad Portuaria de Barcelona
- Autoridad Portuaria de Bilbao
- Autoridad Portuaria de Cartagena
- Autoridad Portuaria de Castellón
- Autoridad Portuaria de Ceuta
- Autoridad Portuaria de Ferrol — San Cibrao
- Autoridad Portuaria de Gijón
- Autoridad Portuaria de Huelva
- Autoridad Portuaria de Las Palmas
- Autoridad Portuaria de Málaga
- Autoridad Portuaria de Marín y Ría de Pontevedra
- Autoridad Portuaria de Melilla
- Autoridad Portuaria de Pasajes
- Autoridad Portuaria de Santa Cruz de Tenerife
- Autoridad Portuaria de Santander
- Autoridad Portuaria de Sevilla
- Autoridad Portuaria de Tarragona
- Autoridad Portuaria de Valencia
- Autoridad Portuaria de Vigo
- Autoridad Portuaria de Villagarcía de Arousa
- Otras entidades Portuarias de las Comunidades Autónomas de Andalucía, Asturias, Baleares, Canarias, Cantabria, Cataluña, Galicia, Murcia, País Vasco y Valencia.

France

- Port autonome de Paris set up pursuant to loi n° 68-917 relative au port autonome de Paris of 24 October 1968

- Port autonome de Strasbourg set up pursuant to the convention entre l'État et la ville de Strasbourg relative à la construction du port rhénan de Strasbourg et à l'exécution de travaux d'extension de ce port of 20 May 1923, approved by the Law of 26 April 1924
- Ports autonomes operating pursuant to Articles L. 111-1 et seq. of the code des ports maritimes
- Ports non autonomes operating pursuant to Articles R. 121-1 et seq. of the code des ports maritimes
- Ports managed by the regional or département authorities or operating pursuant to a concession granted by the regional or département authorities pursuant to Article 6 of Law No 83-663 of 22 July 1983 supplementing loi n° 83-8 relative à la répartition des compétences entre les communes, les départements et l'État of 7 January 1983
- Voies navigables de France, State-owned company subject to the provisions of Article 124 of Law No 90-1168 du 29 December 1990, as amended

Ireland

- Ports operating pursuant to Harbours Acts 1946 to 2000
- Port of Rosslare Harbour operating pursuant to the Fishguard and Rosslare Railways and Harbours Acts 1899

Italy

- National ports and other ports managed by the Capitaneria di Porto pursuant to the Codice della navigazione, Royal Decree No 327 of 30 March 1942
- Autonomous ports (enti portuali) set up by special laws pursuant to Article 19 of the Codice della navigazione, Royal Decree No 327 of 30 March 1942

Luxembourg

- Port de Mertert, set up and operating pursuant to the loi relative à l'aménagement et à l'exploitation d'un port fluvial sur la Moselle of 22 July 1963, as amended

Netherlands

- Contracting entities in the field of sea port or inland port or other terminal equipment

Austria

- Inland ports owned totally or partially by the Länder and/or Gemeinden

Portugal

- APDL — Administração dos Portos do Douro e Leixões, SA, pursuant to Decree-Law No 335/98 of 3 November 1998
- APL — Administração do Porto de Lisboa, SA, pursuant to Decree-Law No 336/98 of 3 November 1998
- APS — Administração do Porto de Sines, SA, pursuant to Decree-Law No 337/98 of 3 November 1998
- APSS — Administração dos Portos de Setúbal e Sesimbra, SA, pursuant to Decree-Law No 338/98 of 3 November 1998
- APA — Administração do Porto de Aveiro, SA, pursuant to Decree-Law No 339/98 of 3 November 1998
- IPN — Instituto Portuário do Norte, pursuant to Decree-Law No 242/99 of 28 June 1999
- ICP — Instituto Portuário do Centro, pursuant to Decree-Law No 243/99 of 28 June 1999
- IPS — Instituto Portuário do Sul, pursuant to Decree-Law No 244/99 of 28 June 1999
- IDN — Instituto da Navegabilidade do Douro, pursuant to Decree-Law No 138-A/97 of 3 June 1997

Finland

- Ports operating pursuant to the laki kunnallisista satamajärjestyksistä ja liikennemaksuista/lagen om kommunala hamnanordningar och trafikavgifter (955/1976) and ports instituted under a licence pursuant to section 3 of the laki yksityisistä yleisistä satamista/lagen om privata allmänna hamnar (1156/1994)
- Saimaan kanavan hoitokunta/Förvaltningsnämnden för Saima kanal

Sweden

- Ports and terminal facilities according to lagen (1983:293) om inrättande, utvidgning och avlysning av allmän farled och allmän hamn and förordningen (1983:744) om trafiken på Göta kanal

United Kingdom

- A local authority which exploits a geographical area for the purpose of providing maritime or inland port or other terminal facilities to carriers by sea or inland waterway
 - A harbour authority within the meaning of section 57 of the Harbours Act 1964
 - British Waterways Board
 - A harbour authority as defined by section 38(1) of the Harbours Act (Northern Ireland) 1970
-

ANNEX X

CONTRACTING ENTITIES IN THE FIELD OF AIRPORT INSTALLATIONS**Belgium**

- Belgocontrol
- Brussels International Airport Company
- Luchthaven van Deurne
- Luchthaven van Oostende
- SA Brussels South Charleroi Airport
- SA Société de Développement et de Promotion de l'Aéroport de Bierset

Denmark

- Airports operating on the basis of an authorisation pursuant to § 55(1) of the lov om luftfart, see Consolidation Act No 543 of 13 June 2001

Germany

- Airports as defined in Article 38(2)(1) of the Luftverkehrs-Zulassungs-Ordnung of 19 June 1964, as last amended on 21 August 2002

Greece

- 'Υπηρεσία Πολιτικής Αεροπορίας' ('ΥΠΙΑ') operating pursuant to Legislative Decree No 714/70, as amended by Law No 1340/83; the organisation of the company is laid down by Presidential Decree No 56/89, as amended subsequently
- The company 'Διεθνής Αερολιμένας Αθηνών' at Spata operating pursuant to Legislative Decree No 2338/95 Κύρωση Σύμβασης Ανάπτυξης του Νέου Διεθνούς Αεροδρομίου της Αθήνας στα Σπάτα, 'ίδρυση της εταιρείας "Διεθνής Αερολιμένας Αθηνών ΑΕ" έγκριση περιβαλλοντικών όρων και άλλες διατάξεις'
- 'Φορείς Διαχείρισης' in accordance with Presidential Decree No 158/02 'Ίδρυση, κατασκευή, εξοπλισμός, οργάνωση, διοίκηση, λειτουργία και εκμετάλλευση πολιτικών αερολιμένων από φυσικά πρόσωπα, νομικά πρόσωπα ιδιωτικού δικαίου και Οργανισμούς Τοπικής Αυτοδιοίκησης' (Greek Official Gazette A 137)

Spain

- Ente público Aeropuertos Españoles y Navegación Aérea (AENA)

France

- Airports operated by State-owned companies pursuant to Articles L.251-1, L.260-1 and L.270-1 of the code de l'aviation civile
- Airports operating on the basis of a concession granted by the State pursuant to Article R.223-2 of the code de l'aviation civile
- Airports operating pursuant to an arrêté préfectoral portant autorisation d'occupation temporaire
- Airports set up by a public authority and which are the subject of a convention as laid down in Article L.221-1 of the code de l'aviation civile

Ireland

- Airports of Dublin, Cork and Shannon managed by Aer Rianta — Irish Airports
- Airports operating on the basis of a public use licence granted pursuant to the Irish Aviation Authority Act 1993 as amended by the Air Navigation and Transport (Amendment) Act, 1998, and at which any scheduled air services are performed by aircraft for the public transport of passengers, mail or cargo

Italy

- AAAVTAG
- Managing entities set up by special laws
- Entities operating airport facilities on the basis of a concession granted pursuant to Article 694 of the Codice della navigazione, Royal Decree No 347 of 30 March 1942
- RAI Registro Aeronautico Italiano

Luxembourg

- Aéroport du Findel

Netherlands

- Airports operating pursuant to Articles 18 and following of the Luchtvaartwet

Austria

- Entities authorised to provide airport facilities pursuant to the Luftfahrtgesetz, BGBl. No 253/1957, as amended

Portugal

- ANA — Aeroportos de Portugal, SA, set up pursuant to Decree-Law No 404/98 of 18 December 1998
- NAV — Empresa Pública de Navegação Aérea de Portugal, EP, set up pursuant to Decree-Law No 404/98 of 18 December 1998
- ANAM — Aeroportos e Navegação Aérea da Madeira, SA, set up pursuant to Decree-Law No 453/91 of 11 December 1991

Finland

- Airports managed by the 'Ilmailulaitos/Luftfartsverket', or by a municipal or public enterprise pursuant to the ilmailulaki/luftfartslagen (281/1995)

Sweden

- Publicly-owned and operated airports in accordance with luftfartslagen (1957:297)
- Privately-owned and operated airports with an operating licence under the act, where this licence corresponds to the criteria of Article 2(3) of the Directive

United Kingdom

- A local authority which exploits a geographical area for the purpose of providing airport or other terminal facilities to carriers by air
 - An airport operator within the meaning of the Airports Act 1986 who has the management of an airport subject to economic regulation under Part IV of that Act
 - An airport operator within the meaning of the Airports Act 1986 who has the management of an airport subject to economic regulation under Part IV of that Act
 - Highland and Islands Airports Limited
 - An airport operator within the meaning of the Airports (Northern Ireland) Order 1994
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ANNEX XI

LIST OF COMMUNITY LEGISLATION REFERRED TO IN ARTICLE 30(3)

A. TRANSPORT OR DISTRIBUTION OF GAS OR HEAT

Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas ⁽¹⁾

B. PRODUCTION, TRANSMISSION OR DISTRIBUTION OF ELECTRICITY

Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity ⁽²⁾

C. PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER

—

D. CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES

—

E. CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEYBUS OR MOTOR BUS SERVICES

—

F. CONTRACTING ENTITIES IN THE FIELD OF POSTAL SERVICES

Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service ⁽³⁾

G. EXPLORATION FOR AND EXTRACTION OF OIL OR GAS

Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons ⁽⁴⁾

H. EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS

—

I. CONTRACTING ENTITIES IN THE FIELD OF SEAPORT OR INLAND PORT OR OTHER TERMINAL EQUIPMENT

—

J. CONTRACTING ENTITIES IN THE FIELD OF AIRPORT INSTALLATIONS

—

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⁽¹⁾ OJ L 204, 21.7.1998, p. 1.

⁽²⁾ OJ L 27, 30.1.1997, p. 20.

⁽³⁾ OJ L 15, 21.1.1998, p. 14. Directive last amended by Directive 2002/39/EC (OJ L 176, 5.7.2002, p. 21).

⁽⁴⁾ OJ L 164, 30.6.1994, p. 3.

ANNEX XII

LIST OF ACTIVITIES AS SET OUT IN ARTICLE 1(2), (b) ⁽¹⁾

NACE ⁽¹⁾					
Section F			Construction		CPV Code
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	<p>This class includes:</p> <ul style="list-style-type: none"> — demolition of buildings and other structures — clearing of building sites — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. — site preparation for mining: overburden removal and other development and preparation of mineral properties and sites <p>This class also includes:</p> <ul style="list-style-type: none"> — building site drainage — drainage of agricultural or forestry land 	45110000
		45.12	Test drilling and boring	<p>This class includes:</p> <ul style="list-style-type: none"> — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes <p>This class excludes:</p> <ul style="list-style-type: none"> — drilling of production oil or gas wells, see 11.20 — water well drilling, see 45.25 — shaft sinking, see 45.25 — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20 	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000

⁽¹⁾ In the event of any difference of interpretation between the CPV and the NACE, the NACE nomenclature will apply.

NACE ⁽¹⁾					
Section F			Construction		CPV Code
Division	Group	Class	Subject	Notes	
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <p>construction of all types of buildings</p> <p>construction of civil engineering constructions:</p> <p>bridges, including those for elevated highways, viaducts, tunnels and subways</p> <p>long-distance pipelines, communication and power lines</p> <p>urban pipelines, urban communication and powerlines;</p> <p>ancillary urban works</p> <p>assembly and erection of prefabricated constructions on the site</p> <p>This class excludes:</p> <p>service activities incidental to oil and gas extraction, see 11.20</p> <p>erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28</p> <p>construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23</p> <p>building installation, see 45.3</p> <p>building completion, see 45.4</p> <p>architectural and engineering activities, see 74.20</p> <p>project management for construction, see 74.20</p>	45210000
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <p>erection of roofs</p> <p>roof covering</p> <p>waterproofing</p>	45220000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <p>construction of highways, streets, roads, other vehicular and pedestrian ways</p> <p>construction of railways</p> <p>construction of airfield runways</p> <p>construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations</p> <p>painting of markings on road surfaces and car parks</p> <p>This class excludes:</p> <p>preliminary earth moving, see 45.11</p>	45230000

NACE ⁽¹⁾					
Section F			Construction		CPV Code
Division	Group	Class	Subject	Notes	
		45.24	Construction of water projects	<p>This class includes construction of:</p> <ul style="list-style-type: none"> waterways, harbour and river works, pleasure ports (marinas), locks, etc. dams and dykes dredging subsurface work 	45240000
		45.25	Other construction work involving special trades	<p>This class includes:</p> <ul style="list-style-type: none"> construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment: construction of foundations, including pile driving water well drilling and construction, shaft sinking erection of non-self-manufactured steel elements steel bending bricklaying and stone setting scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms erection of chimneys and industrial ovens <p>This class excludes:</p> <ul style="list-style-type: none"> renting of scaffolds without erection and dismantling, see 71.32 	45250000
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	<p>This class includes:</p> <ul style="list-style-type: none"> installation in buildings or other construction projects of: electrical wiring and fittings telecommunications systems electrical heating systems residential antennas and aerials fire alarms burglar alarm systems lifts and escalators lightning conductors, etc. 	45310000

NACE ⁽¹⁾					
Section F			Construction		CPV Code
Division	Group	Class	Subject	Notes	
		45.32	Insulation work activities	<p>This class includes:</p> <p>installation in buildings or other construction projects of thermal, sound or vibration insulation</p> <p>This class excludes:</p> <p>waterproofing, see 45.22</p>	45320000
		45.33	Plumbing	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <p>plumbing and sanitary equipment</p> <p>gas fittings</p> <p>heating, ventilation, refrigeration or air-conditioning equipment and ducts</p> <p>sprinkler systems</p> <p>This class excludes:</p> <p>installation of electrical heating systems, see 45.31</p>	45330000
		45.34	Other building installation	<p>This class includes:</p> <p>installation of illumination and signalling systems for roads, railways, airports and harbours</p> <p>installation in buildings or other construction projects of fittings and fixtures n.e.c.</p>	45340000
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes:</p> <p>application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials</p>	45410000
		45.42	Joinery installation	<p>This class includes:</p> <p>installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials</p> <p>interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</p> <p>This class excludes:</p> <p>laying of parquet and other wood floor coverings, see 45.43</p>	45420000

NACE ⁽¹⁾					
Section F			Construction		CPV Code
Division	Group	Class	Subject	Notes	
		45.43	Floor and wall covering	<p>This class includes:</p> <p>laying, tiling, hanging or fitting in buildings or other construction projects of:</p> <p>ceramic, concrete or cut stone wall or floor tiles</p> <p>parquet and other wood floor coverings</p> <p>carpets and linoleum floor coverings, including of rubber or plastic</p> <p>terrazzo, marble, granite or slate floor or wall coverings</p> <p>wallpaper</p>	45430000
		45.44	Painting and glazing	<p>This class includes:</p> <p>interior and exterior painting of buildings, painting of civil engineering structures</p> <p>installation of glass, mirrors, etc.</p> <p>This class excludes:</p> <p>installation of windows, see 45.42</p>	45440000
		45.45	Other building completion	<p>This class includes:</p> <p>installation of private swimming pools</p> <p>steam cleaning, sand blasting and similar activities for building exteriors</p> <p>other building completion and finishing work n.e.c.</p> <p>This class excludes:</p> <p>interior cleaning of buildings and other structures, see 74.70</p>	45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	<p>This class excludes:</p> <p>renting of construction or demolition machinery and equipment without operators, see 71.32</p>	45500000

⁽¹⁾ Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1), Regulation as last amended by Commission Regulation (EC) No 729/2002 (OJ L 6, 10.1.2002, p. 3).

ANNEX XIII

INFORMATION TO BE INCLUDED IN CONTRACT NOTICES**A. OPEN PROCEDURES**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its execution is reserved in the context of sheltered employment programmes.
3. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement or a dynamic purchasing system).

Category of service within the meaning of Annex XVII A or XVII B and description (nomenclature reference No(s)).

Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.

4. Place of delivery, site or place of performance of service.

5. For supplies and works:

(a) Nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));

(b) Indication of whether the suppliers may tender for some and/or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

(c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

6. For services:

(a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

(b) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession;

(c) Reference of the law, regulation or administrative provision;

(d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service;

(e) Indication of whether service providers may tender for a part of the services concerned.

7. Where known, indication of whether authorisation to submit variants exists or not.

8. Time-limits for delivery or completion or duration of service contract and, as far as possible, the starting date.

9. (a) Address from which the contract documents and additional documents may be requested;

(b) Where appropriate, the amount and terms of payment of the sum to be paid to obtain such documents.
10. (a) Final date for receipt of tenders or indicative tenders where a dynamic purchasing system is introduced;

(b) Address to which they should be sent;

(c) Language or languages in which they should be drawn up.
11. (a) Where applicable, the persons authorised to be present at the opening of tenders;

(b) Date, time and place of such opening.
12. Where applicable, any deposits and guarantees required.
13. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
14. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
15. Minimum economic and technical conditions required of the economic operator to whom the contract is awarded.
16. Period during which the tenderer is bound to keep open his tender.
17. Where appropriate, particular conditions to which performance of the contract is subject.
18. Criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications.
19. Where appropriate, the reference to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
20. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time-limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.
21. Date of dispatch of the notice by the contracting entity.
22. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
23. Any other relevant information.

B. RESTRICTED PROCEDURES

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its execution is reserved in the context of sheltered employment programmes.
3. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).

Category of service within the meaning of Annex XVII A or XVII B and description (nomenclature reference No(s)).

Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.

4. Place of delivery, site or place of performance of service.

5. For supplies and works:

(a) The nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));

(b) Indication of whether the suppliers may tender for some and/or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

(c) Information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

6. For services:

(a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

(b) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession;

(c) Reference to the law, regulation or administrative provision;

(d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service;

(e) Indication of whether service providers may tender for a part of the services concerned.

7. Where known, indication of whether authorisation to submit variants exists or not.

8. Time-limits for delivery or completion or duration of service contract and, as far as possible, for starting.

9. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.

10. (a) Final date for receipt of requests to participate;

(b) Address to which they should be sent;

(c) Language or languages in which they should be drawn up.

11. Final date for dispatch of invitations to tender.

12. Where applicable, any deposits and guarantees required.

13. Main terms concerning financing and payment and/or references to the provisions in which these are contained.

14. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.
15. Criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender.
16. Where appropriate, particular conditions to which performance of the contract is subject.
17. Where appropriate, the reference to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
18. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time-limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
19. Date of dispatch of the notice by the contracting entities.
20. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
21. Any other relevant information.

C. NEGOTIATED PROCEDURES

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its execution is reserved in the context of sheltered employment programmes.
3. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).

Category of service within the meaning of Annex XVII A or XVII B and description (nomenclature reference No(s)).

Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.

4. Place of delivery, site or place of performance of service.
5. For supplies and works:
 - (a) The nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));
 - (b) Indication of whether the suppliers may tender for some and/or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

- (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

6. For services:

- (a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
- (b) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession;
- (c) Reference of the law, regulation or administrative provision;
- (d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service;
- (e) Indication of whether service providers may tender for a part of the services concerned.

7. Where known, indication of whether authorisation to submit variants exists or not.

8. Time-limits for delivery or completion or duration of service contract and, as far as possible, for starting.

9. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.

10. (a) Final date for receipt of requests to participate;

(b) Address to which they should be sent;

(c) Language or languages in which they should be drawn up.

11. Where appropriate, any deposits and guarantees required.

12. Main terms concerning financing and payment and/or references to the provisions in which these are contained.

13. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.

14. Criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to negotiate.

15. Where appropriate, the names and addresses of the economic operators already selected by the contracting entity.

16. Where applicable, date(s) of previous publications in the *Official Journal of the European Union*.

17. Where appropriate, particular conditions to which performance of the contract is subject.

18. Where appropriate, the reference to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.

19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time-limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

20. Date of dispatch of the notice by the contracting entity.

21. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).

22. Any other relevant information.

D. SIMPLIFIED CONTRACT NOTICE FOR USE IN A DYNAMIC PURCHASING SYSTEM ⁽¹⁾

1. Country of contracting entity.
 2. Name and e-mail address of contracting entity.
 3. Publication reference of the contract notice on the dynamic purchasing system.
 4. E-mail address at which the contract documents and additional documents relating to the dynamic purchasing system are available.
 5. Subject-matter of contract: description by reference number(s) of CPV nomenclature and quantity or extent of the contract to be awarded.
 6. Timeframe for submitting indicative tenders.
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⁽¹⁾ With a view to admission to the system in order to be able subsequently to participate in the invitation to tender for the specific contract.

ANNEX XIV

INFORMATION TO BE INCLUDED IN THE NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
 2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its execution is reserved in the context of sheltered employment programmes.
 3. Purpose of the qualification system (description of the goods, services or works or categories thereof to be procured through the system — nomenclature reference No(s)).
 4. Conditions to be fulfilled by the economic operators in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested economic operators, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
 5. Period of validity of the qualification system and the formalities for its renewal.
 6. Reference to the fact that the notice acts as the call for competition.
 7. Address where further information and documentation concerning the qualification system can be obtained (if different from the addresses mentioned under 1).
 8. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time-limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
 9. Where known, criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria, shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender or to negotiate.
 10. Any other relevant information.
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ANNEX XV A

INFORMATION TO BE INCLUDED IN THE PERIODIC INDICATIVE NOTICE**I. HEADINGS TO BE COMPLETED IN ALL CASES**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity or the service from which additional information may be obtained.
2. (a) For supply contracts: nature and quantity or value of the services or products to be supplied (nomenclature reference No(s)).

(b) For works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work (nomenclature reference No(s)).

(c) For service contracts: intended total procurement in each of the service categories listed in Annex XVII A (nomenclature reference No(s)).
3. Date of dispatch of the notice or of dispatch of the notice of the publication of this notice on the buyer profile.
4. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
5. Any other relevant information.

II. INFORMATION WHICH SHOULD BE SUPPLIED WHERE THE NOTICE IS USED AS A MEANS OF CALLING FOR COMPETITION OR PERMITS THE REDUCTION OF THE TIME-LIMITS FOR THE RECEIPT OF TENDERS

6. A reference to the fact that interested suppliers should advise the entity of their interest in the contract or contracts.
7. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its execution is reserved in the context of sheltered employment programmes.
8. Time-limit for the receipt of applications for an invitation to tender or to negotiate.
9. Nature and quantity of the goods to be supplied or general nature of the work or category of service within the meaning of Annex XVII A and description, stating if framework agreement(s) are envisaged, including any options for further procurement and the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, an estimate of the timing of the subsequent calls for competition.
10. State whether purchase, lease, rental or hire-purchase or any combination of these is involved.
11. Time-limits for delivery or completion or duration of service contract and, as far as possible, for starting.
12. Address to which interested undertakings should send their expressions of interest in writing.

Time-limit for receipt of expressions of interest.

Language or languages authorised for the presentation of candidatures or tenders.
13. Economic and technical conditions, and financial and technical guarantees required of suppliers.
14. (a) Estimated date for initiating the award procedures in respect of the contract or contracts (if known);

(b) Type of award procedure (restricted or negotiated);

(c) The amount of and payment details for any sum to be paid to obtain documents concerning the consultation.

15. Where appropriate, particular conditions to which performance of the contract is subject.
 16. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time-limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
 17. Where known, criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned, where they do not appear in the specifications, or will not be indicated in the invitation to confirm interest referred to in Article 47(5) or in the invitation tender or to negotiate.
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*ANNEX XV 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**

1. Country of the contracting entity.
 2. Name of the contracting entity.
 3. Internet address of the 'buyer profile' (URL).
 4. CPV Nomenclature reference No(s).
-

ANNEX XVI

INFORMATION TO BE INCLUDED IN THE CONTRACT AWARD NOTICE**I. Information for publication in the *Official Journal of the European Union* ⁽¹⁾**

1. Name and address of the contracting entity.
2. Nature of the contract (supplies, works or services and Nomenclature reference No(s); where appropriate state if it is a framework agreement).
3. At least a summary indication of the nature and quantity of the products, works or services provided.
4. (a) Form of the call for competition (notice on the existence of a system of qualification; periodic notice; call for tenders);

(b) Reference of publication of the notice in the *Official Journal of the European Union*;

(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 40(3) or Article 32.
5. Award procedure (open, restricted or negotiated).
6. Number of tenders received.
7. Date of award of the contract.
8. Price paid for bargain purchases pursuant to Article 40(3)(j).
9. Name and address of the economic operator(s).
10. State, where appropriate, whether the contract has been, or may be, subcontracted.
11. Price paid or the prices of the highest and lowest tenders taken into account in the award of the contract.
12. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time-limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
13. Optional information:
 - value and share of the contract which has been or may be subcontracted to third parties,
 - award criteria.

II. Information not intended for publication

14. Number of contracts awarded (where an award has been split between several suppliers).
15. Value of each contract awarded.
16. Country of origin of the product or service (Community origin or non-Community origin; if the latter, broken down by third country).
17. Which award criteria were used (most economically advantageous; lowest price)?

⁽¹⁾ Information in headings 6, 9 and 11 is deemed information not intended for publication where the awarding entity considers that publication thereof might be detrimental to a sensitive commercial interest.

18. Was the contract awarded to a tenderer who submitted a variant, in accordance with Article 36(1)?
 19. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 57?
 20. Date of transmission of the notice by the contracting entity.
 21. In the case of contracts for services listed in Annex XVII B, agreement by the contracting entity to publication of the notice (Article 43(4)).
-

ANNEX XVII A ⁽¹⁾

SERVICES WITHIN THE MEANING OF ARTICLE 31

Category No	Subject	CPC ⁽¹⁾ reference No	CPV reference No(s)
1	Maintenance and repair services	6112, 6122, 633, 886	50000000, 50100000, 50110000, 50111110, 50112000, 50112100, 50112110, 50112111, 50112120, 50112200, 50112300, 50113000, 50113100, 50113200, 50114000, 50114100, 50114200, 50115000, 50115100, 50115200, 50116000, 50116100, 50116200, 50116300, 50116400, 50116500, 50116510, 50116600, 50117000, 50117100, 50117200, 50117300, 50118000, 50118100, 50118110, 50118200, 50118300, 50118400, 50118500, 50200000, 50210000, 50211000, 50211100, 50211200, 50211210, 50211211, 50211212, 50211300, 50211310, 50212000, 50220000, 50221000, 50221100, 50221200, 50221300, 50221400, 50222000, 50222100, 50223000, 50224000, 50224100, 50224200, 50225000, 50230000, 50231000, 50231100, 50232000, 50232100, 50232200, 50240000, 50241000, 50241100, 50241200, 50242000, 50243000, 50244000, 50245000, 50246000, 50246100, 50246200, 50246300, 50246400, 50314000, 50315000, 50330000, 50331000, 50332000, 50333000, 50333100, 50333200, 50334000, 50334100, 50334110, 50334120, 50334130, 50334140, 50334200, 50334300, 50334400, 50340000, 50341000, 50341100, 50341200, 50342000, 50343000, 50344000, 50344100, 50344200, 50400000, 50410000, 50411000, 50411100, 50411200, 50411300, 50411400, 50411500, 50412000, 50413000, 50413100, 50413200, 50420000, 50421000, 50421100, 50421200, 50422000, 50430000, 50431000, 50432000, 50433000, 50510000, 50511000, 50511100, 50511200, 50512000, 50513000, 50514000, 50514100, 50514200, 50530000, 50531000, 50531100, 50531200, 50531300, 50531400, 50531600, 50532000, 50532100, 50532200, 50532300, 50532400, 50800000, 50810000, 50820000, 50821000, 50822000, 50830000, 50840000, 50841000, 50842000, 50850000, 50860000, 50870000, 50880000, 50881000, 50882000, 50883000, 50884000, 50911000, 50911100, 50911110, 50911120, 50911130, 50911200, 50911210, 50911220, 50912100, 50913100, 50913300, 50913310, 50913400, 50913500, 50913510, 50914000, 50914100, 50914200, 50914300, 50914400, 50914500, 50914600, 50920000, 50921000, 50921100, 50922000, 50923000, 50924000, 50930000, 50931000, 50931100, 50931200, 50931300, 50931400, 50932000, 50932100, 50932200, 50933000, 50934000, 50935000, 50940000, 50941000, 50942000, 50951000, 50952000, 50952100, 50952110, 50952200, 50952400, 50952500, 50960000, 50961000, 50961100, 50961110, 50961200, 50962000, 50970000, 50971000, 50971100, 50971200, 50972000, 50973000, 50973100, 50973200, 50973300, 50973400, 50974000, 50974100, 50974200, 50974300, 50975000, 50975100, 50975200, 50975300, 50976000, 50976100, 50976200, 74732000, 74732100, 74741000, 74742000, 74743000
2	Land transport services ⁽²⁾ , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	55521200, 60110000, 60112000, 60112100, 60112200, 60112300, 60113000, 60113100, 60113310, 60113400, 60114000, 60115000, 60115100, 60115110, 60116000, 60116100, 60116200, 60116300, 60122110, 60122120, 60122130, 60122140, 60122150, 60122160, 60122161, 60122170, 60123100, 60123200, 60123300, 60123400, 60123500, 60123600, 64120000, 64121000, 64122000, 74612000
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	62110000, 62122000, 62210000, 62230000, 62300000
4	Transport of mail by land ⁽²⁾ and by air	71235, 7321	62121000
5	Telecommunications services	752	64200000, 64210000, 64211000, 64212000, 64213000, 64214000, 64214200, 64216000, 64216100, 64216110, 64216120, 64216130, 64216140, 64216200, 64216210, 64216300, 64221000, 64222000, 64223000, 64224000, 64225000, 64226000, 72315000, 72318000, 72511100

⁽¹⁾ In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply.

Category No	Subject	CPC ⁽¹⁾ reference No	CPV reference No(s)
6	Financial services: (a) insurance services (b) banking and investment services ⁽³⁾	ex 81, 812, 814	66000000, 66100000, 66110000, 66120000, 66130000, 66140000, 66200000, 66300000, 66310000, 66311000, 66312000, 66313000, 66314000, 66315000, 66316000, 66317000, 66320000, 66321000, 66330000, 66331000, 66332000, 66333000, 66334000, 66335000, 66340000, 66341000, 66342000, 66343000, 66343100, 66343200, 66350000, 66360000, 66370000, 66371000, 66372000, 66373000, 66374000, 66380000, 66381000, 66382000, 66383000, 66384000, 67200000, 67210000, 67211000, 67212000, 67220000, 67221000, 67230000, 67240000, 67250000, 67251000, 67260000
7	Computer services and related services	84	50310000, 50311000, 50311400, 50312000, 50312100, 50312110, 50312120, 50312200, 50312210, 50312220, 50312300, 50312310, 50312320, 50312400, 50312410, 50312420, 50312500, 50312510, 50312520, 50312600, 50312610, 50312620, 50313000, 50313100, 50313200, 50316000, 50317000, 50320000, 50321000, 50322000, 50323000, 50323100, 50323200, 50324000, 50324100, 50324200, 72000000, 72100000, 72110000, 72120000, 72130000, 72140000, 72150000, 72200000, 72210000, 72211000, 72212000, 72220000, 72221000, 72222000, 72222100, 72222200, 72222300, 72223000, 72224000, 72224100, 72224200, 72225000, 72226000, 72227000, 72228000, 72230000, 72231000, 72232000, 72240000, 72241000, 72243000, 72245000, 72246000, 72250000, 72251000, 72252000, 72253000, 72253100, 72253200, 72254000, 72254100, 72260000, 72261000, 72262000, 72263000, 72264000, 72265000, 72266000, 72267000, 72268000, 72300000, 72310000, 72311000, 72311100, 72311200, 72311300, 72312000, 72312100, 72312200, 72313000, 72314000, 72315100, 72316000, 72317000, 72319000, 72320000, 72321000, 72510000, 72511000, 72511110, 72512000, 72514000, 72514100, 72514200, 72514300, 72520000, 72521000, 72521100, 72540000, 72541000, 72541100, 72550000, 72560000, 72570000, 72580000, 72590000, 72591000
8	R&D services ⁽⁴⁾	85	63368000, 73000000, 73100000, 73110000, 73111000, 73112000
9	Accounting, auditing and book-keeping services	862	74121000, 74121100, 74121110, 74121112, 74121113, 74121120, 74121200, 74121210, 74121220, 74121230, 74121240, 74121250, 74541000
10	Market research and public opinion polling services	864	74130000, 74131000, 74131100, 74131110, 74131120, 74131121, 74131130, 74131200, 74131300, 74131400, 74131500, 74131600, 74132000, 74133000, 74423100, 74423110
11	Management consulting services ⁽⁵⁾ and related services	865, 866	73200000, 73210000, 73220000, 73300000, 74121111, 74141000, 74141100, 74141110, 74141200, 74141300, 74141400, 74141500, 74141510, 74141600, 74141610, 74141620, 74141700, 74141800, 74141900, 74142200, 74150000, 74871000, 90311000, 93620000
12	Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	867	72242000, 72244000, 74142300, 74142310, 74220000, 74221000, 74222000, 74223000, 74224000, 74225000, 74225100, 74230000, 74231100, 74231110, 74231120, 74231130, 74231200, 74231300, 74231310, 74231320, 74231400, 74231500, 74231510, 74231520, 74231521, 74231530, 74231540, 74231600, 74231700, 74231710, 74231720, 74231721, 74231800, 74231900, 74232000, 74232100, 74232110, 74232120, 74232200, 74232210, 74232220, 74232230, 74232240, 74232300, 74232310, 74232320, 74232400, 74232500, 74232600, 74233000, 74233100, 74233200, 74233300, 74233400, 74233500, 74233600, 74233700, 74240000, 74250000, 74251000, 74252000, 74252100, 74260000, 74261000, 74262000, 74262100, 74263000, 74270000, 74271000, 74271100, 74271200, 74271210, 74271220, 74271300, 74271400, 74271500, 74271700, 74271710, 74271720, 74271800, 74272000, 74272100, 74272110, 74272111, 74272112, 74272113, 74272300, 74273000, 74273100, 74273200, 74274000, 74274100, 74274200, 74274300, 74274400, 74274500, 74275000, 74275100, 74275200, 74276000, 74276100, 74276200, 74276300, 74276400, 74300000, 74310000, 74311000, 74312000, 74312100, 74313000, 74313100, 74313110, 74313120, 74313130, 74313140, 74313141, 74313142, 74313143, 74313144, 74313145, 74313146, 74313147, 74313200, 74313210, 74313220, 74874000
13	Advertising services	871	74410000, 74411000, 74412000, 78225000

Category No	Subject	CPC ⁽¹⁾ reference No	CPV reference No(s)
14	Building-cleaning services and property management services	874, 82201 to 82206	70300000, 70310000, 70311000, 70320000, 70321000, 70322000, 70330000, 70331000, 70331100, 70332000, 70332100, 70332200, 70332300, 74710000, 74720000, 74721000, 74721100, 74721210, 74721300, 74722000, 74724000, 74730000, 74731000, 74744000, 74750000, 74760000, 93411200, 93411300, 93411400
15	Publishing and printing services on a fee or contract basis	88442	74831530, 78000000, 78100000, 78110000, 78111000, 78112000, 78113000, 78113100, 78114000, 78114100, 78114200, 78114300, 78114400, 78115000, 78115100, 78116000, 78117000, 78118000, 78119000, 78120000, 78121000, 78122000, 78122100, 78123000, 78124000, 78125000, 78130000, 78131000, 78132000, 78133000, 78134000, 78135000, 78135100, 78136000, 78140000, 78141000, 78142000, 78150000, 78151000, 78152000, 78153000, 78160000, 78170000, 78180000, 78200000, 78210000, 78220000, 78221000, 78222000, 78223000, 78224000, 78230000, 78240000, 78300000, 78310000, 78311000, 78312000
16	Sewage and refuse disposal services; sanitation and similar services	94	71221110, 74734000, 74735000, 85142200, 90000000, 90100000, 90110000, 90111000, 90111100, 90111200, 90111300, 90112000, 90112100, 90112200, 90112210, 90112300, 90113000, 90114000, 90120000, 90121000, 90121100, 90121110, 90121120, 90121130, 90121140, 90121200, 90121300, 90121310, 90121320, 90121330, 90121340, 90121400, 90122000, 90122100, 90122110, 90122111, 90122112, 90122113, 90122120, 90122121, 90122122, 90122123, 90122124, 90122130, 90122131, 90122200, 90122210, 90122220, 90122230, 90122240, 90122300, 90122310, 90122320, 90122330, 90122340, 90200000, 90210000, 90211000, 90212000, 90213000, 90220000, 90221000, 90240000, 90300000, 90310000, 90312000, 90313000, 90313100, 90313110, 90313120, 90314000, 90315000, 90315100, 90315200, 90315300, 90320000

⁽¹⁾ CPC nomenclature (provisional version) is used to define the scope of Directive 93/38/EEC as regards service contracts.

⁽²⁾ Except for rail transport services covered by category 18.

⁽³⁾ Except financial services relating to the issue, sale, purchase or transfer of securities or other financial instruments. Also excluded: contracts involving the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive.

⁽⁴⁾ Except R&D services other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting entity.

⁽⁵⁾ Except arbitration and conciliation services.

ANNEX XVII B

SERVICES WITHIN THE MEANING OF ARTICLE 32

Category No	Subject	CPC reference No	CPV reference No(s)
17	Hotel and restaurant services	64	55000000, 55100000, 55200000, 55210000, 55220000, 55221000, 55240000, 55241000, 55242000, 55243000, 55250000, 55260000, 55270000, 55300000, 55310000, 55311000, 55312000, 55320000, 55321000, 55322000, 55330000, 55400000, 55410000, 55500000, 55510000, 55511000, 55512000, 55520000, 55521000, 55521100, 55522000, 55523000, 55523100, 55524000, 93410000, 93411000
18	Transport services by rail	711	60111000, 60121000, 60121100, 60121200, 60121300, 60121400, 60121500, 60121600
19	Water transport services	72	61000000, 61100000, 61110000, 61200000, 61210000, 61220000, 61230000, 61240000, 61250000, 61400000, 63370000, 63371000, 63372000, 71221120, 71221130
20	Supporting and auxiliary transport services	74	62224000, 62224100, 62226000, 63000000, 63100000, 63110000, 63111000, 63112000, 63112100, 63112110, 63120000, 63121000, 63121100, 63121110, 63122000, 63200000, 63210000, 63220000, 63221000, 63222000, 63222100, 63223000, 63223100, 63223110, 63223200, 63223210, 63224000, 63225000, 63226000, 63300000, 63310000, 63311000, 63313000, 63314000, 63315000, 63320000, 63330000, 63340000, 63341000, 63341100, 63342000, 63343000, 63343100, 63344000, 63350000, 63351000, 63352000, 63353000, 63360000, 63361000, 63362000, 63363000, 63364000, 63365000, 63366000, 63366100, 63369000, 63400000, 63410000, 63420000, 63430000, 63500000, 63510000, 63511000, 63512000, 63514000, 63515000, 63516000, 63520000, 63521000, 63522000, 63523000, 63524000, 63600000, 71221140, 74322000, 93600000
21	Legal services	861	74110000, 74111000, 74111100, 74111200, 74112000, 74112100, 74112110, 74113000, 74113100, 74113200, 74113210, 74114000
22	Personnel placement and supply services ⁽¹⁾	872	74512000, 74522000, 95100000, 95110000, 95120000, 95130000, 95131000, 95132000, 95133000
23	Investigation and security services, except armoured car services	873 (except 87304)	74611000, 74613000, 74614000, 74614100, 74614110, 74615000, 74620000
24	Education and vocational education services	92	80000000, 80100000, 80110000, 80200000, 80210000, 80211000, 80212000, 80220000, 80300000, 80310000, 80320000, 80330000, 80340000, 80400000, 80411000, 80411100, 80411200, 80412000, 80421000, 80422000, 80422100, 80423000, 80423100, 80423110, 80423120, 80423200, 80423300, 80423320, 80424000, 80425000, 80426000, 80426100, 80426200, 80427000, 80428000, 80430000, 92312212, 92312213
25	Health and social services	93	60113300, 74511000, 85000000, 85100000, 85110000, 85111000, 85111100, 85111200, 85111300, 85111320, 85111400, 85111500, 85111600, 85111700, 85111800, 85112000, 85112100, 85120000, 85121000, 85121100, 85121200, 85121300, 85130000, 85131000, 85131100, 85131110, 85140000, 85141000, 85141100, 85141200, 85141210, 85141211, 85141212, 85141220, 85142000, 85142100, 85142200, 85142300, 85142400, 85143000, 85144000, 85144100, 85145000, 85146000, 85146100, 85146200, 85147000, 85148000, 85149000, 85200000, 85300000, 85310000, 85311000, 85311100, 85311200, 85311300, 85312000, 85312100, 85312200, 85312300, 85312310, 85312320, 85312330, 85312400, 85320000, 85323000

Category No	Subject	CPC reference No	CPV reference No(s)
26	Recreational, cultural and sporting services	96	<p>74875000, 74875100, 74875200, 77310000, 77311000, 77313000, 77400000, 80413000, 80414000, 80415000, 92000000, 92100000, 92110000, 92111000, 92111200, 92111210, 92111220, 92111230, 92111240, 92111250, 92111260, 92111300, 92111310, 92111320, 92112000, 92120000, 92121000, 92122000, 92130000, 92140000, 92200000, 92210000, 92211000, 92220000, 92221000, 92300000, 92310000, 92311000, 92312000, 92312100, 92312110, 92312120, 92312130, 92312140, 92312200, 92312210, 92312220, 92312230, 92312240, 92312250, 92320000, 92330000, 92331000, 92331100, 92331200, 92332000, 92340000, 92341000, 92342000, 92342100, 92342200, 92350000, 92351000, 92351100, 92351200, 92352000, 92352100, 92352200, 92360000, 92400000, 92500000, 92510000, 92511000, 92512000, 92520000, 92521000, 92521100, 92521200, 92521210, 92521220, 92522000, 92522100, 92522200, 92530000, 92531000, 92532000, 92533000, 92534000, 92600000, 92610000, 92620000, 92621000, 92622000</p>
27	Other services		<p>50111100, 50232110, 50246500, 50520000, 50521000, 50522000, 50523000, 50531500, 50531510, 50700000, 50710000, 50711000, 50712000, 50720000, 50730000, 50731000, 50732000, 50732100, 50740000, 50760000, 50761000, 50762000, 50911230, 50912200, 50913200, 50915000, 50915100, 50915200, 50952300, 50977000, 52000000, 52100000, 52200000, 52300000, 52400000, 52500000, 52600000, 52700000, 52800000, 52900000, 60113200, 60200000, 60210000, 60220000, 61300000, 62221000, 62222000, 62223000, 63367000, 64110000, 64111000, 64112000, 64113000, 64114000, 64115000, 64116000, 64214100, 64214400, 65000000, 65100000, 65110000, 65120000, 65130000, 65200000, 65210000, 65300000, 65310000, 65320000, 65400000, 65410000, 65500000, 67100000, 67110000, 67120000, 67121000, 67122000, 67130000, 67140000, 67300000, 70100000, 70110000, 70111000, 70112000, 70120000, 70121000, 70121100, 70121200, 70122000, 70122100, 70122110, 70122200, 70122210, 70123000, 70123100, 70123200, 70130000, 70311100, 70311200, 70333000, 71000000, 71100000, 71110000, 71120000, 71130000, 71140000, 71150000, 71160000, 71170000, 71180000, 71181000, 71211300, 71211310, 71211320, 71211400, 71211600, 71211900, 71300000, 71310000, 71311000, 71320000, 71321000, 71321100, 71321200, 71321300, 71321400, 71330000, 71331000, 71332000, 71332100, 71332200, 71333000, 71340000, 71350000, 71360000, 71380000, 74122000, 74122100, 74122200, 74271600, 74271900, 74321000, 74321100, 74420000, 74421000, 74422000, 74423000, 74423200, 74423210, 74542000, 74543000, 74731100, 74810000, 74811000, 74811100, 74811200, 74811300, 74811310, 74811320, 74811330, 74811340, 74812000, 74813000, 74820000, 74821000, 74830000, 74831000, 74831100, 74831110, 74831200, 74831210, 74831300, 74831400, 74831500, 74831510, 74831520, 74831600, 74832000, 74832100, 74841000, 74842000, 74844000, 74850000, 74851000, 74860000, 74861000, 74870000, 74872000, 74873100, 74876000, 74877000, 75000000, 75100000, 75110000, 75111000, 75111100, 75111200, 75112000, 75112100, 75120000, 75121000, 75122000, 75123000, 75124000, 75125000, 75130000, 75131000, 75131100, 75200000, 75210000, 75211000, 75211100, 75211110, 75211200, 75211300, 75220000, 75221000, 75222000, 75230000, 75231000, 75231100, 75231200, 75231210, 75231220, 75231230, 75231240, 75240000, 75241000, 75241100, 75242000, 75242100, 75242110, 75250000, 75251000, 75251100, 75251110, 75251120, 75252000, 75300000, 75310000, 75311000, 75312000, 75313000, 75313100, 75314000, 75320000, 75330000, 75340000, 76000000, 76100000, 76110000, 76111000, 76120000, 76200000, 76210000, 76211000, 76211100, 76211200, 76300000, 76310000, 76320000, 76330000, 76340000, 76400000, 76410000, 76411000, 76420000, 76430000, 76431000, 76440000, 76450000, 76460000, 76470000, 76480000, 76490000, 76491000, 76492000, 76500000, 76510000, 76520000, 76521000, 76522000, 76530000, 76531000, 77000000, 77100000, 77110000, 77120000, 77210000, 77211000, 77211100, 77211300, 77220000, 77230000, 77300000, 77500000, 77510000, 77600000, 77610000, 77700000, 78400000, 85321000, 85322000, 90114100, 90115000, 90122132, 90123000, 90123100, 90123200, 90123300, 90230000, 91000000, 91100000, 91110000, 91120000, 91130000, 91131000, 91200000, 91300000, 91310000, 91320000, 91330000, 91331000, 91331100, 92230000, 92312211, 93100000, 93110000, 93111000, 93112000, 93120000, 93121000, 93130000, 93140000, 93150000, 93160000, 93200000, 93210000, 93211000, 93220000, 93221000, 93221100, 93221200, 93221300, 93300000, 93310000, 93320000, 93330000, 93411100, 93500000, 93510000, 93511000, 93511100, 93621000, 93700000, 93710000, 93711000, 93711100, 93711110, 93711200, 93712000, 93910000, 93930000, 93940000, 93950000, 95000000, 99000000, 99100000</p>

(1) Except employment contracts.

ANNEX XVIII

INFORMATION TO BE INCLUDED IN THE DESIGN CONTEST NOTICE

1. Name, address, electronic address telephone, telex and fax numbers of the contracting authority and of the service from which additional documents may be obtained.
 2. Project description (nomenclature reference No(s)).
 3. Nature of the contest: open or restricted.
 4. In the case of open contests: final date for receipt of projects.
 5. In the case of restricted contests:
 - (a) the number of participants envisaged, or range;
 - (b) where applicable, names of participants already selected;
 - (c) criteria for the selection of participants;
 - (d) final date for receipt of requests to participate.
 6. Where applicable, indication of whether participation is reserved to a particular profession.
 7. Criteria to be applied in the evaluation of projects.
 8. Where applicable, names of the selected members of the jury.
 9. Indication of whether the decision of the jury is binding on the authority.
 10. Where applicable, number and value of prizes.
 11. Where applicable, details of payments to all participants.
 12. Indication of whether the prize-winners are permitted any follow-up contracts.
 13. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time-limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
 14. Date of dispatch of the notice.
 15. Date of receipt of the notice by the Office for Official Publications of the European Communities.
 16. Any other relevant information.
-

ANNEX XIX

INFORMATION TO BE INCLUDED IN THE RESULTS OF DESIGN CONTEST NOTICES

1. Name, address, telegraphic address and telephone, telex and fax numbers of the contracting authority.
 2. Project description (nomenclature reference No(s)).
 3. Total number of participants.
 4. Number of foreign participants.
 5. Winner(s) of the contest.
 6. Where applicable, the prize(s).
 7. Other information.
 8. Reference of the design contest notice.
 9. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time-limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
 10. Date of dispatch of the notice.
 11. Date of receipt of the notice by the Office for Official Publications of the European Communities.
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ANNEX XX

FEATURES CONCERNING PUBLICATION**1. Publication of notices**

- (a) Notices referred to in Articles 41, 42, 43 and 63 must be sent by the contracting entities to the Office for Official Publications of the European Communities in the format required by Commission Directive 2001/78/EC of 13 September 2001 amending Annex IV to Council Directive 93/36/EEC, Annexes IV, V and VI to Council Directive 93/37/EEC, Annexes III and IV to Council Directive 92/50/EEC, as amended by Directive 97/52/EC, and Annexes XII to XV, XVII and XVIII to Council Directive 93/38/EEC, as amended by Directive 98/4/EC (Directive on the use of standard forms in the publication of public contract notices) ⁽¹⁾. The periodic indicative notices referred to in Article 41(1), published on a buyer profile as described in paragraph 2(b), must also use that format, as must the notice of such publication;
- (b) Notices referred to in Articles 41, 42, 43 and 63 must be published by the Office for Official Publications of the European Communities or by the contracting entities in the event of a periodic indicative notice published on a buyer profile in accordance with Article 41(1).

In addition, contracting authorities may publish this information on the Internet on a 'buyer profile' as referred to in point 2(b);

- (c) The Office for Official Publications of the European Communities will give the contracting authority the confirmation referred to in Article 44(7).

2. Publication of complementary or additional information

- (a) Contracting entities are encouraged to publish the specifications and the additional documents in their entirety on the Internet;
- (b) The buyer profile may include periodic indicative notices as referred to in Article 41(1), information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address.

3. Format and modalities for the electronic transmission of notices

The format and procedure for sending notices electronically are accessible at the Internet address '<http://simap.eu.int>'.

⁽¹⁾ OJ L 285, 29.10.2001, p. 1 and OJ L 214, 9.8.2002, p. 1.

ANNEX XXI

DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive,

1. (a) 'Technical specification', in the case of service or supply contracts, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures;
 - (b) 'Technical specification', in the case of works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting entity. These characteristics shall include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, and production processes and methods. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting entity is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
 2. 'Standard' means a technical specification approved by a recognised standardisation body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:
 - 'international standard': a standard adopted by an international standards organisation and made available to the general public;
 - 'European standard': a standard adopted by a European standards organisation and made available to the general public;
 - 'national standard': a standard adopted by a national standards organisation and made available to the general public;
 3. 'European technical approval' means a favourable technical assessment of the fitness for use of a product, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State;
 4. 'Common technical specifications' means a technical specification laid down in accordance with a procedure recognised by the Member States which has been published in the *Official Journal of the European Union*;
 5. 'Technical reference': any product produced by European standardisation bodies, other than official standards, according to procedures adapted to developments in market needs.
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ANNEX XXII

SUMMARY TABLE OF THE TIME-LIMITS LAID DOWN IN ARTICLE 45

Open procedures

<i>Time-limit for receipt of tenders Without a periodic indicative notice</i>					
Time-limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 7	Effect on second subparagraph of paragraph 7
52	45	47	40	none	none
<i>With publication of a periodic indicative notice</i>					
A: Time-limit in general	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 7	Effect on second subparagraph of paragraph 7
36	29	31	24	none	none
B: Minimum time-limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 7	Effect on second subparagraph of paragraph 7
22	15	17	10	The period of 10 days is extended to 15 days	The period of 17 days is extended to 22 days

Restricted and negotiated procedures

<i>Time-limit for the receipt of requests to participate:</i>					
General time-limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
37	30	Not applicable (n.a.)	n.a.	none	n.a.
Minimum time-limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
22	15	n.a.	n.a.	none	n.a.
Minimum time-limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
15	8	n.a.	n.a.	The period of 8 days is extended to 15 days	n.a.

<i>Time-limit for the receipt of tenders</i>					
A: Time-limit in general	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
24	n.a.	19	n.a.	n.a.	none
B: Minimum time-limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
10	n.a.	5	n.a.	n.a.	The period of 5 days is extended to 10 days
C: Time-limit set by agreement	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
	n.a.	n.a.	n.a.	n.a.	n.a.

ANNEX XXIII

REQUIREMENTS RELATING TO DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS TO PARTICIPATE, APPLICATIONS FOR QUALIFICATION AS WELL AS PLANS AND PROJECTS IN CONTESTS

Devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests must guarantee, through technical means and appropriate procedures, at least that:

- (a) electronic signatures relating to tenders, requests to participate and applications for qualification as well as to the forwarding of plans and projects comply with national provisions adopted pursuant to Directive 1999/93/EC ⁽¹⁾;
- (b) the exact time and date of the receipt of tenders, requests to participate, applications for qualification as well as the submission of plans and projects can be determined precisely;
- (c) it may be reasonably ensured that, before the time-limits laid down, no-one can have access to data transmitted under these requirements;
- (d) if that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
- (e) only authorised persons may set or change the dates for opening data received;
- (f) during the various stages of the qualification procedure, the contract award procedure or contest, access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;
- (g) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;
- (h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith.

⁽¹⁾ Directive 1999/93/EC of the European Parliament and of the Council on 13 December 1999, a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

ANNEX XXIV

TIME-LIMITS FOR TRANSPOSITION AND IMPLEMENTATION

Directive	Time-limits for transposition	Time-limits for implementation
93/38/EEC (OJ L 199, 9.8.1993, p. 84)	1.7.1994	Spain: 1.1.1997; Greece and Portugal: 1.1.1998
98/4/EC (OJ L 101, 1.4.1998, p. 1)	16.2.1999	Greece and Portugal: 16.2.2000

ANNEX XXV

CORRELATION TABLE ⁽¹⁾

This Directive	Directive 93/38/EEC	
Article 1(1)	Article 1(1), 1st sentence	
Article 1(2)(a)	Article 1(4), 1st sentence,	Adapted
Article 1(2)(b), 1st sentence	Article 1(4)(b), 1st sentence	Amended
Article 1(2)(b), 2nd sentence	Article 14(10), 2nd sentence	Adapted
Article 1(2)(c), 1st subparagraph	Article 1(4)(a)	Adapted
Article 1(2)(c), 2nd subparagraph		New
Article 1(2)(d), 1st subparagraph	Article 1(4)(c), 1st part	Adapted
Article 1(2)(d), 2nd subparagraph	Article 1(4), 2nd subparagraph	Adapted
Article 1(2)(d), 3rd subparagraph		New
Article 1(3)(a)		New
Article 1(3)(b)		New
Article 1(4)	Article 1(5)	Adapted
Article 1(5)		New
Article 1(6)		New
Article 1(7), 1st paragraph	Article 1(6), in fine	Amended
Article 1(7), 2nd paragraph		New
Article 1(7), 3rd subparagraph	Article 1(6), 1st sentence	Adapted
Article 1(8)		New
Article 1(9), (a) to (c)	Article 1(7)	Adapted
Article 1(9), (d)	Article 1(16)	Adapted
Article 1(10)		New
Article 1(11)		New
Article 1(12)		New
	Article 1(14) and (15)	Deleted
Article 2(1)(a)	Article 1(1)	
Article 2(1)(b)	Article 1(2)	

(1) 'Adapted' indicates that the wording has been reformulated without changing the scope of the text of the repealed Directive. Changes to the scope of the provisions of the repealed Directive are denoted by the word 'Amended'.

This Directive	Directive 93/38/EEC	
Article 2(2)	Article 2(1)	Adapted
Article 2(3)	Article 2(3)	Amended
Article 3(1)	Article 2(2)(a)(iii)	Adapted
Article 3(2)	Article 2(5)(b)	Adapted
Article 3(3)	Article 2(2)(a)(ii)	Adapted
Article 3(4)	Article 2(5)(a)	Adapted
Article 4(1)	Article 2(2)(a)(i)	Adapted
Article 4(2)	Article 6(2)	Adapted
Article 4(3)	Article 2(5)(a)	Adapted
Article 5(1)	Article 2(2)(c)	Amended
Article 5(2)	Article 2(4)	Amended
Article 6		New
Article 7	Article 2(2)(b)	
	Article 2(2)(d)	Deleted
Article 8	Article 2(6)	Amended
Article 9		New
Article 10	Article 4(2)	Amended
Article 11(1), 1st subparagraph	Article 33(2)	
Article 11(1), 2nd subparagraph	Article 33(3)	Amended
Article 11(2)	Article 33(1)	Amended
Article 12	Article 42a	
Article 13(1)	Article 4(3)	
Article 13(2)	Article 4(4)	Amended
Article 14	Article 5	
Article 15		New
Article 16	Article 14(1)	Amended
Article 17(1)	Article 14(2) and (6)	Amended
Article 17(2)	Article 14(13)	Adapted
Article 17(3)	Article 14(9)	Amended
Article 17(4)	Article 14(11)	Adapted

This Directive	Directive 93/38/EEC	
Article 17(5)	Article 14(12)	Adapted
Article 17(6)(a), 1st subparagraph	Article 14(10), 3rd sentence	Amended
Article 17(6)(a), 2nd subparagraph	Article 14(10), 2nd subparagraph, 2nd sentence	Adapted
Article 17(6)(a), 3rd subparagraph	Article 14(10), 2nd subparagraph, 3rd sentence	Amended
Article 17(6)(b), 1st subparagraph	Article 14(10), 2nd subparagraph, 1st sentence	Amended
Article 17(6)(b), 2nd subparagraph	Article 14(10), 2nd subparagraph, 2nd sentence	Adapted
Article 17(6)(b), 3rd subparagraph		New
Article 17(7)	Article 14(7)	Amended
Article 17(8)	Article 14(8)	
Article 17(9)	Article 14(4)	Amended
Article 17(10)	Article 14(3)	Amended
Article 17(11)	Article 14(5)	
Article 18		New
Article 19	Article 7	
Article 20	Article 6(1) and (3)	Adapted
Article 21	Article 10	
Article 22(a)	Article 12, 1	Amended
Article 22(b)	Article 12, 2	
Article 22(c)	Article 12, 3	
Article 23(1)	Article 1(3)	
Article 23(2)	Article 13(1), 1st subparagraph, points (a) and (b)	Amended
Article 23(3), 1st subparagraph, point a	Article 13(1), 1st subparagraph in fine	Amended
Article 23, 1st subparagraph, points b and c		New
Article 23(3), 2nd subparagraph		New
Article 23(3), 3rd subparagraph	Article 13(1), 2nd subparagraph	Amended
Article 23(4)(a)	Article 13(1), 1st subparagraph, point b	Amended
Article 23(4)(b)		New
Article 23(4) in fine		New

This Directive	Directive 93/38/EEC	
Article 23(5)	Article 13(2)	Amended
Article 24(a)	Article 1(4), c, i	
Article 24(b)	Article 1(4), c, iii	
Article 24(c)	Article 1(4), c, iv	Amended
Article 24(d)	Article 1(4), c, v	
Article 24(e)	Article 1(4), c, vi	
	Article 1(4), c, ii and Annex XVI A, footnote 2	Deleted
Article 25	Article 11	Amended
Article 26(a)	Article 9(1), a	Adapted
Article 26(b)	Article 9(1), b	Adapted
	Article 9(2)	Deleted
	Article 3(1)	Deleted
Article 27	Article 3(2)	Amended
	Article 3(3) to (5)	Deleted
Article 28		New
Article 29		New
Article 30		New
	Article 8	Deleted
Article 31	Article 15	Adapted
Article 32	Article 16	
Article 33	Article 17	
Article 34	Article 18 and Article 34(4)	Amended
Article 35	Article 19	Adapted
Article 36 paragraph 1	Article 34(3)	Amended
Article 36(2)		New
Article 37	Article 27	Amended
Article 38		New
Article 39(1)	Article 29(1)	Amended
Article 39(2)	Article 29(2)	
Article 40(1)	Article 4(1)	

This Directive	Directive 93/38/EEC	
Article 40(2) and (3)	Article 20(1) and (2)	
Article 41(1), 1st subparagraph	Article 22(1)	Amended
Article 41(1), 2nd to 6th subparagraph		New
Article 41(2)	Article 22(4)	
Article 41(3)	Article 30(9)	Adapted
Article 42(1)	Article 21(1)	
Article 42(2)		New
Article 42(2)(a) and (b)	Article 21(2), a and b	Adapted
Article 42(2)(c), 1st sentence	Article 22(3), 1st sentence	
Article 42(2)(c), 2nd sentence	Article 22(3), 2nd sentence	
Article 43(1)	Article 24(1)	Amended
Article 43(2)	Article 24(2)	Adapted
Article 43(3)	Article 24(3), 1st to 3rd sentences	Adapted
Article 43(4)	Article 24(3), 4th sentence	Adapted
Article 43(5)	Article 24(4)	Adapted
Article 44(1)		New
Article 44(2)		New
Article 44(3), 1st subparagraph		New
Article 44(3), 2nd subparagraph, 1st sentence	Article 25(3), 1st sentence	Amended
Article 44(3), 2nd subparagraph, 2nd sentence	Article 25(3), 2nd sentence	Adapted
Article 44(4), 1st subparagraph	Article 25(2)	Amended
Article 44(4), 2nd subparagraph	Article 25(4)	
Article 44(5)	Article 25(5)	Amended
Article 44(6)	Article 25(1)	
Article 44(7)		New
Article 44(8)		New
	Article 25(3), 3rd sentence	Deleted
Article 45(1)		New
Article 45(2)	Article 26(1), 1st subparagraph, 1st sentence	

This Directive	Directive 93/38/EEC	
Article 45(3)	Article 26(2)	Adapted
Article 45(4)	Article 26(1), 2nd and 3rd sentences	Adapted
Article 45(5) to (8)		New
Article 45(9)	Article 28(3)	Amended
Article 45(10)		New
Article 46(1)	Article 28(1)	Amended
Article 46(2)	Article 28(2)	Amended
Article 47(1), 1st sentence	Article 28(4), 1st sentence	
Article 47(1), 2nd sentence, 1st indent		New
Article 47(1), 2nd sentence, 2nd indent	Article 28(4), 2nd sentence	Amended
Article 47(2)		New
Article 47(3)	Article 28(2)	Amended
Article 47(4), a to d	Article 28(4), a to d and f	Adapted
	Article 28(4)(f)	Deleted
Article 47(4)(e)	Article 28(4), e	Amended
Article 47(4)(f)		New
Article 47(5), a to h	Article 21(2), c	Adapted
Article 47(3), i		New
Article 48(1)	Article 28(6) 1st and 2nd sentences and 1st indent	Amended
Article 48(2)		New
Article 48(3)	Article 28(6), 2nd and 4th indent	Amended
Article 48(4)		New
Article 48(5)		New
Article 48(6)	Article 28(5)	Amended
Article 49(1)	Article 41(3)	Amended
Article 49(2), 1st subparagraph	Article 41(4), 1st subparagraph	Amended
Article 49(2), 2nd subparagraph	Article 41(2), 2nd subparagraph	Adapted
Article 49(3)	Article 30(4)	

This Directive	Directive 93/38/EEC	
Article 49(4)	Article 30(6)	Amended
Article 49(5)	Article 30(8)	Amended
Article 50(1)	Article 41(1)	Amended
Article 50(2)	Article 41(2)	
Article 51		New
Article 52(1)	Article 30(5)	Amended
Article 52(2)	Article 32	Amended
Article 52(3)		New
Article 53(1)	Article 30(1)	
Article 53(2)	Article 30(2)	Amended
Article 53(3)		New
Article 53(4)		New
Article 53(5)		New
Article 53(6)	Article 30(3)	
Article 53(7)	Article 30(7)	
Article 53(8)		New
Article 53(9)	Article 21(3)	
	Article 21(5)	Deleted
Article 54(1)		New
Article 54(2)	Article 31(1)	
Article 54(3)	Article 31(3)	Adapted
Article 54(4), 1st subparagraph	Article 31(2)	Adapted
Article 54(4), 2nd subparagraph		New
Article 54(5)		New
Article 54(6)		
Article 55(1)	Article 34(1)	
Article 55(2)	Article 34(2)	Amended
	Article 35(1) and (2)	Deleted
Article 56		New
Article 57(1) and (2)	Article 34(5), 1st and 2nd subparagraphs	Amended

This Directive	Directive 93/38/EEC	
Article 57(3)	Article 34(5), 3rd subparagraph	Amended
Article 58(1) and (2)	Article 36(1) and (2)	
Article 58(3)	Article 36(3) and (4)	Adapted
Article 58(4) and (5)	Article 36(5) and (6)	
Article 59	Article 37	Adapted
Article 60(1)	Article 23(3)	
Article 60(2)	Article 23(4)	
Article 61(1) and (2)	Article 23(1) and (2)	Amended
Article 62(1)	Article 6(1), Article 12	Amended
Article 62(2)		New
Article 63(1), 1st subparagraph	Article 21(4)	Amended
Article 63(1), 2nd subparagraph	Article 24(1) and (2), 2nd sentence	Adapted
Article 63(2)	Article 25	Amended
Article 64		New
Article 65(1)	Article 4(1)	Adapted
Article 65(2)	Article 23(5)	
Article 65(3)	Article 23(6), 1st subparagraph	
Article 66	Article 23(6), 2nd subparagraph	Amended
Article 67	Article 42	Amended
	Article 39	Deleted
Article 68(1)	Article 40(5)	Amended
Article 68(2)		New
Article 68(3)		New
Article 69(1), 1st subparagraph	Article 14(15), 1st sentence	Amended
Article 69(1), 2nd subparagraph	Article 14(15), 2nd sentence	Amended
Article 69(2), 1st subparagraph		New
Article 69(2), 2nd subparagraph	Article 14(14), 1st and 2nd sentences	Amended
Article 69(3)	Article 14(14), 3rd sentence and (15), 3rd sentence	Adapted
Article 70(1), point a	Article 40(1)	Amended

This Directive	Directive 93/38/EEC	
Article 70(1), point b	Article 40(2)	Adapted
Article 70(1), point c	Article 40(3)	Amended
Article 70(1), point d	Article 40(3)	Amended
Article 70(1), point e		New
Article 70(1), points f, g and h		New
Article 70(1), point i	Article 40(2) and 42(2)	Adapted
Article 70(1), point j	Article 14(16)	Adapted
	Article 40(4)	Deleted
	Article 43 and Article 44	Deleted
Annex I	Annex III	Adapted
Annex II	Annex II	Adapted
Annex III	Annex I	Adapted
Annex IV	Annex VI	Adapted
Annex V	Annex VII	Adapted
Annex VI		New
Annex VII	Annex IV	Adapted
Annex VIII	Annex V	Adapted
Annex IX	Annex IX	Adapted
Annex X	Annex VIII	Adapted
Annex XI		New
Annex XII	Annex XI	Adapted
Annex XIII, A to C	Annex XII	Amended
Annex XIII, D		New
Annex XIV	Annex XIII	Amended
Annex XV, A	Annex XIV	Amended
Annex XV, B		New
Annex XVI	Annex XV	Amended
Annex XVII A	Annex XVI A	Amended
Annex XVII B	Annex XVI B	Adapted
Annexes XVIII and XIX	Annexes XVII and XVIII	Amended

This Directive	Directive 93/38/EEC	
Annex XX, point 1(a)		New
Annex XX, point 1(b)	Article 25(2)	Amended
Annex XX, point 1(c)		New
Annex XX, points 2 and 3		New
Annex XXI, point 1	Article 1(8)	Amended
Annex XXI, point 2, 1st sentence	Article 1(9)	Adapted
Annex XXI, point 2, 1st indent		New
Annex XXI, point 2, 2nd indent	Article 1(10)	Amended
Annex XXI, point 2, 3rd indent		New
Annex XXI, point 3	Article 1(12)	Amended
Annex XXI, point 4	Article 1(11)	
	Article 1(13)	Deleted
Annex XXII		New
Annex XXIII		New
Annex XXIV		New
Annex XXV		New

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 11 July 2000, the Commission presented its proposal for a Directive of the European Parliament and the Council coordinating the procurement procedures of entities operating in the water, energy and transport sectors ('utilities' Directive) ⁽¹⁾. The proposal is based on Articles 47 (2), 55 and 95 of the Treaty.

The European Parliament delivered its Opinion at first reading on 17 January 2002 ⁽²⁾.

The Economic and Social Committee has given its Opinion on 26 April 2001 ⁽³⁾.

The Committee of Regions has given its Opinion on 13 December 2000 ⁽⁴⁾.

On 30 September 2002, the Council reached a political agreement with a view to adopting a common position in accordance with Article 251 (2) of the Treaty.

On 20 March 2003 the Council adopted its common position on the proposal as set out in doc. 12634/02 MAP 38 CODEC 1180.

II. OBJECTIVE

The objective of the Commission's proposal is to simplify and modernize the existing legal framework for public procurement in the sectors concerned adapting it to the gradual liberalisation in those sectors. The Council has pursued this objective by aligning, where relevant, a number of provisions to those of the 'classical' Directive (see document 11029/02) and by seeking to ensure a maximum degree of flexibility, taking into account the specificities of the individual sectors.

III. ANALYSIS OF THE COMMON POSITION ⁽⁵⁾

1. General

The common position maintains the objective of the Commission's proposal, integrating a number of EP amendments which all contribute in a useful way to the further clarification of the objective. Some of those amendments have also been accepted by the Commission in its modified proposal (COM (2002) 235) ⁽⁶⁾. Like in the 'classical' directive, certain new features have been introduced, such as electronic auctions and dynamic purchasing systems.

The Council has sought to further underline the relationship between the two directives by including the postal services sector in the 'utilities' directive and by adapting the provisions accordingly.

2. European Parliament amendments

The Council has been able to accept several of the European Parliament amendments and has incorporated them in the text of the common position. Some amendments have been accepted in substance but not in the exact wording. In some other cases the Council has only accepted parts of the amendments and other amendments have been rejected.

⁽¹⁾ OJ C 29 E, 30.1.2001, p. 112.

⁽²⁾ OJ C 271 E, 7.11.2002, p. 293.

⁽³⁾ OJ C 193, 10.7.2001, p. 1.

⁽⁴⁾ OJ C 144, 16.5.2001, p. 20.

⁽⁵⁾ The numbering of articles refers to the result of the first reading of Parliament (doc. 5307/02) or, where it is specially indicated (now ...) to the Common Position (doc. 12634/02).

⁽⁶⁾ OJ C 203 E, 27.8.2002, p. 183.

It should, however, be stressed that the alignment of some important provisions to those of the 'classical' has made it possible for the Council to accept a number of amendments which had only been suggested for the 'classical' directive.

2.1. The following European Parliament amendments have been accepted by the Council and have been integrated into the text

Amendment 111 — New recital 2a, now recital 13 (Reference to some objectives mentioned as such in the Treaty)

The Council has accepted the mentioning of some important Treaty objectives in order to clarify the relationship to the procurement provisions as a useful addition to the original proposal. It has, however, introduced some slight modifications in the wording.

Amendment 8 — Recital 42, now: recital 55 (Inclusion of engineers)

This amendment has been accepted in line with the common position on the 'classical' directive.

Amendment 21 — Article 19, paragraph 6 point a, now: Article 17, paragraph 10 (Inclusion of other forms of remuneration)

Accepted.

Amendment 43 — Article 38 (title), now: Article 39 (title) (Inclusion of environmental protection into the title)

The Council has accepted the amendment and aligned the text to the wording of the 'classical' directive.

Amendment 70 — Article 55, paragraph 1, now: Article 57, paragraph 1 (Reasons for low tenders for all types of contracts)

The Council has accepted the amendment as a useful clarification and has introduced only an editorial change.

Amendments 78, 79 and 80 — Annex XII, Part A, point 21a (now: Annex XIII, A, point 21); Annex XII, Part B, point 19a (now: Annex XIII, B, point 19); Annex XII, Part C, point 20a (now: Annex XIII, C, point 19). (Additional information on body for appeal)

The Council has introduced this amendment in the relevant parts of the annex with a minor editorial change, considering that it provides a useful increase of transparency.

Amendments 81, 82 and 83 — Annex XIII, point 7 a, now: Annex XIV, point 8; Annex XIVa, point 14a; now: Annex XVa, A, point 16; Annex XV, point 20a, now: Annex XVI, point 12 (Additional information on body for appeal)

See reasoning regarding amendments 78, 79 and 80.

Amendments 85 and 86 — Annex XVII, point 15 a, now Annex XVIII, point 14; Annex XVIII, point 10a, now: Annex XIX, point 9 (Additional information on body for appeal)

See reasoning regarding amendments 78, 79 and 80.

2.2. The following European Parliament amendments have been accepted in principle, but with modifications

Amendments 89 and 96 — New recital 3a, now recital 12 (Integration of environmental protection and sustainable development as a horizontal policy into all relevant Community legislation)

The Council has accepted the amendment with some modifications in line with the provisions in the body of the text.

Amendment 4 — New recital 4a (Conditions referring to social and employment policy objectives)

The Council has accepted important parts of the objectives of the amendment and has inserted wording to this effect in the new recital 43. This has been done also in order to maintain a high degree of parallelism with the corresponding recitals of the 'classical' directive.

Amendment 6 — Recital 28, now: recital 32 (Extension of the mentioned provisions on affiliated undertakings to other types of contracts and to joint ventures)

The Council has accepted the European Parliament amendment, reformulating it to bring it in coherence with the text of the provision itself. Further explanations have been added to clarify the provision.

Amendment 7 — Recital 34, now: recital 41 (General provisions on the equivalence of tenders)

The Council has accepted the objectives of the European Parliament amendment and has introduced it with some modification in the wording.

Amendment 9 — New recital 42a, (not taken on board as a separate recital) (Abnormally low tenders following from disregard of social provisions)

The Council has acknowledged the substance of the European Parliament amendment, but has not seen any strong reason to add a separate recital, given that the re-structured Article 57, point 1 d) in substance states the same thing.

Amendments 13 and 16 — Article 2, paragraph 2 a) and b); Article 6a (new), now: Article 6 (Inclusion of postal services)

The Council has taken on board the inclusion of 'postal services'. However, the scope and the detailed provisions concerning the postal sector have been modified in order to ensure a maximum degree of coherence between the two directives and to obtain the necessary flexibility, which the amendments also call for, and to ensure legal certainty.

Amendment 18 — Article 10, now: Article deleted in the course of re-structuring (Cumulative fulfilment of requirements by different economic operators)

The Council has accepted the substance of the amendment. For reasons of legal technique, however, the Council has chosen to include this by adjusting the provisions in Article 53 (4) and (5) as well as Article 54 (5) and (6).

Amendment 22 — Article 19, paragraph 7, point b), now: Article 17, paragraph 1 (Clause on tacit renewal of contracts)

The Council has accepted the substance of the amendment, but included all renewals of contracts in Article 17 (1), in line with the similar provision in the 'classical' directive.

Amendment 26 — Article 26, now: Article 23 (Applicability of the provisions on affiliated undertakings and joint ventures to all types of contracts)

The Council has accepted the substance of the amendment and has taken on board the contents through a re-structuring of Article 23 (see also reasoning regarding amendment 6).

Amendments 27 and 28 — Article 26, now: Article 23 (Provisions applicable to affiliated undertakings and joint ventures)

The Council has accepted the main aspect of the amendment — the extension of this provision to all three types of contracts — and has incorporated it by restructuring Article 23 (see also reasoning regarding amendments 6 and 26).

Amendment 29 — Article 27, now: Article 26 (Exclusion for contracts on the supply of energy or fuels)

The Council has accepted the amendment, but has introduced modifications of the wording, which do not affect the substance.

Amendments 99 and 118 — Article 34, paragraph 5, sub-paragraph 1 (Proof of equivalence regarding technical standards)

The Council has accepted the substance of the amendment. The concept according to which it is up to the tenderer to deliver the proof of equivalence has, however, been expressed in a different wording.

Amendments 91 and 98 — Article 34, paragraph 3, sub-paragraph 1, now: paragraph 6 (European eco-labels, national and pluri-national standards as technical specifications)

The Council has accepted the substance of the amendment, but has preferred to lay down the conditions on those labels and standards as technical specifications in a new paragraph 6.

Amendment 35 — Article 34, paragraph 3, sub-paragraph 2, now: paragraph 6 (Scope of performance and functional requirements)

The Council has accepted the substance of the amendment but has preferred to specify how and to which extent environmental considerations may be taken into account in the new paragraph 6 and in Annex XX (see also reasoning regarding amendments 91 and 98).

Amendments 38 and 100 — Article 34, paragraph 5, subparagraph 2 and paragraph 6, now: paragraph 4 and 5 (Interpretation of 'appropriate means')

The Council has accepted part of the amendment and its main substance but has changed the wording in order to keep the functionality similar to the 'classical' directive.

Amendment 40 — Article 34, paragraph 7, now: paragraph 8 (References to specific sources or a particular process)

The Council has been in a position to accept part of the European Parliament amendment insofar as it can be interpreted as excluding references to specific producers or suppliers but making possible references to specific production processes in order to pursue the objective of 'sustainable development'. By adding the new wording 'unless justified by the subject-matter of the contract', the text of the common position makes references to specific production processes possible, if justified by the type of contract and if not excluding for the tenderers the possibility of proof of equivalence. In this way the Council has sought to integrate the substance of the European Parliament amendment.

Amendment 33 — Article 33, paragraph 3, now: Article 38 (Conditions regarding the performance of the contract)

The Council has accepted part of the amendment but has included it in Article 38 (new) in a general wording.

Amendment 50 — Article 47, paragraph 1, subparagraph 2 a (new), now: Article 48, paragraph 1 (Electronic signature)

As far as the use of electronic signatures and the confidentiality of transmitted data are concerned, the Council has accepted the underlying concern as such but has preferred to do so through the provisions of Annex XXIII (new). The Council considers, however, that these legitimate concerns are adequately protected through this Annex and that the obligatory use of encryption would not be appropriate.

Amendment 51 — Article 47, paragraph 2, now: Article 48, paragraph 3 (Additional requirement ensuring adequate data protection)

The Council has integrated part of the amendment by extending the requirement to the storage of information.

Amendment 53 — Article 48, paragraph 4, now: Article 49, paragraph 4 (Information on refusal within a certain time period)

The Council has accepted the substance of this amendment and has decided to integrate an even stricter requirement in order to enhance transparency even further.

Amendment 57 — Article 52, paragraph 2, subparagraph 2a (new), now: Article 53, paragraph 3 (Personal exclusion reasons as part of qualification system requirements)

The Council has accepted part of the European Parliament amendment but has preferred to phrase the requirement as a Member State option for contracting authorities.

Amendment 64 — Article 53a (new) (Environmental management standards)

The Council has accepted most of the substance of the amendment and has integrated it into the new Article 52, paragraph 3. (See also recital 52).

Amendments 67, 68 and 69 — Article 54, paragraphs 3, 4 and 5, now, Article 55 paragraph 2, sub-paragraph 2 (Detailed provisions on information on the weighting)

The Council has acknowledged the need to make the proposed provision simpler by inserting a simplified text in paragraph 2 and by deleting the former paragraphs 3, 4 and 5. In line with the agreement reached on the 'classical' Directive, the Council has also introduced some more flexibility by allowing contracting entities to indicate the criteria in descending order of importance in certain justified cases.

Amendment 74 — Article 62, paragraph 1, subparagraph 2 a (new), now: Article 64 (Electronic signature — 'Design contests')

As the amendments are substantially identical, see reasoning regarding amendment 50.

Amendment 75 — Article 62, paragraph 2, now: Article 64, paragraph 2 (Additional requirement ensuring adequate data protection — 'Design contests')

See reasoning regarding amendment 51.

Amendment 95 — Annex XX, point 1, now: Annex XXI, paragraph 1 (Clarification on technical specifications as far as they relate to environmental matters)

The Council has accepted only part of the amendment. In particular, it was not in a position to include the 'environmental impact' as an important feature of defining a technical specification. However, in line with the common position on the 'classical' directive, the wording 'environmental performance levels' has been introduced.

2.3. Amendments have been rejected and have thus not been integrated into the text

Amendment 1 — Recital 2, now: recital 9 (Reference to the affordability and reliability of services in the 'utilities' area)

The Council has rejected the amendment, given that this Directive does not seek to harmonise the quality and affordability of the services offered.

Amendment 5 — Recital 8, now: recital 10 (Reference to the fact that the provisions deal with private and public entities)

The Council has rejected the European Parliament amendment because the proposed additions are not considered as adding anything indispensable to the reasoning already given in the same recital.

Amendments 123 and 10 — Article 1, paragraph 7 and paragraph 7a (new), now: paragraph 4 (Definition of framework contracts)

The Council has preferred the terminology used in the original Commission proposal. The European Parliament amendments would have diminished the necessary flexibility for contracting entities, besides subjecting them to a stricter regime than what applies to contracting authorities under the 'classical' directive.

Amendment 11 — Article 1, point 9, now point 9 d) (Design contests with and/or without prizes)

The Council has rejected the idea of a mandatory award of prizes in design contests.

Amendment 106 — Article 2, paragraph 1, point a) (Inclusion of purchasing groups in the definition of contracting authorities)

The Council has rejected the amendment since it could risk leading to legal uncertainty concerning the distinction between 'bodies governed by public law' and 'public undertakings'. However, the Council has accepted part of the substance of the amendment by inserting a legally clear definition of 'central purchasing bodies' [see Article 1(8) (new)] and operative provisions governing the possibilities of using such purchasing bodies (see Article 29 (new)).

Amendment 14 — Article 2, paragraph 3 (Definition of special and exclusive rights)

The Council has preferred to maintain the original Commission proposal in this regard with only a small modification of the wording.

Amendment 124 — Article 13, now: Article 14 (Provisions on framework contracts)

See explanation regarding amendments 123 and 10.

Amendment 19 — Article 14, paragraph 1a (new), now: Article 16 (Reference to some objectives mentioned as such in the Treaty)

The Council has considered the reference to Treaty objectives as being sufficiently dealt with in recital 13 (see also reasoning regarding amendment 111).

Amendment 23 — Article 22, now: Article 21 (Contracts which are secret or which require security measures)

The Council has not been in a position to incorporate the European Parliament amendment because it has not considered the addition of the clause to be necessary.

Amendment 25 — Article 25 (Extension of the provision on special and exclusive rights to contracts other than service contracts)

The Council has preferred to follow the original approach and scope as proposed by the Commission.

Amendment 30 — Article 27, paragraph 2, now: Article 26 (Possibility of revision of legislation for contracts covered by the first paragraph of this Article)

The Council has not been in a position to accept the European Parliament amendment considering that there is no need for a special revision clause in this part of the directive since any revision of this legislation must anyway be adopted pursuant to Article 251 of the Treaty.

Amendments 31 and 117 — Article 29, now: Article 30 (Procedure for establishing whether a given activity is exposed to competition)

The Council has preferred to maintain most of the contents of the Commission proposal and has only streamlined some of its provisions. The substance of amendment 117 has been partially accepted.

Amendment 32 — Article 33, paragraph 2 (Provisions on additional information on sub-contracting)

The Council has rejected the European Parliament amendment since the requirements in the social and employment field — in the first instance — should apply to the main contractor, whose obligation it will then be to ensure that subcontractors observe these prescriptions. However, the Member States have an option to decide on a general obligation to require additional information on subcontractors.

Amendment 36 — Article 34, paragraph 3a (new) (Definition of 'equivalent standards')

Given that the Council already has integrated several European Parliament amendments by restructuring paragraphs 3 and 6 of this Article, it has considered the wording to be clear enough and does not see the need to introduce further qualifications of the term 'equivalent' (see also reasoning regarding amendments 91, 98 and 35 above).

Amendment 120 — Article 37 (Further provisions on sub-contracting)

The Council has rejected the European Parliament amendment since it would make the text unnecessarily complicated and conceptually difficult.

Amendment 45 — Article 39, paragraph 3, point (b), now: Article 40, paragraph 3, point (b) (Procedure without call for competition in the case of certain research contracts)

In the view of the Council, this European Parliament amendment would not make the distinction between research and commercial exploitation any clearer. The Council has thus preferred to maintain the original Commission text.

Amendment 47 — Article 41, paragraph 1, sub-paragraph 1a (new), now: Article 42 (Mandatory inclusion of information on obligations relating to employment protection in the ('call for competition'))

The Council has not accepted this mandatory inclusion in the calls for competition. Instead, it has preferred to provide for the insertion of information related to employment protection and working conditions in the contract documents as an option for the contracting entities or as an obligation that might be imposed by the Member States (see general clause in Article 38 (new)).

Amendment 48 — Article 46, paragraph 2, point (f), now: Article 47, paragraph 4 (Prohibition to discriminate between tenderers)

The Council has rejected the European Parliament amendment since the list provided for in paragraph 4 is open anyway, which is clear from the introductory part 'shall include at least ...'.

Amendment 49 — Article 47, paragraph 1, subparagraph 1, now: Article 48, paragraph 1 (Choice of the communication method by the 'contracting authorities')

The Council has rejected this amendment since it would oblige contracting entities to accept tenders or other communications by electronic means even if not equipped to do so.

Amendment 103 — Article 47, paragraph 4a (new), now: Article 48 (Certification of confidentiality on request)

The Council has not been in a position to accept the amendment as being too difficult to handle in practice (see also reasoning for the 'classical directive', amendment 75).

Amendment 52 — Article 48, paragraph 3, now: Article 49, paragraph 3 (Information on qualification systems within a certain period)

The Council has not accepted the amendment, since the provision could then be interpreted as imposing an obligation to complete examinations within two months, which would not be practicable as a general rule.

Amendment 54 — Article 49, paragraph 2, now: Article 50, paragraph 2 (Information to be kept for a certain period)

The Council has preferred to maintain the time span as envisaged in the Commission proposal in order to avoid creating high and hardly justified costs for contracting entities.

Amendment 55 — Article 49a (new) (Review procedures)

The Council has taken the view that another clause on review procedures is not necessary. Review procedures for alleged infringements of the procedural rules are already provided for in Directive 92/13/EEC and review procedures concerning detached workers are provided for under Directive 96/71/EC.

Amendment 56 — Article 50, paragraph 1, now: Article 51, paragraph 1 (Proof of compliance with provisions in Article 38)

The Council has rejected the amendment as this separate requirement would not fit into the general concept expressed in the new paragraph 1. However, the Council agrees with Parliament that applicable social rules (including collective agreements) of course must be respected by the tenderers and that it should be possible for the authorities to exclude tenderers not having observed the relevant social obligations. For reasons of coherence, the Council has chosen to state this explicitly, not in the body of the text, but in recitals 44 and 54 (new).

Amendment 58 — Article 53, paragraph 3 a (new), now: Article 54 (Sectoral provisions)

The Council has not taken over this amendment because it does not seem to be consistent with the objective of a unified framework for procurement contracts and since it might create problems in terms of ensuring that the Community continues to observe its international obligations pursuant to the Global Procurement Agreement (GPA).

Amendment 109 — Article 53, paragraph 4, now: Article 54 (Mandatory criterion 'personal reasons')

The Council has not been in the position to render the application of these exclusion clauses obligatory for all categories of contracting entities. (see also the reasoning with regard to amendment 57 above).

Amendment 60 — Article 53, paragraph 4a (new), now: Article 54 (Provisions on criminal law enforcement)

The Council has preferred to follow the Commission's proposal, which contains a cross-reference to the list of exclusion reasons in the 'classical' directive.

Amendment 61 — Article 53, paragraph 4b (new), now: Article 54 (Provision on 'official lists')

The Council has considered the provision in question to be inappropriate to impose on all contracting authorities, given that the framework of this directive is more flexible.

Amendment 62 — Article 53, paragraph 4c (new), now: Article 54 (Non-interference with promotion of social and employment policy)

The Council does not find it necessary or appropriate to integrate the suggested provision in the directive, since it would impair the distinction between award criteria and technical specifications and risk leading to misunderstandings.

Amendment 125 — Article 54, paragraph 1, point a, now: Article 55 (Inclusion of benefits for third parties in contract award criteria)

In full coherence to the 'classical' directive, the Council has preferred to follow the Commission's proposal to clarify that 'economic advantage' is to be considered from the point of view of 'advantage for the contracting authorities'. The Council has therefore not accepted the amendment. The Council also considers that the term 'justified by' is more appropriate than 'linked' or 'directly linked'. The new wording of recital 54 provides further explanation as to how this term should be interpreted.

Amendment 66 — Article 54, paragraph 2, now: Article 55, paragraph 2 (Weighting of criteria)

The Council prefers the detailed rules for the weighting of criteria envisaged in the Commission proposal. However, the Council has added a provision giving flexibility in cases where such weighting is not possible for demonstrable reasons.

Amendment 71 — Article 57, paragraph 3, now: Article 59, paragraph 3 (Extension of third country implications to all types of contracts and to ILO standards)

The Council has not been in a position to accept the first part of the amendment since it agrees with the Commission's proposal which is intentionally limited to service contracts. The second part of the amendment would have entailed a commitment by the Commission to address questions which are not the subject of the reports referred to in paragraph 2 of the article.

Amendment 73 — Article 62, paragraph 1, subparagraph 1, now: Article 64 (Choice of means of communication)

Like in relation to amendment 49 to Article 47 (now: Article 48), the Council rejects this amendment since it would oblige contracting entities to accept plans, projects or other communications by electronic means even if not equipped to do so.

Amendments 76 and 77 — Annex X, now: Annex XI (List of legislation referred to in Article 29 (3))

The Council has not been in a position to accept amendment 76 because it would have introduced a legal presumption of free access to markets in the sectors concerned. Recognising, however, that where a Member State has decided to render Directive 94/22/EC applicable to the coal sector, this should be taken into account. The Council has chosen to clarify this in the corresponding recital. Regarding amendment 77 the Council has not been able to accept the inclusion of Directive 91/440/EEC in Annex X, as it is not a liberalisation directive. The Council therefore has preferred to maintain the original wording of the Commission proposal in this regard.

Amendment 84 — Annex XVI A, Category 6, point (b) (Banking and investment services in Service Category 6)

The Council has considered the deletion of the row for 'banking and investment services' as being too far-reaching. Instead it has introduced in Article 24 and in recital 26 a similar solution to the one chosen for the 'classical' directive, based on acceptance of EP amendment 37 to that latter proposal.

Amendment 88 — Annex XXI A (new) (Annex on international core labour standards)

The rejection of this amendment is consequential to the rejection of amendment 71.

3. Important changes to the text introduced by the Council in comparison to the original Commission's proposal

Dynamic purchasing systems and electronic auctions — now: Article 15/Article 40

The Council has introduced more detailed provisions on dynamic purchasing systems and electronic auctions, thereby mirroring the provisions of the 'classical' directive and adapting the procurement framework to techniques which have been developed and applied in a number of Member States.

Inclusion of 'postal services' into the 'utilities Directive' — now: Article 6

This inclusion seeks to take account of the liberalisation introduced in the Member States, while at the same time clarifying which options and special arrangements are still appropriate.

Contracts awarded to affiliated undertakings and to joint ventures — now: Article 23

It has been regarded as necessary to introduce special provisions on contracts that are awarded to affiliated undertakings and joint ventures, being a feature not uncommon in the 'utilities' field. By clarifying the conditions under which contracts, awarded without calls for competition by joint ventures of a contracting authority and other entities, are subject to the rules of the directive, a compromise between the different legal requirements and traditions in the Member States has been reached.

Environmental criteria as technical specifications — now: Article 34

By introducing this paragraph the Council has sought to contribute to a clarification of the use of environmental technical specifications with the aim of giving Member States the necessary degree of flexibility and in order to respond to practical requirements.

Decisions of the jury — now: Article 66

This provision mirrors that of the 'classical directive'. The safeguarding of anonymity has been acknowledged as an important prerequisite during the procedures applied in the 'utilities' field.

4. Conclusion

The common position on the 'utilities' directive maintains the concept and objectives of the Commission's original proposal while integrating several of the Parliament's amendments, at least in substance. The Council has to a large extent aligned the text of the common position on the 'utilities' directive to the 'classical' directive, hereby underlining the fact that the two directives are to be seen as integral parts of a new legal framework for public procurement in the European Union.
