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## Legislation

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### Contents

#### I *Acts whose publication is obligatory*

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#### II *Acts whose publication is not obligatory*

##### **Council**

- ★ **Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts** ..... 1
- ★ **Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC** ..... 25

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE 92/50/EEC

of 18 June 1992

**relating to the coordination of procedures for the award of public service contracts**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the last sentence of Article 57 (2) and Article 66 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas the European Council has drawn conclusions on the need to complete the internal market;

Whereas measures aimed at progressively establishing the internal market during the period up to 31 December 1992 need to be taken; whereas the internal market is an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas these objectives require the coordination of the procurement procedures for the award of public service contracts;

Whereas the White Paper on the completion of the internal market contains an action programme and a timetable for opening up public procurement, including in the field of services insofar as this is not already covered by Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the

award of public works contracts <sup>(4)</sup> and Council Directive 77/62/EEC of 21 december 1976 coordinating procedures for the award of public supply contracts <sup>(5)</sup>;

Whereas this Directive should be applied by all contracting authorities within the meaning of Directive 71/305/EEC;

Whereas obstacles to the free movement of services need to be avoided; whereas, therefore, service providers may be either natural or legal persons; whereas this Directive shall 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;

Whereas the field of services is best described, for the purpose of application of procedural rules and for monitoring purposes, by subdividing it into categories corresponding to particular positions of a common classification; whereas Annexes I A and I B of this Directive refer to the CPC nomenclature (common product classification) of the United Nations; whereas that nomenclature is likely to be replaced in the future by Community nomenclature; whereas provision should be made for adapting the CPC nomenclature in Annexes I A and B in consequence;

Whereas the provision of services is covered by this Directive only in so far as it is based on contracts; whereas the provision of services on other bases, such as law or regulations, or employment contracts, is not covered;

<sup>(1)</sup> OJ No C 23, 31. 1. 1991, p. 1, and OJ No C 250, 25. 9. 1991, p. 4.

<sup>(2)</sup> OJ No C 158, 17. 6. 1991, p. 90, and OJ No C 150, 15. 6. 1992.

<sup>(3)</sup> OJ No C 191, 22. 7. 1991, p. 41.

<sup>(4)</sup> OJ No L 185, 16. 8. 1971, p. 5. Directive last amended by Directive 90/531/EEC (OJ No L 297, 29. 10. 1990, p. 1).

<sup>(5)</sup> OJ No L 13, 15. 1. 1977, p. 1. Directive last amended by Directive 90/531/EEC (OJ No L 297, 29. 10. 1990, p. 1).

Whereas, in accordance with Article 130f of the Treaty, the encouragement of research and development is a means to strengthen the scientific and technological basis of European industry and the opening up of public contracts will contribute to this end; whereas contributions to the financing of research programmes should not be subject to this Directive; whereas research and development service 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;

Whereas contracts relating to the acquisition or rental of immovable property or to rights thereon have particular characteristics, which make the application of procurement rules inappropriate;

Whereas the award of contracts for certain audiovisual services in the broadcasting field is governed by considerations which make the application of procurement rules inappropriate;

Whereas arbitration and conciliation services are usually provided by bodies or individuals which are agreed on, or selected, in a manner which cannot be governed by procurement rules;

Whereas for the purposes of this Directive financial services do not include the instruments of monetary, exchange rate, public debt, reserve management, and other policies involving transactions in securities and other financial instruments; whereas, therefore, contracts in connection with the issue, sale, purchase or transfer of securities and other financial instruments are not covered by this Directive; whereas central bank services are also excluded;

Whereas, in the field of services, the same derogations as in Directives 71/305/EEC and 77/62/EEC should apply as regards State security or secrecy and the priority of other procurement rules such as those pursuant to international agreements, those concerning the stationing of troops, or the rules of international organizations;

Whereas this Directive does not prejudice the application of, in particular, Articles 55, 56 and 66 of the Treaty;

Whereas public service contracts, particularly in the field of property management, may from time to time include some works; whereas it results from Directive 71/305/EEC that, for a contract to be a public works contract, its object must be the achievement of a work;

whereas, in so far as these works are incidental rather than the object of the contract, they do not justify treating the contract as a public works contract;

Whereas the rules concerning service contracts as contained in Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors <sup>(1)</sup> should remain unaffected by this Directive;

Whereas contracts with a designated single source of supply may, under certain conditions, be fully or partly exempted from this Directive;

Whereas this Directive should not apply to small contracts below a certain threshold in order to avoid unnecessary formalities; whereas this threshold may in principle be the same as that for public supply contracts; whereas the calculation of the contract value, the publication and the method of adaptation of the thresholds should be the same as in the other Community procurement directives;

Whereas, to eliminate practices that restrict competition in general and participation in contracts by other Member States' nationals in particular, it is necessary to improve the access of service providers to procedures for the award of contracts;

Whereas full application of this Directive must be limited, for a transitional period, to contracts for those services where its provisions will enable the full potential for increased cross-frontier trade to be realized; whereas contracts for other services need to be monitored for a certain period before a decision is taken on the full application of this Directive; whereas the mechanism for such monitoring needs to be defined; whereas this mechanism should at the same time enable those interested to share the relevant information;

Whereas the rules for the award of public service contracts should be as close as possible to those concerning public supply contracts and public works contracts;

Whereas the procurement rules contained in Directives 71/305/EEC and 77/62/EEC can be appropriate, with necessary adaptations so as to take into account special aspects of procurement of services such as the choice of the negotiated procedure, design contests, variants, the legal form under which the service providers operate, the reservation of certain activities to certain professions, registration and quality assurance;

<sup>(1)</sup> OJ No L 297, 29. 10. 1990, p. 1.

Whereas use may be made of the negotiated procedure with prior publication of a notice when the service to be provided cannot be specified with sufficient precision, particularly in the field of intellectual services, with the result that such a contract cannot be awarded by selection of the best tender in accordance with the rules governing the open and restricted procedures;

Whereas 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 an award procedure or a design contest;

Whereas the objectives of this Directive do not require any changes in the current situation at national level as regards price competition between service providers of certain services;

Whereas the operation of this Directive should be reviewed at the latest three years after the date set for procurement rules to be transposed into national law; whereas the review should extend in particular to the possibility of making the Directive fully applicable to a wider range of service contracts,

HAS ADOPTED THIS DIRECTIVE:

## TITLE I

### General provisions

#### Article 1

For the purposes of this Directive:

- (a) *public service contracts* shall mean contracts for pecuniary interest concluded in writing between a service provider and a contracting authority, to the exclusion of:
- (i) public supply contracts within the meaning of Article 1 (a) of Directive 77/62/EEC or public works contracts within the meaning of Article 1 (a) of Directive 71/305/EEC;
  - (ii) contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Directive 90/531/EEC or fulfilling the conditions in Article 6 (2) of the same Directive;
  - (iii) contracts for 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;

- (iv) contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
- (v) contracts for voice telephony, telex, radiotelephony, paging and satellite services;
- (vi) contracts for arbitration and conciliation services;
- (vii) contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services;
- (viii) employment contracts;
- (ix) research and development service 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;

- (b) *contracting authorities* shall mean the State, regional or local authorities, bodies governed by public law, associations formed by one or more of such authorities or bodies governed by public law.

*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, and
- having legal personality and
- financed, for the most part, by the State, or 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.

The lists of bodies or of categories of such bodies governed by public law which fulfil the criteria referred to in the second subparagraph of this point are set out in Annex I to Directive 71/305/EEC. These lists shall be as exhaustive as possible and may be reviewed in accordance with the procedure laid down in Article 30b of that Directive;

- (c) *service provider* shall mean any natural or legal person, including a public body, which offers services.

A service provider who submits a tender shall be designated by the term *tenderer* and one who has sought an invitation to take part in a restricted or negotiated procedure by the term *candidate*;

- (d) *open procedures* shall mean those national procedures whereby all interested service providers may submit a tender;
- (e) *restricted procedures* shall mean those national procedures whereby only those service providers invited by the authority may submit a tender;
- (f) *negotiated procedures* shall mean those national procedures whereby authorities consult service providers of their choice and negotiate the terms of the contract with one or more of them;
- (g) *design contests* shall mean those national procedures which enable the contracting authority to acquire, mainly in the fields of area planning, town planning, architecture and civil 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.

#### Article 2

If a public contract is intended to cover both products within the meaning of Directive 77/62/EEC and services within the meaning of Annexes I A and I B to this Directive, it shall fall within the scope of this Directive if the value of the services in question exceeds that of the products covered by the contract.

#### Article 3

1. In awarding public service contracts or in organizing design contests, contracting authorities shall apply procedures adapted to the provisions of this Directive.
2. Contracting authorities shall ensure that there is no discrimination between different service providers.
3. Member States shall take the necessary measures to ensure that the contracting authorities comply or ensure compliance with this Directive where they subsidize directly by more than 50 % a service contract awarded by an entity other than themselves in connection with a works contract within the meaning of Article 1a (2) of Directive 71/305/EEC.

#### Article 4

1. This Directive shall apply to public service contracts awarded by contracting authorities in the field of

defence, except for contracts to which the provisions of Article 223 of the Treaty apply.

2. This Directive shall not apply to services which are declared secret or the execution of which 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 interests of that State's security so requires.

#### Article 5

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

- (a) in pursuance of an international agreement concluded between a Member State and one or more third countries and covering services intended for the joint implementation or exploitation of a project by the signatory States; any agreement shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Council Decision 71/306/EEC <sup>(1)</sup>;
- (b) to undertakings in a Member State or a third country in pursuance of an international agreement relating to the stationing of troops;
- (c) pursuant to the particular procedure of an international organization.

#### Article 6

This Directive shall not apply to public service contracts awarded to an entity which is itself a contracting authority within the meaning of Article 1 (b) on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

#### Article 7

1. This Directive shall apply to public service contracts, the estimated value of which, net of VAT, is not less than ECU 200 000.
2. For the purposes of calculating the estimated value of the contract, the contracting authority shall include

<sup>(1)</sup> OJ No L 185, 16.8. 1971, p. 15. Decision amended by Decision 77/63/EEC (OJ No L 13, 15. 1. 1977, p. 15).

the estimated total remuneration of the service provider, taking account of the provisions of paragraphs 3 to 8.

3. The selection of the valuation method shall not be used with the intention of avoiding the application of this Directive, nor shall any procurement requirement for a given amount of services be split up with the intention of avoiding the application of this Article.

4. For the purposes of calculating the estimated contract value for the following types of services, account shall be taken, where appropriate:

- as regards insurance services, of the premium payable,
- as regards banking and other financial services, of fees, commissions and interest as well as other types of remuneration,
- as regards contracts which involve design, of the fee or commission payable.

Where the services are subdivided into several lots, each one the subject of a contract, the value of each lot must be taken into account for the purpose of calculating the amount referred to above.

Where the value of the lots is not less than this amount, the provisions of this Directive shall apply to all lots. Contracting authorities may waive application of paragraph 1 for any lot which has an estimated value net of VAT of less than ECU 80 000, provided that the total value of such lots does not exceed 20 % of the total value of all the lots.

5. In the case of contracts which do not specify a total price, the basis for calculating the estimated contract value shall be:

- in the case of fixed-term contracts, where their term is 48 months or less, the total contract value for its duration;
- in the case of contracts of indefinite duration or with a term of more than 48 months, the monthly instalment multiplied by 48.

6. In the case of regular contracts or of contracts which are to be renewed within a given time, the contract value may be established on the basis of:

- either the actual aggregate cost of similar contracts for the same categories of services awarded over the previous fiscal year or 12 months, adjusted, where possible, for anticipated changes in quantity or value over the twelve months following the initial contract,

- or the estimated aggregate cost during the twelve months following the first service performed or during the term of the contract, where this is greater than 12 months.

7. Where a proposed contract provides for options, the basis for calculating the contract value shall be the maximum permitted total including use of the option clauses.

8. The value of the thresholds in national currencies shall be revised every two years with effect from 1 January 1994. The calculation of these values shall be based on the average daily values of those currencies expressed in ecus over the 24 months terminating on the last day of August immediately preceding the 1 January revision. The values shall be published in the *Official Journal of the European Communities* at the beginning of November.

The method of calculation referred to in the preceding subparagraph shall be examined, on the Commission's initiative, within the Advisory Committee for Public Contracts in principle two years after its initial application.

## TITLE II

### Two-tier application

#### Article 8

Contracts which have as their object services listed in Annex I A shall be awarded in accordance with the provisions of Titles III to VI.

#### Article 9

Contracts which have as their object services listed in Annex I B shall be awarded in accordance with Articles 14 and 16.

#### Article 10

Contracts which have as their object services listed in both Annexes I A and I B shall be awarded in accordance with the provisions of Titles III to VI where the value of the services listed in Annex I A is greater than the value of the services listed in Annex I B. Where this is not the case, they shall be awarded in accordance with Articles 14 and 16.

## TITLE III

### Choice of award procedures and rules governing design contests

#### Article 11

1. In awarding public service contracts, contracting authorities shall apply the procedures defined in Arti-

cle 1 (d), (e) and (f), adapted for the purposes of this Directive.

2. Contracting authorities may award their public service contracts by negotiated procedure, with prior publication of a contract notice in the following cases:

- (a) in the event of irregular tenders in response to an open or restricted procedure or in the event of tenders which are unacceptable under national provisions that are in accordance with Articles 23 to 28, insofar as the original terms of the contract are not substantially altered. Contracting authorities may in such cases refrain from publishing a contract notice where they include in the negotiated procedure all the tenderers who satisfy the criteria of Articles 29 to 35 and who, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the tendering procedure;
- (b) in exceptional cases, when the nature of the services or the risks involved do not permit prior overall pricing;
- (c) when the nature of the services to be procured, in particular in the case of intellectual services and services falling within category 6 of Annex I A, is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selecting the best tender according to the rules governing open or restricted procedures.

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

- (a) in the absence of tenders or of appropriate tenders in response to an open or restricted procedure provided that the original terms of the contract are not substantially altered and that a report is communicated to the Commission at its request;
- (b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the services may be provided only by a particular service provider;
- (c) where the contract concerned follows a design contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates. In the latter case, all successful candidates shall be invited to participate in the negotiations;
- (d) in so far 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 referred to in Articles 17 to 20 cannot be kept. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authorities;

- (e) for additional services not included in the project initially considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the performance of the service described therein, on condition that the award is made to the service provider carrying out such service:

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

However, the aggregate estimated value of contracts awarded for additional services may not exceed 50 % of the amount of the main contract;

- (f) for new services consisting in the repetition of similar services entrusted to the service provider to which the same contracting authorities awarded an earlier contract, provided that such services conform to a basic project for which a first contract was awarded according to the procedures referred to in paragraph 4. As soon as the first project is put up for tender, notice must be given that the negotiated procedure might be adopted and the total estimated cost of subsequent services shall be taken into consideration by the contracting authorities when they apply the provisions of Article 7. This procedure may be applied solely during the three years following the conclusion of the original contract.

4. In all other cases, the contracting authorities shall award their public service contracts by the open procedure or by the restricted procedure.

#### *Article 12*

1. The contracting authority shall, within fifteen days of the date on which the request is received, inform any eliminated candidate or tenderer who so requests in writing of the reasons for rejection of his application or his tender, and, in the case of a tender, the name of the successful tenderer.

2. The contracting authority shall inform candidates or tenderers who so request in writing of the grounds on which it decided not to award a contract in respect of which a prior call for competition was made, or to

recommence the procedure. It shall also inform the Office for Official Publications of the European Communities of that decision.

3. For each contract awarded, the contracting authorities shall draw up a written report which shall include at least the following:

- the name and address of the contracting authority, the subject and value of the contract,
- the names of the candidates or tenderers admitted and the reasons for their selection,
- the names of the candidates or tenderers rejected and the reasons for their rejection,
- the name of the successful tenderer and the reasons why his tender was selected and, if known, the part of the contract which the successful tenderer intends to subcontract to third parties,
- for negotiated procedures, the circumstances referred to in Article 11 which justify the use of these procedures.

This report, or the main features of it, shall be communicated to the Commission at its request.

#### *Article 13*

1. This Article shall apply to design contests organized as part of a procedure leading to the award of a service contract whose estimated value net of VAT is not less than the value referred to in Article 7 (1).
2. This Article shall apply to all design contests where the total amount of contest prizes and payments to participants is not less than ECU 200 000.
3. The rules for the organization of a design contest shall be in conformity with the requirements of this Article and shall be communicated to those interested in participating in the contest.
4. The admission of participants to design contests shall not be limited:
  - by reference to the territory or part of the territory of a Member State,
  - on the grounds that, under the law of the Member State in which the contest is organized, they would have been required to be either natural or legal persons.
5. 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.

6. 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 must have the same qualification or its equivalent.

The jury shall be autonomous in its decisions or opinions. These shall be reached on the basis of projects submitted anonymously and solely on the grounds of the criteria indicated in the notice within the meaning of Article 15 (3).

### TITLE IV

#### **Common rules in the technical field**

#### *Article 14*

1. The technical specifications defined in Annex II shall be given in the general documents or the contractual documents relating to each contract.
2. Without prejudice to the legally binding national technical rules and insofar as these are compatible with Community law, such technical specifications shall be defined by the contracting authorities by reference to national standards implementing European standards or by reference to European technical approvals or by reference to common technical specifications.
3. A contracting authority may depart from paragraph 2 if:
  - (a) the standards, European technical approvals or common technical specifications do not include any provisions for establishing conformity, or technical means do not exist for establishing satisfactorily the conformity of a product with these standards, European technical approvals or common technical specifications;
  - (b) the application of paragraph 2 would prejudice the application of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment <sup>(1)</sup>, or Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications <sup>(2)</sup> or other Community instruments in specific service or product areas;

<sup>(1)</sup> OJ No L 217, 5. 8. 1986, p. 21. Amended by Directive 91/263/EEC (OJ No L 128, 23. 5. 1991, p. 1).

<sup>(2)</sup> OJ No L 36, 7. 2. 1987, p. 31.



- (c) these standards, European technical approvals or common technical specifications would oblige the contracting authority to use products or materials incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties, but only as part of a clearly defined and recorded strategy with a view to the transition, with a given period, to European standards, European technical approvals or common technical specifications;
- (d) the project concerned is of a genuinely innovative nature for which use of existing European standards, European technical approvals or common technical specifications would not be appropriate.

4. Contracting authorities invoking paragraph 3 shall record, wherever possible, the reasons for doing so in the contract notice published in the *Official Journal of the European Communities* or in the contract documents and in all cases shall record these reasons in their internal documentation and shall supply such information on request to Member States and to the Commission.

5. In the absence of European standards or European technical approvals or common technical specifications, the technical specifications:

- (a) shall be defined by reference to the national technical specifications recognized as complying with the basic requirements listed in the Community directives on technical harmonization, in accordance with the procedures laid down in those directives, and in particular in accordance with the procedures laid down in Directive 89/106/EEC<sup>(1)</sup>;
- (b) may be defined by reference to national technical specifications relating to design and method of calculation and execution of works and use of materials;
- (c) may be defined by reference to other documents.

In this case, it is appropriate to make reference in order of preference to:

- (i) national standards implementing international standards accepted by the country of the contracting authority;
- (ii) other national standards and national technical approvals of the country of the contracting authority;
- (iii) any other standard.

6. Unless it is justified by the subject of the contract, Member States shall prohibit the introduction into the contractual clauses relating to a given contract of technical specifications which mention products of a specific make or source or of a particular process and which therefore favour or eliminate certain service providers. In particular, the indication of trade marks, patents, types, or of specific origin or production shall be prohibited. However, if such indication is accompanied by the words 'or equivalent', it shall be authorized in cases where the contracting authorities are unable to give a description of the subject of the contract using specifications which are sufficiently precise and intelligible to all parties concerned.

## TITLE V

### Common advertising rules

#### Article 15

1. Contracting authorities shall make known, by means of an indicative notice to be published as soon as possible after the beginning of their budgetary year, the intended total procurement in each of the service categories listed in Annex I A which they envisage awarding during the subsequent 12 months where the total estimated value, taking account of the provisions of Article 7, is not less than ECU 750 000.

2. Contracting authorities who wish to award a public service contract by open, restricted or, under the conditions laid down in Article 11, negotiated procedure, shall make known their intention by means of a notice.

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

#### Article 16

1. Contracting authorities who have awarded a public contract or have held a design contest shall send a notice of the results of the results of the award procedure to the Office for Official Publication of the European Communities.

2. The notices shall be published:

- in the case of public contracts for services listed in Annex I A, in accordance with Articles 17 to 20,
- in the case of design contests, in accordance with Article 17.

3. In the case of public contracts for services listed in Annex I B, the contracting authorities shall indicate in the notice whether they agree on its publication.

<sup>(1)</sup> OJ No L 40, 11. 2. 1989, p. 12.

4. The Commission shall draw up the rules for establishing regular reports on the basis of the notices referred to in paragraph 3, and for the publication of such reports in accordance with the procedure laid down in Article 40 (3).

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

#### Article 17

1. The notices shall be drawn up in accordance with the models set out in Annexes III and IV and shall specify the information requested in those models. The contracting authorities may not require any conditions other than those specified in Articles 31 and 32 when requesting information concerning the economic and technical standards which they require of service providers for their selection (section 13 of Annex III B, section 13 of Annex III C, and section 12 of Annex III D).

2. The contracting authorities shall send the notices as rapidly as possible and by the most appropriate channels to the Office for Official Publications of the European Communities. In the case of the accelerated procedure referred to in Article 20, the notice shall be sent by telex, telegram or fax.

The notice referred to in Article 15 (1) shall be sent as soon as possible after the beginning of each budgetary year.

The notice referred to in Article 16 (1) shall be sent at the latest forty-eight days after the award of the contract in question or the closure of the design contest in question.

3. The notices referred to in Articles 15 (1) and 16 (1) shall be published in full in the *Official Journal of the European Communities* and in the TED data bank in the official languages of the Communities, the text in the original language alone being authentic.

4. The notices referred to in Article 15 (2) and (3) shall be published in full in the *Official Journal of the European Communities* and in the TED data bank in their original language. A summary of the important elements of each notice shall be published in the official languages of the Communities, the text in the original language alone being authentic.

5. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In the case of the accelerated procedure referred to in Article 20, this period shall be reduced to five days.

6. The notices shall not be published in the official journals or in the press of the country of the contracting authority before the date of dispatch to the Office for Official Publications of the European Communities; they shall mention that date. They shall not contain information other than that published in the *Official Journal of the European Communities*.

7. The contracting authorities must be able to supply proof of the date of dispatch.

8. The cost of publication of the notices in the *Official Journal of the European Communities* shall be borne by the Communities. The length of the notice shall not be greater than one page of the Official Journal, or approximately 650 words. Each edition of the Official Journal containing one or more notices shall reproduce the model notice or notices on which the published notice or notices are based.

#### Article 18

1. In open procedures the time limit for the receipt of tenders shall be fixed by the contracting authorities at not less than 52 days from the date of dispatch of the notice.

2. The time limit for the receipt of tenders provided for in paragraph 1 may be reduced to 36 days where the contracting authorities have published the contract notice, drafted in accordance with the model in Annex III A provided for in Article 15 (1), in the *Official Journal of the European Communities*.

3. Provided that they have been requested in good time, the contract documents and supporting documents shall be sent to the service providers by the contracting authorities or competent departments within six days of receipt of their application.

4. Provided that it has been requested in good time, additional information relating to the contract documents shall be supplied by the contracting authorities not later than six days before the final date fixed for receipt of tenders.

5. Where the contract documents, supporting documents or additional information are too bulky to be supplied within the time limits laid down in paragraph 3 or 4 or where the 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 laid down in paragraph 1 and 2 shall be extended accordingly.

#### Article 19

1. In restricted procedures and negotiated procedures within the meaning of Article 11 (2), the time limit for receipt of requests to participate fixed by the contracting authorities shall be not less than 37 days from the date of dispatch of the notice.

2. The contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:

- (a) where appropriate, the address of the service from which the contract documents and supporting documents can be requested and the final date for making such a request; also 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 must be sent and the language or languages in which they must be drawn up;
- (c) a reference to the contract notice published;
- (d) an indication of any documents to be annexed, either to support the verifiable statements furnished by the candidate in accordance with Article 17 (1), or to supplement the information provided for in that Article under the same conditions as those laid down in Articles 31 and 32;
- (e) the criteria for the award of the contract if these are not given in the notice.

3. In restricted procedures, the time limit for receipt of tenders fixed by the contracting authorities may not be less than forty days from the date of dispatch of the written invitation.

4. The time limit for receipt of tenders laid down in paragraph 3 may be reduced to 26 days where the contracting authorities have published the contract notice, drafted according to the model in Annex III A provided for in Article 15 (1), in the *Official Journal of the European Communities*.

5. Requests to participate in procedures for the award of contracts may be made by letter, telegram, telex, fax or telephone. If by one of the last four, they must be confirmed by letter dispatched before the end of the period laid down in paragraph 1.

6. Provided it has been requested in good time, additional information relating to the contract documents must be supplied by the contracting authorities not later than six days before the final date fixed for the receipt of tenders.

7. 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 limit laid down in paragraphs 3 and 4 shall be extended accordingly.

#### Article 20

1. In cases where urgency renders impracticable the time limits laid down in Article 19, the contracting authorities may fix the following time limits:

- (a) a time limit for receipt of requests to participate which shall be not less than 15 days from the date of dispatch of the notice;
- (b) a time limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender.

2. Provided it has been requested in good time, additional information relating to the contract documents must be supplied by the contracting authorities not later than four days before the final date fixed for the receipt of tenders.

3. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex, fax or telephone, they must be confirmed by letter dispatched before the expiry of the time limit referred to in paragraph 1.

#### Article 21

Contracting authorities may arrange for the publication in the *Official Journal of the European Communities* of notices announcing public service contracts which are not subject to the publication requirement laid down in this Directive.

#### Article 22

The conditions for the drawing up, transmission, receipt, translation, collection and distribution of the notices referred to in Articles 15, 16 and 17 and of the statistical reports provided for in Articles 16 (4) and 39 and the nomenclature provided for in Annexes I A and B together with the reference in the notices to particular positions of the nomenclature within the categories of services listed in those Annexes may be modified in

accordance with the procedure laid down in Article 40 (3).

## TITLE VI

### CHAPTER 1

#### Common rules on participation

##### Article 23

Contracts shall be awarded on the basis of the criteria laid down in Chapter 3, taking into account Article 24, after the suitability of the service providers not excluded under Article 29 has been checked by the contracting authorities in accordance with the criteria referred to in Articles 31 and 32.

##### Article 24

1. Where the criterion for the award of the contract is that of the economically most advantageous tender, contracting authorities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by such contracting authorities. The contracting authorities shall state in the contract documents the minimum specifications to be respected by the variants and any specific requirements for their presentation. They shall indicate in the contract notice if variants are not authorized.

Contracting authorities may not reject the submission of a variant on the sole grounds that it has been drawn up with technical specifications defined by reference to national standards transposing European standards, to European technical approvals or to common technical specifications referred to in Article 14 (2) or even by reference to national technical specifications referred to in Article 14 (5) (a) and (b).

2. Contracting authorities which have admitted variants pursuant to paragraph 1 may not reject a variant on the sole grounds that it would lead, if successful, to a supply contract rather than a public service contract within the meaning of this Directive.

##### Article 25

In the contract documents, the contracting authority may ask the tenderer to indicate in his tender any share of the contract he may intend to subcontract to third parties.

This indication shall be without prejudice to the question of the principal service provider's liability.

##### Article 26

1. Tenders may be submitted by groups of service providers. These groups may not be required to assume a specific legal form in order to submit the tender; however, the group selected may be required to do so when it has been awarded the contract.

2. Candidates or tenderers who, under the law of the Member State in which they are established, are entitled to carry out the relevant service activity, 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.

3. Legal persons may be required to indicate in the tender or the request for participation the names and relevant professional qualifications of the staff to be responsible for the performance of the service.

##### Article 27

1. In restricted and negotiated procedures the contracting authorities shall, on the basis of information given relating to the service provider's position as well as to the information and formalities necessary for the evaluation of the minimum conditions of an economic and technical nature to be fulfilled by him, select from among the candidates with the qualifications required by Articles 29 to 35 those whom they will invite to submit a tender or to negotiate.

2. Where the contracting authorities award a contract by restricted procedure, they may prescribe the range within which the number of service providers which they intend to invite will fall. In this case the range shall be indicated in the contract notice. The range shall be determined in the light of the nature of the service to be provided. The range must number at least five service providers and may be up to twenty.

In any event, the number of candidates invited to tender shall be sufficient to ensure genuine competition.

3. Where the contracting authorities award a contract by negotiated procedure as referred to in Article 11 (2), the number of candidates admitted to negotiate may not be less than three, provided that there is a sufficient number of suitable candidates.

4. Each Member State shall ensure that contracting authorities issue invitations without discrimination to those nationals of other Member States who satisfy the necessary requirements and under the same conditions as to its own nationals.

### Article 28

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

2. The contracting authority which supplies the information referred to in paragraph 1 shall request the tenderers or those participating 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 carried out. This shall be without prejudice to the application of the provisions of Article 37 concerning the examination of abnormally low tenders.

## CHAPTER 2

### Criteria for qualitative selection

#### Article 29

Any service provider 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 for an arrangement with creditors or of any other similar proceedings under national laws or regulations;
- (c) has been convicted of an offence concerning his professional conduct by a judgement which has the force of *res judicata*;
- (d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- (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 of the contracting authority;

(g) is guilty of serious misrepresentation in supplying or failing to supply the information that may be required under this Chapter.

Where the contracting authority requires of the service provider proof that none of the cases quoted in (a), (b), (c), (e), or (f) applies to him, it shall accept as sufficient evidence:

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

Where the country concerned does not issue such documents or certificates, they may be replaced by a declaration on oath made by the person concerned before a 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.

Member States shall, within the time limit referred to in Article 44, designate the authorities and bodies competent to issue such documents or certificates and shall forthwith inform the other Member States and the Commission thereof.

#### Article 30

1. In so far as candidates for a public contract or tenderers have to possess a particular authorization or to be members of a particular organization in their home country in order to be able to perform the service concerned, the contracting authority may require them to prove that they hold such authorization or membership.

2. Any candidate or tenderer may be requested to prove his enrolment, as prescribed in his country of establishment, in one of the professional or trade registers or to provide a declaration or certificate as described in paragraph 3 below.

3. 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, the '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 Portugal, the 'Registro nacional das Pessoas Colectivas',
- in the United Kingdom and Ireland, the service provider may be requested to provide a certificate from the Registrar of Companies or 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.

#### Article 31

1. Proof of the service provider's financial and economic standing may, as a general rule, be furnished by one or more of the following references:
  - (a) appropriate statements from banks or evidence of relevant professional risk indemnity insurance;
  - (b) the presentation of the service provider's balance sheets or extracts therefrom, where publication of the balance sheets is required under company law in the country in which the service provider is established;
  - (c) a statement of the undertaking's overall turnover and its turnover in respect of the services to which the contract relates for the previous three financial years.
2. The contracting authorities shall specify in the contract notice or in the invitation to tender which refer-

ence or references mentioned in paragraph 1 they have chosen and which other references are to be produced.

3. If, for any valid reason, the service provider 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 32

1. The ability of service providers to perform services may be evaluated in particular with regard to their skills, efficiency, experience and reliability.
2. Evidence of the service provider's technical capability may be furnished by one or more of the following means according to the nature, quantity and purpose of the services to be provided:
  - (a) the service provider's educational and professional qualifications and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services;
  - (b) a list of the principal services provided in the past three years, with the sums, dates and recipients, public or private, of the services provided;
    - where provided to contracting authorities, evidence to be in the form of certificates issued or countersigned by the competent authority,
    - where provided to private purchasers, delivery to be certified by the purchaser or, failing this, simply declared by the service provider to have been effected;
  - (c) an indication of the technicians or technical bodies involved, whether or not belonging directly to the service provider, especially those responsible for quality control;
  - (d) a statement of the service provider's average annual manpower and the number of managerial staff for the last three years;
  - (e) a statement of the tool, plant or technical equipment available to the service provider for carrying out the services;
  - (f) a description of the service provider's measures for ensuring quality and his study and research facilities;
  - (g) where the services to be provided are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the service provider is established, sub-

ject to that body's agreement, on the technical capacities of the service provider and, if necessary, on his study and research facilities and quality control measures;

- (h) an indication of the proportion of the contract which the service provider may intend to sub-contract.

3. The contracting authority shall specify, in the notice or in the invitation to tender, which references it wishes to receive.

4. The extent of the information referred to in Article 31 and in paragraphs 1, 2 and 3 of this Article must be confined to the subject of the contract; contracting authorities shall take into consideration the legitimate interests of the service providers as regards the protection of their technical or trade secrets.

#### *Article 33*

Where contracting authorities require the production of certificates drawn up by independent bodies for attesting conformity of the service with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant EN 29 000 European standards series certified by bodies conforming to the EN 45 000 European standards series. They shall recognize equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from service providers who have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

#### *Article 34*

Within the limits of Articles 29 to 32, contracting authorities may invite the service providers to supplement the certificates and documents submitted or to clarify them.

#### *Article 35*

1. Member States who have official lists of recognized service providers must adapt them to the provisions of Articles 29 (a) to (d) and (g) and of Articles 30, 31 and 32.

2. Service providers registered in the official lists may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority.

This certificate shall state the reference which enabled them to be registered in the list and the classification given in this list.

3. Certified registration in official lists of service providers by the competent bodies shall, for the contracting authorities of other Member States, constitute a presumption of suitability corresponding to the service provider's classification only as regards Article 29 (a) to (d) and (g), Article 30, Article 31 (b) and (c) and Article 32 (a).

Information which can be deduced from registration in official lists may not be questioned. However, with regard to the payment of social security contributions, an additional certificate may be required of any registered service provider whenever a contract is offered.

The contracting authorities of other Member States shall apply the above provisions only in favour of service providers established in the Member State holding the official list.

4. When registering service providers from other Member States in an official list, no proof or statement can be required in addition to those required of national service providers and, in any case, none in addition to those required in Articles 29 to 33.

5. Member States which have official lists shall be obliged to inform the other Member States of the address of the body to which applications for registration should be sent.

### **CHAPTER 3**

#### **Criteria for the award of contracts**

#### *Article 36*

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

- (a) where the award is made to the economically most advantageous tender, various criteria relating to the contract: for example, quality, technical merit, aesthetic and functional characteristics, technical assistance and after-sales service, delivery date, delivery period or period of completion, price; or

(b) the lowest price only.

2. Where the contract is to be awarded to the economically most advantageous tender, the contracting authority

authority shall state in the contract documents or in the tender notice the award criteria which it intends to apply, where possible in descending order of importance.

#### *Article 37*

If, for a given contract, tenders appear to be abnormally low in relation to the service to be provided, 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 and shall verify those constituent elements taking account of the explanations received.

The contracting authority may take into consideration explanations which are justified on objective grounds including the economy of the method by which the service is provided, or the technical solutions chosen, or the exceptionally favourable conditions available to the tenderer for the provision of the service, or the originality of the service proposed by the tenderer.

If the documents relating to the contract provide for its award at the lowest price tendered, the contracting authority must communicate to the Commission the rejection of tenders which it considers to be too low.

### **TITLE VII**

#### **Final provisions**

#### *Article 38*

The calculation of time limits shall be made in accordance with Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits <sup>(1)</sup>

#### *Article 39*

1. In order to permit assessment of the results of applying the Directive, Member States shall, by 31 October 1995 at the latest for the preceding year and thereafter by 31 October of every second year, forward to the Commission a statistical report on the service contracts awarded by contracting authorities.

2. This report shall detail at least the number and value of contracts awarded by each contracting authority or category of contracting authority above the threshold, subdivided as far as possible by procedure, category of service and the nationality of the service provider to whom the contract has been awarded and, in the case of negotiated procedures, subdivided in accordance with Article 11, listing the number and value of the contracts awarded to each Member State and to third countries.

3. The Commission shall determine in accordance with the procedure laid down in Article 40 (3) the nature of any statistical information which is required in accordance with this Directive.

#### *Article 40*

1. The Commission shall be assisted by the Advisory Committee for Public Contracts set up by Decision 71/306/EEC.

2. As regards telecommunications services falling within category 5 of Annex I A, the Commission shall also be assisted by the Advisory Committee on Telecommunications Procurement set up by Directive 90/531/EEC.

3. Where reference is made to the procedure laid down in this paragraph, the representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

4. The Committees mentioned in paragraphs 1 and 2 shall examine, on the initiative of the Commission or at the request of a Member State, any question relating to the application of the Directive.

#### *Article 41*

Article 1 (1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts <sup>(2)</sup> shall be replaced by the following:

'1. The Member States shall take the measures necessary to ensure that, as regards contract award procedures falling within the scope of Directives 71/305/EEC, 77/62/EE, and 92/50/EEC (+), decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in the following Articles and, in particular,

<sup>(1)</sup> OJ No L 124, 8. 6. 1971, p. 1.

<sup>(2)</sup> OJ No L 395, 30. 12. 1989, p. 33.



Article 2(7) on the grounds that such decisions have infringed Community law in the field of public procurement or nation rules implementing that law.

(\*) OJ No L 209, 24. 7. 1992, p. 1.'

#### Article 42

1. Article 5(1)(c) of Directive 77/62/EEC shall be replaced by the following:

'(c) the value of the thresholds in national currencies and the threshold of the GATT Agreement expressed in ecus shall in principle be revised every two years with effect from 1 January 1988. The calculation of these values shall be based on the average daily values of these currencies expressed in ecus and of the ecu expressed in SDRs over the 24 months terminating on the last day of August immediately preceding the 1 January revision. These values shall be published in the *Official Journal of the European Communities* at the beginning of November.'

2. Article 4a(2) of Directive 71/305/EEC shall be replaced by the following:

'2. (a) The value of the threshold in national currencies shall normally be revised every two years with effect from 1 January 1992. The calculation of this value shall be based on the average daily values of these currencies expressed in ecus over the 24 months terminating on the last day of August immediately preceding the 1 January revision. These values shall be published in the *Official Journal of the European Communities* at the beginning of November.

(b) The method of calculation laid down in subparagraph (a) shall be reviewed, on a proposal from the Commission, by the Advisory Committee for Public Contracts

in principle two years after its initial application.'

#### Article 43

Not later than three years after the time limit for compliance with this Directive, the Commission, acting in close cooperation with the Committees referred to in Article 40(1) and (2), shall review the manner in which this Directive has operated, including the effects of the application of the Directive to procurement of the services listed in Annex I A and the provisions concerning technical standards. It shall evaluate, in particular, the prospects for the full application of the Directive to procurement of the other services listed in Annex I B, and the effects of in-house performance of services on the effective opening-up of procurement in this area. It shall make the necessary proposals to adapt the Directive accordingly.

#### Article 44

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 1993. They shall forthwith inform the Commission thereof.

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

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

#### Article 45

This Directive is addressed to the Member States.

Done at Luxembourg, 18 June 1992.

For the Council  
The President  
Vitor MARTINS

## ANNEX I A

## Services within the meaning of Article 8

Category No	Subject	CPC Reference No
1.	Maintenance and repair services	6112, 6122, 633, 886
2.	Land transport services <sup>(1)</sup> , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304
3.	Air transport services of passengers and freight, except transport of mail	73 (except 7321)
4.	Transport of mail by land <sup>(1)</sup> and by air	71235, 7321
5.	Telecommunications services <sup>(2)</sup>	752
6.	Financial services (a) Insurance services (b) Banking and investment services <sup>(3)</sup>	ex 81 812, 814
7.	Computer and related services	84
8.	R&D services <sup>(4)</sup>	85
9.	Accounting, auditing and book-keeping services	862
10.	Market research and public opinion polling services	864
11.	Management consultant services <sup>(5)</sup> and related services	865, 866
12.	Architectural services; engineering services and integrated engineering services; urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	867
13.	Advertising services	871
14.	Building-cleaning services and property management services	874 82201 to 82206
15.	Publishing and printing services on a fee or contract basis	88442
16.	Sewage and refuse disposal services; sanitation and similar services	94

<sup>(1)</sup> Except for rail transport services covered by Category 18.

<sup>(2)</sup> Except voice telephony, telex, radiotelephony, paging and satellite services.

<sup>(3)</sup> Except contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services.

<sup>(4)</sup> Except research and development service 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.

<sup>(5)</sup> Except arbitration and conciliation services.

**ANNEX I B****Services within the meaning of Article 9**

Category No	Subject	CPC Reference No
17.	Hotel and restaurant services	64
18.	Rail transport services	711
19.	Water transport services	72
20.	Supporting and auxiliary transport services	74
21.	Legal services	861
22.	Personnel placement and supply services	872
23.	Investigation and security services, except armoured car services	873 (except 87304)
24.	Education and vocational education services	92
25.	Health and social services	93
26.	Recreational, cultural and sporting services	96
27.	Other services	

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**ANNEX II****Definition of certain technical specifications**

For the purpose of this Directive the following terms shall be defined as follows:

1. **Technical specifications:** the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a work, material, product or supply, which permits a work, 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 technical prescriptions shall include levels of quality, performance, safety or dimensions, including the requirements applicable to the material, the product or to the supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. 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.
  2. **Standard:** a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory.
  3. **European standard:** a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as 'European Standards (EN)' or 'Harmonization documents (HD)' according to the common rules of these organizations or by the European Telecommunications Standards Institute (ETSI) as a 'European Telecommunication Standard' (ETS).
  4. **European technical approval:** a favourable technical assessment of the fitness for use of a product, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of applications and use. European approval shall be issued by an approval body designated for this purpose by the Member State;
  5. **Common technical specification:** a technical specification laid down in accordance with a procedure recognized by the Member States to ensure uniform application in all Member States which has been published in the *Official Journal of the European Communities*.
  6. **Essential requirements:** requirements regarding safety, health and certain other aspects in the general interest, that the construction works can meet.
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**ANNEX III****Model contract notices*****A. Prior information***

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority, and, if different, of the service from which additional information may be obtained.
2. Intended total procurement in each of the service categories listed in Annex I A.
3. Estimated date for initiating the award procedures, per category.
4. Other information.
5. Date of dispatch of the notice.
6. Date of receipt of the notice by the Office for Official Publications of the European Communities.

***B. Open procedure***

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority.
2. Category of service and description. CPC reference number.
3. Place of delivery.
4. (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
(b) Reference of the law, regulation or administrative provision.  
(c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
5. Indication of whether service providers can tender for a part of the services concerned.
6. Where applicable, non-acceptance of variants.
7. Duration of contract or time limit for completion of the service.
8. (a) Name and address of the service from which the necessary documents may be requested.  
(b) Final date for making such requests.  
(c) Where applicable, the amount and terms of payment of any sum payable for such documents.
9. (a) Persons authorized to be present at the opening of tenders.  
(b) Date, time and place of the opening.
10. Where applicable, any deposits and guarantees required.
11. Main terms concerning financing and payment and/or references to the relevant provisions.
12. Where applicable, the legal form to be taken by the grouping of service providers winning the contract.
13. Information concerning the service provider's own position, and information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.

14. Period during which the tenderer is bound to keep open his tender.
15. Criteria for the award of the contract and, if possible, their order of importance. Criteria other than that of the lowest price shall be mentioned if they do not appear in the contract documents.
16. Other information.
17. Date of dispatch of the notice.
18. Date of receipt of the notice by the Office for Official Publications of the European Communities.

*C. Restricted procedure*

1. Name, address, telegraphic address, telephone, telex and fax number of the contracting authority.
2. Category of service and description. CPC reference number.
3. Place of delivery.
4. (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
(b) Reference of the law, regulation or administrative provision.  
(c) Indication whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
5. Indication of whether the service provider can tender for a part of the services concerned.
6. Envisaged number or range of service providers which will be invited to tender.
7. Where applicable, non-acceptance of variants.
8. Duration of contract, or time limit for completion of the service.
9. Where applicable, the legal form to be assumed by the grouping of service providers winning the contract.
10. (a) Where applicable, justification for the use of the accelerated procedure.  
(b) Final date for the receipt of requests to participate.  
(c) Address to which they must be sent.  
(d) Language(s) in which they must be drawn up.
11. Final date for the dispatch of invitations to tender.
12. Where applicable, any deposits and guarantees required.
13. Information concerning the service provider's own position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
14. Criteria for the award of the contract and, if possible, their order of importance if these are not stated in the invitation to tender.
15. Other information.
16. Date of dispatch of the notice.
17. Date of receipt of the notice by the Office for Official Publications of the European Communities.

*D. Negotiated procedure*

1. Name, address, telegraphic address, telephone, telex and fax number of the contracting authority.
2. Category of service and description. CPC reference number.
3. Place of delivery.
4. (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
(b) Reference of the law, regulation or administrative provision.  
(c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
5. Indication of whether the service provider can tender for a part of the services concerned.
6. Envisaged number or range of service providers which will be invited to tender.
7. Where applicable, non-acceptance of variants.
8. Duration of contract, or time limit for completion of the service.
9. Where applicable, the legal form to be assumed by the grouping of service providers winning the contract.
10. (a) Where applicable, justification for the use of the accelerated procedure.  
(b) Final date for the receipt of requests to participate.  
(c) Address to which they must be sent.  
(d) Language(s) in which they must be drawn up.
11. Where applicable, any deposits and guarantees required.
12. Information concerning the service provider's own position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
13. Where applicable, the names and addresses of service providers already selected by the contracting authority.
14. Other information.
15. Date of dispatch of the notice.
16. Date of receipt of the notice by the Office for Official Publications of the European Communities.
17. Previous date(s) of publication in the *Official Journal of the European Communities*.

*E. Contract award notice*

1. Name and address of the contracting authority.
2. Award procedure chosen. In the case of the negotiated procedure without prior publication of a tender notice, justification (Article 11 (3)).
3. Category of service and description. CPC reference number.
4. Date of award of the contract.

5. Criteria for award of the contract.
  6. Number of tenders received.
  7. Name and address of service provider(s).
  8. Price or range of prices (minimum/maximum) paid.
  9. Where appropriate, value and proportion of the contract which may be subcontracted to third parties.
  10. Other information.
  11. Date of publication of the contract notice in the Official Journal of the European Communities.
  12. Date of dispatch of the notice.
  13. Date of receipt of the notice by the Office for Official Publications of the European Communities.
  14. In the case of contracts for services listed in Annex I B, agreement by the contracting authority to publication of the notice (Article 16 (3)).
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*ANNEX IV**A. Design contest notice*

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority and of the service from which additional documents may be obtained.
2. Project description.
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;
  - (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 contracting 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. Other information.
14. Date of dispatch of the notice.
15. Date of receipt of the notice by the Office for Official Publications of the European Communities.

*B. Results of design contest*

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority.
  2. Project description.
  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. Date of dispatch of the notice.
  10. Date of receipt of the notice by the Office for Official Publications of the European Communities.
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## COUNCIL DIRECTIVE 92/51/EEC

of 18 June 1992

on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, particular Articles 49, 57 (1) and 66 thereof,

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

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

- (1) Whereas, pursuant to Article 8a of the Treaty, the internal market shall comprise an area without internal frontiers and whereas, pursuant to Article 3 (c) of the Treaty, the abolition, as between Member States, of obstacles to freedom of movement for persons and services constitutes one of the objectives of the Community; whereas, for nationals of the Member States, this means in particular the possibility of pursuing a profession, whether in a self-employed or employed capacity, in a Member State other than that in which they acquired their professional qualifications;
- (2) Whereas, for those professions for the pursuit of which the Community has not laid down the necessary minimum level of qualification, Member States reserve the option of fixing such a level with a view to guaranteeing the quality of services provided in their territory; whereas, however, they may not, without disregarding their obligations laid down in Articles 5, 48, 52 and 59 of the Treaty, require a national of a Member State to obtain those qualifications which in general they determine only by reference to those issued under their own national education and training systems, where the person concerned has already acquired all or part of those qualifications in another Member State; whereas, as a result, any host Member State in which a profession is regulated is required to take account of qualifications acquired in another Member State and to determine whether those qualifications correspond to the qualifications which the Member State concerned requires;
- (3) Whereas Council Directive 89/48/EEC of 21 December 1988 on a general system for the

recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration (4) facilitates compliance with such obligations; whereas, however, it is limited to higher education;

- (4) Whereas, in order to facilitate the pursuit of all those professional activities which in a host Member State are dependent on the completion of a certain level of education and training, a second general system should be introduced to complement the first;
- (5) Whereas the complementary general system must be based on the same principles and contain *mutatis mutandis* the same rules as the initial general system;
- (6) Whereas this Directive is not applicable to those regulated professions which are covered by specific Directives principally concerned with introducing mutual recognition of training courses completed before entry into professional life;
- (7) Whereas neither is it applicable, furthermore, to those activities covered by specific Directives principally intended to introduce recognition of technical skills based on experience acquired in another Member State; whereas certain of those Directives apply solely to the pursuit of activities in a self-employed capacity; whereas, in order to ensure that the pursuit of such activities as an employed person does not fall within the scope of this Directive, whereby the pursuit of the same activity would be subject to different legal recognition arrangements depending on whether it was pursued in a self-employed capacity or as an employed person, those Directives should be made applicable to persons pursuing the activities in question as employed persons;
- (8) Whereas the complementary general system is entirely without prejudice to the application of Article 48 (4) and Article 55 of the Treaty;
- (9) Whereas this complementary system must cover the levels of education and training not covered by the initial general system, namely that corresponding to other post-secondary education and training courses and other equivalent education and training, and that corresponding to

(1) OJ No C 263, 16.10.1989, p. 1 and OJ No C 217, 1.9.1990, p. 4.

(2) OJ No C 149, 18.6.1990, p. 149, and OJ No C 150, 15.6.1992.

(3) OJ No C 75, 26.3.1990, p. 11.

(4) OJ No L 19, 24.1.1989, p. 16.

long or short secondary courses, possibly complemented by professional training or experience;

- (10) Whereas, where in most Member States pursuit of a given regulated profession is subject to either very short training or the possession of certain personal attributes or merely general knowledge, the normal mechanisms for recognition under this Directive may be excessively cumbersome; whereas in such cases there should be provision for simplified mechanisms;
- (11) Whereas account should also be taken of the professional training system in the United Kingdom whereby standards for levels of performance for all professional activities are established via the 'National Framework of Vocational Qualifications';
- (12) Whereas in some Member States there are only relatively few regulated professions; whereas, however, training for professions which are not regulated may be specifically geared to the pursuit of the profession, with the structure and level of training being monitored or approved by the competent authorities of the Member State concerned; whereas this provides guarantees equivalent to those provided in connection with a regulated profession;
- (13) Whereas the competent authorities of the host Member State should be allowed to determine, in accordance with the relevant provisions of Community law, the detailed rules necessary for implementation of the adaptation period and the aptitude test;
- (14) Whereas, since it covers two levels of education and training and since the initial general system covers a third level, the complementary general system must lay down whether and under what conditions a person possessing a certain level of education and training may pursue, in another Member State, a profession the qualifications for which are regulated at a different level;
- (15) Whereas, for the pursuit of certain professions, certain Member States require the possession of a diploma within the meaning of Directive 89/48/EEC, while for the same profession other Member States require the completion of professional education or training with a different structure; whereas certain kinds of education and training, while not of a post-secondary nature of minimum duration within the meaning of this Directive, nevertheless result in a comparable professional level and prepare the person for similar responsibilities and activities; whereas such education and training should therefore be classed in

the same category as that attested by a diploma; whereas such education and training is very varied and this classification can be achieved only by listing the courses in question; whereas such classification would, where appropriate, establish the recognition of equivalence between such education and training and that covered by Directive 89/48/EEC; whereas some regulated education and training should also be classed at diploma level in a second list;

- (16) Whereas, in view of the constantly changing organization of professional training, there should be a procedure for amending those lists;
- (17) Whereas, since it covers occupations the pursuit of which is dependent on the possession of professional or vocational education and training qualifications of secondary level and generally requires manual skills, the complementary general system must also provide for the recognition of such qualifications even where they have been acquired solely through professional experience in a Member State which does not regulate such professions;
- (18) Whereas the aim of this general system, like the first general system, is to eliminate obstacles to the taking up and pursuit of regulated professions; whereas work carried out pursuant to Council Decision 85/368/EEC of 16 July 1985 on the comparability of vocational training qualifications between the Member States of the European Community <sup>(1)</sup>, while pursuing a different objective from the elimination of legal obstacles to freedom of movement, namely that of improving the transparency of the labour market, must be used, where appropriate, in the application of this Directive, particularly where it could provide information on the subject, content and duration of professional training;
- (19) Whereas professional bodies and professional educational and training establishments should, where appropriate, be consulted or be involved in an appropriate way in the decision-making process;
- (20) Whereas, like the initial system, such a system, by strengthening the right of a Community national to use his occupational skills in any Member State, supplements and reinforces his right to acquire such skills wherever he wishes;
- (21) Whereas the two systems should be evaluated, after a certain period of application, in order to determine how efficiently they operate and, in particular, how they can both be improved,

<sup>(1)</sup> OJ No L 199, 31.7.1985, p. 56.

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

### Definitions

#### Article 1

For the purposes of this Directive, the following definitions shall apply:

(a) *diploma*: any evidence of education and training or any set of such evidence:

- which has been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of that State,
- which shows that the holder has successfully completed:
  - (i) either a post-secondary course other than that referred to in the second indent of Article 1 (a) of Directive 89/48/EEC, of at least one year's duration or of equivalent duration on a part-time basis, one of the conditions of entry of which is, as a general rule, the successful completion of the secondary course required to obtain entry to university or higher education, as well as the professional training which may be required in addition to that post-secondary course;
  - (ii) or one of the education and training courses in Annex C, and
- which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State,

provided that the education and training attested by this evidence was received mainly in the Community, or outside the Community at teaching establishments which provide education and training in accordance with the laws, regulations or administrative provisions of a Member State, or that the holder thereof has three years' professional experience certified by the Member State which recognized third-country evidence of education and training.

The following shall be treated in the same way as a diploma within the meaning of the first subparagraph: any evidence of education and training or any set of such evidence awarded by a competent authority in a Member State if it is awarded on the successful completion of education and training received in the Community and recognized by a competent authority in that member State as being of an equivalent level and if it confers the same rights in respect of the taking up and pursuit of a regulated profession in that Member State;

(b) *certificate*: any evidence of education and training or any set of such evidence:

- which has been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of that State,
- which shows that the holder, after having followed a secondary course, has completed:

either a course of education or training other than courses referred to in point (a), provided at an educational or training establishment or on the job, or in combination at an educational or training establishment and on the job, and complemented, where appropriate, by the probationary or professional practice required in addition to this course,

or the probationary or professional practice required in addition to this secondary course, or

- which shows that the holder, after having followed a secondary course of a technical or vocational nature has completed, where necessary,

either a course of education or training as referred to in the previous indent,

or the probationary or professional practice required in addition to this secondary course of a technical or vocational nature and

- which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State,

provided that the education and training attested by this evidence was received mainly in the Community, or outside the Community at teaching establishments which provide education and training in accordance with the laws, regulations or administrative provisions of a Member State, or that the holder thereof has two years' professional experience certified by the Member State which recognized third-country evidence of education and training.

The following shall be treated in the same way as a certificate, within the meaning of the first subparagraph: any evidence of education and training or any set of such evidence awarded by a competent authority in a Member State if it is awarded on the successful completion of education and training received in the Community and recognized by a competent authority in a Member State as being of an equivalent level and if it confers the same rights in respect of the taking up and pursuit of a regulated profession in that Member State;

(c) *attestation of competence*: any evidence of qualifications:

- attesting to education and training not forming part of a set constituting a diploma within the meaning of Directive 89/48/EEC or a diploma or certificate within the meaning of this Directive, or
- awarded following an assessment of the personal qualities, aptitudes or knowledge which it is considered essential that the applicant have for the pursuit of a profession by an authority designated in accordance with the laws, regulations or administrative provisions of a Member State, without proof of prior education and training being required;

(d) *host Member State*: any Member State in which a national of a Member State applies to pursue a profession subject to regulation in that Member State, other than the State in which he obtained his evidence of education and training or attestation of competence or first pursued the profession in question;

(e) *regulated profession*: the regulated professional activity or range of activities which constitute this profession in a Member State;

(f) *regulated professional activity*: a professional activity the taking up or pursuit of which, or one of its modes of pursuit in a Member State, is subject, directly or indirectly, by virtue of laws, regulations or administrative provisions, to the possession of evidence of education and training or an attestation of competence. The following in particular shall constitute a mode of pursuit of a regulated professional activity:

- pursuit of an activity under a professional title, in so far as the use of such a title is reserved to the holders of evidence of education and training or an attestation of competence governed by laws, regulations or administrative provisions,
- pursuit of a professional activity relating to health, in so far as remuneration and/or reimbursement for such an activity is subject by virtue of national social security arrangements to the possession of evidence of education and training or an attestation of competence.

Where the first subparagraph does not apply, a professional activity shall be deemed to be a regulated professional activity if it is pursued by the members of an association or organization the purpose of which is, in particular, to promote and maintain a high standard in the professional field concerned and which, to achieve that purpose, is recognized in a special form by a Member State and:

- awards evidence of education and training to its members,

- ensures that its members respect the rules of professional conduct which it prescribes, and

- confers on them the right to use a professional title or designatory letters, or to benefit from a status corresponding to that education and training.

Whenever a Member State grants the recognition referred to in the second subparagraph to an association or organization which satisfies the conditions of that subparagraph, it shall inform the Commission thereof;

(g) *regulated education and training*: any education and training which:

- is specifically geared to the pursuit of a given profession, and

- comprises a course or courses complemented, where appropriate, by professional training or probationary or professional practice, the structure and level of which are determined by the laws, regulations or administrative provisions of that Member State or which are monitored or approved by the authority designated for that purpose;

(h) *professional experience*: the actual and lawful pursuit of the profession concerned in a Member State;

(i) *adaptation period*: the pursuit of a regulated profession in the host Member State under the responsibility of a qualified member of that profession, such period of supervised practice possibly being accompanied by further education and training. This period of supervised practice shall be the subject of an assessment. The detailed rules governing the adaptation period and its assessment shall be laid down by the competent authorities in the host Member State.

The status enjoyed in the host Member State by the person undergoing the period of supervised practice, in particular in the matter of right of residence as well as of obligations, social rights and benefits, allowances and remuneration, shall be established by the competent authorities in that Member State in accordance with applicable Community law;

(j) *aptitude test*: a test limited to the professional knowledge of the applicant, made by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State.

In order to permit this test to be carried out, the competent authorities shall draw up a list of subjects which, on the basis of a comparison of the education and training required in the Member State and that received by the applicant, are not

covered by the evidence of education and training possessed by the applicant. These subjects may cover both theoretical knowledge and practical skills required for the pursuit of the profession.

This aptitude test must take account of the fact that the applicant is a qualified professional in the Member State of origin or the Member State from which he comes. It shall cover subjects to be selected from those on the list referred to in the second subparagraph, knowledge of which is essential to the pursuit of the profession in the host Member State. The test may also include knowledge of the professional rules applicable to the activities in question in the host Member State. The detailed application of the aptitude test shall be determined by the competent authorities of that State.

The status in the host Member State of the applicant who wishes to prepare himself for the aptitude test in that State shall be determined by the competent authorities in that State, in accordance with applicable Community law.

## CHAPTER II

### Scope

#### Article 2

This Directive shall apply to any national of a Member State wishing to pursue a regulated profession in a host Member State in a self-employed capacity or as an employed person.

This Directive shall apply to neither professions which are the subject of a specific Directive establishing arrangements for the mutual recognition of diplomas by Member States, nor activities covered by a Directive listed in Annex A.

The Directives listed in Annex B shall be made applicable to the pursuit as an employed person of the activities covered by those Directives.

## CHAPTER III

### System for recognition where a host Member State requires possession of a diploma within the meaning of this Directive or Directive 89/48/EEC

#### Article 3

Without prejudice to Directive 89/48/EEC, where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a diploma, as defined in this Directive or in Directive 89/48/EEC, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that

profession on the same conditions as those which apply to its own nationals:

- (a) if the applicant holds the diploma, as defined in this Directive or in Directive 89/48/EEC, required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State; or
- (b) if the applicant has pursued the profession in question full-time for two years, or for an equivalent period on a part-time basis, during the previous 10 years in another Member State which does not regulate that profession within the meaning of either Article 1 (e) and the first subparagraph of Article 1 (f) of this Directive or Article 1 (c) and the first subparagraph of Article 1 (d) of Directive 89/48/EEC, and possesses evidence of education and training which:
  - has been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of that State, and
  - either shows that the holder has successfully completed a post-secondary course, other than that referred to in the second indent of Article 1 (a) of Directive 89/48/EEC, of at least one year's duration, or of equivalent duration on a part-time basis, one of the conditions of entry of which is, as a general rule, the successful completion of the secondary course required to obtain entry to university or higher education, as well as any professional training which is an integral part of that post-secondary course,
  - or attests to regulated education and training referred to in Annex D, and
  - has prepared the holder for the pursuit of his profession.

However, the two years' professional experience referred to above may not be required where the evidence of education and training held by the applicant and referred to in this point is awarded on completion of regulated education and training.

The following shall be treated in the same way as the evidence of education and training referred to in the first subparagraph of this point: any evidence of education and training or any set of such evidence awarded by a competent authority in a Member State if it is awarded on the completion of education and training received in the Community and is recognized by that Member State as being of an equivalent level, provided that the other Member States and the Commission have been notified of this recognition.

By way of derogation from the first subparagraph of this Article, the host Member State is not required to apply this Article where the taking up or pursuit of a regulated profession is subject in its country to possession of a diploma as defined in Directive 89/48/EEC, one of the conditions for the issue of which shall be the completion of a post-secondary course of more than four years duration.

#### Article 4

1. Notwithstanding Article 3, the host Member State may also require the applicant:

(a) to provide evidence of professional experience, where the duration of the education and training adduced in support of his application, as laid down in points (a) and (b) of the first subparagraph of Article 3, is at least one year less than that required in the host Member State. In this event, the period of professional experience required may not exceed:

- twice the shortfall in duration of education and training where the shortfall relates to a post-secondary course and/or to a period of probationary practice carried out under the control of a supervising professional person and ending with an examination,
- the shortfall where the shortfall relates to professional practice acquired with the assistance of a qualified member of the profession concerned.

In the case of diplomas within the meaning of the second subparagraph of Article 1 (a), the duration of education and training recognized as being of an equivalent level shall be determined as for the education and training defined in the first subparagraph of Article 1 (a).

When these provisions are applied, account must be taken of the professional experience referred to in point (b) of the first subparagraph of Article 3.

In any event, the professional experience required may not exceed four years.

Professional experience may not, however, be required of an applicant holding a diploma attesting to a post-secondary course as referred to in the second indent of Article 1 (a) or a diploma as defined in Article 1 (a) of Directive 89/48/EEC who wishes to pursue his profession in a host Member State which requires the possession of a diploma or evidence of education and training attesting to one of the courses of education and training as referred to in Annexes C and D;

(b) to complete an adaptation period not exceeding three years or take an aptitude test where:

- the theoretical and/or practical matters covered by the education and training which he has received as laid down in points (a) or (b) of the first subparagraph of Article 3 differ sub-

stantially from those covered by the diploma, as defined in this Directive or in Directive 89/48/EEC, required in the host Member State, or

- in the case referred to in point (a) of the first subparagraph of Article 3, the profession regulated in the host Member State comprises one or more regulated professional activities which do not form part of the profession regulated in the Member State from which the applicant originates or comes and that difference corresponds to specific education and training required in the host Member State and covers theoretical and/or practical matters which differ substantially from those covered by the diploma, as defined in this Directive or in Directive 89/48/EEC, adduced by the applicant, or
- in the case referred to in point (b) of the first subparagraph of Article 3, the profession regulated in the host Member State comprises one or more regulated professional activities which do not form part of the profession pursued by the applicant in the Member State from which he originates or comes, and that difference corresponds to specific education and training required in the host Member State and covers theoretical and/or practical matters which differ substantially from those covered by the evidence of education and training adduced by the applicant.

Should the host Member State make use of this possibility, it must give the applicant the right to choose between an adaptation period and an aptitude test. Where the host Member State, which requires a diploma as defined in Directive 89/48/EEC or in this Directive, intends to introduce derogations from an applicant's right to choose, the procedure laid down in Article 14 shall apply.

By way of derogation from the second subparagraph of this point, the host Member State may reserve the right to choose between the adaptation period and the aptitude test if

- a profession is involved the pursuit of which requires a precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant feature of the professional activity, or
- where the host Member State makes access to the profession or its pursuit subject to the possession of a diploma as defined in Directive 89/48/EEC, one of the conditions for the award of which is the completion of a post-secondary course of at least three years' duration or an equivalent period on a part-time basis and the applicant holds either a diploma as defined in this Directive or evidence of edu-

cation and training within the meaning of point (b) of the first subparagraph of Article 3 and not covered by Article 3 (b) of Directive 89/48/EEC.

2. However, the host Member State may not apply the provisions of paragraph 1 (a) and (b) cumulatively.

#### CHAPTER IV

**System for recognition where a host Member State requires possession of a diploma and the applicant is the holder of a certificate or has received corresponding education and training**

##### *Article 5*

Where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a diploma, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as those which apply to its own nationals:

(a) if the applicant holds the certificate required in another Member State for the taking up or pursuit of the same profession in its territory, such certificate having been awarded in a Member State; or

(b) if the applicant has pursued the same profession full-time for two years during the previous 10 years in another Member State which does not regulate that profession, within the meaning of Article 1 (e) and the first subparagraph of Article 1 (f), and possesses evidence of education and training:

— which was been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of that State, and

— which shows that the holder, after having followed a secondary course, has completed:

either a course of professional education or training other than courses referred to in point (a), provided at an educational or training establishment or on the job, or in combination at an educational or training establishment and on the job and complemented, where appropriate, by the probationary or professional practice which is an integral part of that training course,

or the probationary or professional practice which is an integral part of that secondary course, or

— which shows that the holder, after having followed a secondary course of a technical or vocational nature has completed, where necessary,

either a course of professional education or training as referred to in the previous indent,

or the period of probationary or professional practice which is an integral part of that secondary course of a technical or vocational nature and

— which has prepared the holder for the pursuit of this profession.

However, the two years' professional experience referred to above may not be required where the evidence of education and training held by the applicant and referred to in this point is awarded on completion of regulated education and training.

Nevertheless, the host Member State may require the applicant to undergo an adaptation period not exceeding three years or take an aptitude test. The host Member State must give the applicant the right to choose between an adaptation period and an aptitude test.

Where the host Member State intends to introduce derogations from an applicant's right to choose, the procedure laid down in Article 14 shall apply.

#### CHAPTER V

**System for recognition where a host Member State requires possession of a certificate**

##### *Article 6*

Where, in the host Member State, the taking up or pursuit of a regulated profession is subject to possession of a certificate, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as those which apply to its own nationals:

(a) if the applicant holds the diploma, as defined in this Directive or in Directive 89/48/EEC, or the certificate required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State; or

(b) if the applicant has pursued the profession in question full-time for two years or for an equivalent period on a part-time basis during the previous 10 years in another Member State which does not regulate that profession, within the meaning of



Article 1 (e) and the first subparagraph of Article 1 (f), and possesses evidence of education and training:

- which has been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of that State, and
- which shows that the holder has successfully completed a post-secondary course other than that referred to in the second indent of Article 1 (a) of Directive 89/48/EEC, of at least one year's duration or of equivalent duration on a part-time basis, one of the conditions of entry of which is, as a general rule, the completion of the secondary course required to obtain entry to university or higher education, as well as any professional training which is an integral part of that post-secondary course, or

- which shows that the holder, after having followed a secondary course, has completed:

either a course of education or training for a profession other than courses referred to in point (a), provided at an educational establishment or on the job, or in combination at an educational establishment and on the job and complemented, where appropriate, by the probationary or professional practice which is an integral part of that training course,

or the probationary or professional practice which is an integral part of that secondary course, or

- which shows that the holder, after having followed a secondary course of a technical or vocational nature has completed, where necessary,

either a course of education or training for a profession as referred to in the previous indent,

or the period of probationary or professional practice which is an integral part of that secondary course of a technical or vocational nature and

- which has prepared the holder for the pursuit of this profession.

However, the two years' professional experience referred to above may not be required where the evidence of education and training held by the applicant and referred to in this point is awarded on completion or regulated education and training.

- (c) if the applicant who does not hold any diploma, certificate or other evidence of education and training within the meaning of Article 3 (b) or of point (b) of this Article has pursued the profession in

question full-time for three consecutive years, or for an equivalent period on a part-time basis, during the previous 10 years in another Member State which does not regulate that profession within the meaning of Article 1 (e) and the first subparagraph of Article 1 (f).

The following shall be treated in the same way as the evidence of education and training referred to under (b) in the first subparagraph: any evidence of education and training or any set of such evidence awarded by a competent authority in a Member State if it is awarded on the completion of education and training received in the Community and is recognized by that Member State as being of an equivalent level, provided that the other Member States and the Commission have been notified of this recognition.

#### Article 7

Without prejudice to Article 6, a host Member State may also require the applicant to:

- (a) complete an adaptation period not exceeding two years or to take an aptitude test when the education and training which he received in accordance with points (a) or (b) of the first subparagraph of Article 5 relates to theoretical or practical matters differing substantially from those covered by the certificate required in the host Member State, or where there are differences in the fields of activity characterized in the host Member State by specific education and training relating to theoretical or practical matters differing substantially from those covered by the applicant's evidence of formal qualifications.

Should the host Member State make use of this possibility, it must give the applicant the right to choose between an adaptation period and an aptitude test. Where the host Member State which requires a certificate intends to introduce derogations as regards an applicant's right to choose, the procedure laid down in Article 14 shall apply;

- (b) undergo an adaptation period not exceeding two years or take an aptitude test where, in the instance referred to in point (c) of the first subparagraph of Article 6, he does not hold a diploma, certificate or other evidence of education and training. The host Member State may reserve the right to choose between an adaptation period and an aptitude test.

### CHAPTER VI

#### Special systems for recognition of other qualifications

#### Article 8

Where, in the host Member State, the taking up or pursuit of a regulated profession is subject to possession of

an attestation of competence, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as those which apply to its own nationals:

- (a) if the applicant holds the attestation of competence required in another Member State for the taking up or pursuit of the same profession in its territory, such attestation having been awarded in a Member State; or
- (b) if the applicant provides proof of qualifications obtained in other Member States,

and giving guarantees, in particular in the matter of health, safety, environmental protection and consumer protection, equivalent to those required by the laws, regulations or administrative provisions of the host Member State.

If the applicant does not provide proof of such an attestation or of such qualifications the laws, regulations or administrative provisions of the host Member State shall apply.

#### *Article 9*

Where, in the host Member State, the taking up or pursuit of a regulated profession is subject only to possession of evidence of education attesting to general education at primary or secondary school level, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as those which apply to its own nationals if the applicant possesses formal qualifications of the corresponding level, awarded in another Member State.

This evidence of formal qualifications must have been awarded by a competent authority in that Member State, designated in accordance with its own laws, regulations or administrative provisions.

### **CHAPTER VII**

#### **Other measures to facilitate the effective exercise of the right of establishment, freedom to provide services and freedom of movement of employed persons**

#### *Article 10*

1. Where the competent authority of the host Member State requires of persons wishing to take up a regulated profession proof that they are of good character or repute or that they have not been declared bankrupt, or suspends or prohibits the pursuit of that profession in the event of serious professional misconduct or a criminal offence, that State shall accept as sufficient

evidence, in respect of nationals of Member States wishing to pursue that profession in its territory, the production of documents issued by competent authorities in the Member State of origin or the Member State from which the foreign national comes showing that those requirements are met.

Where the competent authorities of the Member State of origin or of the Member State from which the foreign national comes do not issue the documents referred to in the first subparagraph, such documents shall be replaced by a declaration on oath — or, in Member States where there is no provision for declaration on oath, by a solemn declaration — made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary or qualified professional body of the Member State of origin or the Member State from which the person comes; such authority or notary shall issue written confirmation attesting the authenticity of the declaration on oath or solemn declaration.

2. Where the competent authority of the host Member State requires of nationals of that Member State wishing to take up or pursue a regulated profession a statement of physical or mental health, that authority shall accept as sufficient evidence in this respect the production of the document required in the Member State of origin or the Member State from which the foreign national comes.

Where the Member State of origin or the Member State from which the foreign national comes does not impose any requirements of this nature on those wishing to take up or pursue the profession in question, the host Member State shall accept from such nationals a statement issued by a competent authority in that State corresponding to the statement issued in the host Member State.

3. The competent authority of the host Member State may require that the documents and statements referred to in paragraphs 1 and 2 are presented no more than three months after their date of issue.

4. Where the competent authority of the host Member State requires nationals of that Member State wishing to take up or pursue a regulated profession to take an oath or make solemn declaration and where the form of such oath or declaration cannot be used by nationals of other Member States, that authority shall ensure that an appropriate and equivalent form of oath or declaration is offered to the person concerned.

#### *Article 11*

1. The competent authorities of host Member States shall recognize the right of nationals of Member States who fulfil the conditions for the taking up and pursuit

of a regulated profession in their territory to use the professional title of the host Member State corresponding to that profession.

2. The competent authority of the host Member State shall recognize the right of nationals of Member States who fulfil the conditions for the taking up and pursuit of a regulated profession in the territory to use their lawful academic title and, where appropriate, the abbreviation thereof deriving from their Member State of origin or the Member State from which they come, in the language of that State. The host Member State may require this title to be followed by the name and location of the establishment or examining board which awarded it.

3. Where a profession is regulated in the host Member State by an association or organization referred to in Article 1 (f), nationals of Member States shall be entitled to use the professional title or designatory letters conferred by that organization or association only on proof of membership.

Where the association or organization makes membership subject to certain qualification requirements, it may apply these to nationals of other Member States who are in possession of a diploma within the meaning of Article 1 (a), a certificate within the meaning of Article 1 (b) or evidence of education and training or qualification within the meaning of point (b) of the first subparagraph of Article 3, point (b) of the first subparagraph of Article 5 or Article 9 in accordance only with this Directive, in particular Articles 3, 4 and 5.

#### *Article 12*

1. The host Member State shall accept as means of proof that the conditions laid down in Articles 3 to 9 are satisfied the documents issued by the competent authorities in the Member States, which the person concerned shall submit in support of his application to pursue the profession concerned.

2. The procedure for examining an application to pursue a regulated profession shall be completed as soon as possible and the outcome communicated in a reasoned decision of the competent authority in the host Member State not later than four months after presentation of all the documents relating to the person concerned. A remedy shall be available against this decision or the absence thereof, before a court or tribunal in accordance with the provisions of national law.

### **CHAPTER VIII**

#### **Procedure for coordination**

##### *Article 13*

1. Member States shall designate, within the period provided for in Article 17, the competent authorities empowered to receive the applications and take the decisions referred to in this Directive. They shall communicate this information to the other Member States and to the Commission.

2. Each Member State shall designate a person responsible for coordinating the activities of the authorities referred to in paragraph 1 and shall inform the other Member States and the Commission to that effect. His role shall be to promote uniform application of this Directive to all the professions concerned. This coordinator shall be a member of the coordinating group set up under the aegis of the Commission by Article 9 (2) of Directive 89/48/EEC.

The coordinating group set up under the aforementioned provision of Directive 89/48/EEC shall also be required to:

- facilitate the implementation of this Directive,
- collect all useful information for its application in the Member States, particularly information relating to the establishment of an indicative list of regulated professions and to the disparities between the qualifications awarded in the Member States with a view to assisting the competent authorities of the Member States in their task of assessing whether substantial differences exist.

The group may be consulted by the Commission on any changes to the existing system which may be contemplated.

3. The Member States shall take measures to provide the necessary information on the recognition of diplomas and certificates and on other conditions governing the taking up of the regulated professions within the framework of this Directive. To carry out this task they may call upon the existing information networks and, where appropriate, the relevant professional associations or organizations. The Commission shall take the necessary initiatives to ensure the development and coordination of the communication of the necessary information.

### **CHAPTER IX**

#### **Procedure for derogating from the right to choose between adaptation period and aptitude test**

##### *Article 14*

1. If, pursuant to the second sentence of the second subparagraph of Article 4 (1) (b), the third subpara-

graph of Article 5, or the second sentence of the second subparagraph of Article 7 (a), a Member State proposes not to grant applicants the right to choose between an adaptation period and an aptitude test, it shall immediately communicate to the Commission the corresponding draft provision. It shall at the same time notify the Commission of the grounds which make the enactment of such a provision necessary.

The Commission shall immediately notify the other Member States of any draft which it has received; it may also consult the coordinating group referred to in Article 13 (2) on the draft.

2. Without prejudice to the possibility for the Commission and the other Member States to make comments on the draft, the Member State may adopt the provision only if the Commission has not taken a decision to the contrary within three months.

3. At the request of a Member State or the Commission, Member States shall communicate to them, without delay, the definitive text of any provision arising from the application of this Article.

## CHAPTER X

### Procedure for amending Annexes C and D

#### Article 15

1. The lists of education and training courses set out in Annexes C and D may be amended on the basis of a reasoned request from any Member State concerned to the Commission. All appropriate information and in particular the text of the relevant provisions of national law shall accompany the request. The Member State making the request shall also inform the other Member States.

2. The Commission shall examine the education and training course in question and those required in the other Member States. It shall verify in particular whether the qualification resulting from the course in question confers on the holder:

- a level of professional education or training of a comparably high level to that of the post-secondary course referred to in point (i) of the second indent of the first subparagraph of Article 1 (a),
- a similar level of responsibility and activity.

3. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

4. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

5. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission shall defer for a period of two months the application of the measures which it has decided.

6. The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

7. The Commission shall inform the Member State concerned of the decision and shall, where appropriate, publish the amended list in the *Official Journal of the European Communities*.

## CHAPTER XI

### Other provisions

#### Article 16

Following the expiry of the period provided for in Article 17, Member States shall communicate to the Commission, every two years, a report on the application of the system introduced.

In addition to general remarks, this report shall contain a statistical summary of the decisions taken and a description of the main problems arising from the application of this Directive.

#### Article 17

1. Member States shall adopt the laws, regulations and administrative provisions necessary for them to comply with this Directive before 18 June 1994. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, the latter shall include a reference to this Directive or be accompanied by such reference at the time of their official publication. The methods of making such a reference shall be laid down by the Member States.

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

*Article 18*

Five years at the latest following the date specified in Article 17, the Commission shall report to the European Parliament, the Council and the Economic and Social Committee on the progress of the application of this Directive.

After conducting all necessary consultations, the Commission shall present its conclusions as to any changes

which need to be made to this Directive. At the same time the Commission shall, where appropriate, submit proposals for improving the existing rules in the interest of facilitating freedom of movement, right of establishment and freedom to provide services.

*Article 19*

This Directive is addressed to the Member States.

Done at Luxembourg, 18 June 1992.

*For the Council*

*The President*

VITOR MARTINS

## ANNEX A

## List of the Directives referred to in the second subparagraph of Article 2

1. 64/429/EEG <sup>(1)</sup>

Council Directive of 7 July 1964, concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (Industry and small craft industries)

64/427/EEC <sup>(2)</sup>

Council Directive of 7 July 1964, laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (Industry and small craft industries)

2. 68/365/EEC <sup>(3)</sup>

Council Directive of 15 October 1968, concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in the food manufacturing and beverage industries (ISIC Major Groups 20 and 21)

68/366/EEC <sup>(4)</sup>

Council Directive of 15 October 1968, laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in the food manufacturing and beverage industries (ISIC Major Groups 20 and 21)

3. 64/223/EEC <sup>(5)</sup>

Council Directive of 25 February 1964 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities in wholesale trade

64/224/EEC <sup>(6)</sup>

Council Directive of 25 February 1964 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of intermediaries in commerce, industry and small craft industries

64/222/EEC <sup>(7)</sup>

Council Directive of 25 February 1964 laying down detailed provisions concerning transitional measures in respect of activities in wholesale trade and activities of intermediaries in commerce, industry and small craft industries

4. 68/363/EEC <sup>(8)</sup>

Council Directive of 15 October 1968 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in retail trade (ISIC ex Group 612)

68/364/EEC <sup>(9)</sup>

Council Directive of 15 October 1968 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in retail trade (ISIC ex Group 612)

5. 70/522/EEC <sup>(10)</sup>

Council Directive of 30 November 1970 concerning the attainment of freedom to provide services in respect of activities of self-employed persons in the wholesale coal trade and activities of intermediaries in the coal trade (ISIC ex Group 6112)

70/523/EEC <sup>(11)</sup>

Council Directive of 30 November 1970 laying down detailed provisions concerning transitional measures in respect of activities of intermediaries in the coal trade (ISIC ex Group 6112)

<sup>(1)</sup> OJ No 117, 23. 7. 1964, p. 1880/64.

<sup>(2)</sup> OJ No 117, 23. 7. 1964, p. 1863/64. Amended by Directive 69/77/EEC (OJ No L 59, 10. 3. 1969, p. 8).

<sup>(3)</sup> OJ No L 260, 22. 10. 1968, p. 9.

<sup>(4)</sup> OJ No L 260, 22. 10. 1968, p. 12.

<sup>(5)</sup> OJ No 56, 4. 4. 1964, p. 863/64.

<sup>(6)</sup> OJ No 56, 4. 4. 1964, p. 869/64.

<sup>(7)</sup> OJ No 56, 4. 4. 1964, p. 857/64.

<sup>(8)</sup> OJ No L 260, 22. 10. 1968, p. 1.

<sup>(9)</sup> OJ No L 260, 22. 10. 1968, p. 6.

<sup>(10)</sup> OJ No L 267, 10. 12. 1970, p. 14.

<sup>(11)</sup> OJ No L 267, 10. 12. 1970, p. 18.

6. 74/557/EEC <sup>(1)</sup>

Council Directive of 4 June 1974 on the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons and of intermediaries engaging in the trade and distribution of toxic products

74/556/EEC <sup>(2)</sup>

Council Directive of 4 June 1974 laying down detailed provisions concerning transitional measures relating to activities, trade in and distribution of toxic products and activities entailing the professional use of such products including activities of intermediaries

7. 68/367/EEC <sup>(3)</sup>

Council Directive of 15 October 1968 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in the personal services sector (ISIC ex Major Group 85):

1. restaurants, cafes, taverns and other drinking and eating places (ISIC Group 852);
2. hotels, rooming houses, camps and other lodging places (ISIC Group 853)

68/368/EEC <sup>(4)</sup>

Council Directive of 15 October 1968 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in the personal services sector (ISIC ex Major Group 85):

1. restaurants, cafes, taverns and other drinking and eating places (ISIC Group 852);
2. hotels, rooming houses, camps and other lodging places (ISIC Group 853)

8. 77/92/EEC <sup>(5)</sup>

Council Directive of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities

9. 82/470/EEC <sup>(6)</sup>

Council Directive of 29 June 1968 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in certain services incidental to transport and travel agencies (ISIC Group 720)

10. 82/489/EEC <sup>(7)</sup>

Council Directive of 19 July 1982 laying down measures to facilitate the effective exercise of the right of establishment and freedom to provide services in hairdressing

11. 75/368/EEC <sup>(8)</sup>

Council Directive of 16 June 1975 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of various activities (ex ISIC Division 01 to 85) and, in particular, transitional measures in respect of those activities

12. 75/369/EEC <sup>(9)</sup>

Council Directive of 16 June 1975 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of itinerant activities and, in particular, transitional measures in respect of those activities

<sup>(1)</sup> OJ No L 307, 18. 11. 1974, p. 5.

<sup>(2)</sup> OJ No L 307, 18. 11. 1974, p. 1.

<sup>(3)</sup> OJ No L 260, 22. 10. 1968, p. 16.

<sup>(4)</sup> OJ No L 260, 22. 10. 1968, p. 19.

<sup>(5)</sup> OJ No L 26, 31. 1. 1977, p. 14.

<sup>(6)</sup> OJ No L 213, 21. 7. 1982, p. 1.

<sup>(7)</sup> OJ No L 218, 27. 7. 1982, p. 24.

<sup>(8)</sup> OJ No L 167, 30. 6. 1975, p. 22.

<sup>(9)</sup> OJ No L 167, 30. 6. 1975, p. 29.

**Note**

Some of the Directives listed above have been supplemented by the Acts of Accession of Denmark, Ireland and the United Kingdom (OJ No L 73, 27. 3. 1972), of Greece (OJ No L 291, 19. 11. 1979) and of Spain and Portugal (OJ No L 302, 15. 11. 1985).

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**ANNEX B****List of the Directives referred to in Article 2, third subparagraph**

These are the Directives listed under headings 1 to 7 of Annex A, with the exception of Directive 74/556/EEC listed under heading 6.

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## ANNEX C

**LIST OF COURSES HAVING A SPECIAL STRUCTURE AS REFERRED TO IN POINT (ii) OF THE SECOND INDENT OF THE FIRST SUBPARAGRAPH OF ARTICLE 1 (a)****1. Paramedical and childcare training courses***In Germany*

training for:

- paediatric nurse ('Kinderkrankenschwester/Kinderkrankenpfleger'),
- physiotherapist ('Krankengymnast(in)'),
- occupational therapist ('Beschäftigungs- und Arbeitstherapeut(in)'),
- speech therapist ('Logopäde/Logopädin'),
- orthoptist ('Orthoptist(in)'),
- State-recognized childcare worker ('Staatlich anerkannte(r) Erzieher(in)'),
- State-recognized remedial teacher ('Staatlich anerkannte(r) Heilpädagog(e)-in').

*In Italy*

training for:

- dental technician ('odontotecnico'),
- optician ('ottico'),
- chiropodist ('podologo').

*In Luxembourg*

training for:

- medical X-ray technician (assistant(e) technique médical(e) en radiologie),
- medical laboratory technician (assistant(e) technique médical(e) de laboratoire),
- psychiatric nurse (infirmier/ière psychiatrique),
- medical technician — surgery (assistant(e) technique médical(e) en chirurgie),
- paediatric nurse (infirmier/ière puériculteur/trice),
- nurse — anaesthetics (infirmier/ière anesthésiste),
- qualified masseur/masseuse (masseur/euse diplômé(e)),
- childcare worker (éducateur/trice),

which represent education and training courses of a total duration of at least thirteen years, comprising:

- either at least three years of vocational training in a specialized school culminating in an examination, in some cases supplemented by a one or two-year specialization course culminating in an examination,
- or at least two and a half years in a specialized school culminating in an examination and supplemented by work experience of at least six months or by a traineeship of at least six months in an approved establishment,
- or at least two years in a specialized school culminating in an examination and supplemented by work experience of at least one year or by a traineeship of at least one year in an approved establishment.

**2. Master craftsman sector ('Mester/Meister/Maitre') which represents education and training courses concerning skills not covered by the Directives listed in Annex A***In Denmark*

training for:

- ('optometrist') optician,

this course is of a total duration of 14 years, including five years' vocational training divided into two-and-a-half years' theoretical training provided by the vocational training establishment and two-and-a-half years' practical training received in the workplace, and culminating in a recognized examination relating to the craft and conferring the right to use the title 'Mester';

— orthopaedic technician ('Ortopaedimekaniker')

this course is of a total duration of 12,5 years, including three-and-a-half years' vocational training divided into six months' theoretical training provided by the vocational training establishment and three years' practical training received in the workplace, and culminating in a recognized examination relating to the craft and conferring the right to use the title 'Mester';

— orthopaedic boot and shoemaker ('ortopaediskomager'),

this course is of a total duration of 13,5 years, including four-and-a-half years' vocational training divided into two years' theoretical training provided by the vocational training establishment and two-and-a-half years' practical training received in the workplace, and culminating in a recognized examination relating to the craft and conferring the right to use the title 'Mester'.

#### *In Germany*

training for:

- optician ('Augenoptiker'),
- dental technician ('Zahntechniker'),
- surgical truss maker ('Bandagist'),
- hearing-aid maker ('Hörgeräte-Akustiker'),
- orthopaedic technician ('Orthopädiemechaniker'),
- orthopaedic bootmaker ('Orthopädienschuhmacher').

#### *In Luxembourg*

training for:

- dispensing optician ('opticien'),
- dental technician ('mécanicien dentaire'),
- hearing-aid maker ('audioprothésiste'),
- orthopaedic technician/surgical truss maker ('mécanicien orthopédiste/bandagiste'),
- orthopaedic bootmaker ('orthopédiste-cordonnier'),

These courses are of a total duration of 14 years, including at least five years' training followed within a structured training framework, partly received in the workplace and partly provided by the vocational training establishment, and culminating in an examination which must be passed in order to be able to practise any activity considered as skilled, either independently or as an employee with a comparable level of responsibility.

### 3. Seafaring sector

#### a) Sea transport

##### *In Denmark*

training for:

- ship's captain ('skibsfører'),
- first mate ('overstyrmand'),
- quartermaster, deck officer ('enestyrmand, vagthavende styrmand'),
- deck officer ('vagthavende styrmand'),
- engineer ('maskinchef'),
- first engineer ('1. maskinmester'),
- first engineer/duty engineer ('1. maskinmester/vagthavende maskinmester').

*In Germany*

training for:

- captain, large coastal vessel ('Kapitän AM'),
- captain, coastal vessel ('Kapitän AK),
- deck officer, large coastal vessel ('Nautischer Schiffsoffizier AMW'),
- deck officer, coastal vessel ('Nautischer Schiffsoffizier AKW'),
- chief engineer, grade C ('Schiffsbetriebstechniker CT — Leiter von Maschinenanlagen'),
- ship's mechanic, grade C ('Schiffsmaschinist CMa — Leiter von Maschinenanlagen'),
- ship's engineer, grade C ('Schiffsbetriebstechniker CTW'),
- ship's mechanic, grade C — solo engineer officer ('Schiffsmaschinist CMaW — Technischer Alleinoffizier').

*In Italy*

training for:

- deck officer ('ufficiale di coperta'),
- engineer officer ('ufficiale di macchina').

*In the Netherlands*

training for:

- first mate (coastal vessel) (with supplementary training) ['stuurman kleine handelsvaart (met aanvulling)'],
- coaster engineer (with diploma) ('diploma motordrijver'),

which represents training:

- in Denmark, of nine years' primary schooling followed by a course of basic training and/or service at sea of between 17 and 36 months, supplemented by:
  - for the deck officer, one year of specialized vocational training,
  - for the others, three years of specialized vocational training,
- in Germany, of a total duration of between 14 and 18 years, including a three-year course of basic vocational training and one year's service at sea, followed by one or two years of specialized vocational training supplemented, where appropriate, by two year's work experience in navigation,
- in Italy, of a total duration of 13 years, of which at least five years consist of professional training culminating in an examination, and are supplemented, where appropriate, by a traineeship,
- in the Netherlands, involving a course of 14 years, at least two years of which takes place in a specialized vocational training establishment, supplemented by a twelve month traineeship,

and which are recognized under the International STCW Convention (International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978).

b) Sea fishing

*In Germany*

training for:

- captain, deep-sea fishing ('Kapitän BG/Fischerei'),
- captain, coastal fishing ('Kapitän BK/Fischerei'),
- deck officer, deep-sea vessel ('Nautischer Schiffsoffizier BGW/Fischerei'),
- deck officer, coastal vessel ('Nautischer Schiffsoffizier BKW/Fischerei').

*In the Netherlands*

training for:

- first mate/engineer V ('stuurman werktuigkundige V'),

- engineer IV (fishing vessel) ('werktuigkundige IV visvaart'),
- first mate IV (fishing vessel) ('stuurman IV visvaart'),
- first mate/engineer VI ('stuurman werktuigkundige VI'),

which represents training:

- in Germany, of a total duration of between 14 and 18 years, including a three-year course of basic vocational training and one year's service at sea, followed by one or two years of specialized vocational training supplemented, where appropriate, by two-years' work experience in navigation,
- in the Netherlands, involving a course varying in duration between thirteen and fifteen years, at least two years of which are provided in a specialized vocational school, supplemented by a 12-month period of work experience,

and is recognized under the Torremolinos Convention (1977 International Convention for the Safety of Fishing Vessels).

#### 4. Technical sector

##### *In Italy*

training for:

- building surveyor ('geometra'),
- land surveyor ('perito agrario'),
- accountant ('ragioniere'), and accountancy expert ('perito commerciale'),
- work consultants ('consulente del lavoro'),

which represents secondary technical courses of a total duration of at least 13 years, comprising eight years' compulsory schooling followed by five years' secondary study, including three years' vocational study, culminating in the Technical Baccalaureat examination, and supplemented,

- for building surveyors by:
  - either a traineeship lasting at least two years in a professional office,
  - or five years' work experience, and
- for land surveyors, accountants, accountancy experts and work consultants, by the completion of a practical traineeship lasting at least two years,

followed by the State Examination.

##### *In the Netherlands*

training for:

- bailiff ('gerechtsdeurwaarder'),

which represents a course of study and vocational training totalling nineteen years, comprising eight years' compulsory schooling followed by eight years' secondary education including four years' technical education culminating in a State examination and supplemented by three years' theoretical and practical vocational training.

#### 5. United Kingdom courses accredited as National Vocational Qualifications or Scottish Vocational Qualifications

Training for:

- medical laboratory scientific officer,
- mine electrical engineer,
- mine mechanical engineer,
- approved social worker — mental health,
- probation officer,

- dental therapist,
- dental hygienist,
- dispensing optician,
- mine deputy,
- insolvency practitioner,
- licensed conveyancer,
- prosthetist,
- first mate — freight/passenger ships — unrestricted,
- second mate — freight/passenger ships — unrestricted,
- third mate — freight/passenger ships — unrestricted,
- deck officer — freight/passenger ships — unrestricted,
- engineer officer — freight/passenger ships — unlimited trading area,
- trade mark agent,

leading to qualifications accredited as National Vocational Qualifications (NVQs) or approved or recognized as equivalent by the National Council for Vocational Qualifications, or in Scotland accredited as Scottish Vocational Qualifications, at levels 3 and 4 of the United Kingdom National Framework of Vocational Qualifications.

These levels are defined as follows:

- **Level 3:** competence in a broad range of varied work activities performed in a wide variety of contexts and most of which are complex and non-routine. There is considerable responsibility and autonomy and control or guidance of others is often required,
  - **Level 4:** competence in a broad range of complex, technical or professional work activities performed in a wide variety of contexts and with a substantial degree of personal responsibility and autonomy. Responsibility for the work of others and the allocation of resources is often present.
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*ANNEX D***List of courses having a special structure as referred to in the third indent of point (b) of the first subparagraph of Article 3****In the United Kingdom**

Regulated courses leading to qualifications accredited as National Vocational Qualifications (NVQs) by the National Council for Vocational Qualifications or in Scotland accredited as Scottish Vocational Qualifications, at levels 3 and 4 of the United Kingdom National Framework of Vocational Qualifications.

These levels are defined as follows:

- **Level 3:** competence in a broad range of varied work activities performed in a wide variety of contexts and most of which are complex and non-routine. There is considerable responsibility and autonomy, and control or guidance of others is often required.
  - **Level 4:** competence in a broad range of complex, technical or professional work activities performed in a wide variety of contexts and with a substantial degree of personal responsibility and autonomy. Responsibility for the work of others and the allocation of resources is often present.
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