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► **B**      **DIRECTIVE 98/4/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 16 February 1998**  
**amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in**  
**the water, energy, transport and telecommunications sectors**  
(OJ L 199, 9.8.1993, p. 84)

Amended by:

		Official Journal		
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Amended by:

► <b><u>A1</u></b>	Act of Accession of Austria, Sweden and Finland	C 241	21	29.8.1994
	(adapted by Council Decision 95/1/EC, Euratom, ECSC)	L 1	1	1.1.1995

Corrected by:

- **C1**    Corrigendum, OJ L 82, 25.3.1994, p. 39 (93/38/EEC)

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).



**COUNCIL DIRECTIVE 93/38/EEC**  
**of 14 June 1993**

**coordinating the procurement procedures of entities operating in  
the water, energy, transport and telecommunications sectors**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the last sentence of Articles 57 (2), 66, 100a and 113 thereof,

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

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

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

1. Whereas the measures aimed at progressively establishing the internal market during the period up to 31 December 1992 need to be taken; whereas the internal market consists of an area without internal frontiers in which free movement of goods, persons, services and capital is guaranteed;
2. Whereas restrictions on the free movement of goods and on freedom to provide services in respect of supply and service contracts awarded in the water, energy, transport and telecommunications sectors are prohibited by the terms of Articles 30 and 59 of the EEC Treaty;
3. Whereas Article 97 of the Euratom Treaty prohibits any restrictions based on nationality as regards companies under the jurisdiction of a Member State where they desire to participate in the construction of nuclear installations of a scientific or industrial nature in the Community or to provide the relevant service in the Community;
4. Whereas these objectives also require the coordination of the procurement procedures applied by the entities operating in these sectors;
5. Whereas the White Paper on the completion of the internal market contains an action programme and a timetable for opening up public procurement markets in sectors which are currently excluded from 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 procedure for the award of public supply contracts<sup>(5)</sup>;
6. Whereas the White Paper on the completion of the internal market also contains an action programme and a timetable for opening up service contracts;
7. Whereas among such excluded sectors are those concerning the provision of water, energy and transport services and, as far as Directive 77/62/EEC is concerned, the telecommunications sector;
8. Whereas the main reason for their exclusion was that entities providing such services are in some cases governed by public law, in others by private law;

<sup>(1)</sup> OJ No C 337, 31. 12. 1991, p. 1.

<sup>(2)</sup> OJ No C 176, 13. 7. 1992, p. 136 and  
OJ No C 150, 31. 5. 1993.

<sup>(3)</sup> OJ C 106, 27. 4. 1992, p. 6.

<sup>(4)</sup> OJ No L 185, 16. 8. 1971, p. 5. Directive as last amended by Directive 89/440/EEC (OJ No L 210, 21. 7. 1989, p. 1).

<sup>(5)</sup> OJ No L 13, 15. 1. 1977, p. 1. Directive as last amended by Directive 88/295/EEC (OJ No L 127, 20. 5. 1988, p. 1).

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9. Whereas the need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in these sectors requires that the entities to be covered must be identified on a different basis than by reference to their legal status;
10. Whereas, in the four sectors concerned, the procurement problems to be solved are of a similar nature, thus permitting them to be addressed in one instrument;
11. Whereas, among the main reasons why entities operating in these sectors do not purchase on the basis of Community-wide competition is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the national authorities, concerning the supply to, provision or operation of, networks for providing the service concerned, the exploitation of a given geographical area for a particular purpose, the provision or operation of public telecommunications networks or the provision of public telecommunications services;
12. Whereas the other main reason for the absence of Community-wide competition in these areas results from various ways in which national authorities can influence the behaviour of these entities, including participations in their capital and representation in the entities administrative, managerial or supervisory bodies;
13. Whereas this Directive should not extend to activities of those entities which either fall outside the sectors of water, energy and transport services or outside the telecommunications sector, or which fall within those sectors but are nevertheless directly exposed to competitive forces in markets to which entry is unrestricted;
14. Whereas it is appropriate that these entities apply common procurement procedures in respect of their activities relating to water; whereas certain entities have been covered up to now by Directives 71/305/EEC and 77/62/EEC in respect of their activities in the field of hydraulic engineering projects, irrigation, land drainage or the disposal and treatment of sewage;
15. Whereas, however, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area it will be used;
16. Whereas, when specific conditions are fulfilled, exploitation of a geographical area with the aim of exploring for or extracting oil, gas, coal or other solid fuels may be made subject to alternative arrangements which will enable the same objective of opening up contracts to be achieved; whereas the Commission must ensure that these conditions are complied with by the Member States who implement these alternative arrangements;
17. Whereas the Commission has announced that it will propose measures to remove obstacles to cross-frontier exchanges of electricity by 1992; whereas procurement rules of the type proposed for supplies of goods would not make it possible to overcome existing obstacles to the purchases of energy and fuels in the energy sector; whereas, as a result, it is not appropriate to include such purchases in the scope of this Directive, although it should be borne in mind that this exemption will be re-examined by the Council on the basis of a Commission report and Commission proposals;
18. Whereas Regulations (EEC) No 3975/87<sup>(1)</sup> and (EEC) No 3976/87<sup>(2)</sup>, Directive 87/601/EEC<sup>(3)</sup> and Decision 87/602/EEC<sup>(4)</sup> are

<sup>(1)</sup> OJ No L 374, 31. 12. 1987, p. 1.

<sup>(2)</sup> OJ No L 374, 31. 12. 1987, p. 9.

<sup>(3)</sup> OJ No L 374, 31. 12. 1987, p. 12.

<sup>(4)</sup> OJ No L 374, 31. 12. 1987, p. 19.

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designed to introduce more competition between the entities offering air transport services to the public and it is therefore not appropriate for the time being to include such entities in the scope of this Directive although the situation ought to be reviewed at a later stage in the light of progress made as regards competition;

19. Whereas, in view of the competitive position of Community shipping, it would be inappropriate for the greater part of the contracts in this sector to be subject to detailed procedures; whereas the situation of shippers operating sea-going ferries should be kept under review; whereas certain inshore and river ferry services operated by public authorities should no longer be excluded from the scope of Directives 71/305/EEC and 77/62/EEC;
20. Whereas it is appropriate to facilitate compliance with provisions relating to activities not covered by this Directive;
21. Whereas the rules on the award of service contracts should be as close as possible to the rules on the works and supply contracts referred to in this Directive;
22. 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;
23. Whereas the field of services is best described, for the purpose of application of procedural rules and for monitoring purposes, by subdividing the services into categories corresponding to particular positions of a common classification; whereas Annexes XVI A and XVI B to this Directive refer to the United Nations CPC (Central Product Classification) nomenclature; whereas that nomenclature is likely to be replaced by a Community nomenclature in the future; whereas it is necessary to make provision for the possibility of adapting the reference made to the CPC nomenclature in Annexes XVI A and XVI B accordingly;
24. 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, regulations or administrative provisions or employment contracts, is not covered;
25. Whereas, in accordance with Article 103f of the EEC Treaty, the encouragement of research and development is a means of strengthening 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;
26. Whereas contracts for the acquisition or rental of land, existing buildings or other immovable property have particular characteristics, which make the application of procurement rules inappropriate;
27. 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;
28. Whereas the service contracts covered by this Directive do not include contracts for the issue, purchase sale or transfer of securities or other financial instruments;

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29. Whereas this Directive should not apply to procurement contracts which are declared secret or may affect basic State security interests or are concluded according to other rules set up by existing international agreements or international organizations;
30. Whereas contracts with a designated single source of supply may, under certain conditions, be fully or partly exempted from this Directive;
31. Whereas the Community's or the Member States' existing international obligations must not be affected by the rules of this Directive;
32. Whereas it is appropriate to exclude certain service contracts awarded to an affiliated undertaking having as its principal activity, with respect to services, the provision of such services to the group of which it is part, rather than the offering of its services on the market;
33. 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 taking a decision on the full application of the said Directive; whereas the mechanism for such monitoring needs to be set up by this Directive and whereas it should at the same time enable those interested to share the relevant information;
34. 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;
35. Whereas products, works or services must be described by reference to European specifications; whereas, in order to ensure that a product, work or service fulfils the use for which it is intended by the contracting entity, such reference may be complemented by specifications which do not change the nature of the technical solution or solutions set out in the European specification;
36. Whereas the principles of equivalence and of mutual recognition of national standards, technical specifications and manufacturing methods are applicable in the field of application of this Directive;
37. Whereas Community undertakings should be granted access to the award of service contracts in third countries; whereas the Community should endeavour to remedy any situation whereby such access, in law or in fact, is found to be restricted and whereas it should be possible, under certain conditions, to take measures as regards access to service contracts covered by this Directive for undertakings of the third country concerned or for tenders originating in that country;
38. Whereas, when the contracting entities define by common accord with tenderers the deadlines for receiving tenders, they shall comply with the principles of non-discrimination, and whereas, if there is no such agreement, it is necessary to lay down suitable provisions;
39. Whereas it could prove useful to provide for greater transparency as to the requirements regarding the protection and conditions of employment applicable in the Member State in which the works are to be carried out;
40. Whereas it is appropriate that national provisions for regional development requirements to be taken into consideration in the award of public contracts should be made to conform to the objectives of the Community and be in keeping with the principles of the EEC Treaty;

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41. Whereas contracting entities must not be able to reject abnormally low tenders before having requested in writing explanations as to the constituent elements of the tender;
42. Whereas, within certain limits, preference should be given to an offer of Community origin where there are equivalent offers of third-country origin;
43. Whereas this Directive should not prejudice the position of the Community in any current or future international negotiations;
44. Whereas, based on the results of such international negotiations, this Directive should be extendable to offers of third-country origin, pursuant to a Council Decision;
45. Whereas the rules to be applied by the entities concerned should establish a framework for sound commercial practice and should leave a maximum of flexibility;
46. Whereas, as a counterpart for such flexibility and in the interest of mutual confidence, a minimum level of transparency must be ensured and appropriate methods adopted for monitoring the application of this Directive;
47. Whereas it is necessary to adapt Directives 71/305/EEC and 77/62/EEC to establish well-defined fields of application; whereas the scope of Directive 71/305/EEC should not be reduced, except as regards contracts in the water and telecommunications sectors; whereas the scope of Directive 77/62/EEC should not be reduced, except as regards certain contracts in the water sector; whereas the scope of Directives 71/305/EEC and 77/62/EEC should not, however, be extended to contracts awarded by carriers by land, air, sea, inshore or inland waterway which, although carrying out economic activities of an industrial or commercial nature, belong to the State administration; whereas, nevertheless, certain contracts awarded by carriers by land, air, sea, inshore or inland waterway which belong to the State administration and are carried out only for reasons of public service should be covered by those Directives;
48. Whereas this Directive should be re-examined in the light of experience;
49. Whereas the opening-up of contracts in the sectors covered by this Directive might have an adverse effect upon the economy of the Kingdom of Spain; whereas the economies of the Hellenic Republic and the Portuguese Republic will have to sustain even greater efforts; whereas it is appropriate that these Member States be granted adequate additional periods to implement this Directive,

HAS ADOPTED THIS DIRECTIVE:

#### TITLE I

### General provisions

#### *Article 1*

For the purpose of this Directive:

1. 'public authorities' shall mean the State, regional or local authorities, bodies governed by public law, or associations formed by one or more of such authorities or bodies governed by public law.

A body is considered to be governed by public law where it:

- is established for the specific purpose of meeting needs in the general interest, not being of an industrial or commercial nature,
- has legal personality, and

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- is financed for the most part by the State, or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law;
- 2. 'public undertaking' shall mean any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:
  - hold the majority of the undertaking's subscribed capital, or
  - control the majority of the votes attaching to shares issued by the undertaking, or
  - can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body;
- 3. 'affiliated undertaking' shall mean any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the seventh Council Directive 83/349/EEC of 13 June 1983, based on Article 54 (3) (g) of the EEC Treaty on consolidated accounts<sup>(1)</sup> or, in the case of entities not subject to that Directive, any undertaking over which the contracting entity may exercise, directly or indirectly, a dominant influence within the meaning of paragraph 2, or which may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it;
- 4. 'supply, works and service contracts' shall mean contracts for pecuniary interest concluded in writing between one of the contracting entities referred to in Article 2, and a supplier, a contractor or a service provider, having as their object:
  - (a) in the case of supply contracts, the purchase, lease, rental or hire-purchase, with or without options to buy, of products;
  - (b) in the case of works contracts either the execution, or both the execution and design or the realization, by whatever means, of building or civil engineering activities referred to in Annex XI. These contracts may, in addition, cover supplies and services necessary for their execution;
  - (c) in the case of service contracts, any object other than those referred to in (a) and (b) and to the exclusion of:
    - (i) 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;
    - (ii) contracts for voice telephony, telex, radiotelephony, paging and satellite services;
    - (iii) contracts for arbitration and conciliation services;
    - (iv) contracts for the issue, sale, purchase or transfer of securities or other financial instruments;
    - (v) employment contracts;
    - (vi) research and development service contracts other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity.

<sup>(1)</sup> OJ No L 193, 18. 7. 1983, p. 1. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).

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Contracts which include the provision of services and supplies shall be regarded as supply contracts if the total value of supplies is greater than the value of the services covered by the contract;

5. 'framework agreement' shall mean an agreement between one of the contracting entities defined in Article 2 and one or more suppliers, contractors or service providers the purpose of which is to establish the terms, in particular with regard to the prices and, where appropriate, the quantity envisaged, governing the contracts to be awarded during a given period;
6. 'tenderer' shall mean a supplier, contractor or service provider who submits a tender and 'candidate' shall mean a person who has sought an invitation to take part in a restricted or negotiated procedure; service providers may be either natural or legal persons, including contracting entities within the meaning of Article 2;
7. 'open, restricted and negotiated procedures' shall mean the award procedures applied by contracting entities whereby:
  - (a) in the case of open procedures, all interested suppliers, contractors or service providers may submit tenders;
  - (b) in the case of the restricted procedures, only candidates invited by the contracting entity may submit tenders;
  - (c) in the case of negotiated procedures, the contracting entity consults suppliers, contractors or service providers of its choice and negotiates the terms of the contract with one or more of them;
8. 'technical specifications' shall mean the technical requirements contained in particular in the tender documents, defining the characteristics of a set of works, material, product, supply or service, and enabling a piece of work, a material, a product, a supply or a service to be objectively described in a manner such that it fulfils the use for which it is intended by the contracting entity. These technical specifications may include quality, performance, safety or dimensions, as well as requirements applicable to the material, product, supply or service as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. In the case of works contracts, they may also include rules for the design and costing, the test, inspection and acceptance conditions for works and techniques or methods of construction and all other technical conditions which the contracting entity is in a position to prescribe under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
9. 'standard' shall mean a technical specification approved by a recognized standardizing body for repeated or continuous application, compliance with which is in principle not compulsory;
10. 'European standard' shall mean a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as a 'European Standard (EN)' or 'Harmonization Document (HD)', according to the common rules of those organizations, or by the European Telecommunications Standards Institute (ETSI) according to its own rules as a 'European Telecommunications Standard (ETS)';
11. 'common technical specification' shall mean a technical specification drawn up in accordance with a procedure recognized by the Member States with a view to uniform application in all Member States and published in the *Official Journal of the European Communities*;
12. 'European technical approval' shall mean a favourable technical assessment of the fitness for use of a product for a particular purpose, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use, as provided for in Council Directive 89/106/EEC of 21 December

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1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products<sup>(1)</sup>. European technical approval shall be issued by an approval body designated for this purpose by the Member State;

13. 'European specification' shall mean a common technical specification, a European technical approval or a national standard implementing a European standard;
14. 'public telecommunications network' shall mean the public telecommunications infrastructure which enables signals to be conveyed between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;  
'network termination point' shall mean all physical connections and their technical access specification which form part of the public telecommunications network and are necessary for access to, and efficient communication through, that public network;
15. 'public telecommunications services' shall mean telecommunications services the provision of which the Member States have specifically assigned notably to one or more telecommunications entities;  
'Telecommunications services' shall mean services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of radio-broadcasting and television;
16. 'design contests' shall mean the national procedures which enable the contracting entity to acquire, mainly in the fields of architecture, engineering or data processing, a plan or design selected by a jury after having been put out to competition with or without the award of prizes.

## *Article 2*

1. This Directive shall apply to contracting entities which:
  - (a) are public authorities or public undertakings and exercise one of the activities referred to in paragraph 2;
  - (b) when they are not public authorities or public undertakings, have as one of their activities any of those referred to in paragraph 2 or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.
2. Relevant activities for the purposes of this Directive shall be:
  - (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of:
    - (i) drinking water; or
    - (ii) electricity; or
    - (iii) gas or heat;
 or the supply of drinking water, electricity, gas or heat to such networks;
  - (b) the exploitation of a geographical area for the purpose of:
    - (i) exploring for or extracting oil, gas, coal or other solid fuels, or
    - (ii) the provision of airport, maritime or inland port or other terminal facilities to carriers by air, sea or inland waterway;
  - (c) the operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on

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

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the routes to be served, the capacity to be made available or the frequency of the service;

- (d) the provision or operation of public telecommunications networks or the provision of one or more public telecommunications services.

3. For the purpose of applying paragraph 1 (b), special or exclusive rights shall mean rights deriving from authorizations granted by a competent authority of the Member State concerned, by law, regulation or administrative action, having as their result the reservation for one or more entities of the exploitation of an activity defined in paragraph 2.

A contracting entity shall be considered to enjoy special or exclusive rights in particular where:

- (a) for the purpose of constructing the networks or the facilities referred to in paragraph 2, it may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over the public highway;
- (b) in the case of paragraph 2 (a), the entity supplies with drinking water, electricity, gas or heat a network which is itself operated by an entity enjoying special or exclusive rights granted by a competent authority of the Member State concerned.

4. The provision of bus transport services to the public shall not be considered to be a relevant activity within the meaning of paragraph 2 (c) where other entities are free to provide those services, either in general or in a particular geographical area, under the same condition as the contracting entities.

5. The supply of drinking water, electricity, gas or heat to networks which provide a service to the public by a contracting entity other than a public authority shall not be considered as a relevant activity within the meaning of paragraph 2 (a) where:

- (a) in the case of drinking water or electricity:
- the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in paragraph 2, and
  - supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year;
- (b) in the case of gas or heat:
- the production of gas or heat by the entity concerned is the unavoidable consequence of carrying on an activity other than that referred to in paragraph 2, and
  - supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover having regard to the average for the preceding three years, including the current year.

6. The contracting entities listed in Annexes I to X shall fulfil the criteria set out above. In order to ensure that the lists are as exhaustive as possible, Member States shall notify the Commission of amendments to their lists. The Commission shall revise Annexes I to X in accordance with the procedure in Article 40.

### *Article 3*

1. Member States may request the Commission to provide that exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels shall not be considered to be an activity defined in Article 2 (2) (b) (i) and that entities shall not be considered as operating under special or exclusive rights within the meaning of Article 2 (3) (b) by virtue of carrying on one or more of

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these activities, provided that all the following conditions are satisfied with respect to the relevant national provisions concerning such activities:

- (a) at the time when authorization to exploit such a geographical area is requested, other entities shall be free to seek authorization for that purpose under the same conditions as the contracting entities;
- (b) the technical and financial capacity of entities to engage in particular activities shall be established prior to any evaluation of the merits of competing applications for authorization;
- (c) authorization to engage in those activities shall be granted on the basis of objective criteria concerning the way in which it is intended to carry out exploitation or extraction, which shall be established and published prior to the requests and applied in a non-discriminatory manner;
- (d) all conditions and requirements concerning the carrying out or termination of the activity, including provisions on operating obligations, royalties, and participation in the capital or revenue of the entities, shall be established and made available prior to the requests for authorization being made and then applied in a non-discriminatory manner; every change concerning these conditions and requirements shall be applied to all the entities concerned, or else amendments must be made in a non-discriminatory manner; however, operating obligations need not be established until immediately before the authorization is granted; and
- (e) contracting entities shall not be required by any law, regulation, administrative requirement, agreement or understanding to provide information on a contracting entity's intended or actual sources of procurement, except at the request of national authorities with a view to the objectives mentioned in Article 36 of the EEC Treaty.

2. Member States which apply the provisions of paragraph 1 shall ensure, through the conditions of the authorization or other appropriate measures, that any entity:

- (a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the entity makes available to undertakings concerning its procurement intentions;
- (b) communicates to the Commission, under conditions to be defined by the latter in accordance with Article 40, information relating to the award of contracts.

3. As regards individual concessions or authorizations granted before the date on which Member States apply this Directive in accordance with Article 45, paragraph 1 (a), (b) and (c) shall not apply, provided that at that date other entities are free to seek authorization for the exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels, on a non-discriminatory basis and in the light of objective criteria. Paragraph 1 (d) shall not apply as regards conditions or requirements established, applied or amended before the date referred to above.

4. A Member State which wishes to apply paragraph 1 shall inform the Commission accordingly. In so doing, it shall inform the Commission of any law, regulation or administrative provision, agreement or understanding relating to compliance with the conditions referred to in paragraphs 1 and 2.

The Commission shall take a decision in accordance with the procedure laid down in Article 40 (5) to (8). It shall publish its decision, giving its reasons, in the *Official Journal of the European Communities*.

It shall forward to the Council each year a report on the implementation of this Article and review its application in the framework of the report provided for in Article 44.

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*Article 4*

1. When awarding supply, works or service contracts, or organizing design contests, the contracting entities shall apply procedures which are adapted to the provisions of this Directive.
2. Contracting entities shall ensure that there is no discrimination between different suppliers, contractors or service providers.
3. In the context of provision of technical specifications to interested suppliers, contractors or service providers, of qualification and selection of suppliers, contractors or service providers and of award of contracts, contracting entities may impose requirements with a view to protecting the confidential nature of information which they make available.
4. This Directive shall not limit the right of suppliers, contractors or service providers to require a contracting entity, in conformity with national law, to respect the confidential nature of information which they make available.

*Article 5*

1. Contracting entities may regard a framework agreement as a contract within a meaning of Article 1 (4) and award it in accordance with this Directive.
2. Where contracting entities have awarded a framework agreement in accordance with this Directive, they may avail themselves of Article 20 (2) (i) when awarding contracts based on that agreement.
3. Where a framework agreement has not been awarded in accordance with this Directive, contracting entities may not avail themselves of Article 20 (2) (i).
4. Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.

*Article 6*

1. This Directive shall not apply to contracts or design contests which the contracting entities award or organize for purposes other than the pursuit of their activities as described in Article 2 (2) or for the pursuit of such activities in a non-member country, in conditions not involving the physical use of a network or geographical area within the Community.
2. However, this Directive shall apply to contracts or design contests awarded or organized by the entities which exercise an activity referred to in Article 2 (2) (a) (i) and which:
  - (a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water intended for the supply of drinking water represents more than 20 % of the total volume of water made available by these projects or irrigation or drainage installations, or
  - (b) are connected with the disposal or treatment of sewage.
3. The contracting entities shall notify the Commission at its request of any activities they regard as excluded under paragraph 1. The Commission may periodically publish lists of the categories of activities which it considers to be covered by this exclusion for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

*Article 7*

1. This Directive shall not apply to contracts awarded for purposes of resale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such

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contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.

2. The contracting entities shall notify the Commission at its request of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish lists of the categories of products or activities which it considers to be covered by this exclusion for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information.

*Article 8*

1. This Directive shall not apply to contracts which contracting entities exercising an activity described in Article 2 (2) (d) award for purchases intended exclusively to enable them to provide one or more telecommunications services where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.

2. The contracting entities shall notify the Commission at its request of any services which they regard as excluded under paragraph 1. The Commission may periodically publish the list of services which it considers to be covered by this exclusion for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

*Article 9*

1. This Directive shall not apply to:

- (a) contracts which the contracting entities listed in Annex I award for the purchase of water;
- (b) contracts which the contracting entities listed in Annexes II to V award for the supply of energy or of fuels for the production of energy.

2. The Council shall re-examine the provisions of paragraph 1 when it has before it a report from the Commission together with appropriate proposals.

*Article 10*

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

*Article 11*

This Directive shall not apply to service contracts awarded to an entity which is itself a contracting authority within the meaning of Article 1 (b) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts<sup>(1)</sup> on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision which is compatible with the EEC Treaty.

<sup>(1)</sup> OJ No L 209, 24. 7. 1992, p. 1.

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*Article 12*

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

1. pursuant to an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering supplies, works, services or design contests intended for the joint implementation or exploitation of a project by the signatory States; every 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> or, in the case of agreements governing contracts awarded by entities exercising an activity defined in Article 2 (2) (d), the Advisory Committee on Telecommunications Procurement referred to in Article 39;
2. to undertakings in a Member State or a third country in pursuance of an international agreement relating to the stationing of troops;
3. pursuant to the particular procedure of an international organization.

*Article 13*

1. This Directive shall not apply to service contracts which:

- (a) a contracting entity awards to an affiliated undertaking;
- (b) are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out a relevant activity within the meaning of Article 2 (2) to one of those contracting entities or to an undertaking which is affiliated with one of these contracting entities,

provided that at least 80 % of the average turnover of that undertaking with respect to services arising within the Community for the preceding three years derives from the provision of such services to undertakings with which it is affiliated.

Where more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover deriving from the provision of services by those undertakings shall be taken into account.

2. The contracting entities shall notify to the Commission, at its request, the following information regarding the application of the provisions of paragraph 1:

- the names of the undertakings concerned,
- the nature and value of the service contracts involved,
- such proof as may be deemed necessary by the Commission that the relationship between the undertaking to which the contracts are awarded and the contracting entity is in conformity with the requirements of this Article.

<sup>(1)</sup> OJ No L 185, 16. 8. 1971, p. 15. Decision as last amended by Decision 77/63/EEC (OJ No L 13, 15. 1. 1977, p. 15).

**▼B***Article 14***▼M1**

1. This Directive shall apply to:
  - (a) contracts awarded by contracting entities carrying out activities referred to in Annex X<sup>(1)</sup>, provided that the estimated value, net of value added tax (VAT), is not less than:
    - (i) ECU 600 000 in the case of supply and service contracts;
    - (ii) ECU 5 000 000 in the case of works contracts;
  - (b) contracts awarded by contracting entities carrying out activities referred to in Annexes I, II, VII, VIII and IX<sup>(2)</sup>, provided that the estimated value, net of VAT, is not less than:
    - (i) the equivalent in ECU of 400 000 special drawing rights (SDR) for supply contracts and for the service contracts listed in Annex XVI A, except for the R&D services mentioned in Category 8 and Category 5 telecommunications services, the CPC reference numbers of which are 7524, 7525 and 7526;
    - (ii) ECU 400 000 in the case of service contracts other than those mentioned in (i);
    - (iii) the equivalent in ECU of 5 000 000 SDR for works contracts;
  - (c) contracts awarded by contracting entities carrying out activities referred to in Annexes III, IV, V, and VI<sup>(3)</sup>, provided that the estimated value, net of VAT, is not less than:
    - (i) ECU 400 000 in the case of supply and service contracts;
    - (ii) ECU 5 000 000 in the case of works contracts.

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2. For the purposes of calculating the estimated amount of a service contract, the contracting entity shall include the total remuneration of the service provider, taking account of the elements specified in paragraphs 3 to 13.
3. For the purposes of calculating the estimated contract amount of financial services, the following amounts shall be taken into account:
  - as regards insurance services, the premium payable,
  - as regards banking and other financial services, fees, commissions, interest and other types of remuneration,
  - as regards contracts which involve design, the fee or commission payable.
4. In the case of supply contracts for lease, rental or hire-purchase, the basis for calculating the contract value shall be:
  - (a) in the case of fixed-term contracts, where their term is 12 months or less, the estimated total value for the contract's duration, or, where their term exceeds 12 months, the contract's total value including the estimated residual value;

- |                |   |
|----------------|---|
| (1) Annex X:   | contracting entities in the telecommunications sector.  |
| (2) Annex I:   | entities in the sectors covering the production, transport or distribution of drinking water.     |
| Annex II:      | entities in the sectors covering the production, transport or distribution of electricity.        |
| Annex VI:      | entities in the field of urban railway, tramway, trolleybus or bus services.                      |
| Annex VIII:    | entities in the field of airport facilities.  |
| Annex IX:      | entities in the field of maritime or inland port or other terminal facilities.                    |
| (3) Annex III: | entities in the sectors covering the transport or distribution of gas or heat.                    |
| Annex IV:      | entities in the sectors covering the exploration for and extraction of oil or gas.                |
| Annex V:       | entities in the sectors covering the exploration for and extraction of coal or other solid fuels. |
| Annex VI:      | entities in the field of railway services.  |

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(b) in the case of contracts for an indefinite period or in cases where there is doubt as to the duration of the contracts, the anticipated total instalments to be paid in the first four years.

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

- for fixed-term contracts, where their term is 48 months or less, the total value for their whole duration,
- for contracts without a fixed term or for a term exceeding 48 months, the monthly value multiplied by 48.

6. Where a proposed supply or service contract expressly specifies option clauses, the basis for calculating the contract value shall be the highest possible total purchase, lease, rental or hire-purchase permissible, inclusive of the option clauses.

7. In the case of a procurement of supplies or services over a given period by means of a series of contracts to be awarded to one or more suppliers or service providers or of contracts which are to be renewed, the contract value shall be calculated on the basis of:

- (a) the total value of contracts with similar characteristics which were awarded over the previous financial year or 12 months, adjusted where possible for anticipated changes in quantity or value over the subsequent twelve months; or
- (b) the aggregate value of contracts to be awarded during the 12 months following the first award or during the whole term of the contract, where this is longer than 12 months.

8. The basis for calculating the estimated value of a contract including both supplies and services shall be the total value of the supplies and services, regardless of their respective values. The calculation shall include the value of the siting and installation operations.

9. The basis for calculating the value of a framework agreement shall be the estimated maximum value of all the contracts envisaged for the period in question.

10. The basis for calculating the value of a works contract for the purposes of paragraph 1 shall be the total value of the work. 'Work' shall mean the result of building and civil engineering activities, taken as a whole, which are intended to fulfil an economic and technical function by themselves.

In particular, where a supply, work or service is the subject of several lots, the value of each lot shall be taken into account when assessing the value referred to in paragraph 1. Where the aggregate value of the lots equals or exceeds the value laid down in paragraph 1, that paragraph shall apply to all the lots. However, in the case of works contracts, contracting entities may derogate from paragraph 1 in respect of lots the estimated value net of VAT for which is less than ECU 1 million, provided that the aggregate value of those lots does not exceed 20 % of the overall value of the lots.

11. For the purposes of paragraph 1, contracting entities shall include in the estimated value of a works contract the value of any supplies or services necessary for the execution of the contracts which they make available to the contractor.

12. The value of supplies or services which are not necessary for the execution of a particular works contract may not be added to that of the works contract with the result of avoiding application of this Directive to the procurement of those supplies or services.

13. Contracting entities may not circumvent this Directive by splitting contracts or using special methods of calculating the value of contracts.

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14. The value in national currencies of the thresholds laid down specified in paragraph 1 shall, in principle, be revised every two years with effect from 1 January 1996. The calculation of such value shall be based on the average daily values of those currencies expressed in ecus

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over the 24 months terminating on the last day of August preceding the revision with effect from 1 January. These values shall be published in the *Official Journal of the European Communities* at the beginning of November.

15. The values of the thresholds of the Agreement on Government Procurement, concluded in the framework of the Uruguay Round multilateral negotiations<sup>(1)</sup>, hereinafter referred to as the 'Agreement', expressed in ecus shall in principle be revised every two years with effect from 1 January 1996. The calculation of these values shall be based on the average daily value of the ecu expressed in SDR over the 24 months terminating on the last day of August preceding the 1 January revision. These values shall be published as provided for in paragraph 14.

16. The methods of calculation laid down in paragraphs 14 and 15 shall be examined pursuant to the second subparagraph of Article 5(1)(c) of Directive 93/36/EEC.

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## TITLE II

**Two-tier application***Article 15*

Supply and works contracts and contracts which have as their object services listed in Annex XVI A shall be awarded in accordance with the provisions of Titles III, IV and V.

*Article 16*

Contracts which have as their object services listed in Annex XVI B shall be awarded in accordance with Articles 18 and 24.

*Article 17*

Contracts which have as their object services listed in both Annexes XVI A and XVI B shall be awarded in accordance with the provisions of Titles III, IV and V where the value of the services listed in Annex XVI A is greater than the value of the services listed in Annex XVI B. Where this is not the case, they shall be awarded in accordance with Articles 18 and 24.

## TITLE III

**Technical specifications and standards***Article 18*

1. Contracting entities shall include the technical specifications in the general documents or the contract documents relating to each contract.
2. The technical specifications shall be defined by reference to European specifications, where these exist.
3. In the absence of European specifications, the technical specifications should as far as possible be defined by reference to other standards having currency within the Community.
4. Contracting entities shall define such further requirements as are necessary to complete European specifications or other standards. In so doing, they shall prefer specifications which indicate performance requirements rather than design or description characteristics, unless

<sup>(1)</sup> Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ No L 336, 23.12.1994, p. 1).

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the contracting entity has objective reasons for considering that such specifications are inadequate for the purposes of the contract.

5. Technical specifications which mention goods of a specific make or source or of a particular process, and which have the effect of favouring or eliminating certain undertakings, shall not be used unless such specifications are indispensable for the subject of the contract. In particular, the indication of trade marks, patents, types, of specific origin or production shall be prohibited; however, such an indication accompanied by the words 'or equivalent' shall be authorized where the subject of the contract cannot otherwise be described by specifications which are sufficiently precise and fully intelligible to all concerned.

6. Contracting entities may derogate from paragraph 2 if:

- (a) it is technically impossible to establish satisfactorily that a product conforms to the European 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 of Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications<sup>(2)</sup>;
- (c) in the context of adapting existing practice to take account of European specifications, use of those specifications would oblige the contracting entity to acquire supplies incompatible with equipment already in use or would entail disproportionate cost or disproportionate technical difficulty. Contracting entities which have recourse to this derogation shall do so only as part of clearly-defined and recorded strategy with a view to a changeover to European specifications;
- (d) the relevant European specification is inappropriate for the particular application or does not take account of technical developments which have come about since its adoption. Contracting entities which have recourse to this derogation shall inform the appropriate standardizing organization, or any other body empowered to review the European specification, of the reasons why they consider the European specification to be inappropriate and shall request its revision;
- (e) the project is of a genuinely innovative nature for which use of European specifications would not be appropriate.

7. Notices published pursuant to Article 21 (1) (a) or Article 21 (2) (a) shall indicate any recourse to the derogations referred to in paragraph 6.

8. This Article shall be without prejudice to compulsory technical rules in so far as these are compatible with Community law.

#### *Article 19*

1. Contracting entities shall make available on request to suppliers, contractors or service providers interested in obtaining a contract the technical specifications regularly referred to in their supply, works or service contracts or the technical specifications which they intend to apply to contracts covered by periodic information notices within the meaning of Article 22.

2. Where such technical specifications are based on documents available to interested suppliers, contractors or service providers, a reference to those documents shall be sufficient.

<sup>(1)</sup> OJ No L 217, 5. 8. 1986, p. 21.

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



## TITLE IV

**Procedures for the award of contracts***Article 20*

1. Contracting entities may choose any of the procedures described in Article 1 (7), provided that, subject to paragraph 2, a call for competition has been made in accordance with Article 21.
2. Contracting entities may use a procedure without prior call for competition in the following cases:
  - (a) in the absence of tenders or suitable tenders in response to a procedure with a prior call for competition, provided that the original contract conditions have not been substantially changed;
  - (b) where a contract is purely for the purpose of research, experiment, study or development and not for the purpose of ensuring profit or of recovering research and development costs and in so far as the award of such contract does not prejudice the competitive award of subsequent contracts which have in particular these purposes;
  - (c) when, for technical or artistic reasons or for reasons connected with protection of exclusive rights, the contract may be executed only by a particular supplier, contractor or service provider;
  - (d) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting entities, the time limits laid down for open and restricted procedures cannot be adhered to;
  - (e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
  - (f) for additional works or services not included in the project initially awarded or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the execution of the contract, on condition that the award is made to the contractor or service provider executing the original contract:
    - when such additional works or services cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities,
    - or when such additional works or services, although separable from the execution of the original contract, are strictly necessary to its later stages;
  - (g) in the case of works contracts, for new works consisting of the repetition of similar works entrusted to the contractor to which the same contracting entities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded after a call for competition. As soon as the first project is put up for tender, notice must be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting entities when they apply the provisions of Article 14;
  - (h) for supplies quoted and purchased on a commodity market;
  - (i) for contracts to be awarded on the basis of a framework agreement, provided that the condition referred to in Article 5 (2) is fulfilled;
  - (j) for bargain purchases, where it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a very short space of time at a price considerably lower than normal market prices;
  - (k) for purchases of goods under particularly advantageous conditions from either a supplier definitively winding up his business activities or the receivers or liquidators of a bankruptcy, an

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arrangement with creditors or a similar procedure under national laws or regulations;

- (l) when the service contract concerned is part of the follow-up a design contest organized in conformity with the provisions of this Directive and must, in accordance with the relevant rules, be awarded to the winner or to one of the winners of that contest. In the latter case, all the winners must be invited to participate in the negotiations.

*Article 21*

1. In the case of supplies, works or service contracts, the call for competition may be made:

- (a) by means of a notice drawn up in accordance with Annex XII A, B or C; or
- (b) by means of a periodic indicative notice drawn up in accordance with Annex XIV; or
- (c) by means of a notice on the existence of a qualification system drawn up in accordance with Annex XIII.

2. When a call for competition is made by means of a periodic indicative notice:

- (a) the notice must refer specifically to the supplies, works or services which will be the subject of the contract to be awarded;
- (b) the notice must indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a notice of a call for competition and invite interested undertakings to express their interest in writing;

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- (c) contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations. The information must include at least the following:

- (i) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent calls for competition for the works, supplies or services to be procured;
- (ii) whether the procedure is restricted or negotiated;
- (iii) any date for starting or completing the delivery of supplies or for performing works or services;
- (iv) the address and final date for submitting an application to be invited to tender, as well as the language or languages in which it must be submitted;
- (v) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;
- (vi) any economic and technical requirements, financial guarantees and information required from suppliers, undertakings or providers of services;
- (vii) the amount and terms of payment of any sum payable for the documentation relating to the procurement procedure;  
and
- (viii) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.

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2. When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.

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4. In the case of design contests, the call for competition shall be made by means of a notice drawn up in accordance with Annex XVII.

5. The notices referred to in this Article shall be published in the *Official Journal of the European Communities*.

*Article 22*

1. Contracting entities shall make known, at least once a year, by means of a periodic indicative notice:

(a) in the case of supply contracts, the total of the contracts for each product area of which the estimated value, taking into account the provisions of Article 14, is equal to or greater than ECU 750 000, and which they intend to award over the following twelve months;

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(b) in the case of works contracts, the essential characteristics of the works contracts which the contracting entities intend to award, the estimated value of which is not less than:

- the threshold laid down in Article 14(1)(a)(ii) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annex X,
- the threshold laid down in Article 14(1)(b)(iii) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annexes I, II, VII, VIII and IX, or
- the threshold laid down in Article 14(1)(c)(ii) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annexes III, IV, V and VI;

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(c) in the case of service contracts, the estimated total value of the service contracts in each of the categories of services listed in Annex XVI A which they intend to award over the following 12 months, where such estimated total value, taking into account the provisions of Article 14, is equal to or greater than ECU 750 000.

2. The notice shall be drawn up in accordance with Annex XIV and published in the *Official Journal of the European Communities*.

3. Where the notice is used as a means of calling for competition in accordance with Article 21 (1) (b), it must have been published not more than 12 months prior to the date on which the invitation referred to in Article 21 (2) (c) is sent. Moreover, the contracting entity shall meet the deadlines laid down in Article 26 (2).

4. Contracting entities may, in particular, publish periodic indicative notices relating to major projects without repeating information previously included in a periodic indicative notice, provided that it is clearly stated that such notices are additional notices.

*Article 23***▼M1**

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 for which is not less than:

- the threshold laid down in Article 14(1)(a)(i) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annex X,
- the threshold laid down in Article 14(1)(b)(i) or (ii) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annexes I, II, VII, VIII and IX, or
- the threshold laid down in Article 14(1)(c)(i) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annexes III, IV, V and VI.

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2. This Article shall apply to all design competitions where the total amount of competition prizes and payments to participants is not less than:

- the threshold laid down in Article 14(1)(a)(i) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annex X,
- the threshold laid down in Article 14(1)(b)(i) or (ii) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annexes I, II, VII, VIII and IX, or
- the threshold laid down in Article 14(1)(c)(i) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annexes III, IV, V, and VI.

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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 400 000 for design contests organized by entities exercising an activity referred to in Article 2 (2) (a), (b) and (c) and ECU 600 000 for design contests organized by entities exercising an activity referred to in Article 2 (2) (d).

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 provided for in Annex XVII.

*Article 24*

1. Contracting entities which have awarded a contract or organized a design contest shall communicate to the Commission, within two months of the award of the contract and under conditions to be laid down by the Commission in accordance with the procedure laid down in Article 40, the results of the awarding procedure by means of a notice drawn up in accordance with Annex XV or Annex XVIII.

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2. Information provided under Section I of Annex XV or under Annex XVIII shall be published in the *Official Journal of the European Communities*. In this connection the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information in connection with points 6, 9 and 11 of Annex XV.

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3. Contracting entities awarding service contracts within category No 8 of Annex XVI A to which Article 20 (2) (b) applies need mention, concerning point 3 of Annex XV, only the main title thereof within the meaning of the classification of Annex XVI. Contracting

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entities awarding service contracts within category No 8 of Annex XVI A to which Article 20 (2) (b) does not apply may, on the grounds of commercial confidentiality, limit the information provided for in point 3 of Annex XV. However, they must ensure that any information published under this point is no less detailed than that contained in the notice of the call for competition published in accordance with Article 20 (1) or, where a qualification system is used, no less detailed than the category referred to in Article 30 (7). In the case listed in Annex XVI B, the contracting entities shall indicate in the notice whether they agree on its publication.

4. Information provided under Section II of Annex XV must not be published, except in aggregated form, for statistical purposes.

*Article 25*

1. The contracting entities must be able to supply proof of the date of dispatch of the notices referred to in Articles 20 to 24.

2. The notices shall be published in full in their original language in the *Official Journal of the European Communities* and in the TED data bank. A summary of the important elements of each notice shall be published in the other official languages of the Community, the original text alone being authentic.

3. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In exceptional cases it shall endeavour to publish the notice referred to in Article 21 (1) (a) within five days in response to a request by the contracting entity and provided that the notice has been sent to the Office by electronic mail, telex or telefax. Each edition of the *Official Journal of the European Communities* which contains one or more notices shall reproduce the model notice or notices on which the published notice or notices is/are based.

4. The cost of publication of the notices in the *Official Journal of the European Communities* shall be borne by the Communities.

5. Contracts or design contests in respect of which a notice is published in the *Official Journal of the European Communities* pursuant to Article 21 (1) or (4) shall not be published in any other way before that notice has been dispatched to the Office for Official Publications of the European Communities. Such publication shall not contain information other than that published in the *Official Journal of the European Communities*.

**▼M1***Article 26*

1. In open procedures the time limit for the receipt of tenders shall be fixed by contracting entities at not less than 52 days from the date of dispatch of the notice. This time limit may be replaced by one which is sufficiently long to allow those concerned to submit valid tenders and which, as a general rule, shall not be less than 36 days and in any case not less than 22 days from the date on which the contract notice was dispatched, if the contracting entities have sent the *Official Journal of the European Communities* a periodic indicative notice in accordance with Article 22(1), provided that this notice contains the information required in Parts II and III of Annex XIV, insofar as that information is available at the time of publication of the notice referred to in Article 22(1).

This periodic indicative notice must furthermore have been dispatched to the *Official Journal of the European Communities* within a minimum of 52 days and a maximum of 12 months before the date on which the contract notice provided for in Article 21(1)(a) is dispatched to the *Official Journal of the European Communities*.

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2. In restricted procedures and in negotiated procedures with a prior call for competition, the following shall apply:
  - (a) the time limit for receipt of requests to participate, in response to a notice published in accordance with Article 21(1)(a) or in response to an invitation from a contracting entity in accordance with Article 21(2)(c), shall, as a general rule, be at least 37 days from the date of dispatch of the notice or invitation and shall in any case not be less than the time limit for publication laid down in Article 25(3), plus 10 days;
  - (b) the time limit for receipt of tenders may be fixed by mutual agreement between the contracting entity and the selected candidates, provided that all tenderers are given equal time to prepare and submit tenders;
  - (c) where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least 24 days and shall in any case not be less than 10 days from the date of the invitation to tender; the time allowed shall be sufficiently long to take account in particular of the factors mentioned in Article 28(3).

**▼B***Article 27*

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

This indication shall be without prejudice to the question of the principal contractor's responsibility.

*Article 28*

1. Provided that they have been requested in good time, the contract documents and supporting documents must be sent to the suppliers, contractors or service providers by the contracting entities as a general rule within six days of receipt of the application.
2. Provided that it has been requested in good time, additional information relating to the contract documents shall be supplied by the contracting entities not later than six days before the final date fixed for receipt of tenders.
3. Where tenders require the examination of voluminous documentation such as lengthy technical specifications, a visit to the site or an on-the-spot inspection of the documents supporting the contract documents, this shall be taken into account when the appropriate time limits are fixed.
4. Contracting entities shall invite the selected candidates simultaneously and in writing. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:
  - (a) the address from which any additional documents can be requested, the final date for such requests and the amount and methods 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 any tender notice published;
  - (d) an indication of any document to be annexed;
  - (e) the criteria for the award of the contract if these are not given in the notice;
  - (f) any other special condition for participation in the contract.

**▼M1**

5. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible.

**▼M1**

When requests to participate are made by telegram, telex, fax, telephone or any other electronic means, Member States may require them to be confirmed by letter dispatched before the expiry of the time limit referred to in Article 26(2).

6. Tenders shall be submitted in writing, directly or by mail. Member States may authorise the submission of tenders by any other means making it possible to ensure:

- that each tender contains all the information necessary for its evaluation,
- that the confidentiality of tenders is maintained pending their evaluation,
- that, where necessary for reasons of legal proof, such tenders are confirmed as soon as possible in writing or by dispatch of a certified copy,
- that tenders are opened after the time-limit for their submission has expired.

**▼B***Article 29*

1. The contracting entity may state in the contract documents, or be obliged by a Member State so to do, 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 works or services are to be executed or performed and which shall be applicable to the works carried out or the services performed on site during the performance of the contract.

2. A contracting entity which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract 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 work or the service is to be carried out or performed. This shall be without prejudice to the application of Article 34 (5) concerning the examination of abnormally low tenders.

## TITLE V

**Qualification, selection and award***Article 30***▼M1**

1. Contracting entities which so wish may establish and operate a system of qualification of suppliers, contractors or service providers.

Entities establishing or operating a qualification system shall ensure that suppliers, contractors and service providers may apply for qualification at any time.

**▼B**

2. The system, which may involve different qualification stages, shall operate on the basis of objective criteria and rules to be established by the contracting entity. The contracting entity shall use European standards as a reference where they are appropriate. The criteria and rules may be updated as required.

3. The criteria and rules for qualification shall be made available on request to interested suppliers, contractors or service providers. The updating of these criteria and rules shall be communicated to the interested suppliers, contractors and service providers. Where a contracting entity considers that the qualification system of certain third entities or bodies meets its requirements, it shall communicate to interested suppliers, contractors and service providers the names of such third entities or bodies.

4. Contracting entities shall inform applicants of their decision as to qualification within a reasonable period. If the decision will take longer

## ▼B

than six months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying a longer period and of the date by which its application will be accepted or refused.

5. In reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities may not:

- impose conditions of an administrative, technical or financial nature on some suppliers, contractors or service providers which are not imposed on others,
- require tests or proof which duplicate objective evidence already available.

6. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal. The reasons must be based on the criteria for qualification referred to in paragraph 2.

7. A written record of qualified suppliers, contractors or service providers shall be kept and it may be divided into categories, according to the type of contract for which the qualification is valid.

8. Contracting entities may bring the qualification of a supplier, contractor or service provider to an end only for reasons based on the criteria referred to in paragraph 2. The intention to bring qualification to an end must be notified in writing to the supplier, contractor or service provider beforehand, together with the reason or reasons justifying the proposed action.

9. The qualification system shall be the subject of a notice drawn up in accordance with Annex XIII and published in the *Official Journal of the European Communities*, indicating the purpose of the qualification system and the availability of the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.

#### Article 31

1. Contracting entities which select candidates to tender in restricted procedures or to participate in negotiated procedures shall do so according to objective criteria and rules which they lay down and which they shall make available to interested suppliers, contractors or service providers.

2. The criteria used may include the criteria for exclusion specified in Article 23 of Directive 71/305/EEC and in Article 20 of Directive 77/62/EEC.

3. The criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the contract award procedure and the resources required to complete it. The number of candidates selected must, however, take account of the need to ensure adequate competition.

#### Article 32

Should contracting entities require the production of certificates drawn up by independent bodies for attesting conformity of the service provider to 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.

Entities 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.

## ▼B

*Article 33*

1. Groupings of suppliers, contractors or service providers shall be permitted to tender or negotiate. The conversion of such groupings into a specific legal form shall not be required in order to submit a tender or to negotiate, but the grouping selected may be required so to convert itself once it has been awarded the contract where such conversion is necessary for the proper performance of 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 on the sole ground that under the law of the Member State in which the contract is awarded they would have been required to be either a natural or a legal person.
3. However, 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 34*

1. Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which the contracting entities shall base the award of contracts shall be:
  - (a) the most economically advantageous tender, involving various criteria depending on the contract in question, such as: delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance, commitments with regard to spare parts, security of supplies and price; or
  - (b) the lowest price only.
2. In the case referred to in paragraph 1 (a), contracting entities shall state in the contract documents or in the tender notice all the criteria which they intend to apply to the award, where possible in descending order of importance.
3. Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting entities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by the contracting entities. Contracting entities shall state in the contract documents the minimum specifications to be respected by the variants and specific requirements for their presentation. Where variants are not permitted, they shall so indicate in the contract documents.
4. Contracting entities may not reject the presentation of a variant on the sole ground that it was drawn up on the basis of technical specifications defined with reference to European specifications or to national technical specifications recognized as complying with the essential requirements within the meaning of Directive 89/106/EEC.
5. If, for a given contract, tenders appear abnormally low in relation to the provision of services, the contracting entity shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received. It may set a reasonable period within which to reply.

The contracting entity may take into consideration explanations which are justified on objective grounds relating to the economy of the construction or production method, or the technical solutions chosen, or the exceptionally favourable conditions available to the tenderer for the execution of the contract, or the originality of the product or the work proposed by the tenderer.

Contracting entities may reject tenders which are abnormally low owing to the receipt of State aid only if they have consulted the tenderer and if the tenderer has been unable to show that the aid in question has been notified to the Commission pursuant to Article 93

**▼B**

(3) of the EEC Treaty or has received the Commission's approval. Contracting entities which reject a tender under these circumstances shall inform the Commission thereof.

*Article 35***▼M1**

1. Article 34(1) shall not apply where a Member State bases the award of contracts on other criteria, within the framework of rules in force at the time of adoption of this Directive, which are intended to give preference to certain tenderers, provided that the rules invoked are compatible with the Treaty.

**▼B**

2. Without prejudice to paragraph 1, this Directive shall not prevent, until 31 December 1992, the application of national provisions in force on the award of supply or works contracts which have as their objective the reduction of regional disparities and the promotion of job creation in disadvantaged regions or those suffering from industrial decline, provided that the provisions concerned are compatible with the EEC Treaty and with the Community's international obligations.

*Article 36*

1. This Article shall apply to tenders comprising products originating in third countries with which the Community has not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Community or its Member States in respect of third countries.

2. Any tender made for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods<sup>(1)</sup>, exceeds 50 % of the total value of the products constituting the tender.

For the purposes of this Article, software used in telecommunications network equipment shall be considered as products.

3. Subject to paragraph 4, where two or more tenders are equivalent in the light of the award criteria defined in Article 34, preference shall be given to the tenders which may not be rejected pursuant to paragraph 2. The prices of these tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

4. However, a tender shall not be preferred to another pursuant to paragraph 3 where its acceptance would oblige the contracting entity to acquire material having technical characteristics different from those of existing material, resulting in incompatibility or technical difficulties in operation and maintenance or disproportionate costs.

5. For the purpose of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the proportion referred to in paragraph 2 of products originating in third countries.

6. The Commission shall submit an annual report to the Council (for the first time in the second half of 1991) on progress made in multilateral or bilateral negotiations regarding access for Community undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved and on the implementation in practice of all the agreements which have been concluded.

<sup>(1)</sup> OJ No L 148, 28. 6. 1968, p. 1. Regulation as last amended by Regulation (EEC) No 3860/87 (OJ No L 363, 23. 12. 1987, p. 30).

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The Council, acting by a qualified majority on a proposal from the Commission, may amend the provisions of this Article in the light of such developments.

*Article 37*

1. The Member States shall inform the Commission of any general difficulties encountered, in law or in fact, by their undertakings in securing the award of service contracts in third countries.

2. The Commission shall report to the Council before 31 December 1994 and periodically thereafter on the opening-up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the GATT framework.

3. Whenever the Commission establishes, on the basis of either the reports referred to in paragraph 2 or other information, that with regard to the award of service contracts a third country:

- (a) does not grant Community undertakings effective access comparable to that granted by the Community to undertakings from that country;
- (b) does not grant Community undertakings national treatment or the same competitive opportunities as are available to national undertakings; or
- (c) grants undertakings from other third countries more favourable treatment than Community undertakings,

it must approach the third country concerned to try to remedy the situation.

4. Under the conditions referred to in paragraph 3, the Commission may at any time propose that the Council decide to suspend or restrict the award of service contracts to:

- (a) undertakings governed by the law of the third country in question;
- (b) undertakings affiliated to the undertakings specified in (a) and having their registered office in the Community but having no direct and effective link with the economy of a Member State;
- (c) undertakings submitting tenders which have as their object services originating in the third country in question,

during a period to be determined in the decision. The Council shall act by qualified majority as soon as possible.

The Commission may propose these measures on its own initiative or at the request of a Member State.

5. This Article is without prejudice to the obligations of the Community in relation to third countries.

## TITLE VI

**Final provisions****▼M1****▼B***Article 39*

1. The Commission shall be assisted, as regards procurement by the contracting entities exercising an activity referred to in Article 2 (2) (d), by a Committee of an advisory nature which shall be the Advisory Committee on Telecommunications Procurement. The Committee shall be composed of representatives of the Member States and chaired by a representative of the Commission.

2. The Commission shall consult this Committee on:

- (a) amendments to Annex X;
- (b) revision of the currency values of the thresholds;

**▼B**

- (c) the rules concerning contracts awarded under international agreements;
- (d) the review of the application of this Directive;
- (e) the procedures described in Article 40 (2) relating to notices and statistical reports.

*Article 40*

1. Annexes I to X shall be revised in accordance with the procedure laid down in paragraphs 4 to 8 with a view to ensuring that they fulfil the criteria of Article 2.
2. The conditions for the presentation, dispatch, reception, translation, keeping and distribution of the notices referred to in Articles 21, 22 and 24 and of the statistical reports provided for in Article 42 shall be established, for the purposes of simplification, in accordance with the procedure laid down in paragraphs 4 to 8.
3. The nomenclature cited in Annexes XVI A and XVI B and the references in the notices to particular headings of the nomenclature may be amended in accordance with the procedure laid down in paragraphs 4 to 8.
4. The revised Annexes and the conditions referred to in paragraphs 1 and 2 shall be published in the *Official Journal of the European Communities*.
5. The Commission shall be assisted by the Advisory Committee for Public Contracts and, in the case of the revision of Annex X, by the Advisory Committee on Telecommunications Procurement provided for in Article 39 of this Directive.
6. The Commission representative shall submit to the Committee a draft of the decisions 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.
7. 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.
8. 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.

**▼M1***Article 41*

1. Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:
  - (a) the qualification and selection of contractors, suppliers or service providers and award of contracts;
  - (b) recourse to derogations from the use of European specifications in accordance with Article 18(6);
  - (c) use of procedures without prior call for competition in accordance with Article 20(2);
  - (d) non-application of Titles II, III and IV in accordance with the derogations provided for in Title I.
2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to supply the necessary information to the Commission if the latter so requests.
3. Entities carrying out one of the activities mentioned in Annexes I, II, VII, VIII and IX shall inform participating suppliers, contractors or service providers of decisions on contract awards promptly and, upon request, in writing.

**▼M1**

4. The contracting entities carrying out one of the activities mentioned in Annexes I, II, VII, VIII and IX shall, promptly after the date on which a written request is received, inform any eliminated candidate or tenderer of the reasons for rejection of his application or his tender and any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer.

However, contracting entities may decide that certain information on the contract award, referred to in the first subparagraph of this paragraph, be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private, including those of the enterprise to which the contract has been awarded, or might prejudice fair competition between suppliers, contractors or service providers.

**▼B***Article 42*

1. The Member States shall ensure, in accordance with the arrangements to be laid down under the procedure provided for in Article 40 (4) to (8), that the Commission receives each year a statistical report concerning the total value, broken down by Member State and each category of activity to which Annexes I to X refer, of the contracts awarded below the thresholds defined in Article 14 which would, if they were not below those thresholds, be covered by this Directive.

**▼M1**

1a. With respect to the activities to which Annexes I, II, VII, VIII and IX refer, Member States shall, in accordance with the arrangements to be laid down under the procedure provided for in Article 40(4) to (8), ensure that, by 31 October 1997 at the latest for the preceding year and thereafter by 31 October of every year, the Commission receives a statistical report on the contracts awarded. This report shall contain the information necessary to verify the proper application of the Agreement.

The information required under this paragraph shall not include information concerning contracts for the services listed in category 8 of Annex XVI A, telecommunications services listed in category 5, the CPC reference numbers of which are 7524, 7525 and 7526, or the services listed in Annex XVI.B.

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2. Arrangements shall be fixed in accordance with the procedure referred to in Article 40 to ensure that:

- (a) in the interests of administrative simplification, contracts of lesser value may be excluded, provided that the usefulness of the statistics is not jeopardized;
- (b) the confidential nature of the information provided is respected.

**▼M1***Article 42a*

For the purposes of the award of contracts by the contracting entities, Member States shall apply in their relations conditions as favourable as those which they grant to third countries in implementation of the Agreement. The Member States shall to this end consult each other within the Advisory Committee for Public Contracts on the measures to be taken pursuant to the Agreement.

**▼B***Article 43*

Article 2 (2) of Directive 77/62/EEC is hereby replaced by the following:

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‘2. This Directive shall not apply to:

- (a) contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of 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> or fulfilling the conditions in Article 6 (2) of the said Directive;
- (b) supplies which are declared secret or when their delivery 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 <sup>(2)</sup>.

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

#### *Article 44*

Not later than four years after the application of this Directive, the Commission, acting in close cooperation with the Advisory Committee for Public Contracts, shall review the manner in which this Directive has operated and its field of application and, if necessary, shall make further proposals to adapt it, in the light of developments linked in particular with progress made in opening up contracts and the level of competition. In the case of entities exercising an activity defined in Article 2 (2) (d), the Commission shall act in close cooperation with the Advisory Committee on Telecommunications Procurement.

#### *Article 45*

1. Member States shall adopt the measures necessary to comply with the provisions of this Directive and shall apply them by 1 July 1994. They shall forthwith inform the Commission thereof.
2. Nevertheless, the Kingdom of Spain may provide that the measures referred to in paragraph 1 shall apply from 1 January 1997 only and the Hellenic Republic and the Portuguese Republic may provide that the measures referred to in paragraph 1 shall apply from 1 January 1998 only.
3. Directive 90/531/EEC shall cease to have effect as from the date on which this Directive is applied by the Member States and this shall be without prejudice to the obligations of the Member States concerning the deadlines laid down in Article 37 of that Directive.
4. References to Directive 90/531/EEC shall be construed as referring to this Directive.

#### *Article 46*

When Member States adopt the provisions referred to in Article 45, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

#### *Article 47*

Member States shall communicate to the Commission the main provisions of national law, whether laws, regulations or administrative provisions, which they adopt in the field covered by this Directive.

#### *Article 48*

This Directive is addressed to the Member States.



## LIST OF ANNEXES

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## ANNEX I

# **PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER**

## **BELGIUM**

Entity set up pursuant to the *décret du 2 juillet 1987 de la région wallonne érigeant en entreprise régionale de production et d'adduction d'eau le service du ministère de la région chargé de la production et du grand transport d'eau*.

Entity set up pursuant to the *arrêté du 23 avril 1986 portant constitution d'une société wallonne de distribution d'eau*.

Entity set up pursuant to the *arrêté du 17 juillet 1985 de l'exécutif flamand portant fixation des statuts de la société flamande de distribution d'eau*.

Entities producing or distributing water and set up pursuant to the *loi relative aux intercommunales du 22 décembre 1986*.

Entities producing or distributing water set up pursuant to the *code communal, article 47 bis, ter et quater sur les régies communales*.

## **DENMARK**

Entities producing or distributing water referred to in Article 3, paragraph 3 of *lovbekendtgørelse om vandforsyning m.v. af 4. juli 1985*.

## **GERMANY**

Entities producing or distributing water pursuant to the *Eigenbetriebsverordnungen* or *Eigenbetriebsgesetze* of the *Länder* (*Kommunale Eigenbetriebe*).

Entities producing or distributing water pursuant to the *Gesetze über die Kommunale Gemeinschaftsarbeit oder Zusammenarbeit* of the *Länder*.

Entities producing water pursuant to the *Gesetz über Wasser- und Bodenverbände vom 10. Februar 1937* and the *erste Verordnung über Wasser- und Bodenverbände vom 3. September 1937*.

(*Regiebetriebe*) producing or distributing water pursuant to the *Kommunalgesetze* and notably with the *Gemeindeordnungen der Länder*.

Entities set up pursuant to the *Aktiengesetz vom 6. September 1965, zuletzt geändert am 19. Dezember 1985* or *GmbH-Gesetz vom 20. Mai 1898, zuletzt geändert am 15. Mai 1986*, or having the legal status of a *Kommanditgesellschaft*, producing or distributing water on the basis of a special contract with regional or local authorities.

## **GREECE**

The Water Company of Athens / *Εταιρεία Υδρεύσεως — Αποχετεύσεως Πρωτευούσης* set up pursuant to Law 1068/80 of 23 August 1980.

The Water Company of Salonica / *Οργανισμός Υδρεύσεως Θεσσαλονίκης* operating pursuant to Presidential Decree 61/1988.

The Water Company of Voios / *Εταιρεία Υδρεύσεως Βόλου* operating pursuant to Law 890/1979.

Municipal companies / *Δημοτικές Επιχειρήσεις ύδρευσης — αποχέτευσης* producing or distributing water and set up pursuant to Law 1059/80 of 23 August 1980.

Associations of local authorities (*Σύνδεσμοι ύδευσης*) operating pursuant to the Code of local authorities (*Κώδικας Δήμων και Κοινοτήτων*) implemented by Presidential Decree 76/1985.

## **SPAIN**

— Entities producing or distributing water pursuant to *Ley nº 7/1985 de 2 de abril de 1985. Reguladora de las Bases del Régimen local* and to *Decreto Real nº 781/1986 Texto Refundido Régimen local*.

— *Canal de Isabel II. Ley de la Comunidad Autónoma de Madrid de 20 de diciembre de 1984*.

— *Mancomunidad de los Canales de Taibilla, Ley de 27 de abril de 1946*.

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## FRANCE

Entities producing or distributing water pursuant to the:

*dispositions générales sur les régies, code des communes L 323-1 à L 328-8, R 323-1 à R 323-6 (dispositions générales sur les régies); or*

*code des communes L 323-8 R 323-4 [régies directes (ou de fait)]; or*

*décret-loi du 28 décembre 1926, règlement d'administration publique du 17 février 1930, code des communes L 323-10 à L 323-13, R 323-75 à 323-132 (régies à simple autonomie financière); or*

*code des communes L 323-9, R 323-7 à R 323-74, décret du 19 octobre 1959 (régies à personnalité morale et à autonomie financière); or*

*code des communes L 324-1 à L 324-6, R 324-1 à R 324-13 (gestion déléguée, concession et affermage); or*

*jurisprudence administrative, circulaire intérieure du 13 décembre 1975 (gérance); or*

*code des communes R 324-6, circulaire intérieure du 13 décembre 1975 (régie intéressée); or*

*circulaire intérieure du 13 décembre 1975 (exploitation aux risques et périls); or*

*décret du 20 mai 1955, loi du 7 juillet 1983 sur les sociétés d'économie mixte (participation à une société d'économie mixte); or*

*code des communes L 322-1 à L 322-6, R 322-1 à R 322-4 (dispositions communes aux régies, concessions et affermagés).*

## IRELAND

Entities producing or distributing water pursuant to the *Local Government (Sanitary Services) Act 1878 to 1964*.

## ITALY

Entities producing or distributing water pursuant to the *Testo unico delle leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578 and to Decreto del P.R. n. 902 del 4 ottobre 1986*.

*Ente Autonomo Acquedotto Pugliese set up pursuant to RDL 19 ottobre 1919, n. 2060.*

*Ente Acquedotti Siciliani set up pursuant to leggi regionali 4 settembre 1979, n. 2/2 e 9 agosto 1980, n. 81.*

*Ente Sardo Acquedotti e Fognature set up pursuant to legge 5 luglio 1963 n. 9.*

## LUXEMBOURG

Local authorities distributing water.

Associations of local authorities producing or distributing water set up pursuant to the *loi du 14 février 1900 concernant la création des syndicats de communes telle qu'elle a été modifiée et complétée par la loi du 23 décembre 1958 et par la loi du 29 juillet 1981 and pursuant to the loi du 31 juillet 1962 ayant pour objet le renforcement de l'alimentation en eau potable du grand-duché de Luxembourg à partir du réservoir d'Esch-sur-Sûre*.

## NETHERLANDS

Entities producing or distributing water pursuant to the *Waterleidingwet van 6 april 1957, amended by the wetten van 30 juni 1967, 10 september 1975, 23 juni 1976, 30 september 1981, 25 januari 1984, 29 januari 1986*.

## PORTUGAL

*Empresa Pública das Águas Livres producing or distributing water pursuant to the Decreto-Lei nº 190/81 de 4 de Julho de 1981.*

Local authorities producing or distributing water.

## UNITED KINGDOM

*Water companies producing or distributing water pursuant to the Water Acts 1945 and 1989.*

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The *Central Scotland Water Development Board* producing water and the *water authorities* producing or distributing water pursuant to the *Water (Scotland) Act 1980*.

The *Department of the Environment for Northern Ireland* responsible for producing and distributing water pursuant to the *Water and Sewerage (Northern Ireland) Order 1973*.

**▼A1****AUSTRIA**

Entities of local authorities (*Gemeinden*) and associations of local authorities (*Gemeindeverbände*) producing, transporting or distributing drinking water pursuant to the *Wasserversorgungsgesetze* of the nine *Länder*.

**FINLAND**

Entities producing, transporting or distributing drinking water pursuant to Article 1 of *Laki yleisistä vesi- ja viemärlaitoksista*(982/77) of 23 December 1977.

**SWEDEN**

Local authorities and municipal companies which produce, transport or distribute drinking water pursuant to *lagen (1970:244) om allmänna vatten- och avloppsanläggningar*.



## ANNEX II

## PRODUCTION, TRANSPORT OR DISTRIBUTION OF ELECTRICITY

## BELGIUM

Entities producing, transporting or distributing electricity pursuant to *article 5: Des régies communales et intercommunales* of the *loi du 10 mars 1925 sur les distributions d'énergie électrique*.

Entities transporting or distributing electricity pursuant to the *loi relative aux intercommunales du 22 décembre 1986*.

EBES, Intercom, Unerg and other entities producing, transporting or distributing electricity and granted a concession for distribution pursuant to *article 8 — les concessions communales et intercommunales* of the *loi du 10 mars 1952 sur les distributions d'énergie électrique*.

The *Société publique de production d'électricité (SPÉ)*.

## DENMARK

Entities producing or transporting electricity on the basis of a licence pursuant to § 3, *stk. 1*, of the *lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde*.

Entities distributing electricity as defined in § 3, *stk. 2*, of the *lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde* and on the basis of authorizations for expropriation pursuant to Articles 10 to 15 of the *lov om elektriske stærkstrømsanlæg, jf. lovbekendtgørelse nr. 669 af 28. december 1977*.

## GERMANY

Entities producing, transporting or distributing electricity as defined in § 2 *Absatz 2* of the *Gesetz zur Förderung der Energiewirtschaft (Energiewirtschaftsgesetz)* of 13 December 1935. Last modified by the *Gesetz* of 19 December 1977, and auto-production of electricity so far as this is covered by the field of application of the Directive pursuant to Article 2, paragraph 5.

## GREECE

*Δημόσια Επιχείρηση Ηλεκτρισμού* (Public Power Corporation) set up pursuant to the law 1468 of 2 August 1950 *Περί ιδρύσεως Δημοσίας Επιχειρήσεως Ηλεκτρισμού*, and operating pursuant to the law 57/85: *Δομή, ρόλος και τρόπος διοίκησης και λειτουργίας της κοινωνικοποιημένης Δημόσιας Επιχείρησης Ηλεκτρισμού*.

## SPAIN

Entities producing, transporting or distributing electricity pursuant to Article 1 of the *Decreto de 12 de marzo de 1954*, approving the *Reglamento de verificaciones eléctricas y regularidad en el suministro de energía* and pursuant to *Decreto 2617/1966, de 20 de octubre, sobre autorización administrativa en materia de instalaciones eléctricas*.

*Red Eléctrica de España SA*, set up pursuant to *Real Decreto 91/1985 de 23 de enero*.

## FRANCE

*Électricité de France*, set up and operating pursuant to the *loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz*.

Entities (*sociétés d'économie mixte* or *régies*) distributing electricity and referred to in article 23 of the *loi 48/1260 du 12 août 1948 portant modification des lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz*.

*Compagnie nationale du Rhône*.

## IRELAND

The *Electricity Supply Board (ESB)* set up and operating pursuant to the *Electricity Supply Act 1927*.

## ▼B

## ITALY

*Ente nazionale per l'energia elettrica* set up pursuant to *legge n. 1643, 6 dicembre 1962 approvato con Decreto n. 1720, 21 dicembre 1965*.

Entities operating on the basis of a concession pursuant to article 4, n. 5 or 8 of *legge 6 dicembre 1962, n. 1643 — Istituzione dell'Ente nazionale per la energia elettrica e trasferimento ad esso delle imprese esercenti le industrie elettriche*.

Entities operating on the basis of concession pursuant to article 20 of *Decreto del Presidente della Repubblica 18 marzo 1965, n. 342 norme integrative della legge 6 dicembre 1962, n. 1643 e norme relative al coordinamento e all'esercizio delle attività elettriche esercitate da enti ed imprese diverse dell'Ente nazionale per l'energia elettrica*.

## LUXEMBOURG

*Compagnie grand-ducale d'électricité de Luxembourg*, producing or distributing electricity pursuant to the *convention du 11 novembre 1927 concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le grand-duché du Luxembourg approuvée par la loi du 4 janvier 1928*.

*Société électrique de l'Our (SEO)*.

*Syndicat de Communes SIDOR*.

## NETHERLANDS

*Elektriciteitsproduktie Oost-Nederland*.

*Elektriciteitsbedrijf Utrecht—Noord-Holland—Amsterdam (UNA)*.

*Elektriciteitsbedrijf Zuid-Holland (EZH)*

*Elektriciteitsproduktiemaatschappij Zuid-Nederland (EPZ)*.

*Provinciale Zeeuwse Energie Maatschappij (PZEM)*.

*Samenwerkende Elektriciteitsbedrijven (SEP)*.

Entities distributing electricity on the basis of a licence (*vergunning*) granted by the provincial authorities pursuant to the *Provinciewet*.

## PORTUGAL

*Electricidade de Portugal (EDP)*, set up pursuant to the *Decreto-Lei n° 502/76 de 30 de Junho de 1976*.

Entities distributing electricity pursuant to *artigo 1° do Decreto-Lei n° 344-B/82 de 1 de Setembro de 1982*, amended by *Decreto-Lei n° 297/86 de 19 de Setembro de 1986*. Entities producing electricity pursuant to *Decreto Lei n° 189/88 de 27 de Maio de 1988*.

Independent producers of electricity pursuant to *Decreto Lei n° 189/88 de 27 de Maio de 1988*.

*Empresa de Electricidade dos Açores — EDA, EP*, created pursuant to the *Decreto Regional n° 16/80 de 21 de Agosto de 1980*.

*Empresa de Electricidade da Madeira, EP*, created pursuant to the *Decreto-Lei n° 12/74 de 17 de Janeiro de 1974* and regionalized pursuant to the *Decreto-Lei n° 31/79 de 24 de Fevereiro de 1979, Decreto-Lei n° 91/79 de 19 de Abril de 1979*.

## UNITED KINGDOM

*Central Electricity Generating (CEGB), and the Areas Electricity Boards* producing, transporting or distributing electricity pursuant to the *Electricity Act 1947* and the *Electricity Act 1957*.

The *North of Scotland Hydro-Electricity Board (NSHB)*, producing, transporting and distributing electricity pursuant to the *Electricity (Scotland) Act 1979*.

The *South of Scotland Electricity Board (SSEB)* producing, transporting and distributing electricity pursuant to the *Electricity (Scotland) Act 1979*.

The *Northern Ireland Electricity Service (NIES)*, set up pursuant to the *Electricity Supply (Northern Ireland) Order 1972*.

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**▼ A1****AUSTRIA**

Entities producing, transporting or distributing electricity pursuant to the second *Verstaatlichungsgesetz* (BGBl. Nr. 81/1947), and the *Elektrizitätswirtschaftsgesetz* (BGBl. Nr. 260/1975), including the *Elektrizitätswirtschaftsgesetze* of the nine *Länder*.

**FINLAND**

Entities producing, transporting or distributing electricity on the basis of a concession pursuant to Article 27 of *Sähkölaki* (319/79) of 16 March 1979.

**SWEDEN**

Entities which transport or distribute electricity on the basis of a concession pursuant to *lagen (1902:71 s. 1) innefattande vissa bestämmelser omelektriska anläggningar*.



## ANNEX III

## TRANSPORT OR DISTRIBUTION OF GAS OR HEAT

## BELGIUM

*Distrigaz SA* operating pursuant to the *loi du 29 juillet 1983*.

Entities transporting gas on the basis of an authorization or concession pursuant to the *loi du 12 avril 1985* as amended by the *loi du 28 juillet 1987*.

*Entities distributing gas and operating pursuant to the loi relative aux Intercommunales du 22 décembre 1986.*

Local authorities, or associations of these local authorities supplying heat to the public.

## DENMARK

*Dansk Olie og Naturgas A/S* operating on the basis of an exclusive right granted pursuant to *bekendtgørelse nr. 869 af 18. juni 1979 om eneretsbevilling til indførsel, forhandling, transport og oplagring af naturgas*.

Entities operating pursuant to *lov nr. 294 af 7. juni 1972 om naturgasforsyning*.

Entities distributing gas or heat on the basis of an approval pursuant to Chapter IV of *lov om varmforsyning, jf. lovbekendtgørelse nr. 330 af 29. juni 1983*.

Entities transporting gas on the basis of an authorization pursuant to *bekendtgørelse nr. 141 af 13. marts 1974 om rørledningsanlæg på dansk kontinentalsokkelområde til transport af kulbrinter* (installation of pipelines on the continental shelf for the transport of hydrocarbons).

## GERMANY

Entities transporting or distributing gas as defined in § 2 Absatz 2 of the *Gesetz zur Förderung der Energiewirtschaft vom 13. Dezember 1935 (Energiewirtschaftsgesetz)*, as last amended by the law of 19 December 1977.

Local authorities, or associations of these local authorities supplying heat to the public.

## GREECE

*DEP* transporting or distributing gas pursuant to the Ministerial decision 2583/1987 (*Ανάθεση στη Δημόσια Επιχείρηση Πετρελαίων αρμοδιοτήτων σχετικών με το φυσικό σέριο*) Σύσταση της ΔΕΠΑ ΑΕ (*Δημόσια Επιχείρηση Αερίου, Ανώνυμος Εταιρεία*).

Athens Municipal Gasworks S.A. *DEFA* transporting or distributing gas.

## SPAIN

Entities operating pursuant to *Ley nº 10 de 15 de junio de 1987*.

## FRANCE

*Société nationale des gaz du Sud-Ouest* transporting gas.

*Gaz de France*, set up and operating pursuant to the *loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz*.

Entities (*sociétés d'économie mixte* or *régies*) distributing electricity and referred to in Article 23 of the *loi 48/1260 du 12 août 1948 portant modification des lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz*.

*Compagnie française du méthane* transporting gas.

Local authorities, or associations of, supplying heat to the public.

## IRELAND

*Irish Gas Board* and operating pursuant to the *Gas Act 1976 to 1987* and other entities governed by *Statute*.

*Dublin Corporation*, supplying heat to the public.

▼ **B**

## ITALY

SNAM and SGM e Montedison transporting gas.

Entities distributing gas pursuant to the *Testo unico delle leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578* and to the *Decreto del P.R. n. 902 del 4 ottobre 1986*.

Entities distributing heat to the public referred to in Article 10 of the *Legge 29 maggio 1982, n. 308 — Norme sul contenimento dei consumi energetici, lo sviluppo delle fonti rinnovabili di energia, l'esercizio di centrali elettriche alimentate con combustibili diversi dagli idrocarburi*.

Local authorities, or associations of, supplying heat to the public.

## LUXEMBOURG

*Société de transport de gaz SOTEG SA.*

*Gaswerk Esch-Uelzecht SA.*

*Service industriel de la commune de Dudelange.*

*Service industriel de la commune de Luxembourg.*

Local authorities, or associations of these local authorities supplying heat to the public.

## NETHERLANDS

*NV Nederlandse Gasunie*

Entities transporting or distributing gas on the basis of a licence (*vergunning*) granted by the local authorities pursuant to the *Gemeentewet*.

Local or provincial entities transporting or distributing gas to the public pursuant to the *Gemeentewet* and the *Provinciewet*.

Local authorities, or associations of these local authorities supplying heat to the public.

## PORTUGAL

*Petroquímica e Gás de Portugal, EP Decreto-Lei n° 346-A/88 de 29 de Setembro de 1988.*

## UNITED KINGDOM

*British Gas plc* and other entities operating pursuant to the *Gas Act 1986*.

Local authorities, or associations of, supplying heat to the public pursuant to the *Local Government (Miscellaneous Provisions) Act 1976*.

*Electricity Boards* distributing heat pursuant to the *Electricity Act 1947*.

▼ **A1**

## AUSTRIA

Gas: contracting entities transporting or distributing gas pursuant to the *Energiawirtschaftsgesetz 1935, dRGBL. I S.1451/1935* as amended by *dRGBL. I S. 467/1941*.

Heat: contracting entities transporting or distributing heat licensed pursuant to the Austrian Trade, Commerce and Industry Regulation Act (*Gewerbeordnung BGBL. Nr. 50/1974*).

## FINLAND

Municipal energy boards, or associations thereof, or other entities transporting or distributing gas or heat on the basis of a concession granted by the municipal authorities.

## SWEDEN

Entities which transport or distribute gas or heat on the basis of a concession pursuant to *lagen (1978:160) om vissa rörledningar*.



## ANNEX IV

## EXPLORATION FOR AND EXTRACTION OF OIL OR GAS

The entities granted an authorization, permit, licence or concession to explore for or extract oil and gas pursuant to the following legal provisions:

## BELGIUM

*Loi du 1 mai 1939 complétée par l'arrêté royal n° 83 du 28 novembre 1939 sur l'exploration et l'exploitation du pétrole et du gaz.*

*Arrêté royal du 15 novembre 1919.*

*Arrêté royal du 7 avril 1953.*

*Arrêté royal du 15 mars 1960 loi au sujet de la plate-forme continentale du 15 juin 1969.*

*Arrêté de l'exécutif régional wallon du 29 septembre 1982.*

*Arrêté de l'exécutif flamand du 30 mai 1984.*

## DENMARK

*Lov nr. 293 af 10. juni 1981 om anvendelse af Danmarks undergrund.*

*Lov om kontinentalsoklen, jf. lovbekendtgørelse nr. 182 af 1. maj 1979.*

## GERMANY

*Bundesberggesetz vom 13. August 1980, as last amended on 12 February 1990.*

## GREECE

*Law 87/1975 setting up DEP-EKY (Περί ιδρύσεως Δημοσίας Επιχειρήσεως Πετρελαίου).*

## SPAIN

*Ley sobre Investigación y Explotación de Hidrocarburos de 27 de Junio de 1974 and its implementing decrees.*

## FRANCE

*Code minier (décret 56-838 du 16 août 1956) amended by the loi 56-1327 du 29 décembre 1956, ordonnance 58-1186 du 10 décembre 1958, décret 60-800 du 2 août 1960, décret 61-359 du 7 avril 1961, loi 70-1 du 2 janvier 1970, loi 77-620 du 16 juin 1977, décret 80-204 du 11 mars 1980.*

## IRELAND

*Continental Shelf Act 1960.*

*Petroleum and Other Minerals Development Act 1960.*

*Ireland Exclusive Licensing Terms 1975.*

*Revised Licensing Terms 1987.*

*Petroleum (Production) Act (NI) 1964.*

## ITALY

*Legge 10 febbraio 1953, n. 136.*

*Legge 11 gennaio 1957, n. 6, modificata dalla legge 21 luglio 1967, n. 613.*

## LUXEMBOURG

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## NETHERLANDS

*Mijnwet nr. 285 van 21 april 1810.*

*Wet opsporing delfstoffen nr. 258 van 3 mei 1967.*

*Mijnwet continentaal plat 1965, nr. 428 van 23 september 1965.*

**▼B**

## PORTUGAL

*Decreto-Lei nº 543/74 de 16 de Outubro de 1974, nº 168/77 de 23 de Abril de 1977, nº 266/80 de 7 de Agosto de 1980, nº 174/85 de 21 de Maio de 1985 and Despacho nº 22 de 15 de Março de 1979.*

*Decreto-Lei nº 47973 de 30 de Setembro de 1967, nº 49369 de 11 de Novembro de 1969, nº 97/71 de 24 de Março de 1971, nº 96/74 de 13 de Março de 1974, nº 266/80 de 7 de Agosto de 1980, nº 2/81 de 7 de Janeiro de 1981 and nº 245/82 de 22 de Junho de 1982.*

## UNITED KINGDOM

*Petroleum (Production) Act 1934 as extended by the Continental Shelf Act 1964.*

Petroleum (Production) Act (Northern Ireland) 1964.

**▼A1**

## AUSTRIA

Berggesetz 1975 (BGBl. Nr. 259/1975).

## SWEDEN

Entities holding a concession for the prospection or exploitation of oil or gas under *minerallagen* (1991:45) or which have been granted an authorization pursuant to *lagen* (1966:314) *om kontinentalsockeln*.



## ANNEX V

## EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS

## BELGIUM

Entities exploring or extracting coal or other solid fuels pursuant to the *arrêté du Régent du 22 août 1948* and the *loi du 22 avril 1980*.

## DENMARK

Entities exploring or extracting coal or other solid fuels pursuant to the *lovbekendtgørelse nr. 531 af 10. oktober 1984*.

## GERMANY

Entities exploring or extracting coal or other solid fuels pursuant to the *Bundesberggesetz vom 13. August 1980*, as last amended on 12 February 1990.

## GREECE

Public Power Corporation *exploring or extracting* coal or other fuels pursuant to the *Mining code of 1973 as amended by the law of 27 April 1976*. Δημόσια Επιχείρηση Ηλεκτρισμού.

## SPAIN

Entities exploring or extracting coal or other solid fuels pursuant to *Ley 22/1973, de 21 de julio, de Minas*, as amended by *Ley 54/1980 de 5 de noviembre* and by *Real Decreto Legislativo 1303/1986, de 28 de junio*.

## FRANCE

Entities exploring extracting coal or other solid fuels pursuant to *code minier (décret 58-863 du 16 août 1956)*, as amended by the *loi 77-620 du 16 juin 1977, décret 80-204 et arrêté du 11 mars 1980*.

## IRELAND

*Bord na Mona*.

Entities prospecting or extracting coal pursuant to the *Minerals Development Acts, 1940 to 1970*.

## ITALY

*Carbo Sulcis SpA*

## LUXEMBOURG

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## NETHERLANDS

—

## PORTUGAL

*Empresa Carbonífera do Douro*.

*Empresa Nacional de Urânio*.

## UNITED KINGDOM

*British Coal Board (BCC)* set up pursuant to the *Coal Industry Nationalization Act 1946*.

Entities benefiting from a licence granted by the BCC pursuant to the *Coal Industry Nationalization Act 1946*.

*Entities exploring or extracting solid fuels pursuant to the Mineral Development Act (Northern Ireland) 1969*.

**▼A1****AUSTRIA**

Entities exploring for or extracting coal or other solid fuels pursuant to the *Berggesetz 1975 (BGBl. Nr. 259/1975)*.

**FINLAND**

Entities exploring for or extracting coal or other solid fuels and operating on the basis of an exclusive right pursuant to Articles 1 and 2 of *Laki oikeudesta luovuttaa valtion maaomaisuutta ja tuloatuottavia oikeuksia (687/78)*.

**SWEDEN**

Entities exploring or extracting coal or other solid fuels on the basis of a concession pursuant to *minerallogen (1991:45) or lagen (1985:620) om vissa torvfyndigheter* or which have been granted an authorization pursuant to *lagen (1966:314) om kontinentalsockeln*.



## ANNEX VI

## CONTRACTING ENTITIES IN THE FIELD OF RAILWAY SERVICES

## BELGIUM

*Société nationale des chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen.*

## DENMARK

*Danske Statsbaner (DSB)*

Entities operating set up pursuant to lov nr. 295 af 6. juni 1984 om privatbanerne, jf. lov nr. 245 af 6. august 1977.

## GERMANY

*Deutsche Bundesbahn*

Other entities providing railway services to the public as defined in paragraph 2 Abs. 1 of *Allgemeines Eisenbahngesetz* of 29 March 1951.

## GREECE

*Οργανισμός Σιδηροδρόμων Ελλάδος (ΟΣΕ)*. Organization of railways in Greece (OSE).

## SPAIN

*Red Nacional de Los Ferrocarriles Españoles.*

*Ferrocarriles de Vía Estrecha (FEVE).*

*Ferrocarrils de la Generalitat de Catalunya (FGC).*

*Eusko Trenbideak (Bilbao).*

*Ferrocarriles de la Generalitat Valenciana (FGV).*

## FRANCE

*Société nationale des chemins de fer français* and other *réseaux ferroviaires ouverts au public* referred to in the *loi d'orientation des transports intérieurs* du 30 décembre 1982, titre II, chapitre 1<sup>er</sup> du transport ferroviaire.

## IRELAND

*Iarnrod Éireann (Irish Rail).*

## ITALY

*Ferrovie dello Stato*

Entities providing railway services on the basis of a concession pursuant to Article 10 of *Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'Industria privata, le tramvie a trazione meccanica e gli automobili*.

Entities operating on the basis of a concession granted, pursuant to special laws, as referred to in *Titolo XI, Capo II, Sezione I* del *Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili*.

Entities providing railway services on the basis of a concession pursuant to Article 4 of *Legge 14 giugno 1949, n. 410 — Concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione*.

Entities or local authorities providing railway services on the basis of a concession pursuant to Article 14 of *Legge 2 agosto 1952, n. 1221 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione*.

## LUXEMBOURG

*Chemins de fer luxembourgeois (CFL).*

**▼B**

## NETHERLANDS

*Nederlandse Spoorwegen NV.*

## PORTUGAL

*Caminhos de Ferro Portugueses.*

## UNITED KINGDOM

*British Railways Board.*

*Northern Ireland Railways.*

**▼A1**

## AUSTRIA

Entities providing railway services pursuant to the *Eisenbahngesetz 1957 (BGBl. Nr. 60/1957)*.

## FINLAND

*Valtionrautatiet — Statsjärnvägarna* (State Railways).

## SWEDEN

Public entities operating railway services in accordance with *förordningen (1988:1379) om statens spåranläggningar* and *lagen (1990:1157) om järnvägssäkerhet*.

Regional and local public entities operating regional or local railway communications pursuant to *lagen (1978:438) om huvudmannaskap för viss kollektiv persontrafik*.

Private entities operating railway services pursuant to a permission under *förordningen (1988:1379) om statens spåranläggningar* where such permits correspond to Article 2 (3) of the Directive.



## ANNEX VII

**CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY,  
TRAMWAY, TROLLEYBUS OR BUS SERVICES**

## BELGIUM

*Société nationale des chemins de fer vicinaux (SNCV)/Nationale Maatschappij van Buurtspoorwegen (NMB)*

Entities providing transport services to the public on the basis of a contract granted by SNCV pursuant to Articles 16 and 21 of the *arrêté du 30 décembre 1946 relatif aux transports rémunérés de voyageurs par route effectués par autobus et par autocars*.

*Société des transports intercommunaux de Bruxelles (STIB),*

*Maatschappij van het Intercommunaal Vervoer te Antwerpen (MIVA),*

*Maatschappij van het Intercommunaal Vervoer te Gent (MIVG),*

*Société des transports intercommunaux de Charleroi (STIC),*

*Société des transports intercommunaux de la région liégeoise (STIL),*

*Société des transports intercommunaux de l'agglomération verviétoise (STIAV),* and other entities set up pursuant to the *loi relative à la création de sociétés de transports en commun urbains/Wet betreffende de oprichting van maatschappijen voor stedelijk gemeenschappelijk vervoer* of 22 February 1962.

Entities providing transport services to the public on the basis of a contract with STIB pursuant to *Article 10* or with other transport entities pursuant to *Article 11* of the *arrêté royal 140 du 30 décembre 1982 relatif aux mesures d'assainissement applicables à certains organismes d'intérêt public dépendant du ministère des communications*.

## DENMARK

*Danske Statsbaner (DSB)*

Entities providing bus services to the public (*almindelig rutekørsel*) on the basis of an authorization pursuant to *lov nr. 115 af 29. marts 1978 om buskørsel*.

## GERMANY

Entities providing, on the basis of an authorization, short-distance transport services to the public (*Öffentlichen Personennahverkehr*) pursuant to the *Persönbeförderungsgesetz vom 21. März 1961, as last amended on 25 July 1989*.

## GREECE

*Ηλεκτροκίνητα Λεωφορεία Περιοχής Αθηνών-Πειραιώς*, (Electric buses of the Athens — Piraeus area) operating pursuant to *decree 768/1970 and law 588/1977*.

*Ηλεκτρικοί Σιδηρόδρομοι Αθηνών-Πειραιώς*. (Athen-Piraeus electric railways) operating pursuant to *laws 352/1976 and 588/1977*.

*Επιχείρηση Αστικών Συγκοινωνιών*. (Enterprise of urban transport) operating pursuant to *law 588/1977*.

*Κοινό Ταμείο Εισπράξεως Λεωφορείων*. (Joint receipts fund of buses) operating pursuant to *decree 102/1973*.

*ΡΟΔΑ (Δημοτική Επιχείρηση Λεωφορείων Ρόδου)* Roda: Municipal bus enterprise in Rhodes.

*Οργανισμός Αστικών Συγκοινωνιών Θεσσαλονίκης*. (Urban transport organization of Thessaloniki) operating pursuant to *decree 3721/1957 and law 716/1980*.

## SPAIN

Entities providing transport services to the public pursuant to the *Ley de Régimen local*.

*Corporación metropolitana de Madrid*.

*Corporación metropolitana de Barcelona*.

## ▼B

Entities providing urban or inter-urban bus services to the public pursuant to Articles 113 to 118 of the *Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987*.

Entities providing bus services to the public, pursuant to Article 71 of the *Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987*.

FEVE, RENFE (or *Empresa Nacional de Transportes de Viajeros por Carretera*) providing bus services to the public pursuant to the *Disposiciones adicionales. Primera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957*.

Entities providing bus services to the public pursuant to *Disposiciones Transitorias, Tercera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957*.

## FRANCE

Entities providing transport services to the public pursuant to *article 7-11 of the loi n° 82-1153 du 30 décembre 1982, transports intérieurs, orientation*).

*Régie autonome des transports parisiens, Société nationale des chemins de fer français, APTF, and other entities providing transport services to the public on the basis of an authorization granted by the syndicat des transports parisiens pursuant to the ordonnance de 1959 et ses décrets d'application relatifs à l'organisation des transports de voyageurs dans la région parisienne.*

## IRELAND

*Iarnrod Éireann (Irish Rail).*

*Bus Éireann (Irish Bus).*

*Bus Átha Cliath (Dublin Bus).*

Entities providing transport services to the public pursuant to the amended *Road Transport Act 1932*.

## ITALY

Entities providing transport services of a concession pursuant to *Legge 28 settembre 1939, n. 1822 — Disciplina degli autoservizi di linea (autolinee per viaggiatori, bagagli e pacchi agricoli in regime di concessione all'industria privata) — Article 1 as modified by Article 45 of Decreto del Presidente della Repubblica 28 giugno 1955, n. 771*.

Entities providing transport services to the public pursuant to *Article 1 (15) of Regio Decreto 15 ottobre 1925, n. 2578 — Approvazione del Testo unico della legge sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province*.

Entities operating on the basis of a concession pursuant to *Article 242 or 255 of Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili*.

Entities or local authorities operating on the basis of a concession pursuant to *Article 4 of Legge 14 giugno 1949, n. 410, concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione*.

Entities operating on the basis of a concession pursuant to *Article 14 of Legge 2 agosto 1952, n. 1221 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione*.

## LUXEMBOURG

*Chemins de fer du Luxembourg (CFL).*

*Service communal des autobus municipaux de la ville de Luxembourg.*

*Transports intercommunaux du canton d'Esch-sur-Alzette (TICE).*

*Bus service undertakings operating pursuant to the règlement grand-ducal du 3 février 1978 concernant les conditions d'octroi des autorisations d'établissement et d'exploitation des services de transports routiers réguliers de personnes rémunérées.*

## NETHERLANDS

Entities providing transport services to the public pursuant to Chapter II (*Openbaar vervoer*) of the *Wet Personenvervoer van 12 maart 1987*.

▼ **B**

## PORTUGAL

*Rodoviaria Nacional, EP.*

*Companhia Carris de ferro de Lisboa.*

*Metropolitano de Lisboa, EP.*

*Serviços de Transportes Colectivos do Porto.*

*Serviços Municipalizados de Transporte do Barreiro.*

*Serviços Municipalizados de Transporte de Aveiro.*

*Serviços Municipalizados de Transporte de Braga.*

*Serviços Municipalizados de Transporte de Coimbra.*

*Serviços Municipalizados de Transporte de Portalegre.*

## UNITED KINGDOM

Entities providing bus services to the public pursuant to the *London Regional Transport Act 1984*.

*Glasgow Underground.*

*Greater Manchester Rapid Transit Company.*

*Docklands Light Railway.*

*London Underground Ltd.*

*British Railways Board.*

*Tyne and Wear Metro.*

▼ **A1**

## AUSTRIA

Entities providing transport services pursuant to the *Eisenbahngesetz 1957 (BGBl. Nr. 60/1957)* and the *Kraftfahrliniengesetz 1952 (BGBl. Nr. 84/1952)*.

## FINLAND

Public or private entities operating bus services according to '*Laki (343/91) luvanvaraisesta henkilöliikenteestä tiellä*' and *Helsingin kaupungin liikennelaitos — Helsingfors stads trafikverk* (Helsinki Transport Board), which provides metro and tramway services to the public.

## SWEDEN

Entities operating urban railway or tramway services according to *lagen (1978:438) om huvudmannaskap för viss kollektiv persontrafik* and *lagen (1990:1157) om järnvägssäkerhet*. Public or private entities operating a trolley bus or bus service in accordance with the *lagen (1978:438) om huvudmannaskap för viss kollektiv persontrafik* and *lagen (1983:293) om yrkestrafik*.



## ANNEX VIII

## CONTRACTING ENTITIES IN THE FIELD OF AIRPORT FACILITIES

## BELGIUM

*Régie des voies aériennes* set up pursuant to the *arrêté-loi du 20 novembre 1946 portant création de la régie des voies aériennes* amended by *arrêté royal du 5 octobre 1970 portant refonte du statut de la règle des voies aériennes*.

## DENMARK

Airports operating on the basis of an authorization pursuant to § 55, *stk. 1, lov om luftfart, jf. lovbekendtgørelse nr. 408 af 11. september 1985*.

## GERMANY

Airports as defined in Article 38 *Absatz 2 no* of the *Luftverkehrszulassungsordnung vom 19. März 1979*, as last amended by the *Verordnung vom 21. Juli 1986*.

## GREECE

Airports operating pursuant to law 517/1931 setting up the civil aviation service (*Υπηρεσία Πολιτικής Αεροπορίας (ΥΠΑ)*).

International airports operating pursuant to presidential decree 647/981.

## SPAIN

Airports managed by *Aeropuertos Nacionales* operating pursuant to the *Real Decreto 278/1982 de 15 de octubre de 1982*.

## FRANCE

*Aéroports de Paris* operating pursuant to *titre V, articles L 251-1 à 252-1 du code de l'aviation civile*.

*Aéroport de Bâle — Mulhouse*, set up pursuant to the *convention franco-suisse du 4 juillet 1949*.

Airports as defined in *article L 270-1, code de l'aviation civile*.

Airports operating pursuant to the *cahier de charges type d'une concession d'aéroport, décret du 6 mai 1955*.

Airports operating on the basis of a *convention d'exploitation* pursuant to *article L/221, code de l'aviation civile*.

## IRELAND

Airports of *Dublin, Cork and Shannon* managed by *Aer Rianta — Irish Airports*.

Airports operating on the basis of a *Public use License* granted, pursuant to the *Air Navigation and Transport Act No 23 1936*, the *Transport Fuel and Power Transfer of Departmental, Administration and Ministerial Functions Order 1959 (SI No 125 of 1959)* and the *Air Navigation (Aerodromes and Visual Ground Aids) Order 1970 (SI No 291 of 1970)*.

## ITALY

Civil Stat. airports (*aerodromi civili istituiti dallo Stato* referred to in Article 692 of the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327*.

Entities operating airport facilities on the basis of a concession granted pursuant to Article 694 of the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327*.

## LUXEMBOURG

*Aéroport de Findel*.

## NETHERLANDS

Airports operating pursuant to Articles 18 and following of the *Luchtvaartwet* of 15 January 1958, amended on 7 June 1978.

**▼B**

## PORTUGAL

Airports managed by *Aeroportos de Navegação Aérea (ANA)*, EP pursuant to *Decreto-Lei n° 246/79*.

*Aeroporto do Funchal* and *Aeroporto de Porto Santo*, regionalized pursuant to the *Decreto-Lei n° 284/81*.

## UNITED KINGDOM

Airports managed by *British Airports Authority plc*.

Airports which are *public limited companies (plc)* pursuant to the *Airports Act 1986*.

**▼A1**

## AUSTRIA

Austro Control GmbH

Entities as defined in Articles 60 to 80 of the *Luftfahrtgesetz 1957 (BGBl. Nr. 253/1957)*.

## FINLAND

Airports managed by '*Ilmailulaitos — Luftfartsverket*' pursuant to *Ilmailulaki (595/64)*.

## SWEDEN

Publicly owned and operated airports in accordance with *lagen (1957:297) om luftfart*.

Privately owned and operated airports with an exploitation permit under the act, where this permit corresponds to the criteria of Article 2 (3) of the Directive.



## ANNEX IX

**CONTRACTING ENTITIES IN THE FIELD OF MARITIME OR  
INLAND PORT OR OTHER TERMINAL FACILITIES**

## BELGIUM

*Société anonyme du canal et des installations maritimes de Bruxelles.*

*Port autonome de Liège.*

*Port autonome de Namur.*

*Port autonome de Charleroi.*

*Port de la ville de Gand.*

*La Compagnie des installations maritimes de Bruges — Maatschappij der Brugse haveninrichtingen.*

*Société intercommunale de la rive gauche de l'Escaut — Intercommunale maatschappij van de linker Scheldeoevers (Port d'Anvers).*

*Port de Nieuwport.*

*Port d'Ostende.*

## DENMARK

Ports as defined in Article 1, I to III of the *bekendtgørelse nr. 604 af 16. december 1985 om hvilke havne der er omfattet af lov om trafikhavne, jf. lov nr. 239 af 12. maj 1976 om trafikhavne.*

## GERMANY

Seaports owned totally or partially by territorial authorities (*Länder, Kreise, Gemeinden*).

Inland ports subject to the *Hafenordnung* pursuant to the *Wassergesetze der Länder*.

## GREECE

Piraeus port (*Οργανισμός Λιμένος Πειραιώς*) set up pursuant to Emergency Law 1559/1950 and Law 1630/1951.

Thessaloniki port (*Οργανισμός Λιμένος Θεσσαλονίκης*) set up pursuant to decree N.A. 2251/1953.

*Other ports governed by presidential decree 649/1977 (N.A. 649/1977) Εποπτεία, οργάνωση λειτουργίας, διοικητικός έλεγχος λιμένων.* (supervision, organization of functioning and administrative control).

## SPAIN

*Puerto de Huelva* set up pursuant to the *Decreto de 2 de octubre de 1969, nº 2380/69. Puertos y Faros. Otorga Régimen de Estatuto de Autonomía al Puerto de Huelva.*

*Puerto de Barcelona* set up pursuant to the *Decreto de 25 de agosto de 1978, nº 2407/78, Puertos y Faros. Otorga al de Barcelona Régimen de Estatuto de Autonomía.*

*Puerto de Bilbao* set up pursuant to the *Decreto de 25 de agosto de 1978, nº 2048/78. Puertos y Faros. Otorga al de Bilbao Régimen de Estatuto de Autonomía.*

*Puerto de Valencia* set up pursuant to the *Decreto de 25 de agosto de 1978, nº 2409/78. Puertos y Faros. Otorga al de Valencia Régimen de Estatuto de Autonomía.*

*Juntas de Puertos* operating pursuant to the *Lei 27/68 de 20 de junio de 1968; Puertos y Faros. Juntas de Puertos y Estatutos de Autonomía* and to the *Decreto de 9 de abril de 1970, nº 1350/70. Juntas de Puertos. Reglamento.*

Ports managed by the *Comisión Administrativa de Grupos de Puertos*, operating pursuant to the *Ley 27/68 de 20 de junio de 1968, Decreto 1958/78 de 23 de junio de 1978* and *Decreto 571/81 de 6 de mayo de 1981.*

Ports listed in the *Real Decreto 989/82 de 14 de mayo de 1982. Puertos. Clasificación de los de interés general.*

## ▼B

## FRANCE

*Port autonome de Paris* set up pursuant to *loi 68/917 du 24 octobre 1968 relative au port autonome de Paris*.

*Port autonome de Strasbourg* set up pursuant to the *convention du 20 mai 1923 entre l'État et la ville de Strasbourg relative à la constitution du port rhénan de Strasbourg et à l'exécution de travaux d'extension de ce port*, approved by the *loi du 26 avril 1924*.

Other inland waterway ports set up or managed pursuant to *article 6 (navigation intérieure)* of the *décret 69-140 du 6 février 1969 relatif aux concessions d'outillage public dans les ports maritimes*.

*Ports autonomes* operating pursuant to *articles L 111-1 et suivants* of the *code des ports maritimes*.

*Ports non autonomes* operating pursuant to *articles R 121-1 et suivants* of the *code des ports maritimes*.

Ports managed by regional authorities (*départements*) or operating pursuant to a concession granted by the regional authorities (*départements*) pursuant to *article 6* of the *loi 86-663 du 22 juillet 1983 complétant la loi 83-8 du 7 janvier 1983 relative à la répartition de compétences entre les communes, départements et l'État*.

## IRELAND

Ports operating pursuant to the *Harbour Acts 1946 to 1976*.

Port of *Dun Laoghaire* operating pursuant to the *State Harbours Act 1924*.

Port of *Rosslare Harbour* operating pursuant to the *Finguard and Rosslare Railways and Harbours Act 1899*.

## ITALY

State ports and other ports managed by the *Capitaneria di Porto* pursuant to the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 32*.

Autonomous ports (*enti portuali*) set up by special laws pursuant to *Article 19* of the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327*.

## LUXEMBOURG

*Port de Mertert* set up and operating pursuant to *loi du 22 juillet 1963 relative à l'aménagement et à l'exploitation d'un port fluvial sur la Moselle*.

## NETHERLANDS

*Havenbedrijven*, set up and operating pursuant to the *Gemeentewet van 29 juni 1851*.

*Havenschap Vlissingen*, set up by the *wet van 10 september 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Vlissingen*.

*Havenschap Terneuzen*, set up by the *wet van 8 april 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Terneuzen*.

*Havenschap Delfzijl*, set up by the *wet van 31 juli 1957 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Delfzijl*.

*Industrie- en havenschap Moerdijk*, set up by *gemeenschappelijke regeling tot oprichting van het Industrie- en havenschap Moerdijk van 23 oktober 1970*, approved by *Koninklijke Besluit nr. 23 van 4 maart 1972*.

## PORTUGAL

*Porto do Lisboa* set up pursuant to *Decreto Real do 18 de Fevereiro de 1907* and operating pursuant to *Decreto-Lei nº 36976 de 20 de Julho de 1948*.

*Porto do Douro e Leixões* set up pursuant to *Decreto-Lei nº 36977 de 20 de Julho de 1948*.

*Porto de Sines* set up pursuant to *Decreto-Lei nº 508/77 de 14 de Dezembro de 1977*.

*Portos de Setúbal, Aveiro, Figueira de Foz, Viana do Castelo, Portimão e Faro* operating pursuant to the *Decreto-Lei nº 37754 de 18 de Fevereiro de 1950*.

**▼B**

## UNITED KINGDOM

*Harbour Authorities* within the meaning of *Section 57 of the Harbours Act 1964* providing port facilities to carriers by sea or inland waterway.

**▼A1**

## AUSTRIA

Inland ports owned totally or partially by *Länder* and/or *Gemeinden*.

## FINLAND

Ports operating pursuant to *Laki kunnallisista satamajärjestyksistä ja liikennemaksuista (955/76)*.

Saimaa Canal (Saimaan kanavan hoitokunta).

## SWEDEN

Ports and terminal facilities according to *lagen (1983:293) om inrättande, utvidgning och avlysning av allmän farled och allmän hamn, the förordningen (1983:744) om trafiken på Göta kanal*.



## ANNEX X

# OPERATION OF TELECOMMUNICATIONS NETWORKS OR PROVISION OF TELECOMMUNICATIONS SERVICES

## BELGIUM

*Régie des télégraphes et des téléphones/Regie van Telegrafie en Telefonie.*

## DENMARK

*Kjøbenhavns Telefon Aktieselskab.*

*Jydsk Telefon.*

*Fyns Telefon.*

*Statens Teletjeneste.*

*Tele Sønderjylland.*

## GERMANY

*Deutsche Bundespost — Telekom.*

*Mannesmann — Mobilfunk GmbH.*

## GREECE

*OTE/Hellenic Telecommunications Organization.*

## SPAIN

*Compañía Telefónica Nacional de España.*

## FRANCE

*Direction générale des télécommunications.*

*Transpac.*

*Telecom service mobile.*

*Société française de radiotéléphone.*

## IRELAND

*Telecom Éireann.*

## ITALY

*Amministrazione delle poste e delle telecomunicazioni.*

*Azienda di stato per i servizi telefonici.*

*Società italiana per l'esercizio telefonico SpA.*

*Italcable.*

*Telespazio SpA.*

## LUXEMBOURG

*Administration des postes et télécommunications.*

## NETHERLANDS

*Koninklijke PTT Nederland NV and subsidiaries <sup>(1)</sup>.*

## PORTUGAL

*Telefones de Lisboa e Porto, SA.*

*Companhia Portuguesa Rádio Marconi.*

► C1 Telecom Portugal, SA ◄.

<sup>(1)</sup> Except PTT Post BV.

**▼B**

## UNITED KINGDOM

*British Telecommunications plc.*  
*Mercury Communications Ltd.*  
*City of Kingston upon Hull.*  
*Racal Vodafone.*  
*Telecoms Securicor Cellular Radio Ltd (Cellnet).*

**▼A1**

## AUSTRIA

*Österreichische Post- und Telegraphenverwaltung (PTV).*

## FINLAND

Entities operating subject to permits corresponding to the criteria of Article 2 (3) of the Directive (Article 4 of *Teletointalaki* (183/87, as amended by 676/92)).

## SWEDEN

Entities operating subject to permits corresponding to the criteria of Article 2 (3) of the Directive.



## ANNEX XI

**LIST OF PROFESSIONAL ACTIVITIES AS SET OUT IN THE GENERAL INDUSTRIAL  
CLASSIFICATION OF ECONOMIC ACTIVITIES WITHIN THE EUROPEAN COMMU-  
NITIES**

Classes	Groups	Subgroups and items	Description
50			<b>BUILDING AND CIVIL ENGINEERING</b>
	500		<b>General building and civil engineering work (without any particular specification) and demolition work</b>
		500.1	General building and civil engineering work (without any particular specification)
		500.2	Demolition work
	501		<b>Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential</b>
		501.1	General building contractors
		501.2	Roofings
		501.3	Construction of chimneys, kilns and furnaces
		501.4	Water-proofing and damp-proofing
		501.5	Restoration and maintenance of outside walls (repainting, cleaning, etc.)
		501.6	Erection and dismantlement of scaffolding
		501.7	Other specialized activities relating to construction work (including carpentry)
	502		<b>Civil engineering: construction of roads, bridges, railways, etc.</b>
		502.1	General civil engineering work
		502.2	Earth-moving (navvying)
		502.3	Construction of bridges, tunnels and shafts; drillings
		502.4	Hydraulic engineering (rivers, canals, harbours, flows, lochs and dams)
		502.5	Road-building (including specialized construction of airports and runways)
		502.6	Specialized construction work relating to water (i.e. to irrigation land drainage, water supply, sewage disposal, sewerage, etc.)
		502.7	Specialized activities in other areas of civil engineering
	503		<b>Installation (fittings and fixtures)</b>
		503.1	General installation work
		503.2	Gas fitting and plumbing, and the installation of sanitary equipment
		503.3	Installation of heating and ventilating apparatus (central heating, air-conditioning, ventilation)
		503.4	Sound and heat insulation; insulation against vibration
		503.5	Electrical fittings
		503.6	Installation of aerials, lightning conductors, telephones, etc.
	504		<b>Building completion work</b>
		504.1	General building completion work
		504.2	Plastering
		504.3	Joinery, primarily engaged in the after assembly and/or installation (including the laying of parquet flooring)

**▼B**

Classes	Groups	Subgroups and items	Description
		504.4	Painting, glazing and paper-hanging
		504.5	Tiling and otherwise covering floors and walls
		504.6	Other building completion work (putting in fireplaces, etc.)

## ▼M1

## ANNEX XII

## A. OPEN PROCEDURES

1. Name, address, telegraphic address, telephone number, telex and fax number of the contracting entity.

2. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).

Category of service within the meaning of Annex XVI A or XVI B and description (CPC classification).

Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.

3. Place of delivery, site or place of performance of service.

4. For supplies and works:

(a) nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work;

(b) indication of whether suppliers can tender for some and/or all of the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of magnitude of the different lots and the possibility of tendering for one, for several or for all of the lots;

(c) for works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

5. For services:

(a) nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

(b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;

(c) reference of the law, regulation or administrative provision;

(d) indication whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the services;

(e) indication whether suppliers can tender for a part of the services concerned.

6. Authorisation to submit variants.

7. Derogation from the use of European specifications, in accordance with Article 18(6).

8. Time limits for delivery or completion or duration of service contract and, as far as possible, the starting date.

9. (a) Address from which the contract documents and additional documents may be requested.

(b) Where appropriate, the amount and terms of payment of the sum to be paid to obtain such documents.

10. (a) Final date for receipt of tenders.

(b) Address to which they must be sent.

(c) Language or languages in which they must be drawn up.

11. (a) Where appropriate, the persons authorised to be present at the opening of tenders.

(b) Date, time and place of such opening.

12. Where appropriate, any deposits and guarantees required.

13. Main terms concerning financing and payment and/or references to the relevant provisions.

14. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or service providers to whom the contract is awarded.

**▼M1**

15. Minimum economic and technical conditions required of the supplier, contractor or provider to whom the contract is awarded.
16. Period during which the tenderer is bound to keep open his tender.
17. Criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.
18. Other information.
19. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.
20. Date of dispatch of the notice by the contracting entity.
21. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).

## ▼M1

## B. RESTRICTED PROCEDURES

1. Name, address, telegraphic address, telephone number, telex and fax number of the contracting entity.
2. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).  
  
Category of service within the meaning of Annex XVI A or XVI B and description (CPC classification).  
  
Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.
3. Place of delivery, site or place of performance of service.
4. For supplies and works:
  - (a) nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work.
  - (b) indication of whether suppliers can tender for some and/or all of the goods required.  
  
If, for works contracts, the work or the contract is subdivided into several lots, the order of magnitude of the different lots and possibility of tendering for one, for several or for all of the lots;
  - (c) for works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
5. For services:
  - (a) nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;
  - (c) reference of the law, regulation or administrative provision;
  - (d) indication whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the services;
  - (e) indication whether suppliers can tender for a part of the services concerned.
6. Authorisation to submit variants.
7. Derogation from the use of European specifications, in accordance with Article 18(6).
8. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
9. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or providers to whom the contract is awarded.
10. (a) Final date for receipt of requests to participate.  
(b) Address to which they must be sent.  
(c) Language or languages in which they must be drawn up.
11. Final date for dispatch of invitations to tender.
12. Where appropriate, any deposits and guarantees required.
13. Main terms concerning financing and payment and/or references to the texts in which these are contained.
14. Information concerning the supplier's, contractor's or provider's position and minimum economic and technical conditions required of him.
15. Criteria for the award of the contract where they are not mentioned in the invitation to tender.
16. Other information.

**▼M1**

17. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.
18. Date of dispatch of the notice by the contracting entities.
19. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).

## ▼M1

## C. NEGOTIATED PROCEDURES

1. Name, address, telegraphic address, telephone number, telex and fax number of the contracting entity.
2. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).

Category of service within the meaning of Annex XVI A or XVI B and description (CPC classification).

Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.

3. Place of delivery, site or place of performance of service.
4. For supplies and works:
  - (a) nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work.
  - (b) Indication of whether suppliers can tender for some and/or all of the goods required.  
If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots.
  - (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
5. For services:
  - (a) nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured.
  - (b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession,
  - (c) reference of the law, regulation or administrative provision,
  - (d) indication whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the services,
  - (e) indication whether suppliers can tender for a part of the services concerned.
6. Authorisation to submit variants.
7. Derogation from the use of European specifications, in accordance with Article 18(6).
8. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
9. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or providers to whom the contract is awarded.
10. (a) Final date for receipt of requests to participate.  
(b) Address to which they must be sent.  
(c) Language or languages in which they must be drawn up.
11. Where appropriate, any deposits and guarantees required.
12. Main terms concerning financing and payment and/or references to the texts in which these are contained.
13. Information concerning the supplier's, contractor's or service provider's position and minimum economic and technical conditions required of him.
14. Criteria for the award of the contract where they are not mentioned in the invitation to tender or the contract documents.
15. Where appropriate, the names and addresses of suppliers, contractors or service providers already selected by the contracting entity.
16. Where applicable, date(s) of previous publications in the *Official Journal of the European Communities*.

**▼M1**

17. Other information.
18. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.
19. Date of dispatch of the notice by the contracting entity.
20. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).

**▼M1***ANNEX XIII***NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM**

1. Name, address, telegraphic address, telephone number, telex and fax number of the contracting entity.
2. Purpose of the qualification system (description of the goods, services or works or categories thereof to be procured through the system).
3. Conditions to be fulfilled by suppliers, contractors and service providers in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested suppliers, contractors and service providers, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
4. Period of validity of the qualification system and the formalities for its renewal.
5. Reference to the fact that the notice acts as the call for competition.
6. Address where further information and documentation concerning the qualification system can be obtained (if different from the address mentioned under 1).
7. Any other relevant information.

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## ANNEX XIV

**PERIODIC INFORMATION NOTICE****I. HEADINGS TO BE COMPLETED IN ANY CASE**

1. Name, address, telegraphic address, telephone number, telex and fax number of the contracting entity or the service from which additional information may be obtained.
2. (a) For supply contracts: nature and quantity or value of the services or products to be supplied.  
(b) For works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work.  
(c) For service contracts: intended total procurement in each of the service categories listed in Annex XVI A.
3. Date of dispatch of the notice by the contracting entity.
4. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
5. Any other relevant information.

**II. INFORMATION WHICH MUST BE SUPPLIED WHERE THE NOTICE IS USED AS A MEANS OF CALLING FOR COMPETITION OR PERMITS REDUCTION OF THE DEADLINES FOR THE RECEIPT OF CANDIDATURES OR TENDERS**

6. A reference to the fact that interested suppliers must advise the entity of their interest in the contract or contracts.
7. Deadline for the receipt of applications for an invitation to tender.

**III. INFORMATION TO BE SUPPLIED, IN SO FAR AS SUCH INFORMATION IS AVAILABLE, WHERE THE NOTICE IS USED AS A MEANS OF CALLING FOR COMPETITION OR PERMITS REDUCTION OF THE DEADLINES FOR THE RECEIPT OF CANDIDATURES OR TENDERS**

8. Nature and quantity of the goods to be supplied or general nature of the work or category of service within the meaning of Annex XVI A and description (CPC classification), stating if framework agreement(s) are envisaged, including any options for further procurement and an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, an estimate of the timing of the subsequent calls for competition.
9. State whether tenders are requested for purchase, lease, rental or hire-purchase or any combination of these.
10. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
11. Address to which interested undertakings should send their expressions of interest in writing.  
  
Final date for receipt of expressions of interest.  
  
Language or languages authorised for the presentation of candidatures or tenders.
12. Economic and technical conditions, and financial and technical guarantees required of suppliers.
13. (a) Provisional date, if known, for commencing the procedures for awarding the contract or contracts.  
(b) Type of award procedure (restricted or negotiated).  
(c) The amount of and payment details for any sum to be paid to obtain documents concerning the consultation.

## ▼M1

## ANNEX XV

## NOTICE ON CONTRACTS AWARDED

I. INFORMATION FOR PUBLICATION IN THE *OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES*<sup>(1)</sup>

1. Name and address of the contracting entity.
2. Nature of the contract (supplies, works or services; where appropriate state if it is a framework agreement).
3. At least a summary indication of the nature and quantity of the products, works or services provided.
4. (a) Form of the call for competition (notice on the existence of a qualification procedure; periodic information notice; call for tenders).  
(b) Reference of publication of the notice in the *Official Journal of the European Communities*.  
(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 20(2), or Article 16.
5. Award procedure (open, restricted or negotiated).
6. Number of tenders received.
7. Date of award of the contract.
8. Price paid for bargain purchases pursuant to Article 20(2)(j).
9. Name and address of supplier(s), contractor(s) or service provider(s).
10. State, where appropriate, whether the contract has been, or may be, subcontracted.
11. Price paid or the prices of the highest and lowest offers taken into account in the award of the contract.
12. Optional information:
  - value and share of the contract which may be subcontracted to third parties,
  - award criteria.

## II. INFORMATION NOT INTENDED FOR PUBLICATION

13. Number of contracts awarded (where an award has been split between more than one supplier).
14. Value of each contract awarded.
15. Country of origin of the product or service (Community origin or non-Community origin; if the latter, broken down by third country).
16. Was recourse made to the exceptions to the use of European specifications provided for under Article 18(6). If so, which?
17. Which award criteria were used (most economically advantageous; lowest price; criteria permitted pursuant to Article 35)?
18. Was the contract awarded to a bidder who submitted a variant, in accordance with Article 34(3)?
19. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 34(5)?
20. Date of transmission of the notice by the contracting entity.
21. In the case of contracts for services listed in Annex XVI B, agreement by the contracting entity to publication of the notice (Article 24(3)).

<sup>(1)</sup> Information in headings 6, 9 and 11 is deemed information not intended for publication where the awarding entity considers that publication thereof might be detrimental to a sensitive commercial interest.



## ANNEX XVI A

## SERVICES IN THE SENSE OF ARTICLE 15

Category	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>	ex81 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 consulting 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, 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 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 entity for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting entity.

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



## ANNEX XVI B

## SERVICES IN THE SENSE OF ARTICLE 16

Category	Subject	CPC reference No
17	Hotel and restaurant services	64
18	Transport services by rail	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	

*ANNEX XVII***DESIGN CONTEST NOTICES**

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting entity and of the service from which the relevant 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 envisaged number of participants, or range;
  - (b) where applicable, names of already selected participants;
  - (c) the criteria to be applied in the selection of participants;
  - (d) final date for receipt of requests to participate.
6. Where applicable, indication whether participation is reserved to a particular profession.
7. Criteria to be applied in the evaluation of projects.
8. Where applicable, names of selected members of the jury.
9. Indication whether the decision of the jury is binding for the authority.
10. Where applicable, the number and value of the prizes to be awarded.
11. Where applicable, details on payments to all participants.
12. Indication whether the prizewinners are entitled to be awarded 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.

*ANNEX XVIII***RESULTS OF DESIGN CONTESTS**

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting entity.
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.