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► **B**      **DIRECTIVE 2004/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 31 March 2004**  
**coordinating the procurement procedures of entities operating in the water, energy, transport and**  
**postal services sectors**

(OJ L 134, 30.4.2004, p. 1)

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	Official Journal		
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► <b><u>M1</u></b> Commission Regulation (EC) No 1874/2004 of 28 October 2004	L 326	17	29.10.2004
► <b><u>M2</u></b> Commission Directive 2005/51/EC of 7 September 2005	L 257	127	1.10.2005
► <b><u>M3</u></b> Commission Regulation (EC) No 2083/2005 of 19 December 2005	L 333	28	20.12.2005

Corrected by:

- **C1** Corrigendum, OJ L 358, 3.12.2004, p. 35 (2004/17/EC)



**DIRECTIVE 2004/17/EC OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL**

**of 31 March 2004**

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the Opinion of the Economic and Social Committee <sup>(2)</sup>,

Having regard to the Opinion of the Committee of the Regions <sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(4)</sup>, in the light of the joint text approved by the Conciliation Committee on 9 December 2003,

Whereas:

- (1) On the occasion of new amendments being made to Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors <sup>(5)</sup>, which are necessary to meet requests for simplification and modernisation made by contracting entities and economic operators alike in their responses to the Green Paper adopted by the Commission on 27 November 1996, the Directive should, in the interests of clarity, be recast. This Directive is based on Court of Justice case-law, in particular case-law on award criteria, which clarifies the possibilities for the contracting entities to meet the needs of the public concerned, including in the environmental and/or social area, provided that such criteria are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the contracting entity, are expressly mentioned and comply with the fundamental principles mentioned in recital 9.
- (2) One major reason for the introduction of rules coordinating procedures for the award of contracts in these sectors is the variety of ways in which national authorities can influence the behaviour of these entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies.
- (3) Another main reason why it is necessary to coordinate procurement procedures applied by the entities operating in these sectors is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the service concerned.
- (4) Community legislation, and in particular Council Regulation (EEC) No 3975/87 of 14 December 1987 laying

<sup>(1)</sup> OJ C 29 E, 30.1.2001, p. 112 and OJ C 203 E, 27.8.2002, p. 183.

<sup>(2)</sup> OJ C 193, 10.7.2001, p. 1.

<sup>(3)</sup> OJ C 144, 16.5.2001, p. 23.

<sup>(4)</sup> Opinion of the European Parliament of 17 January 2002 (OJ C 271 E, 7.11.2002, p. 293), Council Common Position of 20 March 2003 (OJ C 147 E, 24.6.2003, p. 137) and Position of the European Parliament of 2 July 2003 (not yet published in the Official Journal). Legislative Resolution of the European Parliament of 29 January 2004 and Decision of the Council of 2 February 2004.

<sup>(5)</sup> OJ L 199, 9.8.1993, p. 84. Directive as last amended by Commission Directive 2001/78/EC (OJ L 285, 29.10.2001, p. 1).

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down the procedure for the application of the rules on competition to undertakings in the air transport sector <sup>(1)</sup> and Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector <sup>(2)</sup>, is designed to introduce more competition between carriers providing air transport services to the public. It is therefore not appropriate to include such entities in the scope of this Directive. In view of the competitive position of Community shipping, it would also be inappropriate to make the contracts awarded in this sector subject to the rules of this Directive.

- (5) The scope of Directive 98/38/EEC covers, at present, certain contracts awarded by contracting entities operating in the telecommunications sector. A legislative framework, as mentioned in the Fourth report on the implementation of the telecommunications regulations of 25 November 1998, has been adopted to open this sector. One of its consequences has been the introduction of effective competition, both de jure and de facto, in this sector. For information purposes, and in the light of this situation, the Commission has published a list of telecommunications services <sup>(3)</sup> which may already be excluded from the scope of that Directive by virtue of Article 8 thereof. Further progress has been confirmed in the Seventh report on the implementation of telecommunications regulations of 26 November 2001. It is therefore no longer necessary to regulate purchases by entities operating in this sector.
- (6) It is therefore no longer appropriate to maintain the Advisory Committee on Telecommunications Procurement set up by Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy transport and telecommunications sectors <sup>(4)</sup>.
- (7) Nevertheless, it is appropriate to continue to monitor developments in the telecommunications sector and to reconsider the situation if it is established that there is no longer effective competition in that sector.
- (8) Directive 93/38/EEC excludes from its scope purchases of voice telephony, telex, mobile telephone, paging and satellite services. Those exclusions were introduced to take account of the fact that the services in question could frequently be provided only by one service provider in a given geographical area because of the absence of effective competition and the existence of special or exclusive rights. The introduction of effective competition in the telecommunications sector removes the justification for these exclusions. It is therefore necessary to include the procurement of such telecommunications services in the scope of this Directive.
- (9) In order to guarantee the opening up to competition of public procurement contracts awarded by entities operating in the water, energy, transport and postal services sectors, it is advisable to draw up provisions for Community coordination of contracts above a certain value. Such coordination is based on the requirements inferable from Articles 14, 28 and 49 of the EC Treaty and from Article 97 of the Euratom Treaty, namely the principle of equal treatment, of which the principle of non-discrimination is no more than a specific expression, the principle of mutual recognition, the principle of proportionality, as well as the principle of transparency. In view of the nature of the sectors affected by such coordination, the latter should, while safeguarding the application

<sup>(1)</sup> OJ L 374, 31.12.1987, p. 1. Regulation as last amended by Regulation (EC) No 1/2003 (OJ L 1, 4.1.2003, p. 1).

<sup>(2)</sup> OJ L 374, 31.12.1987, p. 9. Regulation as last amended by the 1994 Act of Accession.

<sup>(3)</sup> OJ C 156, 3.6.1999, p. 3.

<sup>(4)</sup> OJ L 297, 29.10.1990, p. 1. Directive as last amended by Directive 94/22/EC of the European Parliament and of the Council (OJ L 164, 30.6.1994, p. 3).

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of those principles, establish a framework for sound commercial practice and should allow maximum flexibility.

For public contracts the value of which is lower than that triggering the application of provisions of Community coordination, it is advisable to recall the case-law developed by the Court of Justice according to which the rules and principles of the Treaties referred to above apply.

- (10) To ensure a real opening up of the market and a fair balance in the application of procurement rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 295 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.
- (11) Member States should ensure that the participation of a body governed by public law as a tenderer in a procedure for the award of a contract does not cause any distortion of competition in relation to private tenderers.
- (12) Under Article 6 of the Treaty, environmental protection requirements are to be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of the Treaty, in particular with a view to promoting sustainable development. This Directive therefore clarifies how the contracting entities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts.
- (13) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public morality, public policy, public security, health, human and animal life or the preservation of plant life, in particular with a view to sustainable development, provided that these measures are in conformity with the Treaty.
- (14) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) <sup>(1)</sup>, approved in particular the WTO Agreement on Government Procurement (hereinafter referred to as the 'Agreement'), the aim of which is to establish a multilateral framework of balanced rights and obligations relating to public contracts with the aim of achieving the liberalisation and expansion of world trade. In view of the international rights and commitments devolving on the Community as a result of the acceptance of the Agreement, the arrangements to be applied to tenderers and products from signatory third countries are those defined by the Agreement. The Agreement does not have direct effect. The contracting entities covered by the Agreement which comply with this Directive and which apply the latter to economic operators of third countries which are signatories to the Agreement should therefore be in conformity with the Agreement. It is also appropriate that this Directive should guarantee for Community economic operators conditions for participation in public procurement which are just as favourable as those reserved for economic operators of third countries which are signatories to the Agreement.
- (15) Before launching a procurement procedure, contracting entities may, using a technical dialogue, seek or accept advice which may be used in the preparation of the specifications, provided,

<sup>(1)</sup> OJ L 336, 23.12.1994, p. 1.

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however, that such advice does not have the effect of precluding competition.

- (16) In view of the diversity of works contracts, contracting entities should be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. It is not the intention of this Directive to prescribe either joint or separate contract awards. The decision to award contracts separately or jointly should be determined by qualitative and economic criteria, which may be defined by national law.

A contract may be considered to be a works contract only if its subject-matter specifically covers the execution of activities listed in Annex XII, even if the contract covers the provision of other services necessary for the execution of such activities. Service contracts, in particular in the sphere of property management services, may in certain circumstances include works. However, insofar as such works are incidental to the principal subject-matter of the contract, and are a possible consequence thereof or a complement thereto, the fact that such works are included in the contract does not justify the qualification of the contract as a works contract.

For the purpose of calculating the estimated value of a works contract it is appropriate to take as a basis the value of the works themselves as well as the estimated value of supplies and services, if any, that the contracting entities place at the disposal of contractors, insofar as these services or supplies are necessary for the execution of the works in question. It should be understood that, for the purposes of this paragraph, the services concerned are those rendered by the contracting entities through their own personnel. On the other hand, calculation of the value of services contracts, whether or not to be placed at the disposal of a contractor for the subsequent execution of works, follows the rules applicable to service contracts.

- (17) The field of services is best delineated, for the purpose of applying the procedural rules of this Directive and for monitoring purposes, by subdividing it into categories corresponding to particular headings of a common classification and by bringing them together in two Annexes, XVII A and XVII B, according to the regime to which they are subject. As regards services in Annex XVII B, the relevant provisions of this Directive should be without prejudice to the application of Community rules specific to the services in question.
- (18) As regards service contracts, full application of this Directive should be limited, for a transitional period, to contracts where its provisions will permit the full potential for increased cross-frontier trade to be realised. Contracts for other services need to be monitored during this transitional period before a decision is taken on the full application of this Directive. In this respect, the mechanism for such monitoring needs to be defined. This mechanism should, at the same time, enable interested parties to have access to the relevant information.
- (19) Obstacles to the free provision of services should be avoided. Therefore, service providers may be either natural or legal persons. This Directive should not, however, prejudice the application, at national level, of rules concerning the conditions for the pursuit of an activity or a profession, provided that they are compatible with Community law.
- (20) Certain new electronic purchasing techniques are continually being developed. Such techniques help to increase competition and streamline public purchasing, particularly in terms of the savings in time and money which their use will allow. Contracting entities may make use of electronic purchasing techniques, provided that such use complies with the rules of this Directive and the principles of equal treatment, non-discrimination and transparency. To that extent, a tender submitted by a tenderer, in particular under a framework agreement or where a

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dynamic purchasing system is being used, may take the form of that tenderer's electronic catalogue if the latter uses the means of communication chosen by the contracting entity in accordance with Article 48.

- (21) In view of the rapid expansion of electronic purchasing systems, appropriate rules should now be introduced to enable contracting entities to take full advantage of the possibilities afforded by these systems. Against this background, it is necessary to define a completely electronic dynamic purchasing system for commonly used purchases and to lay down specific rules for setting up and operating such a system in order to ensure the fair treatment of any economic operator who wishes to join. Any economic operator which submits an indicative tender in accordance with the specification and meets the selection criteria should be allowed to join such a system. This purchasing technique allows the contracting entity, through the establishment of a list of tenderers already selected and the opportunity given to new tenderers to join, to have a particularly broad range of tenders, as a result of the electronic facilities available, and hence to ensure optimum use of funds through broad competition.
- (22) Since use of the technique of electronic auctions is likely to increase, such auctions should be given a Community definition and be governed by specific rules in order to ensure that they operate fully in accordance with the principles of equal treatment, non-discrimination and transparency. To that end, provision should be made for such electronic auctions to deal only with contracts for works, supplies or services for which the specifications can be determined with precision. Such may in particular be the case for recurring supplies, works and service contracts. With the same objective, it should also be possible to establish the respective ranking of the tenderers at any stage of the electronic auction. Recourse to electronic auctions enables contracting entities to ask tenderers to submit new prices, revised downwards, and, when the contract is awarded to the most economically advantageous tender, also to improve elements of the tenders other than prices. In order to guarantee compliance with the principle of transparency, only the elements suitable for automatic evaluation by electronic means, without any intervention and/or appreciation by the contracting entity, may be the object of electronic auctions, that is, only the elements which are quantifiable so that they can be expressed in figures or percentages. On the other hand, those aspects of tenders which imply an appreciation of non-quantifiable elements should not be the object of electronic auctions. Consequently, certain works contracts and certain service contracts having as their subject-matter intellectual performances, such as the design of works, should not be the object of electronic auctions.
- (23) Certain centralised purchasing techniques have been developed in Member States. Several contracting authorities are responsible for making acquisitions or awarding contracts/framework agreements for contracting entities. In view of the large volumes purchased, those techniques help increase competition and streamline public purchasing. Provision should therefore be made for a Community definition of central purchasing bodies used by contracting entities. A definition should also be given of the conditions under which, in accordance with the principles of non-discrimination and equal treatment, contracting entities purchasing works, supplies and/or services through a central purchasing body may be deemed to have complied with this Directive.
- (24) In order to take account of the different circumstances obtaining in Member States, Member States should be allowed to choose whether contracting entities may use central purchasing bodies, dynamic purchasing systems or electronic auctions, as defined and regulated by this Directive.
- (25) There has to be an appropriate definition of the concept of special or exclusive rights. The consequence of the definition is that the



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fact that, for the purpose of constructing networks or port or airport facilities, an entity may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over the public highway will not in itself constitute exclusive or special rights within the meaning of this Directive. Nor does the fact that an entity supplies drinking water, electricity, gas or heat to a network which is itself operated by an entity enjoying special or exclusive rights granted by a competent authority of the Member State concerned in itself constitute an exclusive or special right within the meaning of this Directive. Nor may rights granted by a Member State in any form, including by way of acts of concession, to a limited number of undertakings on the basis of objective, proportionate and non-discriminatory criteria that allow any interested party fulfilling those criteria to enjoy those rights be considered special or exclusive rights.

- (26) It is appropriate for the contracting entities to apply common procurement procedures in respect of their activities relating to water and for such rules also to apply where contracting authorities within the meaning of this Directive award contracts in respect of their projects in the field of hydraulic engineering, irrigation, land drainage or the disposal and treatment of sewage. However, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area in which it will be used.
- (27) Certain entities providing bus transport services to the public were already excluded from the scope of Directive 93/38/EEC. Such entities should also be excluded from the scope of this Directive. In order to forestall the existence of a multitude of specific arrangements applying to certain sectors only, the general procedure that permits the effects of opening up to competition to be taken into account should also apply to all entities providing bus transport services that are not excluded from the scope of Directive 93/38/EEC pursuant to Article 2(4) thereof.
- (28) Taking into account the further opening up of Community postal services to competition and the fact that such services are provided through a network by contracting authorities, public undertakings and other undertakings, contracts awarded by contracting entities providing postal services should be subject to the rules of this Directive, including those in Article 30, which, safeguarding the application of the principles referred to in recital 9, create a framework for sound commercial practice and allow greater flexibility than is offered by Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>(1)</sup>. For a definition of the activities in question, it is necessary to take into account the definitions of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service<sup>(2)</sup>.

Whatever their legal status, entities providing postal services are not currently subject to the rules set out in Directive 93/38/EEC. The adjustment of contract award procedures to this Directive could therefore take longer to implement for such entities than for entities already subject to those rules which will merely have to adapt their procedures to the amendments made by this Directive. It should therefore be permissible to defer application of this Directive to accommodate the additional time required for this adjustment. Given the varying situations of such entities, Member States should have the option of providing for a transitional

<sup>(1)</sup> See page 114 of this Official Journal.

<sup>(2)</sup> OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

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period for the application of this Directive to contracting entities operating in the postal services sector.

- (29) Contracts may be awarded for the purpose of meeting the requirements of several activities, possibly subject to different legal regimes. It should be clarified that the legal regime applicable to a single contract intended to cover several activities should be subject to the rules applicable to the activity for which it is principally intended. Determination of the activity for which the contract is principally intended may be based on an analysis of the requirements which the specific contract must meet, carried out by the contracting entity for the purposes of estimating the contract value and drawing up the tender documents. In certain cases, such as the purchase of a single piece of equipment for the pursuit of activities for which information allowing an estimation of the respective rates of use would be unavailable, it might be objectively impossible to determine for which activity the contract is principally intended. The rules applicable to such cases should be indicated.
- (30) Without prejudice to the international commitments of the Community, it is necessary to simplify the implementation of this Directive, particularly by simplifying the thresholds and by rendering applicable to all contracting entities, regardless of the sector in which they operate, the provisions regarding the information to be given to participants concerning decisions taken in relation to contract award procedures and the results thereof. Furthermore, in the context of Monetary Union, such thresholds should be established in euro in such a way as to simplify the application of these provisions while at the same time ensuring compliance with the thresholds laid down in the Agreement, which are expressed in Special Drawing Rights (SDR). In this context, provision should also be made for periodic reviews of the thresholds expressed in euro so as to adjust them, where necessary, in line with possible variations in the value of the euro in relation to the SDR. In addition, the thresholds applicable to design contests should be identical to those applicable to service contracts.
- (31) Provision should be made for cases in which it is possible to refrain from applying the measures for coordinating procedures on grounds relating to State security or secrecy, or because specific rules on the awarding of contracts which derive from international agreements, relating to the stationing of troops, or which are specific to international organisations are applicable.
- (32) It is appropriate to exclude certain service, supply and works contracts awarded to an affiliated undertaking having as its principal activity the provision of such services, supply or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service, supply and works contracts awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded contracts without calls for competition, the composition of joint ventures and the stability of links between these joint ventures and the contracting entities of which they are composed.
- (33) In the context of services, contracts for the acquisition or rental of immovable property or rights to such property have particular characteristics which make the application of procurement rules inappropriate.



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- (34) Arbitration and conciliation services are usually provided by bodies or individuals designated or selected in a manner which cannot be governed by procurement rules.
- (35) In accordance with the Agreement, the financial services covered by this Directive do not include contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments; in particular, transactions by the contracting entities to raise money or capital are not covered.
- (36) This Directive should cover the provision of services only where based on contracts.
- (37) Pursuant to Article 163 of the Treaty, the encouragement of research and technological development is a means of strengthening the scientific and technological basis of Community industry, and the opening up of service contracts contributes to this end. This Directive should not cover the cofinancing of research and development programmes: research and development contracts other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity, are therefore not covered by this Directive.
- (38) To forestall the proliferation of specific arrangements applicable to certain sectors only, the current special arrangements created by Article 3 of Directive 93/38/EEC and Article 12 of Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons<sup>(1)</sup> governing entities exploiting a geographical area for the purpose of exploring for or extracting oil, gas, coal or other solid fuels should be replaced by the general procedure allowing for exemption of sectors directly exposed to competition. It has to be ensured, however, that this will be without prejudice to Commission Decision 93/676/EEC of 10 December 1993 establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the Netherlands an activity defined by Article 2(2)(b)(i) of Council Directive 90/531/EEC and that entities carrying on such an activity are not to be considered in the Netherlands as operating under special or exclusive rights within the meaning of Article 2(3)(b) of the Directive<sup>(2)</sup>, Commission Decision 97/367/EC of 30 May 1997 establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the United Kingdom an activity defined by Article 2(2)(b)(i) of Council Directive 93/38/EEC and that entities carrying on such an activity are not to be considered in the United Kingdom as operating under special or exclusive rights within the meaning of Article 2(3)(b) of the Directive<sup>(3)</sup>, Commission Decision 2002/205/EC of 4 March 2002 following a request by Austria applying for the special regime provided for in Article 3 of Directive 93/38/EEC<sup>(4)</sup> and Commission Decision 2004/73/EC on a request from Germany to apply the special procedure laid down in Article 3 of Directive 93/38/EEC<sup>(5)</sup>.
- (39) Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute to integration in society. In this context, sheltered workshops and sheltered employment programmes contribute efficiently towards the integration or reintegration of people with disabilities in the labour market. However, such workshops might not be able to obtain contracts under normal conditions of competition. Consequently, it is

<sup>(1)</sup> OJ L 164, 30.6.1994, p. 3.

<sup>(2)</sup> OJ L 316, 17.12.1993, p. 41.

<sup>(3)</sup> OJ L 156, 13.6.1997, p. 55.

<sup>(4)</sup> OJ L 68, 12.3.2002, p. 31.

<sup>(5)</sup> OJ L 16, 23.1.2004, p.57.

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appropriate to provide that Member States may reserve the right to participate in award procedures for contracts to such workshops or reserve performance of contracts to the context of sheltered employment programmes.

- (40) This Directive should apply neither to contracts intended to permit the performance of an activity referred to in Articles 3 to 7 nor to design contests organised for the pursuit of such an activity if, in the Member State in which this activity is carried out, it is directly exposed to competition on markets to which access is not limited. It is therefore appropriate to introduce a procedure, applicable to all sectors covered by this Directive, that will enable the effects of current or future opening up to competition to be taken into account. Such a procedure should provide legal certainty for the entities concerned, as well as an appropriate decision-making process, ensuring, within short time limits, uniform application of Community law in this area.
- (41) Direct exposure to competition should be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. The implementation and application of appropriate Community legislation opening a given sector, or a part of it, will be considered to provide sufficient grounds for assuming there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. When updating, the Commission takes in particular into account the possible adoption of measures entailing a genuine opening up to competition of sectors other than those for which a legislation is already mentioned in Annex XI, such as that of railway transports. Where free access to a given market does not result from the implementation of appropriate Community legislation, it should be demonstrated that, *de jure* and *de facto*, such access is free. For this purpose, application by a Member State of a Directive, such as Directive 94/22/EC opening up a given sector to competition, to another sector, such as the coal sector, is a circumstance to be taken into account for the purposes of Article 30.
- (42) The technical specifications drawn up by purchasers should allow public procurement to be opened up to competition. To this end, it should be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it should be possible to draw up the technical specifications in terms of functional performance and requirements and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety should be considered by the contracting entities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Contracting entities should be able to provide a reason for any decision that equivalence does not exist in a given case. Contracting entities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics, such as a given production method, and/or specific environmental effects of product groups or services. They may use, but are not obliged to use appropriate specifications that are defined in eco-labels, such as the European Eco-label, (multi-) national eco-labels or any other eco-label provided that the requirements for the label are drawn up and adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and provided that the label is accessible and available to all interested parties. Contracting entities should, whenever possible, lay down technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users. The technical specifications should be clearly indicated, so that all tenderers know what the requirements established by the contracting entity cover.

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- (43) In order to encourage the involvement of small and medium-sized undertakings in the public contracts procurement market, it is advisable to include provisions on subcontracting.
- (44) Contract performance conditions are compatible with the Directive provided that they are not directly or indirectly discriminatory and are indicated in the notice used to make the call for competition, or in the specifications. They may in particular be intended to encourage on-site vocational training, the employment of people experiencing particular difficulty in integration, the fight against unemployment or the protection of the environment. For example, mention may be made of the requirements — applicable during the performance of the contract — to recruit long-term job-seekers or to implement training measures for the unemployed or for young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation.
- (45) The laws, regulations and collective agreements, at both national and Community level, which are in force in the areas of employment conditions and safety at work apply during the performance of a contract, provided that such rules, and their application, comply with Community law. In cross-border situations where workers from one Member State provide services in another Member State for the purpose of performing a contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>(1)</sup> lays down the minimum conditions which must be observed by the host country in respect of such posted workers. If national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a contract.
- (46) In view of new developments in information and telecommunications technology, and the simplifications these can bring in terms of publicising contracts and the efficiency and transparency of procurement procedures, electronic means should be put on a par with traditional means of communication and information exchange. As far as possible, the means and technology chosen should be compatible with the technologies used in the other Member States.
- (47) The use of electronic means leads to savings in time. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Community level. However, it is necessary to ensure that the cumulative effect of reductions of time limits does not lead to excessively short time limits.
- (48) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures<sup>(2)</sup> and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on electronic commerce')<sup>(3)</sup> should, in the context of this Directive, apply to the transmission of information by electronic means. The public procurement procedures and the rules applicable to service contests require a level of security and confidentiality higher than that required by these Directives. Accordingly, the

<sup>(1)</sup> OJ L 18, 21.1.1997, p. 1.

<sup>(2)</sup> OJ L 13, 19.1.2000, p. 12.

<sup>(3)</sup> OJ L 178, 17.7.2000, p. 1.

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devices for the electronic receipt of offers, requests to participate and plans and projects should comply with specific additional requirements. To this end, use of electronic signatures, in particular advanced electronic signatures, should, as far as possible, be encouraged. Moreover, the existence of voluntary accreditation schemes could constitute a favourable framework for enhancing the level of certification service provision for these devices.

- (49) It is appropriate that the participants in an award procedure are informed of decisions to conclude a framework agreement or to award a contract or to abandon the procedure within time limits that are sufficiently short so as not to render the lodging of requests for review impossible; this information should therefore be given as soon as possible and in general within 15 days following the decision.
- (50) It should be clarified that contracting entities which establish selection criteria in an open procedure should do so in accordance with objective rules and criteria, just as the selection criteria in restricted and negotiated procedures should be objective. These objective rules and criteria, just as the selection criteria, do not necessarily imply weightings.
- (51) It is important to take into account Court of Justice case-law in cases where an economic operator claims the economic, financial or technical capabilities of other entities, whatever the legal nature of the link between itself and those entities, in order to meet the selection criteria or, in the context of qualification systems, in support of its application for qualification. In the latter case, it is for the economic operator to prove that those resources will actually be available to it throughout the period of validity of the qualification. For the purposes of that qualification, a contracting entity may therefore determine the level of requirements to be met and in particular, for example where the operator lays claim to the financial standing of another entity, it may require that that entity be held liable, if necessary jointly and severally.

Qualification systems should be operated in accordance with objective rules and criteria, which, at the contracting entities' choice, may concern the capacities of the economic operators and/or the characteristics of the works, supplies or services covered by the system. For the purposes of qualification, contracting entities may conduct their own tests in order to evaluate the characteristics of the works, supplies or services concerned, in particular in terms of compatibility and safety.

- (52) The relevant Community rules on mutual recognition of diplomas, certificates or other evidence of formal qualifications apply when evidence of a particular qualification is required for participation in a procurement procedure or a design contest.
- (53) In appropriate cases, in which the nature of the works and/or services justifies applying environmental management measures or schemes during the performance of a contract, the application of such measures or schemes may be required. Environmental management schemes, whether or not they are registered under Community instruments such as Regulation (EC) No 761/2001 (EMAS) <sup>(1)</sup>, can demonstrate that the economic operator has the technical capability to perform the contract. Moreover, a description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence.

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

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- (54) The award of public contracts to economic operators who have participated in a criminal organisation or who have been found guilty of corruption or of fraud to the detriment of the financial interests of the European Communities or of money laundering should be avoided. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether or not to apply the exclusion criteria listed in Article 45 (1) of Directive 2004/18/EC to these contracting entities. The obligation to apply Article 45(1) should therefore be limited only to contracting entities that are contracting authorities. Where appropriate, the contracting entities should ask applicants for qualification, candidates or tenderers to supply relevant documents and, where they have doubts concerning the personal situation of these economic operators, they may seek the cooperation of the competent authorities of the Member State concerned. The exclusion of such economic operators should take place as soon as the contracting authority has knowledge of a judgment concerning such offences rendered in accordance with national law that has the force of *res judicata*.

If national law contains provisions to this effect, non-compliance with environmental legislation or legislation on unlawful agreements in contracts which has been the subject of a final judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.

Non-observance of national provisions implementing the Council Directives 2000/78/EC <sup>(1)</sup> and 76/207/EEC <sup>(2)</sup> concerning equal treatment of workers, which has been the subject of a final judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.

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

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

<sup>(1)</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

<sup>(2)</sup> Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, (OJ L 39 of 14.2.1976, p. 40). Directive as amended by Directive 2002/73/EC of the European Parliament and of the Council (OJ L 269, 5.10.2002, p. 15).

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Where contracting entities choose to award a contract to the most economically advantageous tender, they should assess the tenders in order to determine which one offers the best value for money. In order to do this, they should determine the economic and quality criteria which, taken as a whole, must make it possible to determine the most economically advantageous tender for the contracting entity. The determination of these criteria depends on the object of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the object of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. In order to guarantee equal treatment, the criteria for the award of the contract must enable tenders to be compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, may enable the contracting entity to meet the needs of the public concerned, as expressed in the specifications of the contract. Under the same conditions, a contracting entity may use criteria aiming to meet social requirements, in particular in response to the needs — defined in the specifications of the contract — of particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong.

- (56) The award criteria must not affect the application of national provisions on the remuneration of certain services, such as the services provided by architects, engineers or lawyers.
- (57) Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>(1)</sup> should apply to the calculation of the time limits contained in this Directive.
- (58) This Directive should be without prejudice to the existing international obligations of the Community or of the Member States and should not prejudice the application of the provisions of the Treaty, in particular Articles 81 and 86 thereof.
- (59) This Directive should not prejudice the time-limits set out in Annex XXV, within which Member States are required to transpose and apply Directive 93/38/EEC.
- (60) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission,<sup>(2)</sup>

HAVE ADOPTED THIS DIRECTIVE:

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<sup>(1)</sup> OJ L 124, 8.6.1971, p. 1.

<sup>(2)</sup> OJ L 184, 17.7.1999, p. 23.



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## TITLE I

### GENERAL PROVISIONS APPLICABLE TO CONTRACTS AND DESIGN CONTESTS

#### CHAPTER I

##### *Basic terms*

##### *Article 1*

##### **Definitions**

1. For the purposes of this Directive, the definitions set out in this Article shall apply.
2. (a) ‘Supply, works and service contracts’ are contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in Article 2(2), and one or more contractors, suppliers, or service providers.

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

- (c) ‘Supply contracts’ are contracts other than those referred to in (b) having as their object the purchase, lease, rental or hire-purchase, with or without the option to buy, of products.

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

- (d) ‘Service contracts’ are contracts other than works or supply contracts having as their object the provision of services referred to in Annex XVII.

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

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

3. (a) A ‘works concession’ is a contract of the same type as a works contract except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the work or in that right together with payment;
- (b) A ‘service concession’ is a contract of the same type as a service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in that right together with payment.

4. A ‘framework agreement’ is an agreement between one or more contracting entities referred to in Article 2(2) and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.

5. A ‘dynamic purchasing system’ is a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting entity, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria

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and has submitted an indicative tender that complies with the specification.

6. An ‘electronic auction’ is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods. Consequently, certain service contracts and certain works contracts having as their subject-matter intellectual performances, such as the design of works, may not be the object of electronic auctions.

7. The terms ‘contractor’, ‘supplier’ or ‘service provider’ mean either a natural or a legal person, or a contracting entity within the meaning of Article 2(2)(a) or (b), or a group of such persons and/or entities which offers on the market, respectively, the execution of works and/or a work, products or services.

The terms ‘economic operator’ shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interests of simplification.

A ‘tenderer’ is an economic operator who submits a tender, and ‘candidate’ means one who has sought an invitation to take part in a restricted or negotiated procedure.

8. A ‘central purchasing body’ is a contracting authority within the meaning of Article 2(1)(a) or a contracting authority within the meaning of Article 1(9) of Directive 2004/18/EC which:

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

9. ‘Open, restricted and negotiated procedures’ are the procurement procedures applied by contracting entities, whereby:

- (a) in the case of open procedures, any interested economic operator may submit a tender;
- (b) in the case of restricted procedures, any economic operator may request to participate and only candidates invited by the contracting entity may submit a tender;
- (c) in the case of negotiated procedures, the contracting entity consults the economic operators of its choice and negotiates the terms of the contract with one or more of these.

10. ‘Design contests’ are those procedures which enable the contracting entity to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after having been put out to competition with or without the award of prizes.

11. ‘Written’ or ‘in writing’ means any expression consisting of words or figures that can be read, reproduced and subsequently communicated. It may include information transmitted and stored by electronic means.

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

13. ‘Common Procurement Vocabulary (CPV)’ means the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No 2195/2002 of 5 November 2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CVP)<sup>(1)</sup> while ensuring equivalence with the other existing nomenclatures.

<sup>(1)</sup> OJ L 340, 16.12.2002, p. 1.



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

## CHAPTER II

*Definition of the activities and entities covered*

## Section 1

## Entities

*Article 2***Contracting entities**

1. For the purposes of this Directive,
  - (a) ‘Contracting authorities’ are State, regional or local authorities, bodies governed by public law, associations formed by one or several such authorities or one or several of such bodies governed by public law.

‘A body governed by public law’ means any body:

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

- (b) a ‘public undertaking’ is any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.

A dominant influence on the part of the contracting authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

- hold the majority of the undertaking's subscribed capital, or
- control the majority of the votes attaching to shares issued by the undertaking, or
- can appoint more than half of the undertaking's administrative, management or supervisory body.

2. This Directive shall apply to contracting entities:
  - (a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 3 to 7;
  - (b) which, when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 3 to 7, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

3. For the purposes of this Directive, ‘special or exclusive rights’ mean rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Articles 3 to 7 to one or more entities, and which substantially affects the ability of other entities to carry out such activity.

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## Section 2

## Activities

*Article 3***Gas, heat and electricity**

1. As far as gas and heat are concerned, this Directive shall apply to the following activities:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat; or
- (b) the supply of gas or heat to such networks.

2. The supply of gas or heat to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where:

- (a) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraphs 1 or 3 of this Article or in Articles 4 to 7; and
- (b) supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover having regard to the average for the preceding three years, including the current year.

3. As far as electricity is concerned, this Directive shall apply to the following activities:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity; or
- (b) the supply of electricity to such networks.

4. The supply of electricity to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 3 where:

- (a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraphs 1 or 3 of this Article or in Articles 4 to 7; and
- (b) supply to the public network depends only on the entity's own consumption and has not exceeded 30% of the entity's total production of energy, having regard to the average for the preceding three years, including the current year.

*Article 4***Water**

1. This Directive shall apply to the following activities:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water; or
- (b) the supply of drinking water to such networks.

2. This Directive shall also apply to contracts or design contests awarded or organised by entities which pursue an activity referred to in paragraph 1 and which:

- (a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total

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volume of water made available by such projects or irrigation or drainage installations, or

(b) are connected with the disposal or treatment of sewage.

3. The supply of drinking water to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of paragraph 1 where:

- (a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 3 to 7; and
- (b) supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, having regard to the average for the preceding three years, including the current year.

*Article 5***Transport services**

1. This Directive shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

2. This Directive shall not apply to entities providing bus transport services to the public which were excluded from the scope of Directive 93/38/EEC pursuant to Article 2(4) thereof.

*Article 6***Postal services**

1. This Directive shall apply to activities relating to the provision of postal services or, on the conditions set out in paragraph 2(c), other services than postal services.

2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:

- (a) 'postal item': means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;
- (b) 'postal services': means services consisting of the clearance, sorting, routing and delivery of postal items. These services comprise:
  - 'reserved postal services': postal services which are or may be reserved on the basis of Article 7 of Directive 97/67/EC,
  - 'other postal services': postal services which may not be reserved on the basis of Article 7 of Directive 97/67/EC; and
- (c) 'other services than postal services': means services provided in the following areas:
  - mail service management services (services both preceding and subsequent to despatch, such as 'mailroom management services'),
  - added-value services linked to and provided entirely by electronic means (including the secure transmission of coded

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documents by electronic means, address management services and transmission of registered electronic mail),

- services concerning postal items not included in point (a), such as direct mail bearing no address,
- financial services, as defined in category 6 of Annex XVII A and in Article 24(c) and including in particular postal money orders and postal giro transfers,
- philatelic services, and
- logistics services (services combining physical delivery and/or warehousing with other non-postal functions),

on condition that such services are provided by an entity which also provides postal services within the meaning of point (b), first or second indent, and provided that the conditions set out in Article 30(1) are not satisfied in respect of the services falling within those indents.

*Article 7***Exploration for, or extraction of, oil, gas, coal or other solid fuels, as well as ports and airports**

This Directive shall apply to activities relating to the exploitation of a geographical area for the purpose of:

- (a) exploring for or extracting oil, gas, coal or other solid fuels, or
- (b) the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

*Article 8***Lists of contracting entities**

The non-exhaustive lists of contracting entities within the meaning of this Directive are contained in Annexes I to X. Member States shall notify the Commission periodically of any changes to their lists.

*Article 9***Contracts covering several activities**

1. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.

However, the choice between awarding a single contract and awarding a number of separate contracts may not be made with the objective of excluding it from the scope of this Directive or, where applicable, Directive 2004/18/EC.

2. If one of the activities for which the contract is intended is subject to this Directive and the other to the abovementioned Directive 2004/18/EC and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with the abovementioned Directive 2004/18/EC.

3. If one of the activities for which the contract is intended is subject to this Directive and the other is not subject to either this Directive or the abovementioned Directive 2004/18/EC, and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with this Directive.



## CHAPTER III

### *General principles*

#### *Article 10*

#### **Principles of awarding contracts**

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

## TITLE II

### RULES APPLICABLE TO CONTRACTS

#### CHAPTER I

### *General provisions*

#### *Article 11*

#### **Economic operators**

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

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

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

#### *Article 12*

#### **Conditions relating to agreements concluded within the World Trade Organisation**

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

#### *Article 13*

#### **Confidentiality**

1. In the context of provision of technical specifications to interested economic operators, of qualification and selection of economic operators and of award of contracts, contracting entities may impose requirements with a view to protecting the confidential nature of information which they make available.

2. Without prejudice to the provisions of this Directive, in particular those concerning the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 43 and 49, and in accordance with the national law to which the contracting entity is subject, the contracting authority shall not disclose information forwarded to it by economic operators which they

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have designated as confidential; such information includes, in particular, technical or trade secrets and the confidential aspects of tenders.

*Article 14***Framework agreements**

1. Contracting entities may regard a framework agreement as a contract within the meaning of Article 1(2) and award it in accordance with this Directive.
2. Where contracting entities have awarded a framework agreement in accordance with this Directive, they may avail themselves of Article 40(3)(i) when awarding contracts based on that framework agreement.
3. Where a framework agreement has not been awarded in accordance with this Directive, contracting entities may not avail themselves of Article 40(3)(i).
4. Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.

*Article 15***Dynamic purchasing systems**

1. Member States may provide that contracting entities may use dynamic purchasing systems.
2. In order to set up a dynamic purchasing system, contracting entities shall follow the rules of the open procedure in all its phases up to the award of the contracts to be concluded under this system. All tenderers who satisfy the selection criteria and have submitted an indicative tender which complies with the specification and any possible additional documents shall be admitted to the system; indicative tenders may be improved at any time provided that they continue to comply with the specification. With a view to setting up the system and to the award of contracts under that system, contracting entities shall use solely electronic means in accordance with Article 48(2) to (5).
3. For the purposes of setting up the dynamic purchasing system, contracting entities shall:
  - (a) publish a contract notice making it clear that a dynamic purchasing system is involved;
  - (b) indicate in the specification, amongst other matters, the nature of the purchases envisaged under that system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;
  - (c) offer by electronic means, on publication of the notice and until the system expires, unrestricted, direct and full access to the specification and to any additional documents and shall indicate in the notice the internet address at which such documents may be consulted.
4. Contracting entities shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting an indicative tender and of being admitted to the system under the conditions referred to in paragraph 2. They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime.

Contracting entities shall inform the tenderer referred to in the first subparagraph at the earliest possible opportunity of its admittance to the dynamic purchasing system or of the rejection of its indicative tender.
5. Each specific contract shall be the subject of an invitation to tender. Before issuing the invitation to tender, contracting entities shall publish a simplified contract notice inviting all interested economic



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operators to submit an indicative tender, in accordance with paragraph 4, within a time limit that may not be less than 15 days from the date on which the simplified notice was sent. Contracting entities may not proceed with tendering until they have completed evaluation of all the indicative tenders received within that time limit.

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

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

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

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

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

## CHAPTER II

*Thresholds and exclusion provisions*

## Section 1

## Thresholds

*Article 16***Contract thresholds**

Save where they are ruled out by the exclusions in Articles 19 to 26 or pursuant to Article 30, concerning the pursuit of the activity in question, this Directive shall apply to contracts which have a value excluding value-added tax (VAT) estimated to be no less than the following thresholds:

- (a) ► **M3** EUR 422 000 ◀ in the case of supply and service contracts;
- (b) ► **M3** EUR 5 278 000 ◀ in the case of works contracts.

*Article 17***Methods of calculating the estimated value of contracts, framework agreements and dynamic purchasing systems**

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

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

2. Contracting entities may not circumvent this Directive by splitting works projects or proposed purchases of a certain quantity of supplies and/or services or by using special methods for calculating the estimated value of contracts.

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

4. For the purposes of Article 16, contracting entities shall include in the estimated value of a works contract both the cost of the works and

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the value of any supplies or services necessary for the execution of the works, which they make available to the contractor.

5. The value of supplies or services which are not necessary for the performance of a particular works contract may not be added to the value of the works contract when to do so would result in removing the procurement of those supplies or services from the scope of this Directive.

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

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 16, this Directive shall apply to the awarding of each lot.

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

(b) Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying Article 16.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 16, this Directive shall apply to the awarding of each lot.

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

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

(a) either the total actual value of the successive contracts of the same type awarded during the preceding twelve months or financial year adjusted, if possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;

(b) or the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year if that 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 shares. The calculation shall include the value of the siting and installation operations.

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

(a) in the case of fixed-term contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, if the term of the contract is greater than 12 months, the total value including the estimated residual value;

(b) in the case of contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

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10. For the purposes of calculating the estimated contract value of service contracts, the following amounts shall, where appropriate, be taken into account:

- (a) the premium payable, and other forms of remuneration, in the case of insurance services;
- (b) fees, commissions, interest and other modes of remuneration, in the case of banking and other financial services;
- (c) fees, commissions payable and other forms of remuneration, in the case of contracts involving design tasks.

11. In the case of service contracts which do not indicate a total price, the value to be used as the basis for calculating the estimated contract value shall be:

- (a) in the case of fixed-term contracts, if that term is less than or equal to 48 months: the total value for their full term;
- (b) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.

## Section 2

Contracts and concessions and contracts subject to special arrangements

### *SUBSECTION 1*

#### *Article 18*

#### **Works and service concessions**

This Directive shall not apply to works and service concessions which are awarded by contracting entities carrying out one or more of the activities referred to in Articles 3 to 7, where those concessions are awarded for carrying out those activities.

### *SUBSECTION 2*

Exclusions applicable to all contracting entities and to all types of contract

#### *Article 19*

#### **Contracts awarded for purposes of resale or lease to third parties**

1. This Directive shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.

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

#### *Article 20*

#### **Contracts awarded for purposes other than the pursuit of an activity covered or for the pursuit of such an activity in a third country**

1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Articles 3 to 7 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Community.

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

*Article 21***Contracts which are secret or require special security measures**

This Directive shall not apply to contracts when they are declared to be secret by a Member State, when their performance 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 Member State so requires.

*Article 22***Contracts awarded pursuant to international rules**

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

- (a) pursuant to an international agreement concluded in accordance with the Treaty between a Member State and one or more third countries and covering supplies, works, services or design contests intended for the joint implementation or exploitation of a project by the signatory States; all agreements shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 68;
- (b) pursuant to a concluded international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;
- (c) pursuant to the particular procedure of an international organisation.

*Article 23***Contracts awarded to an affiliated undertaking, to a joint venture or to a contracting entity forming part of a joint venture**

1. For the purposes of this Article, ‘affiliated undertaking’ means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 44(2)(g) of the Treaty on consolidated accounts <sup>(1)</sup> <sup>(2)</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 Article 2(1)(b) hereof or which may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

2. Provided that the conditions in paragraph 3 are met, this Directive shall not apply to contracts awarded:

- (a) by a contracting entity to an affiliated undertaking, or

<sup>(1)</sup> OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

<sup>(2)</sup> Editorial Note: The title of the Directive has been adjusted to take account of the renumbering of the Articles of the Treaty in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 54(3)(g) of the Treaty.

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(b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 3 to 7, to an undertaking which is affiliated with one of these contracting entities.

3. Paragraph 2 shall apply:

(a) to service contracts provided that at least 80 % of the average turnover of the affiliated undertaking with respect to services for the preceding three years derives from the provision of such services to undertakings with which it is affiliated;

(b) to supplies contracts provided that at least 80 % of the average turnover of the affiliated undertaking with respect to supplies for the preceding three years derives from the provision of such supplies to undertakings with which it is affiliated;

(c) to works contracts provided that at least 80 % of the average turnover of the affiliated undertaking with respect to works for the preceding three years derives from the provision of such works to undertakings with which it is affiliated.

When, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in points (a), (b) or (c) is credible, particularly by means of business projections.

Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

4. This Directive shall not apply to contracts awarded:

(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 3 to 7, to one of these contracting entities, or

(b) by a contracting entity to such a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period.

5. Contracting entities shall notify to the Commission, at its request, the following information regarding the application of paragraphs 2, 3 and 4:

(a) the names of the undertakings or joint ventures concerned,

(b) the nature and value of the contracts involved,

(c) such proof as may be deemed necessary by the Commission that the relationship between the undertaking or joint venture to which the contracts are awarded and the contracting entity complies with the requirements of this Article.

### *SUBSECTION 3*

Exclusions applicable to all contracting entities, but to service contracts only

#### *Article 24*

**Contracts relating to certain services excluded from the scope of this Directive**

This Directive shall not apply to service contracts for:

(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the

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same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;

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

*Article 25***Service contracts awarded on the basis of an exclusive right**

This Directive shall not apply to service contracts awarded to an entity which is itself a contracting authority within the meaning of Article 2(1) (a) or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

*SUBSECTION 4*Exclusions applicable to certain contracting entities only*Article 26***Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy**

This Directive shall not apply:

- (a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities referred to in Article 4 (1).
- (b) to contracts for the supply of energy or of fuels for the production of energy, if awarded by contracting entities engaged in an activity referred to in Article 3(1), Article 3(3) or Article 7(a).

*SUBSECTION 5*Contracts subject to special arrangements, provisions concerning central purchasing bodies and the general procedure in case of direct exposure to competition*Article 27***Contracts subject to special arrangements**

Without prejudice to Article 30 the Kingdom of the Netherlands, the United Kingdom, the Republic of Austria and the Federal Republic of Germany shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decisions 93/676/EEC, 97/367/EEC, 2002/205/EC and 2004/73/EC:

- (a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions;
- (b) communicates to the Commission, under the conditions defined in Commission Decision 93/327/EEC defining the conditions under which contracting entities exploiting geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid

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fuels must communicate to the Commission information relating to the contracts they award <sup>(1)</sup>.

*Article 28***Reserved contracts**

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

The notice used to make the call for competition shall make reference to this Article.

*Article 29***Contracts and framework agreements awarded by central purchasing bodies**

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

2. Contracting entities which purchase works, supplies and/or services from or through a central purchasing body in the cases set out in Article 1(8) shall be deemed to have complied with this Directive insofar as the central purchasing body has complied with it or, where appropriate, with Directive 2004/18/EC.

*Article 30***Procedure for establishing whether a given activity is directly exposed to competition**

1. Contracts intended to enable an activity mentioned in Articles 3 to 7 to be carried out shall not be subject to this Directive if, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted.

2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the Treaty provisions on competition, such as the characteristics of the goods or services concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or services in question.

3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the Member State has implemented and applied the provisions of Community legislation mentioned in Annex XI.

If free access to a given market cannot be presumed on the basis of the first subparagraph, it must be demonstrated that access to the market in question is free de facto and de jure.

4. When a Member State considers that, in compliance with paragraphs 2 and 3, paragraph 1 is applicable to a given activity, it shall notify the Commission and inform it of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in paragraph 1, where appropriate together with the position adopted by an independent national authority that is competent in relation to the activity concerned.

<sup>(1)</sup> OJ L 129, 27.5.1993, p. 25.



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Contracts intended to enable the activity concerned to be carried out shall no longer be subject to this Directive if the Commission:

- has adopted a Decision establishing the applicability of paragraph 1 in accordance with paragraph 6 and within the period it provides for, or
- has not adopted a Decision concerning such applicability within that period.

However, where free access to a given market is presumed on the basis of the first subparagraph of paragraph 3, and where an independent national authority that is competent in the activity concerned has established the applicability of paragraph 1, contracts intended to enable the activity concerned to be carried out shall no longer be subject to this Directive if the Commission has not established the inapplicability of paragraph 1 by a Decision adopted in conformity with paragraph 6 and within the period it provides for.

5. When the legislation of the Member State concerned provides for it, the contracting entities may ask the Commission to establish the applicability of paragraph 1 to a given activity by a Decision in conformity with paragraph 6. In such a case, the Commission shall immediately inform the Member State concerned.

That Member State shall, taking account of paragraphs 2 and 3, inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in paragraph 1, where appropriate together with the position adopted by an independent national authority that is competent in the activity concerned.

The Commission may also begin the procedure for adoption of a Decision establishing the applicability of paragraph 1 to a given activity on its own initiative. In such a case, the Commission shall immediately inform the Member State concerned.

If, at the end of the period laid down in paragraph 6, the Commission has not adopted a Decision concerning the applicability of paragraph 1 to a given activity, paragraph 1 shall be deemed to be applicable.

6. For the adoption of a Decision under this Article, in accordance with the procedure under Article 68(2), the Commission shall be allowed a period of three months commencing on the first working day following the date on which it receives the notification or the request. However, this period may be extended once by a maximum of three months in duly justified cases, in particular if the information contained in the notification or the request or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. This extension shall be limited to one month where an independent national authority that is competent in the activity concerned has established the applicability of paragraph 1 in the cases provided for under the third subparagraph of paragraph 4.

When an activity in a given Member State is already the subject of a procedure under this Article, further requests concerning the same activity in the same Member State before the expiry of the period opened in respect of the first request shall not be considered as new procedures and shall be treated in the context of the first request.

The Commission shall adopt detailed rules for applying paragraphs 4, 5 and 6 in accordance with the procedure under Article 68(2).

These rules shall include at least:

- (a) the publication in the Official Journal, for information, of the date on which the three-month period referred to in the first subparagraph begins, and, in case this period is prolonged, the date of prolongation and the period by which it is prolonged;
- (b) publication of the possible applicability of paragraph 1 in accordance with the second or third subparagraph of paragraph 4 or in accordance with the fourth subparagraph of paragraph 5; and

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- (c) the arrangements for forwarding positions adopted by an independent authority that is competent in the activity concerned, regarding questions relevant to paragraphs 1 and 2.

## CHAPTER III

*Rules applicable to service contracts**Article 31***Service contracts listed in Annex XVII A**

Contracts which have as their object services listed in Annex XVII A shall be awarded in accordance with Articles 34 to 59.

*Article 32***Service contracts listed in Annex XVII B**

Contracts which have as their object services listed in Annex XVII B shall be governed solely by Articles 34 and 43.

*Article 33***Mixed service contracts including services listed in Annexes XVII A and services listed in Annex XVII B**

Contracts which have as their subject-matter services listed both in Annex XVII A and in Annex XVII B shall be awarded in accordance with Articles 34 to 59 where the value of the services listed in Annex XVII A is greater than the value of the services listed in Annex XVII B. In other cases, contracts shall be awarded in accordance with Articles 34 and 43.

## CHAPTER IV

*Specific rules governing specifications and contract documents**Article 34***Technical specifications**

1. Technical specifications as defined in point 1 of Annex XXI shall be set out in the contract documentation, such as contract notices, contract documents or additional documents. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users.
2. Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.
3. Without prejudice to legally binding national technical rules, to the extent that they are compatible with Community law, the technical specifications shall be formulated:
  - (a) either by reference to technical specifications defined in Annex XXI and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when these do not exist — national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied by the words ‘or equivalent’;
  - (b) or in terms of performance or functional requirements; the latter may include environmental characteristics. However, such parameters must be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;

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- (c) or in terms of performance or functional requirements as mentioned in subparagraph (b), with reference to the specifications mentioned in subparagraph (a) as a means of presuming conformity with such performance or functional requirements;
- (d) or by referring to the specifications mentioned in subparagraph (a) for certain characteristics, and by referring to the performance or functional requirements mentioned in subparagraph (b) for other characteristics.

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

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

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

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

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

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

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

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

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

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

8. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted, on an

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exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraphs 3 and 4 is not possible; such reference shall be accompanied by the words 'or equivalent'.

*Article 35***Communication of technical specifications**

1. Contracting entities shall make available on request to economic operators interested in obtaining a contract the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts covered by periodic indicative notices within the meaning of Article 41(1).

2. Where the technical specifications are based on documents available to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

*Article 36***Variants**

1. Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting entities may take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

Contracting entities shall indicate in the specifications whether or not they authorise variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation.

2. In procedures for awarding supply or service contracts, contracting entities which have authorised variants pursuant to paragraph 1 may not reject a variant on the sole ground that it would, if successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

*Article 37***Subcontracting**

In the contract documents, the contracting entity may ask, or may be required by a Member State to ask, the tenderer to indicate in his tender any share of the contract he intends to subcontract to third parties and any proposed subcontractors. This indication shall be without prejudice to the question of the principal economic operator's liability.

*Article 38***Conditions for performance of contracts**

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

*Article 39***Obligations relating to taxes, environmental protection, employment protection provisions and working conditions**

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

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

The first subparagraph shall be without prejudice to the application of Article 57.

## CHAPTER V

*Procedures**Article 40***Use of open, restricted and negotiated procedures**

1. When awarding supply, works or service contracts, contracting entities shall apply the procedures adjusted for the purposes of this Directive.
2. Contracting entities may choose any of the procedures described in Article 1(9)(a), (b) or (c), provided that, subject to paragraph 3, a call for competition has been made in accordance with Article 42.
3. Contracting entities may use a procedure without prior call for competition in the following cases:
  - (a) when no tenders or no suitable tenders or no applications have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of contract are not substantially altered;
  - (b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;
  - (c) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be executed only by a particular economic operator;
  - (d) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting entities, the time limits laid down for open procedures, restricted procedures and negotiated procedures with a prior call for competition cannot be adhered to;
  - (e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
  - (f) for additional works or services which were not included in the project initially awarded or in the contract first concluded but have, through unforeseen circumstances, become necessary to the performance of the contract, on condition that the award is made to the contractor or service provider executing the original contract:
    - when such additional works or services cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities, or
    - when such additional works or services, although separable from the performance of the original contract, are strictly necessary to its later stages;
  - (g) in the case of works contracts, for new works consisting in the repetition of similar works assigned to the contractor to which the same

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contracting entities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded after a call for competition; as soon as the first project is put up for tender, notice shall be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting entities when they apply the provisions of Articles 16 and 17;

- (h) for supplies quoted and purchased on a commodity market;
- (i) for contracts to be awarded on the basis of a framework agreement, provided that the condition referred to in Article 14(2) is fulfilled;
- (j) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;
- (k) for purchases of supplies under particularly advantageous conditions from either a supplier definitively winding up his business activities or the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure under national laws or regulations;
- (l) when the service contract concerned is part of the follow-up to a design contest organised in accordance with the provisions of this Directive and shall, in accordance with the relevant rules, be awarded to the winner or to one of the winners of that contest; in the latter case, all the winners shall be invited to participate in the negotiations.

## CHAPTER VI

*Rules on publication and transparency*

## Section 1

## Publication of notices

*Article 41***Periodic indicative notices and notices on the existence of a system of qualification**

1. Contracting entities shall make known, at least once a year, by means of a periodic indicative notice as referred to in Annex XV A, published by the Commission or by themselves on their 'buyer profile', as described in point 2(b) of Annex XX:

- (a) where supplies are concerned, the estimated total value of the contracts or the framework agreements by product area which they intend to award over the following 12 months, where the total estimated value, taking into account the provisions of Articles 16 and 17, is equal to or greater than EUR 750 000.

The product area shall be established by the contracting entities by reference to the CPV nomenclature:

- (b) where services are concerned, the estimated total value of the contracts or the framework agreements in each of the categories of services listed in Annex XVII A which they intend to award over the following 12 months, where such estimated total value, taking into account the provisions of Articles 16 and 17, is equal to or greater than EUR 750 000;
- (c) where works are concerned, the essential characteristics of the works contracts or the framework agreements which they intend to award over the following 12 months, whose estimated value is equal to or greater than the threshold specified in Article 16, taking into account the provisions of Article 17.

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



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

Contracting entities which publish a periodic indicative notice on their buyer profiles shall transmit to the Commission, electronically, a notice of the publication of the periodic indicative notice on a buyer profile, in accordance with the format and procedures for the electronic transmission of notices indicated in point 3 of Annex XX.

The publication of the notices referred to in subparagraphs (a), (b) and (c) shall be compulsory only where the contracting entities take the option of reducing the time limits for the receipt of tenders as laid down in Article 45(4).

This paragraph shall not apply to procedures without prior call for competition.

2. Contracting entities may, in particular, publish or arrange for the Commission to publish periodic indicative notices relating to major projects without repeating information previously included in a periodic indicative notice, provided that it is clearly pointed out that these notices are additional ones.

3. Where contracting entities choose to set up a qualification system in accordance with Article 53, the system shall be the subject of a notice as referred to in Annex XIV, indicating the purpose of the qualification system and how to have access to the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.

#### *Article 42*

##### **Notices used as a means of calling for competition**

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

- (a) by means of a periodic indicative notice as referred to in Annex XV A; or
- (b) by means of a notice on the existence of a qualification system as referred to in Annex XIV; or
- (c) by means of a contract notice as referred to in Annex XIII A, B or C.

2. In the case of dynamic purchasing systems, the system's call for competition shall be by contract notice as referred to in paragraph 1(c), whereas calls for competition for contracts based on such systems shall be by simplified contract notice as referred to in Annex XIII D.

3. When a call for competition is made by means of a periodic indicative notice, the notice shall:

- (a) refer specifically to the supplies, works or services which will be the subject of the contract to be awarded;
- (b) indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a notice of a call for competition and invite interested economic operators to express their interest in writing; and
- (c) have been published in accordance with Annex XX not more than 12 months prior to the date on which the invitation referred to in Article 47(5) is sent. Moreover, the contracting entity shall meet the time limits laid down in Article 45.



▼B*Article 43***Contract award notices**

1. Contracting entities which have awarded a contract or a framework agreement shall, within two months of the award of the contract or framework agreement, send a contract award notice as referred to in Annex XVI under conditions to be laid down by the Commission in accordance with the procedure referred to in Article 68(2).

In the case of contracts awarded under a framework agreement within the meaning of Article 14(2), the contracting entities shall not be bound to send a notice of the results of the award procedure for each contract based on that agreement.

Contracting entities shall send a contract award notice based on a dynamic purchasing system within two months after the award of each contract. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within two months of the end of each quarter.

2. The information provided in accordance with Annex XVI and intended for publication shall be published in accordance with Annex XX. In this connection, the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information, concerning the number of tenders received, the identity of economic operators, or prices.

3. Where contracting entities award a research-and-development service contract ('R&D contract') by way of a procedure without a call for competition in accordance with Article 40(3)(b), they may limit to the reference 'research and development services' the information to be provided in accordance with Annex XVI concerning the nature and quantity of the services provided.

Where contracting entities award an R&D contract which cannot be awarded by way of a procedure without a call for competition in accordance with Article 40(3)(b), they may, on grounds of commercial confidentiality, limit the information to be provided in accordance with Annex XVI concerning the nature and quantity of the services supplied.

In such cases, contracting entities shall ensure that any information published under this paragraph is no less detailed than that contained in the notice of the call for competition published in accordance with Article 42(1).

If they use a qualification system, contracting entities shall ensure in such cases that such information is no less detailed than the category referred to in the list of qualified service providers drawn up in accordance with Article 53(7).

4. In the case of contracts awarded for services listed in Annex XVII B, the contracting entities shall indicate in the notice whether they agree to publication.

5. Information provided in accordance with Annex XVI and marked as not being intended for publication shall be published only in simplified form and in accordance with Annex XX for statistical purposes.

*Article 44***Form and manner of publication of notices**

1. Notices shall include the information mentioned in Annexes XIII, XIV, XV A, XV B and XVI and, where appropriate, any other information deemed useful by the contracting entity in the format of standard forms adopted by the Commission in accordance with the procedure referred to in Article 68(2).

2. Notices sent by contracting entities to the Commission shall be sent either by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex XX, or by other means.

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The notices referred to in Articles 41, 42 and 43 shall be published in accordance with the technical characteristics for publication set out in point 1(a) and (b) of Annex XX.

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

Notices which are not transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex XX shall be published not later than 12 days after they are transmitted. However, in exceptional cases, the contract notices referred to in Article 42(1)(c) shall be published within five days in response to a request by the contracting entity, provided that the notice has been sent by fax.

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

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

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

Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission or published on a buyer profile in accordance with the first subparagraph of Article 41(1), but shall mention the date of dispatch of the notice to the Commission or its publication on the buyer profile.

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

6. Contracting entities shall ensure that they are able to supply proof of the dates on which notices are dispatched.

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

8. Contracting entities may publish in accordance with paragraphs 1 to 7 contract notices which are not subject to the publication requirements laid down in this Directive.

## Section 2

### Time limits

#### *Article 45*

#### **Time limits for the receipt of requests to participate and for the receipt of tenders**

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

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

3. In restricted procedures and in negotiated procedures with a prior call for competition, the following arrangements shall apply:

(a) the time limit for the receipt of requests to participate, in response to a notice published under Article 42(1)(c), or in response to an invitation by the contracting entities under Article 47(5), shall, as a

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general rule, be fixed at no less than 37 days from the date on which the notice or invitation was sent and may in no case be less than 22 days if the notice is sent for publication by means other than electronic means or fax, and at no less than 15 days if the notice is transmitted by such means;

- (b) the time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;
- (c) where it is not possible to reach agreement on the time limit for 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 no case be less than 10 days from the date of the invitation to tender.

4. If the contracting entities have published a periodic indicative notice as referred to in Article 41(1) in accordance with Annex XX, the minimum time limit for the receipt of tenders in open procedures shall, as a general rule, not be less than 36 days, but shall in no case be less than 22 days from the date on which the notice was sent.

These reduced time limits are permitted, provided that the periodic indicative notice has included, in addition to the information required by Annex XV A, part I, all the information required by Annex XV A, part II, insofar as the latter information is available at the time the notice is published, and that the notice has been sent for publication between 52 days and 12 months before the date on which the contract notice referred to in Article 42(1)(c) is sent.

5. Where notices are drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex XX the time-limits for the receipt of requests to participate in restricted and negotiated procedures, and for receipt of tenders in open procedures, may be reduced by seven days.

6. Except in the case of a time limit set by mutual agreement in accordance with paragraph 3(b), time limits for the receipt of tenders in open, restricted and negotiated procedures may be further reduced by five days where the contracting entity offers unrestricted and full direct access to the contract documents and any supplementary documents by electronic means from the date on which the notice used as a means of calling for competition is published, in accordance with Annex XX. The notice should specify the internet address at which this documentation is accessible.

7. In open procedures, the cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case result in a time limit for the receipt of tenders of less than 15 days from the date on which the contract notice is sent.

However, if the contract notice is not transmitted by fax or electronic means, the cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case result in a time limit for receipt of tenders in an open procedure of less than 22 days from the date on which the contract notice is transmitted.

8. The cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case result in a time limit for receipt of requests to participate, in response to a notice published under Article 42 (1)(c), or in response to an invitation by the contracting entities under Article 47(5), of less than 15 days from the date on which the contract notice or invitation is sent.

In restricted and negotiated procedures, the cumulative effect of the reductions provided for in paragraphs 4, 5 and 6 may in no case, except that of a time limit set by mutual agreement in accordance with paragraph 3(b), result in a time limit for the receipt of tenders of less than 10 days from the date of the invitation to tender.

9. If, for whatever reason, the contract documents and the supporting documents or additional information, although requested in good time, have not been supplied within the time limits set in Articles 46 and

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47, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limits for the receipt of tenders shall be extended accordingly, except in the case of a time-limit set by mutual agreement in accordance with paragraph 3(b), so that all economic operators concerned may be aware of all the information needed for the preparation of a tender.

10. A summary table of the time limits laid down in this Article is given in Annex XXII.

*Article 46***Open procedures: specifications, additional documents and information**

1. In open procedures, where contracting entities do not offer unrestricted and full direct access by electronic means in accordance with Article 45(6) to the specifications and any supporting documents, the specifications and supporting documents shall be sent to economic operators within six days of receipt of the request, provided that the request was made in good time before the time limit for the submission of tenders.

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

*Article 47***Invitations to submit a tender or to negotiate**

1. In restricted procedures and negotiated procedures, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate. The invitation to the candidates shall include either:

- a copy of the specifications and any supporting documents, or
- a reference to accessing the specifications and the supporting documents indicated in the first indent, when they are made directly available by electronic means in accordance with Article 45(6).

2. Where the specifications and/or any supporting documents are held by an entity other than the contracting entity responsible for the award procedure, the invitation shall state the address from which those specifications and documents may be requested and, if appropriate, the closing date for requesting such documents, the sum payable for obtaining them and any payment procedures. The competent department shall send that documentation to the economic operator immediately upon receipt of the request.

3. The additional information on the specifications or the supporting documents shall be sent by the contracting entity or the competent department not less than six days before the final date fixed for the receipt of tenders, provided that it is requested in good time.

4. In addition, the invitation shall include at least the following:

- (a) where appropriate, the time limit for requesting additional documents, as well as the amount and terms of payment of any sum to be paid for such documents;
- (b) the final date for receipt of tenders, the address to which they are to be sent, and the language or languages in which they are to be drawn up;
- (c) a reference to any published contract notice;
- (d) an indication of any documents to be attached;
- (e) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition;

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- (f) the relative weighting of the contract award criteria or, where appropriate, the order of importance of such criteria, if this information is not given in the contract notice, the notice on the existence of a qualification system or the specifications.

5. When a call for competition is made by means of a periodic indicative notice, contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

This invitation shall include at least the following information:

- (a) nature and quantity, including all options concerning complementary contracts and, if possible, the estimated time available for exercising these options for renewable contracts, the nature and quantity and, if possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;
- (b) type of procedure: restricted or negotiated;
- (c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;
- (d) the address and closing date for the submission of requests for tender documents and the language or languages in which they are to be drawn up;
- (e) the address of the entity which is to award the contract and the information necessary for obtaining the specifications and other documents;
- (f) economic and technical conditions, financial guarantees and information required from economic operators;
- (g) the amount and payment procedures for any sum payable for obtaining tender documents;
- (h) the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of these; and
- (i) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, if this information is not given in the indicative notice or the specifications or in the invitation to tender or to negotiate.

### Section 3

#### Communication and information

##### *Article 48*

#### **Rules applicable to communication**

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

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

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

4. The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, gener-

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ally available and interoperable with the information and communication technology products in general use.

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

- (a) information regarding the specifications necessary for the electronic submission of tenders and requests to participate, including encryption, shall be available to interested parties. Moreover, the devices for the electronic receipt of tenders and requests to participate shall conform to the requirements of Annex XXIV;
- (b) Member States may, in compliance with Article 5 of Directive 1999/93/EC, require that electronic tenders be accompanied by an advanced electronic signature in conformity with paragraph 1 thereof;
- (c) Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for these devices;
- (d) tenderers or candidates shall undertake to submit, before expiry of the time limit laid down for the submission of tenders or requests to participate, the documents, certificates and declarations mentioned in Articles 52(2), 52(3), 53 and 54 if they do not exist in electronic format.

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

- (a) requests to participate in procedures for the award of contracts may be made in writing or by telephone;
- (b) where requests to participate are made by telephone, a written confirmation must be sent before expiry of the time limit set for their receipt;
- (c) contracting entities may require that requests for participation made by fax should be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the time limit for sending confirmation by post or electronic means, should be stated by the contracting entity in the notice used as a means of calling for competition or in the invitation referred to in Article 47(5).

*Article 49*

**Information to applicants for qualification, candidates and tenderers**

1. Contracting entities shall as soon as possible inform the economic operators involved of decisions reached concerning the conclusion of a framework agreement, the award of the contract, or admission to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing system; this information shall be provided in writing if the contracting entities are requested to do so.

2. On request from the party concerned, contracting entities shall, as soon as possible, inform:

- any unsuccessful candidate of the reasons for the rejection of his application,
- any unsuccessful tenderer of the reasons for the rejection of his tender, including, for the cases referred to in Article 34(4) and (5), the reasons for their decision of non-equivalence or their decision that the works, supplies or services do not meet the performance or functional requirements,
- any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the



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name of the successful tenderer or the parties to the framework agreement.

The time taken to do so may under no circumstances exceed 15 days from receipt of the written enquiry.

However, contracting entities may decide that certain information on the contract award or the conclusion of the framework agreement or on admission to a dynamic purchasing system, referred to in the paragraph 1, is to be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.

3. Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a period of six months.

If the decision will take longer than four months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.

4. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal as soon as possible and under no circumstances more than 15 days later than the date of the decision. The reasons shall be based on the criteria for qualification referred to in Article 53(2).

5. Contracting entities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in Article 53(2). Any intention to bring qualification to an end shall be notified in writing to the economic operator beforehand, at least 15 days before the date on which qualification is due to end, together with the reason or reasons justifying the proposed action.

#### *Article 50*

##### **Information to be stored concerning awards**

1. Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:

- (a) the qualification and selection of economic operators and the award of contracts;
- (b) the use of procedures without a prior call for competition by virtue of Article 40(3);
- (c) the non-application of Chapters III to VI of this Title by virtue of the derogations provided for in Chapter II of Title I and in Chapter II of this Title.

Contracting entities shall take appropriate steps to document the progress of award procedures conducted by electronic means.

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if the latter so requests.

#### CHAPTER VII

##### ***Conduct of the procedure***

#### *Article 51*

##### **General provisions**

1. For the purpose of selecting participants in their award procedures:

- (a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with Article 54(1), (2)



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- or (4) shall exclude economic operators which comply with such rules and meet such criteria;
- (b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to Article 54;
- (c) in restricted procedures and in negotiated procedures with a call for competition, they shall where appropriate reduce in accordance with Article 54 the number of candidates selected pursuant to subparagraphs (a) and (b).
2. When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in award procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:
- (a) qualify economic operators in accordance with the provisions of Article 53;
- (b) apply to such qualified economic operators those provisions of paragraph 1 that are relevant to restricted or negotiated procedures.
3. Contracting entities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in Articles 55 and 57.

## Section 1

## Qualification and qualitative selection

*Article 52***Mutual recognition concerning administrative, technical or financial conditions, and certificates, tests and evidence**

1. When selecting participants for a restricted or negotiated procedure, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:
- (a) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others;
- (b) require tests or evidence which would duplicate objective evidence already available.
2. Where they request the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, contracting entities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

3. For works and service contracts, and only in appropriate cases, the contracting entities may require, in order to verify the economic operator's technical abilities, an indication of the environmental management measures which the economic operator will be able to apply when carrying out the contract. In such cases, should the contracting entities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the EMAS or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification.

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other

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evidence of equivalent environmental management measures from economic operators.

*Article 53***Qualification systems**

1. Contracting entities which so wish may establish and operate a system of qualification of economic operators.

Contracting entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.

2. The system under paragraph 1 may involve different qualification stages.

It shall be operated on the basis of objective criteria and rules for qualification to be established by the contracting entity.

Where those criteria and rules include technical specifications, the provisions of Article 34 shall apply. The criteria and rules may be updated as required.

3. The criteria and rules for qualification referred to in paragraph 2 may include the exclusion criteria listed in Article 45 of Directive 2004/18/EC on the terms and conditions set out therein.

Where the contracting entity is a contracting authority within the meaning of Article 2(1)(a), those criteria and rules shall include the exclusion criteria listed in Article 45(1) of Directive 2004/18/EC.

4. Where the criteria and rules for qualification referred to in paragraph 2 include requirements relating to the economic and financial capacity of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that these resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to that effect.

Under the same conditions, a group of economic operators as referred to in Article 11 may rely on the capacity of participants in the group or of other entities.

5. Where the criteria and rules for qualification referred to in paragraph 2 include requirements relating to the technical and/or professional abilities of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to make the necessary resources available to the economic operator.

Under the same conditions, a group of economic operators referred to in Article 11 may rely on the abilities of participants in the group or of other entities.

6. The criteria and rules for qualification referred to in paragraph 2 shall be made available to economic operators on request. The updating of these criteria and rules shall be communicated to interested economic operators.

Where a contracting entity considers that the qualification system of certain other entities or bodies meets its requirements, it shall communicate to interested economic operators the names of such other entities or bodies.

7. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.

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8. When establishing or operating a qualification system, contracting entities shall in particular observe the provisions of Article 41(3) concerning notices on the existence of a system of qualification, of Article 49(3), (4) and (5) concerning the information to be delivered to economic operators having applied for qualification, of Article 51(2) concerning the selection of participants when a call for competition is made by means of a notice on the existence of a qualification system as well as the provisions of Article 52 on mutual recognition concerning administrative, technical or financial conditions, certificates, tests and evidence.

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

*Article 54***Criteria for qualitative selection**

1. Contracting entities which establish selection criteria in an open procedure shall do so in accordance with objective rules and criteria which are available to interested economic operators.

2. Contracting entities which select candidates for restricted or negotiated procedures shall do so according to objective rules and criteria which they have established and which are available to interested economic operators.

3. In restricted or negotiated procedures, the criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the procurement procedure with the resources required to conduct it. The number of candidates selected shall, however, take account of the need to ensure adequate competition.

4. The criteria set out in paragraphs 1 and 2 may include the exclusion criteria listed in Article 45 of Directive 2004/18/EC on the terms and conditions set out therein.

Where the contracting entity is a contracting authority within the meaning of Article 2(1)(a), the criteria and rules referred to in paragraphs 1 and 2 of this Article shall include the exclusion criteria listed in Article 45(1) of Directive 2004/18/EC.

5. Where the criteria referred to in paragraphs 1 and 2 include requirements relating to the economic and financial capacity of the economic operator, the latter may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that the necessary resources will be available to it, for example by delivering an undertaking by those entities to that effect.

Under the same conditions, a group of economic operators as referred to in Article 11 may rely on the capacities of participants in the group or of other entities.

6. Where the criteria referred to in paragraphs 1 and 2 include requirements relating to the technical and/or professional abilities of the economic operator, the latter may where necessary and for a particular contract rely on the abilities of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that for the performance of the contract those resources will be available to it, for example by delivering an undertaking by those entities to make the necessary resources available to the economic operator.

Under the same conditions, a group of economic operators as referred to in Article 11 may rely on the abilities of participants in the group or of other entities.



## Section 2

### Award of the contract

#### *Article 55*

##### **Contract award criteria**

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

(a) where the contract is awarded on the basis of the most economically advantageous tender from the point of view of the contracting entity, be various criteria linked to the subject-matter of the contract in question, such as delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, environmental characteristics, technical merit, after-sales service and technical assistance, commitments with regard to parts, security of supply, and price or otherwise

(b) the lowest price only.

2. Without prejudice to the provisions of the third subparagraph, in the case referred to in paragraph 1(a), the contracting entity shall specify the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Those weightings can be expressed by providing for a range with an appropriate maximum spread.

Where, in the opinion of the contracting entity, weighting is not possible for demonstrable reasons, the contracting entity shall indicate the criteria in descending order of importance.

The relative weighting or order of importance shall be specified, as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm the interest referred to in Article 47(5), in the invitation to tender or to negotiate, or in the specifications.

#### *Article 56*

##### **Use of electronic auctions**

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

2. In open, restricted or negotiated procedures with a prior call for competition, the contracting entities may decide that the award of a contract shall be preceded by an electronic auction when the contract specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 15.

The electronic auction shall be based:

(a) either solely on prices when the contract is awarded to the lowest price,

(b) or on prices and/or on the new values of the features of the tenders indicated in the specification, when the contract is awarded to the most economically advantageous tender.

3. Contracting entities which decide to hold an electronic auction shall state that fact in the notice used as a means of calling for competition.

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

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

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

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

5. When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tender carried out in accordance with the weighting provided for in the first subparagraph of Article 55(2).

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

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

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

7. Contracting entities shall close an electronic auction in one or more of the following manners:

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

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

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

8. After closing an electronic auction the contracting entities shall award the contract in accordance with Article 55 on the basis of the results of the electronic auction.

9. Contracting entities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject-matter of the contract, as defined in the notice used as a means of calling for competition and in the specification.

*Article 57***Abnormally low tenders**

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

Those details may relate in particular to:

- (a) the economics of the manufacturing process, of the services provided and of the construction method;
- (b) the technical solutions chosen and/or any exceptionally favourable conditions available to the tenderer for the supply of the goods or services or for the execution of the work;
- (c) the originality of the supplies, services or work proposed by the tenderer;
- (d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;
- (e) the possibility of the tenderer obtaining State aid.

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

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

**Section 3**

Tenders comprising products originating in third countries and relations with those countries

*Article 58***Tenders comprising products originating in third countries**

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

2. Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in



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third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code <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 regarded as products.

3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 55, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

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

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

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

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

*Article 59*

**Relations with third countries as regards works, supplies and service contracts**

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

2. The Commission shall report to the Council before 31 December 2005, and periodically thereafter, on the opening up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the framework of the WTO.

3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service contracts, a third country:

- (a) does not grant Community undertakings effective access comparable to that granted by the Community to undertakings from that country; or
- (b) does not grant Community undertakings national treatment or the same competitive opportunities as are available to national undertakings; or

<sup>(1)</sup> OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council (OJ L 311, 12.12.2000, p. 17).



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(c) grants undertakings from other third countries more favourable treatment than Community undertakings.

4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international labour law provisions listed in Annex XXIII when these undertakings have tried to secure the award of contracts in third countries.

5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council decide to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:

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

The Council shall act, by qualified majority, as soon as possible.

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

6. This Article shall be without prejudice to the commitments of the Community in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO.

### TITLE III

#### RULES GOVERNING SERVICE DESIGN CONTESTS

##### *Article 60*

##### **General provision**

1. The rules for the organisation of a design contest shall be in conformity with paragraph 2 of this Article and with Articles 61 and 63 to 66 and shall be made available to those interested in participating in the contest.

2. The admission of participants to design contests shall not be limited:

- (a) by reference to the territory or part of the territory of a Member State;
- (b) on the ground that, under the law of the Member State in which the contest is organised, they would have been required to be either natural or legal persons.

##### *Article 61*

##### **Thresholds**

1. This Title shall apply to design contests organised as part of a procurement procedure for services whose estimated value, net of VAT, is equal to or greater than ►**M3** EUR 422 000 ◀. For the purposes of this paragraph, 'threshold' means the estimated value net of VAT of the service contract, including any possible prizes and/or payments to participants.

2. This Title shall apply to all design contests where the total amount of contest prizes and payments to participants is equal to or greater than ►**M3** EUR 422 000 ◀.

For the purposes of this paragraph, 'threshold' means the total amount of the prizes and payments, including the estimated value net of VAT of the service contract which might subsequently be concluded under

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Article 40(3) if the contracting entity does not exclude such an award in the contest notice.

*Article 62***Design contests excluded**

This Title shall not apply to:

- (1) contests which are organised in the same cases as referred to in Articles 20, 21 and 22 for service contracts;
- (2) design contests organised for the pursuit, in the Member State concerned, of an activity to which the applicability of paragraph 1 of Article 30 has been established by a Commission decision or has been deemed applicable pursuant to paragraph 4, second or third subparagraph, or to paragraph 5, fourth subparagraph, of that Article.

*Article 63***Rules on advertising and transparency**

1. Contracting entities which wish to organise a design contest shall call for competition by means of a contest notice. Contracting entities which have held a design contest shall make the results known by means of a notice. The call for competition shall contain the information referred to in Annex XVIII and the notice of the results of a design contest shall contain the information referred to in Annex XIX in accordance with the format of standard forms adopted by the Commission in accordance with the procedure in Article 68(2).

The notice of the results of a design contest shall be forwarded to the Commission within two months of the closure of the design contest and under conditions to be laid down by the Commission in accordance with the procedure referred to in Article 68(2). In this connection, the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information, concerning the number of projects or plans received, the identity of the economic operators and the prices tendered.

2. Article 44(2) to (8) shall also apply to notices relating to design contests.

*Article 64***Means of communication**

1. Article 48(1), (2) and (4) shall apply to all communications relating to contests.

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

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

- (a) the information relating to the specifications which is necessary for the presentation of plans and projects by electronic means, including encryption, shall be available to the parties concerned. In addition, the devices for the electronic receipt of plans and projects shall comply with the requirements of Annex XXIV;
- (b) Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for such devices.

▼B*Article 65***Rules on the organisation of design contests, the selection of participants and the jury**

1. When organising design contests, contracting entities shall apply procedures which are adapted to the provisions of this Directive.
2. Where design contests are restricted to a limited number of participants, contracting entities shall establish clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.
3. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required of participants in a contest, at least a third of the jury members shall have the same qualification or an equivalent qualification.

*Article 66***Decisions of the jury**

1. The jury shall be autonomous in its decisions or opinions.
2. It shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.
3. It shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points which may need clarification.
4. Anonymity must be observed until the jury has reached its opinion or decision.
5. Candidates may be invited, if need be, to answer questions which the jury has recorded in the minutes to clarify any aspects of the projects.
6. Complete minutes shall be drawn up of the dialogue between jury members and candidates.

**TITLE IV****STATISTICAL OBLIGATIONS, EXECUTORY POWERS AND FINAL PROVISIONS***Article 67***Statistical obligations**

1. Member States shall ensure, in accordance with the arrangements to be laid down under the procedure provided for in Article 68(2), that the Commission receives every year a statistical report concerning the total value, broken down by Member State and by category of activity to which Annexes I to X refer, of the contracts awarded below the thresholds set out in Article 16 but which would be covered by this Directive were it not for those thresholds.
2. As regards the categories of activity to which Annexes II, III, V, IX and X refer, Member States shall ensure that the Commission receives a statistical report on contracts awarded no later than 31 October 2004 for the previous year, and before 31 October of each year thereafter, in accordance with arrangements to be laid down under the procedure provided for in Article 68(2). The statistical report shall contain the information required to verify the proper application of the Agreement.

The information required under the first subparagraph shall not include information concerning contracts for the R & D services listed in category 8 of Annex XVII A, for telecommunications services listed in category 5 of Annex XVII A whose CPV positions are equivalent to the CPC reference numbers 7524, 7525 and 7526, or for the services listed in Annex XVII B.

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3. The arrangements under paragraphs 1 and 2 shall be laid down in such a way as to ensure that:

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

*Article 68***Committee procedure**

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

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. The Committee shall adopt its rules of procedure.

*Article 69***Revision of the thresholds**

1. The Commission shall verify the thresholds established in Article 16 every two years from 30 April 2004, and shall, if necessary with regard to the second subparagraph, revise them in accordance with the procedure provided for in Article 68(2).

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

2. At the same time as performing the revision under paragraph 1, the Commission shall, in accordance with the procedure provided for in Article 68(2), align the thresholds laid down in Article 61 (design contests) with the revised threshold applicable to service contracts.

The values of the thresholds laid down in accordance with paragraph 1 in the national currencies of Member States not participating in Monetary Union shall, in principle, be revised every two years from 1 January 2004. The calculation of such values shall be based on the average daily values of those currencies, expressed in euro, over the 24 months terminating on the last day of August preceding the revision with effect from 1 January.

3. The revised thresholds referred to in paragraph 1, their values in national currencies and the aligned thresholds referred to in paragraph 2 shall be published by the Commission in the *Official Journal of the European Union* at the beginning of the month of November following their revision.

*Article 70***Amendments**

The Commission may amend, in accordance with the procedure provided for in Article 68(2):

- (a) the list of contracting entities in Annexes I to X so that they fulfil the criteria set out in Articles 2 to 7;

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

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- (b) the procedures for the drawing-up, transmission, receipt, translation, collection and distribution of the notices referred to in Articles 41, 42, 43 and 63;
- (c) the procedures for specific references to particular positions in the CPV nomenclature in the notices;
- (d) the reference numbers in the nomenclature set out in Annex XVII, in so far as this does not change the material scope of the Directive, and the procedures for reference in the notices to particular positions in this nomenclature within the categories of services listed in the Annex;
- (e) the reference numbers in the nomenclature set out in Annex XII, insofar as this does not change the material scope of the Directive, and the procedures for reference to particular positions of this nomenclature in the notices;
- (f) Annex XI;
- (g) the procedure for sending and publishing data referred to in Annex XX, on grounds of technical progress or for administrative reasons;
- (h) the technical details and characteristics of the devices for electronic receipt referred to in points (a), (f) and (g) of Annex XXIV;
- (i) in the interests of administrative simplification as provided for in Article 67(3), the procedures for the use, drawing-up, transmission, receipt, translation, collection and distribution of the statistical reports referred to in Article 67(1) and (2);
- (j) the technical procedures for the calculation methods set out in Article 69(1) and (2), second subparagraph.

*Article 71***Implementation of the Directive**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 January 2006 at the latest. They shall forthwith inform the Commission thereof.

Member States may avail themselves of an additional period of up to 35 months after expiry of the time limit provided for in the first subparagraph for the application of the provisions necessary to comply with Article 6 of this Directive.

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

The provisions of Article 30 are applicable from 30 April 2004.

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

*Article 72***Monitoring mechanisms**

In conformity with Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors <sup>(1)</sup>, Member States shall ensure implementation of this Directive by effective, available and transparent mechanisms.

<sup>(1)</sup> OJ L 76, 23.03.1992, p. 14. Directive amended by the 1994 Act of Accession (OJ 241, 29.8.1994, p. 228).

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For this purpose they may, among other things, appoint or establish an independent body.

*Article 73***Repeal**

Directive 93/38/EEC is hereby repealed, without prejudice to the obligations of the Member States concerning the time limits for transposition into national law set out in Annex XXV.

References to the repealed Directive shall be construed as being made to this Directive and shall be read in accordance with the correlation table in Annex XXVI.

*Article 74***Entry into force**

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

*Article 75***Addressees**

This Directive is addressed to the Member States.



ANNEX I

**CONTRACTING ENTITIES IN THE SECTORS OF TRANSPORT OR DISTRIBUTION OF GAS OR HEAT**

**Belgium**

- Distrigaz/NV Distrigaz.
- Local authorities, or associations of local authorities, for this part of their activities.

**Denmark**

- Entities distributing gas or heat on the basis of an authorisation pursuant to § 4 of the lov om varmforsyning, see Consolidation Act No 772 of 24 July 2000.
- Entities transporting gas on the basis of a licence pursuant to § 10 of lov nr. 449 om naturgasforsyning of 31 May 2000.
- Entities transporting gas on the basis of an authorisation pursuant to bekendtgørelse nr. 141 om rørledningsanlæg på dansk kontinentalsokkelområde til transport af kulbrinter of 13 March 1974.

**Germany**

- Local authorities, public law bodies or associations of public law bodies or State-controlled undertakings supplying gas or heat to others or operating a general supply network pursuant to Article 2(3) of the Gesetz über die Elektrizitäts- und Gasversorgung (Energiewirtschaftsgesetz) of 24 April 1998, as last amended on 10 November 2001.

**Greece**

- ‘Δημόσια Επιχείρηση Αερίου (Δ.Ε.Π.Α.) Α.Ε.’, which transports and distributes gas in accordance with Law No 2364/95, as amended by Laws Nos 2528/97, 2593/98 and 2773/99.

**Spain**

- Enagas, S.A.
- Bahía de Bizkaia Gas, S.L.
- Gasoducto Al Andalus, S.A.
- Gasoducto de Extremadura, S.A.
- Infraestructuras Gasistas de Navarra, S.A.
- Regasificadora del Noroeste, S.A.
- Sociedad de Gas de Euskadi, S.A.
- Transportista Regional de Gas, S.A.
- Unión Fenosa de Gas, S.A.
- Bilbogas, S.A.
- Compañía Española de Gas, S.A.
- Distribución y Comercialización de Gas de Extramadura, S.A.
- Distribuidora Regional de Gas, S.A.
- Donostigas, S.A.
- Gas Alicante, S.A.
- Gas Andalucía, S.A.
- Gas Aragón, S.A.
- Gas Asturias, S.A.
- Gas Castilla – La Mancha, S.A.
- Gas Directo, S.A.
- Gas Figueres, S.A.



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- Gas Galicia SDG, S.A.
- Gas Hernani, S.A.
- Gas Natural de Cantabria, S.A.
- Gas Natural de Castilla y León, S.A.
- Gas Natural SDG, S.A.
- Gas Natural de Alava, S.A.
- Gas Natural de La Coruña, S.A.
- Gas Natural de Murcia SDG, S.A.
- Gas Navarra, S.A.
- Gas Pasaia, S.A.
- Gas Rioja, S.A.
- Gas y Servicios Mérida, S.L.
- Gesa Gas, S.A.
- Meridional de Gas, S.A.U.
- Sociedad del Gas Euskadi, S.A.
- Tolosa Gas, S.A.

**France**

- Société nationale des gaz du Sud-Ouest, transporting gas.
- Gaz de France, set up and operated pursuant to loi n° 46-628 sur la nationalisation de l'électricité et du gaz of 8 April 1946, as amended.
- Entities distributing electricity mentioned in Article 23 of loi n° 46-628 sur la nationalisation de l'électricité et du gaz of 8 April 1946, as amended.
- Compagnie française du méthane, transporting gas.
- Local authorities or associations of local authorities, distributing heat.

**Ireland**

- Bord Gáis Éireann
- Other entities that may be licensed to undertake the activity of natural gas distribution or transmission by the Commission for Energy Regulation pursuant to the provisions of the Gas Acts 1976 to 2002.
- Entities licensed under the Electricity Regulation Act 1999 which as operators of 'Combined Heat and Power Plants' are engaged in the distribution of heat.

**Italy**

- SNAM Rete Gas s.p.a., SGM and EDISON T&S, transporting gas.
- Entities distributing gas governed by the consolidated text of the laws on the direct assumption of control of public services by local authorities and provinces, approved by Royal Decree No. 2578 of 15 October 1925 and by Presidential Decree No. 902 of 4 October 1986.
- Entities distributing heat to the public as referred to in Article 10 of Law No. 308 of 29 May 1982 — Norme sul contenimento dei consumi energetici, lo sviluppo delle fonti rinnovabili di energia, l'esercizio di centrali elettriche alimentate con combustibili dagli idrocarburi.
- Local authorities, or associations of local authorities, distributing heat to the public.

**Luxembourg**

- Société de transport de gaz SOTEG S.A.
- Gaswierk Esch-Uelzecht S.A.
- Service industriel de la Ville de Dudelange.
- Service industriel de la Ville de Luxembourg.

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- Local authorities or associations formed by those local authorities responsible for the distribution of heat.

**Netherlands**

- Entities producing, transporting or distributing gas on the basis of a licence (vergunning) granted by the municipal authorities pursuant to the Gemeentewet.
- Municipal or provincial authorities transporting or distributing gas pursuant to the Gemeentewet or the Provinciewet.
- Local authorities or associations of local authorities distributing heat to the public.

**Austria**

- Entities authorised to transport or distribute gas pursuant to the Energiewirtschaftsgesetz, dRGBL. I, pp. 1451-1935 or the Gaswirtschaftsgesetz, BGBl. I No 121/2000, as amended.
- Entities authorised to transport or distribute heat pursuant to the Gewerbeordnung, BGBl. No 194/1994, as amended.

**Portugal**

- Entities transporting or distributing gas pursuant to Article 1 of Decree-Law No 8/2000 of 8 February 2000, with the exception of subparagraphs (ii) and (iii) of paragraph 3(b) of that Article.

**Finland**

- Public or other entities operating a gas network transport system and transporting or distributing gas under a licence pursuant to Chapter 3(1) or Chapter 6(1) of the *themaakaasumarkkinalaki/naturgasmarknadslagen* (508/2000); and municipal entities or public enterprises producing, transporting or distributing heat or providing heat to networks.

**Sweden**

- Entities transporting or distributing gas or heat on the basis of a concession pursuant to *lagen (1978:160) om vissa rörledningar*.

**United Kingdom**

- A public gas transporter as defined in section 7(1) of the Gas Act 1986.
- A person declared to be an undertaker for the supply of gas under Article 8 of the Gas (Northern Ireland) Order 1996.
- A local authority which provides or operates a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of heat.
- A person licensed under section 6(1)(a) of the Electricity Act 1989 whose licence includes the provisions referred to in section 10(3) of that Act.
- The Northern Ireland Housing Executive.



ANNEX II

**CONTRACTING ENTITIES IN THE SECTORS OF PRODUCTION,  
TRANSPORT OR DISTRIBUTION OF ELECTRICITY**

**Belgium**

- SA Electrabel/NV Electrabel.
- Local authorities and associations of local authorities, for this part of their activities.
- SA Société de Production d'Electricité/NV Elektriciteitsproductie Maatschappij.

**Denmark**

- Entities producing electricity on the basis of a licence pursuant to § 10 of the lov om elforsyning, see Consolidation Act No 767 of 28 August 2001.
- Entities transporting electricity on the basis of a licence pursuant to § 19 of the lov om elforsyning, see Consolidation Act No 767 of 28 August 2001.
- Entities undertaking responsibility for the system on the basis of a licence pursuant to § 27 of the lov om elforsyning, see Consolidation Act No 767 of 28 August 2001.

**Germany**

- Local authorities, public law bodies or associations of public law bodies or State undertakings, supplying electricity to other undertakings or operating a general supply network pursuant to Article 2(3) of the Gesetz über die Elektrizitäts- und Gasversorgung (Energiewirtschaftsgesetz) of 24 April 1998, as last amended on 10 November 2001.

**Greece**

- ‘Δημόσια Επιχείρηση Ηλεκτρισμού Α.Ε.’, set up by Law No 1468/1950 περί ιδρύσεως της ΔΕΗ and operates in accordance with Law No 2773/1999 and Presidential Decree No 333/1999.
- The company ‘ΔΙΑΧΕΙΡΙΣΤΗΣ ΕΛΛΗΝΙΚΟΥ ΣΥΣΤΗΜΑΤΟΣ ΜΕΤΑΦΟΡΑΣ ΗΛΕΚΤΡΙΚΗΣ ΕΝΕΡΓΕΙΑΣ Α.Ε.’ known as ‘ΔΙΑΧΕΙΡΙΣΤΗΣ ΤΟΥ ΣΥΣΤΗΜΑΤΟΣ ή ΔΕΣΜΗΕ’, set up pursuant to Article 14 of Law No 2773/1999 and Presidential Decree No 328/2000 (Greek Official Gazette 268).

**Spain**

- Red Eléctrica de España, S.A.
- Endesa, S.A.
- Iberdrola, S.A.
- Unión Fenosa, S.A.
- Hidroeléctrica del Cantábrico, S.A.
- Electra del Viesgo, S.A.
- Otras entidades encargadas de la producción, transporte y distribución de electricidad en virtud de la Ley 54/1997, de 27 de noviembre, del Sector eléctrico y su normativa de desarrollo.

**France**

- Électricité de France, set up and operating pursuant to loi n° 46-628 sur la nationalisation de l'électricité et du gaz of 8 April 1946, as amended.
- Entities distributing electricity and referred to in Article 23 of loi n° 46-628 sur la nationalisation de l'électricité et du gaz of 8 April 1946, as amended.
- Compagnie nationale du Rhône.

**Ireland**

- The Electricity Supply Board.
- ESB Independent Energy [ESBIE — electricity supply].

**▼B**

- Synergen Ltd. [electricity generation].
- Viridian Energy Supply Ltd. [electricity supply].
- Huntstown Power Ltd. [electricity generation].
- Bord Gáis Éireann [electricity supply].
- Electricity Suppliers and Generators licensed under the Electricity Regulation Act 1999.

**Italy**

- Companies in the Gruppo Enel authorised to produce, transmit and distribute electricity within the meaning of Legislative Decree No 79 of 16 March 1999, as subsequently amended and supplemented.
- Other undertakings operating on the basis of concessions under Legislative Decree No 79 of 16 March 1999.

**Luxembourg**

- Compagnie grand-ducale d'électricité de Luxembourg (CEGEDEL), producing or distributing electricity pursuant to the convention concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le Grand-Duché du Luxembourg of 11 November 1927, approved by the Law of 4 January 1928.
- Local authorities responsible for the transport or distribution of electricity.
- Société électrique de l'Our (SEO).
- Syndicat de communes SIDOR.

**Netherlands**

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

**Austria**

- Entities operating a transmission or distribution network pursuant to the Elektrizitätswirtschafts- und Organisationsgesetz, BGBl. I No 143/1998, as amended, or pursuant to the Elektrizitätswirtschafts(wesen)gesetze of the nine Länder.

**Portugal**

## — BASIC LEGISLATION

- ELECTRICIDADE DE PORTUGAL (EDP), set up pursuant to Decree-Law No 182/95 of 27 July 1995, as amended by Decree-Law No 56/97 of 14 March 1997.
- EMPRESA ELÉCTRICA DOS AÇORES (EDA), operating pursuant to Regional Legislative Decree No 15/96/A of 1 August 1996.
- EMPRESA DE ELECTRICIDADE DA MADEIRA (EEM), operating pursuant to Decree-Law No 99/91 and Decree-Law No 100/91, both of 2 March 1991.

## — PRODUCTION OF ELECTRICITY

- Entities producing electricity pursuant to Decree-Law No 183/95 of 27 July 1995, as amended by Decree-Law No 56/97 of 14 March 1997, as further amended by Decree-Law No 198/2000 of 24 August 2000.
- Independent producers of electricity pursuant to Decree-Law No 189/88 of 27 May 1988, as amended by Decree-Laws No 168/99 of 18 May 1999, No 313/95 of 24 November 1995, No 312/2001 of 10 December 2001 and No 339-C/2001 of 29 December 2001.

## — TRANSPORT OF ELECTRICITY

- Entities transporting electricity pursuant to Decree-Law No 185/95 of 27 July 1995, as amended by Decree-Law No 56/97 of 14 March 1997.

**▼B**

## — DISTRIBUTION OF ELECTRICITY

- Entities distributing electricity pursuant to Decree-Law No 184/95 of 27 July 1995, as amended by Decree-Law No 56/97 of 14 March 1997, and pursuant to Decree-Law No 344-B/82 of 1 September 1982, as amended by Decree-Law No.297/86 of 19 September 1986 and by Decree-Law No 341/90 of 30 October 1990 and Decree-Law No 17/92 of 5 February 1992.

**Finland**

- Municipal entities and public enterprises producing electricity and entities responsible for the maintenance of electricity transport or distribution networks and for transporting electricity or for the electricity system under a licence pursuant to Section 4 or 16 of the sähkömarkkinalakisähkömarkkina-laki/elmarknadslagen (386/1995).

**Sweden**

- Entities transporting or distributing electricity on the basis of a concession pursuant to ellagen (1997:857).

**United Kingdom**

- A person licensed under section 6 of the Electricity Act 1989.
- A person licensed under Article 10(1) of the Electricity (Northern Ireland) Order 1992.

▼ **B***ANNEX III***CONTRACTING ENTITIES IN THE SECTORS OF PRODUCTION,  
TRANSPORT OR DISTRIBUTION OF DRINKING WATER****Belgium**

- Aqinter
- Local authorities and associations of local authorities, for this part of their activities.
- Société wallonne des Eaux
- Vlaams Maatschappij voor Watervoorziening

**Denmark**

- Entities supplying water as defined in § 3(3) of lovbekendtgørelse nr. 130 om vandforsyning m.v. of 26 February 1999.

**Germany**

- Entities producing or distributing water pursuant to the Eigenbetriebsverordnungen or Eigenbetriebsgesetze of the Länder (public utility companies).
- Entities producing or distributing water pursuant to the Gesetze über die kommunale Gemeinschaftsarbeit oder Zusammenarbeit of the Länder.
- Entities producing water pursuant to the Gesetz über Wasser- und Bodenverbände of 12 February 1991, as last amended on 15 May 2002.
- Publicly-owned companies producing or distributing water pursuant to the Kommunalgesetze, in particular the Gemeindeverordnungen of the Länder.
- Undertakings set up pursuant to the Aktiengesetz of 6 September 1965, as last amended on 19 July 2002, or the GmbH-Gesetz of 20 April 1892, as last amended on 19 July 2002, or having the legal status of a Kommanditgesellschaft (limited partnership), producing or distributing water on the basis of a special contract with regional or local authorities.

**Greece**

- ‘Εταιρεία Υδρεύσεως και Αποχετεύσεως Πρωτεύουσας Α.Ε.’ (‘Ε.Υ.Δ.Α.Π.’ or ‘Ε.Υ.Δ.Α.Π. Α.Ε.’). The legal status of the company is governed by the provisions of Consolidated Law No 2190/1920, Law No 2414/1996 and additionally by the provisions of Law No 1068/80 and Law No 2744/1999.
- ‘Εταιρεία Ύδρευσης και Αποχέτευσης Θεσσαλονίκης Α.Ε.’ (‘Ε.Υ.Α.Θ. Α.Ε.’) governed by the provisions of Law No 2937/2001 (Greek Official Gazette 169 A’) and of Law No 2651/1998 (Greek Official Gazette 248 A’).
- ‘Δημοτική Επιχείρηση Ύδρευσης και Αποχέτευσης Μείζονος Περιοχής Βόλου’ (‘ΔΕΥΑΜΒ’), which operates pursuant to Law No 890/1979.
- ‘Δημοτικές Επιχειρήσεις Ύδρευσης — Αποχέτευσης’, which produce and distribute water pursuant to Law No 1069/80 of 23 August 1980.
- ‘Σύνδεσμοι Ύδρευσης’, which operate pursuant to Presidential Decree No 410/1995, in accordance with the Κώδικος Δήμων και Κοινοτήτων.
- ‘Δήμοι και Κοινότητες’, which operate pursuant to Presidential Decree No 410/1995, in accordance with the Κώδικος Δήμων και Κοινοτήτων.

**Spain**

- Mancomunidad de Canales de Taibilla.
- Otras entidades públicas integradas o dependientes de las Comunidades Autónomas y de las Corporaciones locales que actúan en el ámbito de la distribución de agua potable.
- Otras entidades privadas que tienen concedidos derechos especiales o exclusivos por las Corporaciones locales en el ámbito de la distribución de agua potable.

**France**

- Regional or local authorities and public local bodies producing or distributing drinking water.

**▼B****Ireland**

- Entities producing or distributing water pursuant to the Local Government [Sanitary Services] Act 1878 to 1964.

**Italy**

- Bodies responsible for managing the various stages of the water distribution service under the consolidated text of the laws on the direct assumption of control of public services by local authorities and provinces, approved by Royal Decree No. 2578 of 15 October 1925, Presidential Decree No. 902 of 4 October 1986 and Legislative Decree No. 267 setting out the consolidated text of the laws on the structure of local authorities, with particular reference to Articles 112 to 116.
- Ente Autonomo Acquedotto Pugliese set up by Royal Decree-Law No. 2060 of 19 October 1919.
- Ente Acquedotti Siciliani set up by Regional Law No. 2/2 of 4 September 1979 and Regional Law No. 81 of 9 August 1980.
- Ente Sardo Acquedotti e Fognature set up by Law No. 9 of 5 July 1963.

**Luxembourg**

- Departments of the local authorities responsible for water distribution.
- Associations of local authorities producing or distributing water, set up pursuant to the loi concernant la création des syndicats de communes of 23 February 2001, as amended and supplemented by the Law of 23 December 1958 and by the Law of 29 July 1981, and pursuant to the loi ayant pour objet le renforcement de l'alimentation en eau potable du Grand-Duché du Luxembourg à partir du réservoir d'Esch-sur-Sûre of 31 July 1962.

**Netherlands**

- Entities producing or distributing water according to the Waterleidingwet.

**Austria**

- Local authorities and associations of local authorities producing, transporting or distributing drinking water pursuant to the Wasserversorgungsgesetze of the nine Länder.

**Portugal**

- INTERMUNICIPAL SYSTEMS — Undertakings involving the State or other public entities, with a majority shareholding, and private undertakings, pursuant to Decree-Law No 379/93 of 5 November 1993. Direct administration by the State is permissible.
- MUNICIPAL SYSTEMS — Local authorities, associations of local authorities, local authority services, undertakings in which all or a majority of the capital is publicly owned or private undertakings pursuant to Decree-Law No 379/93 of 5 November 1993 and Law No 58/98 of 18 August 1998.

**Finland**

- Water supply authorities coming under Section 3 of the vesihuoltolaki/lagen om vattentjänster (119/2001).

**Sweden**

- Local authorities and municipal companies producing, transporting or distributing drinking water pursuant to lagen (1970:244) om allmänna vatten- och avloppsanläggningar.

**United Kingdom**

- A company holding an appointment as a water undertaker or a sewerage undertaker under the Water Industry Act 1991.
- A water and sewerage authority established by section 62 of the Local Government etc (Scotland) Act 1994.
- The Department for Regional Development (Northern Ireland).





*ANNEX IV*

**CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES**

**Belgium**

- Société nationale des Chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen.

**Denmark**

- Danske Statsbaner.
- Entities pursuant to lov nr. 1317 om amtskommunernes overtagelse af de statlige ejerandele i privatbanerne of 20 December 2000.
- Ørestadsselskabet I/S.

**Germany**

- Deutsche Bahn AG.
- Other undertakings providing railway services to the public pursuant to Article 2(1) of the Allgemeines Eisenbahngesetz of 27 December 1993, as last amended on 21 June 2002.

**Greece**

- ‘Οργανισμός Σιδηροδρόμων Ελλάδος Α.Ε.’ (‘Ο.Σ.Ε. Α.Ε.’), pursuant to Law No 2671/98.
- ‘ΕΡΓΟΣΕ Α.Ε.’ pursuant to Law No 2366/95.

**Spain**

- Ente público Gestor de Infraestructuras Ferroviarias (GIF).
- Red Nacional de los Ferrocarriles Españoles (RENFE).
- Ferrocarriles de Vía Estrecha (FEVE).
- Ferrocarrils de la Generalitat de Catalunya (FGC).
- Eusko Trenbideak (Bilbao).
- Ferrocarriles de la Generalitat Valenciana. (FGV).
- Ferrocarriles de Mallorca.

**France**

- Société nationale des chemins de fer français and other rail networks open to the public, referred to in loi d'orientation des transports intérieurs No 82-1153 of 30 December 1982, Title II, Chapter 1.
- Réseau ferré de France, State-owned company set up by Law No 97-135 of 13 February 1997.

**Ireland**

- Iamród Éireann [Irish Rail]
- Railway Procurement Agency

**Italy**

- Ferrovie dello Stato S. p. A.
- Trenitalia S. p. A.
- Entities, companies and undertakings providing railway services on the basis of a concession pursuant to Article 10 of Royal Decree No. 1447 of 9 May 1912, approving the consolidated text of the laws on le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.
- Entities, companies and undertakings providing railway services on the basis of a concession pursuant to Article 4 of Law No. 410 of 4 June 1949 — Concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.

**▼B**

- Entities, companies and undertakings or local authorities providing railway services on the basis of a concession pursuant to Article 14 of Law No. 1221 of 2 August 1952 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie di altre linee di trasporto in regime di concessione.
- Entities, companies and undertakings providing public transport services pursuant to Articles 8 and 9 of Legislative Decree No. 422 of 19 November 1997 — Conferimento alle regioni ed agli enti locali di funzioni e compiti in materia di trasporto pubblico locale, under the terms of Article 4(4) of Law No. 9 of 15 March 1997, as amended by Legislative Decree No 400 of 20 September 1999 and by Article 45 of Law No. 166 of 1 August 2002.

**Luxembourg**

- Chemins de fer luxembourgeois (CFL).

**Netherlands**

- Procuring entities in the field of railway services.

**Austria**

- Österreichische Bundesbahn.
- Schieneninfrastrukturfinanzierungs-Gesellschaft mbH sowie.
- Entities authorised to provide transport services pursuant to Eisenbahngesetz, BGBl. No 60/1957, as amended.

**Portugal**

- CP – Caminhos de Ferro de Portugal, E.P., pursuant to Decree-Law No 109/77 of 23 March 1977.
- REFER, E.P., pursuant to Decree-Law No 104/97 of 29 April 1997.
- RAVE, S.A., pursuant to Decree-Law No 323-H/2000 of 19 December 2000.
- Fertagus, S.A., pursuant to Decree-Law No 189-B/99 of 2 June 1999.
- Metro do Porto, S.A., pursuant to Decree-Law No 394-A/98 of 15 December 1998, as amended by Decree-Law No 261/2001 of 26 September 2001.
- Normetro, S.A., pursuant to Decree-Law No 394-A/98 of 15 December 1998, as amended by Decree-Law No 261/2001 of 26 September 2001.
- Metropolitano Ligeiro de Mirandela, S.A., pursuant to Decree-Law No 15/95 of 8 February 1995.
- Metro do Mondego, S.A., pursuant to Decree-Law No 10/2002 of 24 January 2002.
- Metro Transportes do Sul, S.A., pursuant to Decree-Law No 337/99 of 24 August 1999.
- Local authorities and local authority undertakings providing transport services pursuant to Law No 159/99 of 14 September 1999.
- Public authorities and public undertakings providing railway services pursuant to Law No 10/90 of 17 March 1990.
- Private undertakings providing railway services pursuant to Law No 10/90 of 17 March 1990, where they hold special or exclusive rights.

**Finland**

- VR Osakeyhtiö/VR Aktiebolag

**Sweden**

- Public entities operating railway services in accordance with förordningen (1996:734) om statens spåranläggningar and lagen (1990:1157) om järnvägs-säkerhet.
- Regional and local public entities operating regional or local railway communications pursuant to lagen (1997:734) om ansvar för viss kollektiv persontrafik.
- Private entities operating railway services pursuant to an authorisation granted under förordningen (1996:734) om statens spåranläggningar, where such permission complies with Article 2(3) of the Directive.

▼B

**United Kingdom**

- Railtrack plc
- Eurotunnel plc
- Northern Ireland Transport Holding Company
- Northern Ireland Railways Company Limited



## ANNEX V

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

- Société des Transports intercommunaux de Bruxelles/Maatschappij voor intercommunale Vervoer van Brussel
- Société régionale wallonne du Transport et ses sociétés d'exploitation (TEC Liège–Verviers, TEC Namur–Luxembourg, TEC Brabant wallon, TEC Charleroi, TEC Hainaut)/ Société régionale wallonne du Transport en haar exploitatiemaatschappijen (TEC Liège–Verviers, TEC Namur–Luxembourg, TEC Brabant wallon, TEC Charleroi, TEC Hainaut)
- Vlaamse Vervoermaatschappij (De Lijn)
- Private companies benefiting from special or exclusive rights.

**Denmark**

- Danske Statsbaner
- Entities providing bus services to the public (ordinary regular services) on the basis of an authorisation pursuant to lov bekendtgørelse nr. 738 om buskørsel of 22 December 1999.
- Ørestadsselskabet I/S.

**Germany**

- Undertakings providing, on the basis of an authorisation, short-distance transport services to the public pursuant to the Personenbeförderungsgesetz of 21 March 1961, as last amended on 21 August 2002.

**Greece**

- ‘Ηλεκτροκίνητα Λεωφορεία Περιοχής Αθηνών - Πειραιώς Α.Ε.’ (‘Η.Λ.Π.Α.Π. Α.Ε.’), established and operating pursuant to Legislative Decree No 768/1970 (A'273), Law No 588/1977 (A'148) and Law No 2669/1998 (A'283).
- ‘Ηλεκτρικοί Σιδηρόδρομοι Αθηνών – Πειραιώς’ (‘Η.Σ.Α.Π. Α.Ε.’), established and operating pursuant to Laws Nos 352/1976 (A' 147) and 2669/1998 (A'283).
- ‘Όργανισμός Αστικών Συγκοινωνιών Αθηνών Α.Ε.’ (‘Ο.Α.ΣΑ. Α.Ε.’), established and operating pursuant to Laws Nos 2175/1993 (A'211) and 2669/1998 (A'283).
- ‘Εταιρεία Θερμικών Λεωφορείων Α.Ε.’ (‘Ε.Θ.Ε.Λ. Α.Ε.’), established and operating pursuant to Laws Nos 2175/1993 (A'211) and 2669/1998 (A'283).
- ‘Αττικό Μετρό Α.Ε.’, established and operating pursuant to Law No 1955/1991.
- ‘Όργανισμός Αστικών Συγκοινωνιών Θεσσαλονίκης’ (‘Ο.Α.Σ.Θ.’), established and operating pursuant to Decree No 3721/1957, Legislative Decree No 716/1970 and Laws Nos 66/79 and 2898/2001 (A'71).
- ‘Κοινό Ταμείο Είσπραξης Λεωφορείων’ (‘Κ.Τ.Ε.Λ.’), operating pursuant to Law No 2963/2001 (A'268).
- ‘Δημοτικές Επιχειρήσεις Λεωφορείων Ρόδου και Κω’, otherwise known as ‘ΡΟΔΑ’ and ‘ΔΕΑΣ ΚΩ’ respectively, operating pursuant to Law No 2963/2001 (A'268).

**Spain**

- Entidades que prestan servicios públicos de transporte urbano con arreglo a la Ley 7/1985, de 2 de abril, Reguladora de las Bases de Régimen Local; Real Decreto legislativo 781/1986, de 18 de abril, por el que se aprueba el texto refundido de las disposiciones legales vigentes en materia de régimen local y correspondiente legislación autonómica en su caso.
- Entidades que prestan servicios públicos de autobuses con arreglo a la disposición transitoria tercera de la Ley 16/1987, de 30 de julio, de Ordenación de los Transportes Terrestres.

**▼B****France**

- Entities providing transport services to the public pursuant to Article 7-II of loi d'orientation des transports intérieurs n° 82-1153 of 30 December 1982.
- Régie autonome des transports parisiens, Société nationale des chemins de fer français and other entities providing transport services on the basis of an authorisation granted by the Syndicat des transports d'Ile-de-France, pursuant to Order No 59-151 of 7 January 1959 as amended and the Decrees implementing it with regard to the organisation of passenger transport in the Ile-de-France region.
- Réseau ferré de France, State-owned company set up by Law No 97-135 of 13 February 1997.

**Ireland**

- Iarnród Éireann [Irish Rail]
- Railway Procurement Agency
- Luas [Dublin Light Rail]
- Bus Éireann [Irish Bus]
- Bus Átha Cliath [Dublin Bus]
- Entities providing transport services to the public pursuant to the amended Road Transport Act 1932.

**Italy**

- Entities, companies and undertakings providing public transport services by rail, automated system, tramway, trolleybus or bus or managing the relevant infrastructures at national, regional or local level.

They include, for example:

- Entities, companies and undertakings providing transport services on the basis of a concession pursuant to Law No 1822 of 28 September 1939 — Disciplina degli autoservizi di linea (autolinee per viaggiatori, bagagli e pacchi agricoli in regime di concessione all'industria privata) — Article 1, as amended by Article 45 of the Presidential Decree No 771 of 28 June 1955.
- Entities, companies and undertakings providing transport services to the public pursuant to Article 1(4) or (15) of Royal Decree No 2578 of 15 October 1925 — Approvazione del testo unico della legge sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province.
- Entities, companies and undertakings providing transport services to the public pursuant to Legislative Decree No 422 of 19 November 1997 — Conferimento alle regioni ed agli enti locali di funzioni e compiti in materia di trasporto pubblico locale, under the terms of Article 4(4) of Law No 59 of 15 March 1997 — as amended by Legislative Decree No 400 of 20 September 1999, and by Article 45 of Law No 166 of 1 August 2002.
- Entities, companies and undertakings providing public transport services pursuant to Article 113 of the consolidated text of the laws on the structure of local authorities, approved by Law No 267 of 18 August 2000 as amended by Article 35 of Law No 448 of 28 December 2001.
- Entities, companies and undertakings operating on the basis of a concession pursuant to Article 242 or 256 of Royal Decree No 1447 of 9 May 1912 approving the consolidated text of the laws on le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.
- Entities, companies and undertakings and local authorities operating on the basis of a concession pursuant to Article 4 of Law No 410 of 4 June 1949 — Concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.
- Entities, companies and undertakings operating on the basis of a concession pursuant to Article 14 of Law No 1221 of 2 August 1952 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.

**Luxembourg**

- Chemins de fer du Luxembourg (CFL).

**▼B**

- Service communal des autobus municipaux de la Ville de Luxembourg.
- Transports intercommunaux du canton d'Esch-sur-Alzette (TICE).
- Bus service undertakings operating pursuant to the règlement grand-ducal concernant les conditions d'octroi des autorisations d'établissement et d'exploitation des services de transports routiers réguliers de personnes rémunérées of 3 February 1978.

**Netherlands**

- Entities providing transport services to the public pursuant to chapter II (Openbaar Vervoer) of the Wet Personenvervoer.

**Austria**

- Entities authorised to provide transport services pursuant to the Eisenbahngesetz, BGBl. No 60/1957, as amended, or the Kraftfahrliiniengesetz, BGBl. I No 203/1999, as amended.

**Portugal**

- Metropolitano de Lisboa, E.P., pursuant to Decree-Law No 439/78 of 30 December 1978.
- Local authorities, local authority services and local authority undertakings under Law No 58/98 of 18 August 1998, which provide transport services pursuant to Law No 159/99 of 14 September 1999.
- Public authorities and public undertakings providing railway services pursuant to Law No 10/90 of 17 March 1990.
- Private undertakings providing railway services pursuant to Law No 10/90 of 17 March 1990, where they hold special or exclusive rights.
- Entities providing public transport services pursuant to Article 98 of the Regulamento de Transportes em Automóveis (Decree No 37272 of 31 December 1948).
- Entities providing public transport services pursuant to Law No 688/73 of 21 December 1973.
- Entities providing public transport services pursuant to Decree-Law No 38144 of 31 December 1950.

**Finland**

- Entities providing regular coach transport services under a special or exclusive licence pursuant to the laki luvanvaraisesta henkilöliikenteestä tiellä/lagen om tillståndspliktig persontrafik på väg (343/1991) and municipal transport authorities and public enterprises providing public transport services by bus, rail or underground railway, or maintaining a network for the purpose of providing such transport services.

**Sweden**

- Entities operating urban railway or tramway services pursuant to lagen (1997:734) om ansvar för viss kollektiv persontrafik and lagen (1990:1157) om järnvägssäkerhet.
- Public or private entities operating a trolley bus or bus service pursuant with lagen (1997:734) om ansvar för viss kollektiv persontrafik and yrkestrafiklagen (1998:490).

**United Kingdom**

- London Regional Transport
- London Underground Limited
- Transport for London
- A subsidiary of Transport for London within the meaning of section 424(1) of the Greater London Authority Act 1999
- Strathclyde Passenger Transport Executive
- Greater Manchester Passenger Transport Executive
- Tyne and Wear Passenger Transport Executive
- Brighton Borough Council

**▼B**

- South Yorkshire Passenger Transport Executive
- South Yorkshire Supertram Limited
- Blackpool Transport Services Limited
- Conwy County Borough Council
- A person who provides a London local service as defined in section 179(1) of the Greater London Authority Act 1999 (a bus service) in pursuance of an agreement entered into by Transport for London under section 156(2) of that Act or in pursuance of a transport subsidiary's agreement as defined in section 169 of that Act
- Northern Ireland Transport Holding Company
- A person who holds a road service licence under section 4(1) of the Transport Act (Northern Ireland) 1967 which authorises him to provide a regular service within the meaning of that licence





## ANNEX VI

**CONTRACTING ENTITIES IN THE POSTAL SERVICES SECTOR**

## BELGIUM

De Post/La Poste

## DENMARK

Post Danmark, jf. Lov nr. 569 om Post Danmark A/S of 6 June 2002.

## GERMANY

—

## GREECE

Ελληνικά Ταχυδρομεία ΕΛ.ΤΑ established by Legislative Decree No 496/70 and operating pursuant to Law No 2668/98 (ELTA)

## SPAIN

Correos y Telégrafos, S.A.

## FRANCE

La Poste

## IRELAND

An Post plc

## ITALY

Poste Italiane S.p.A.

## LUXEMBOURG

Entreprise des Postes et Télécommunications Luxembourg

## NETHERLANDS

—

## AUSTRIA

Österreichische Post AG

## PORTUGAL

CTT – Correios de Portugal

## FINLAND

—

## SWEDEN

Posten Sverige AB

Posten Logistik AB

BLSI-I AB

DPD Nordic AB,

DPD Sverige AB

Falcon Air AB

Hultbergs Inrikes Transporter AB (HIT)

Posten Express AB

Posten Logistik AB

Poståkeriet Sverige AB

**▼B**

SwedeGiro AB

TAB

UNITED KINGDOM

—



*ANNEX VII*

**CONTRACTING ENTITIES IN THE SECTORS OF EXPLORATION  
FOR AND EXTRACTION OF OIL OR GAS**

**Belgium**

—

**Denmark**

Entities pursuant to

- Lov om Danmarks undergrund, see Consolidation Act No 526 of 11 June 2002.
- Lov om kontinentalsoklen, see Consolidation Act No 182 of 1 May 1979.

**Germany**

- Undertakings pursuant to the Bundesberggesetz of 13 August 1980.

**Greece**

- ‘Ελληνικά Πετρέλαια Α.Ε.’, pursuant to Law No 2593/98 για την αναδιοργάνωση της Δ.Ε.Π. Α.Ε. και των θυγατρικών της εταιρειών, το καταστατικό αυτής και άλλες διατάξεις.

**Spain**

- BG International Limited Quatum, Asesores & Consultores, S.A.
- Cambria Europe, Inc.
- CNWL oil (España), S.A.
- Compañía de investigación y explotaciones petrolíferas, S.A.
- Conoco limited.
- Eastern España, S.A.
- Enagas, S.A.
- España Canadá resources Inc.
- Fugro – Geoteam, S.A.
- Galioil, S.A.
- Hope petróleos, S.A.
- Locs oil compay of Spain, S.A.
- Medusa oil Ltd.
- Muphy Spain oil company
- Onemppm España, S.A.
- Petroleum oil & gas España, S.A.
- Repsol Investigaciones petrolíferas, S.A.
- Sociedad de hidrocarburos de Euskadi, S.A.
- Taurus petroleum, AN.
- Teredo oil limited
- Unión Fenosa gas exploración y producción, S.A.
- Wintersahll, AG
- YCI España, L.C.
- Otras entidades que operan en virtud de la Ley 34/1998, de 7 de octubre, del Sector de hidrocarburos y su normativa de desarrollo.

**France**

- Entities responsible for exploration for and the extraction of oil or gas pursuant to the code minier and its implementing rules, particularly Decree No 95-427 of 19 April 1995.

**▼B****Ireland**

- Entities granted an authorisation, license, permit or concession to explore for or extract oil and gas pursuant to the following legal provisions:
  - Continental Shelf Act 1968
  - Petroleum and Other Minerals Development Act 1960
  - Licensing Terms for Offshore Oil and Gas Exploration and Development 1992
  - Petroleum (Production) Act (NI) 1964.

**Italy**

- Entities granted an authorisation, permit, licence or concession to explore for or extract oil and gas or to store natural gas underground pursuant to the following legislative provisions:
  - Law No 136 of 10 February 1953;
  - Law No 6 of 11 January 1957, as amended by Law No 613 of 21 July 1967;
  - Law No 9 of 9 January 1991;
  - Legislative Decree No 625 of 25 November 1996;
  - Law No 170 of 26 April 1974, as amended by the Legislative Decree No 164 of 23 May 2000.

**Luxembourg**

—

**Netherlands**

- Entities pursuant to Mijnbouwwet (1 January 2003).

**Austria**

- Entities authorised to explore for or extract oil or gas pursuant to the Mineralrohstoffgesetz, BGBl. I No 38/1999, as amended.

**Portugal**

Entities pursuant to

- Decree-Law No 109/94 of 26 April 1994 and Portaria (Ministerial Order) No 790/94 of 5 September 1994.
- Decree-Law No 82/94 of 24 August 1994 and Despacho (Decision) No A-87/94 of 17 January 1994.

**Finland**

—

**Sweden**

- Entities holding a concession for exploring for or exploiting oil or gas pursuant to minerallagen (1991:45) or which have been granted an authorisation pursuant to lagen (1966:314) om kontinentalsockeln.

**United Kingdom**

- A person operating by virtue of a licence granted or having effect as if granted under the Petroleum Act 1998
- A person licensed under the Petroleum (Production) Act (Northern Ireland) 1964



*ANNEX VIII*

**CONTRACTING ENTITIES IN THE SECTORS OF EXPLORATION  
FOR AND EXTRACTION OF COAL AND OTHER SOLID FUELS**

**Belgium**

—

**Denmark**

— Entities exploring for or extracting coal or other solid fuels pursuant to Consolidation Act No 569 of 30 June 1997.

**Germany**

— Undertakings exploring for or extracting coal or other solid fuels pursuant to the Bundesberggesetz of 13 August 1980.

**Greece**

— ‘Δημόσια Επιχείρηση Ηλεκτρισμού’, which prospects for and extracts coal and other solid fuels pursuant to the Mining Code of 1973, as amended by the law of 27 April 1976.

**Spain**

- Alto Bierzo, S.A.
- Antracitas de Arlanza, S.A.
- Antracitas de Gillon, S.A.
- Antracitas de La Granja, S.A.
- Antracitas de Tineo, S.A.
- Campomanes Hermanos, S.A.
- Carbones de Arlanza, S.A.
- Carbones de Linares, S.A.
- Carbones de Pedraforca, S.A.
- Carbones del Puerto, S.A.
- Carbones el Túnel, S.L.
- Carbones San Isidro y María, S.A.
- Carbonifera del Narcea, S.A.
- Compañía Minera Jove, S.A.
- Compañía General Minera de Teruel, S.A.
- Coto minero del Narcea, S.A.
- Coto minero del Sil, S.A.
- Empresa Nacional Carbonífera del Sur, S.A.
- Endesa, S.A.
- Gonzalez y Diez, S.A.
- Hijos de Baldomero García, S.A.
- Hullas del Coto Cortés, S.A.
- Hullera Vasco-leonesa, S.A.
- Hulleras del Norte, S.A.
- Industrial y Comercial Minera, S.A.
- La Carbonífera del Ebro, S.A.
- Lignitos de Meirama, S.A.
- Malaba, S.A.
- Mina Adelina, S.A.

**▼B**

- Mina Escobal, S.A.
- Mina La Camocha, S.A.
- Mina La Sierra, S.A.
- Mina Los Compadres, S.A.
- Minas de Navaleo, S.A.
- Minas del Principado, S.A.
- Minas de Valdeloso, S.A.
- Minas Escucha, S.A.
- Mina Mora primera bis, S.A.
- Minas y explotaciones industriales, S.A.
- Minas y ferrocarriles de Utrillas, S.A.
- Minera del Bajo Segre, S.A.
- Minera Martín Aznar, S.A.
- Minero Siderúrgica de Ponferrada, S.A.
- Muñoz Sole hermanos, S.A.
- Promotora de Minas de carbón, S.A.
- Sociedad Anónima Minera Catalano–aragonesa.
- Sociedad minera Santa Bárbara, S.A.
- Unión Minera del Norte, S.A.
- Union Minera Ebro Segre, S.A.
- Viloría Hermanos, S.A.
- Virgilio Riesco, S.A.
- Otras entidades que operan en virtud de la Ley 22/1973, de 21 de julio, de Minas y su normativa de desarrollo.

**France**

- Entities exploring for or extracting coal or other solid fuels pursuant to the code minier and its implementing rules, particularly Decree No 95-427 of 19 April 1995.

**Ireland**

- Bord na Mona plc. set up and operating pursuant to the Turf Development Act 1946 to 1998.

**Italy**

- Carbosulcis S.p.A.

**Luxembourg**

—

**Netherlands**

—

**Austria**

- Entities authorised to explore for or extract coal or other solid fuels pursuant to the Mineralrohstoffgesetz, BGBl. I No 38/1999, as amended.

**Portugal**

- Empresa Nacional de Urânio.

**Finland**

- Entities benefiting from a special concession for the exploration for or extraction of solid fuels pursuant to the laki oikeudesta luovuttaa valtion

**▼B**

kiinteistövarallisuutta/lagn om rätt att överlåta statlig fastighetsförmögenhet (...).

**Sweden**

- Entities benefiting from a concession for the exploration for or extraction of coal or other solid fuels on the basis of a concession pursuant to minerallagen (1991:45) or lagen (1985:620) om vissa torvfyndigheter, or which have been granted an authorisation pursuant to lagen (1966:314) om kontinentalsöckeln.

**United Kingdom**

- Any licensed operator (within the meaning of the Coal Industry Act 1994)
- The Department of Enterprise, Trade and Investment (Northern Ireland)
- A person operating by virtue of a prospecting licence, a mining lease, a mining licence or a mining permission as defined by section 57(1) of the Mineral Development Act (Northern Ireland) 1969





ANNEX IX

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

**Belgium**

- Gemeentelijk Havenbedrijf van Antwerpen
- Havenbedrijf van Gent
- Maatschappij der Brugse Zeevaartinrichtigen
- Port autonome de Charleroi
- Port autonome de Namur
- Port autonome de Liège
- Port autonome du Centre et de l'Ouest
- Société régionale du Port de Bruxelles/Gewestelijk Vennootschap van de Haven van Brussel
- Zeekanaal en Watergebonden Grondbeheer Vlaanderen

**Denmark**

- Ports as defined in § 1 of lov nr. 326 om havne of 28 May 1999.

**Germany**

- Seaports owned totally or partially by territorial authorities (Länder, Kreise, Gemeinden).
- Inland ports subject to the Hafenordnung pursuant to the Wassergesetze of the Länder.

**Greece**

- ‘Όργανισμός Λιμένος Πειραιώς Ανώνυμη Εταιρεία’ (‘Ο.Λ.Π. Α.Ε.’), pursuant to Law No 2688/99.
- ‘Όργανισμός Λιμένος Θεσσαλονίκης Ανώνυμη Εταιρεία’ (‘Ο.Λ.Θ. Α.Ε.’), pursuant to Law No 2688/99.
- ‘Όργανισμός Λιμένος Αλεξανδρούπολης Ανώνυμη Εταιρεία’ (‘Ο.Λ.Α. Α.Ε.’), pursuant to Law No 2932/01.
- ‘Όργανισμός Λιμένος Βόλου Ανώνυμη Εταιρεία’ (‘Ο.Λ.Β. Α.Ε.’), pursuant to Law No 2932/01.
- ‘Όργανισμός Λιμένος Ελευσίνας Ανώνυμη Εταιρεία’ (‘Ο.Λ.Ε. Α.Ε.’), pursuant to Law No 2932/01.
- ‘Όργανισμός Λιμένος Ηγουμενίτσας Ανώνυμη Εταιρεία’ (‘Ο.Λ.ΗΓ. Α.Ε.’), pursuant to Law No 2932/01.
- ‘Όργανισμός Λιμένος Ηρακλείου Ανώνυμη Εταιρεία’ (‘Ο.Λ.Η. Α.Ε.’), pursuant to Law No 2932/01.
- ‘Όργανισμός Λιμένος Καβάλας Ανώνυμη Εταιρεία’ (‘Ο.Λ.Κ. Α.Ε.’), pursuant to Law No 2932/01.
- ‘Όργανισμός Λιμένος Κέρκυρας Ανώνυμη Εταιρεία’ (‘Ο.Λ.ΚΕ. Α.Ε.’), pursuant to Law No 2932/01.
- ‘Όργανισμός Λιμένος Πατρών Ανώνυμη Εταιρεία’ (‘Ο.Λ.ΠΑ. Α.Ε.’), pursuant to Law No 2932/01.
- ‘Όργανισμός Λιμένος Λαυρίου Ανώνυμη Εταιρεία’ (‘Ο.Λ.Λ. Α.Ε.’), pursuant to Law No 2932/01.
- ‘Όργανισμός Λιμένος Ραφήνας Ανώνυμη Εταιρεία’ (‘Ο.Λ.Ρ. Α.Ε.’), pursuant to Law No 2932/01.
- Other ports, governed by Presidential Decree No 649/1977. (Εποπτεία, οργάνωση, λειτουργία και διοικητικός έλεγχος λιμένων).

**Spain**

- Ente público Puertos del Estado

**▼B**

- Autoridad Portuaria de Alicante
- Autoridad Portuaria de Almería – Motril
- Autoridad Portuaria de Avilés
- Autoridad Portuaria de la Bahía de Algeciras
- Autoridad Portuaria de la Bahía de Cádiz
- Autoridad Portuaria de Baleares
- Autoridad Portuaria de Barcelona
- Autoridad Portuaria de Bilbao
- Autoridad Portuaria de Cartagena
- Autoridad Portuaria de Castellón
- Autoridad Portuaria de Ceuta
- Autoridad Portuaria de Ferrol – San Cibrao
- Autoridad Portuaria de Gijón
- Autoridad Portuaria de Huelva
- Autoridad Portuaria de Las Palmas
- Autoridad Portuaria de Málaga
- Autoridad Portuaria de Marín y Ría de Pontevedra
- Autoridad Portuaria de Melilla
- Autoridad Portuaria de Pasajes
- Autoridad Portuaria de Santa Cruz de Tenerife
- Autoridad Portuaria de Santander
- Autoridad Portuaria de Sevilla
- Autoridad Portuaria de Tarragona
- Autoridad Portuaria de Valencia
- Autoridad Portuaria de Vigo
- Autoridad Portuaria de Villagarcía de Arousa
- Otras entidades Portuarias de las Comunidades Autónomas de Andalucía, Asturias, Baleares, Canarias, Cantabria, Cataluña, Galicia, Murcia, País Vasco y Valencia.

**France**

- Port autonome de Paris set up pursuant to loi n° 68-917 relative au port autonome de Paris of 24 October 1968.
- Port autonome de Strasbourg set up pursuant to the convention entre l'État et la ville de Strasbourg relative à la construction du port rhénan de Strasbourg et à l'exécution de travaux d'extension de ce port of 20 May 1923, approved by the Law of 26 April 1924.
- Ports autonomes operating pursuant to Articles L. 111-1 et seq. of the code des ports maritimes.
- Ports non autonomes operating pursuant to Articles R. 121-1 et seq. of the code des ports maritimes.
- Ports managed by the regional or département authorities or operating pursuant to a concession granted by the regional or département authorities pursuant to Article 6 of Law No 83-663 of 22 July 1983 supplementing loi n° 83-8 relative à la répartition des compétences entre les communes, les départements et l'État of 7 January 1983.
- Voies navigables de France, State-owned company subject to the provisions of Article 124 of Law No 90-1168 du 29 December 1990, as amended.

**Ireland**

- Ports operating pursuant to Harbours Acts 1946 to 2000
- Port of Rosslare Harbour operating pursuant to the Fishguard and Rosslare Railways and Harbours Acts 1899.

**▼B****Italy**

- National ports and other ports managed by the Capitaneria di Porto pursuant to the Codice della navigazione, Royal Decree No 327 of 30 March 1942.
- Autonomous ports (enti portuali) set up by special laws pursuant to Article 19 of the Codice della navigazione, Royal Decree No 327 of 30 March 1942.

**Luxembourg**

- Port de Mertert, set up and operating pursuant to the loi relative à l'aménagement et à l'exploitation d'un port fluvial sur la Moselle of 22 July 1963, as amended.

**Netherlands**

- Contracting entities in the field of sea port or inland port or other terminal equipment.

**Austria**

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

**Portugal**

- APDL — Administração dos Portos do Douro e Leixões, S.A., pursuant to Decree-Law No 335/98 of 3 November 1998.
- APL — Administração do Porto de Lisboa, S.A., pursuant to Decree-Law No 336/98 of 3 November 1998.
- APS — Administração do Porto de Sines, S.A., pursuant to Decree-Law No 337/98 of 3 November 1998.
- APSS — Administração dos Portos de Setúbal e Sesimbra, S.A., pursuant to Decree-Law No 338/98 of 3 November 1998.
- APA — Administração do Porto de Aveiro, S.A., pursuant to Decree-Law No 339/98 of 3 November 1998.
- IPN — Instituto Portuário do Norte, pursuant to Decree-Law No 242/99 of 28 June 1999.
- ICP — Instituto Portuário do Centro, pursuant to Decree-Law No 243/99 of 28 June 1999.
- IPS — Instituto Portuário do Sul, pursuant to Decree-Law No 244/99 of 28 June 1999.
- IDN — Instituto da Navegabilidade do Douro, pursuant to Decree-Law No 138-A/97 of 3 June 1997.

**Finland**

- Ports operating pursuant to the laki kunnallisista satamajärjestyksistä ja liikennemaksuista/lagen om kommunala hamnanordningar och trafikavgifter (955/1976) and ports instituted under a licence pursuant to section 3 of the laki yksityisistä yleisistä satamista/lagen om privata allmänna hamnar (1156/1994).
- Saimaan kanavan hoitokunt/Förvaltningsnämnden för Saima kanal.

**Sweden**

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

**United Kingdom**

- A local authority which exploits a geographical area for the purpose of providing maritime or inland port or other terminal facilities to carriers by sea or inland waterway
- A harbour authority within the meaning of section 57 of the Harbours Act 1964
- British Waterways Board
- A harbour authority as defined by section 38(1) of the Harbours Act (Northern Ireland) 1970



ANNEX X

**CONTRACTING ENTITIES IN THE FIELD OF AIRPORT INSTALLATIONS**

**Belgium**

- Belgocontrol
- Brussels International Airport Company
- Luchthaven van Deurne
- Luchthaven van Oostende
- SA Brussels South Charleroi Airport
- SA Société de Développement et de Promotion de l'Aéroport de Bierset

**Denmark**

- Airports operating on the basis of an authorisation pursuant to § 55(1) of the lov om luftfart, see Consolidation Act No 543 of 13 June 2001.

**Germany**

- Airports as defined in Article 38(2)(1) of the Luftverkehrs-Zulassungs-Ordnung of 19 June 1964, as last amended on 21 August 2002.

**Greece**

- ‘Υπηρεσία Πολιτικής Αεροπορίας’ (‘ΥΠΑ’) operating pursuant to Legislative Decree No 714/70, as amended by Law No 1340/83; the organisation of the company is laid down by Presidential Decree No. 56/89, as amended subsequently.
- The company ‘Διεθνής Αερολιμένας Αθηνών’ at Spata operating pursuant to Legislative Decree No 2338/95 Κύρωση Σύμβασης Ανάπτυξης του Νέου Διεθνούς Αεροδρομίου της Αθήνας στα Σπάτα, ‘ίδρυση της εταιρείας ‘Διεθνής Αερολιμένας Αθηνών Α.Ε.’ έγκριση περιβαλλοντικών όρων και άλλες διατάξεις’).
- ‘Φορείς Διαχείρισης’ in accordance with Presidential Decree No 158/02 ‘Ίδρυση, κατασκευή, εξοπλισμός, οργάνωση, διοίκηση, λειτουργία και εκμετάλλευση πολιτικών αερολιμένων από φυσικά πρόσωπα, νομικά πρόσωπα ιδιωτικού δικαίου και Οργανισμούς Τοπικής Αυτοδιοίκησης’ (Greek Official Gazette A 137).

**Spain**

- Ente público Aeropuertos Españoles y Navegación Aérea (AENA).

**France**

- Airports operated by State-owned companies pursuant to Articles L. 251-1, L.260-1 and L. 270-1 of the code de l'aviation civile.
- Airports operating on the basis of a concession granted by the State pursuant to Article R.223-2 of the code de l'aviation civile.
- Airports operating pursuant to an arrêté préfectoral portant autorisation d'occupation temporaire.
- Airports set up by a public authority and which are the subject of a convention as laid down in Article L. 221-1 of the code de l'aviation civile.

**Ireland**

- Airports of Dublin, Cork and Shannon managed by Aer Rianta – Irish Airports.
- Airports operating on the basis of a public use licence granted pursuant to the Irish Aviation Authority Act 1993 as amended by the Air Navigation and Transport (Amendment) Act, 1998, and at which any scheduled air services are performed by aircraft for the public transport of passengers, mail or cargo.

**Italy**

- AAAVTAG.

**▼B**

- Managing entities set up by special laws.
- Entities operating airport facilities on the basis of a concession granted pursuant to Article 694 of the Codice della navigazione, Royal Decree No 347 of 30 March 1942.
- R.A.I. Registro Aeronautico Italiano.

**Luxembourg**

- Aéroport du Findel.

**Netherlands**

- Airports operating pursuant to Articles 18 and following of the Luchtvaartwet.

**Austria**

- Entities authorised to provide airport facilities pursuant to the Luftfahrtgesetz, BGBl. No 253/1957, as amended.

**Portugal**

- ANA — Aeroportos de Portugal, S.A., set up pursuant to Decree-Law No 404/98 of 18 December 1998.
- NAV — Empresa Pública de Navegação Aérea de Portugal, E. P., set up pursuant to Decree-Law No 404/98 of 18 December 1998.
- ANAM — Aeroportos e Navegação Aérea da Madeira, S. A., set up pursuant to Decree-Law No 453/91 of 11 December 1991.

**Finland**

- Airports managed by the 'Ilmailulaitos/Luftfartsverket', or by a municipal or public enterprise pursuant to the ilmailulaki/luftfartslagen (281/1995).

**Sweden**

- Publicly-owned and operated airports in accordance with luftfartslagen (1957:297).
- Privately-owned and operated airports with an operating licence under the act, where this licence corresponds to the criteria of Article 2(3) of the Directive.

**United Kingdom**

- A local authority which exploits a geographical area for the purpose of providing airport or other terminal facilities to carriers by air.
- An airport operator within the meaning of the Airports Act 1986 who has the management of an airport subject to economic regulation under Part IV of that Act.
- An airport operator within the meaning of the Airports Act 1986 who has the management of an airport subject to economic regulation under Part IV of that Act.
- Highland and Islands Airports Limited.
- An airport operator within the meaning of the Airports (Northern Ireland) Order 1994.



*ANNEX XI*

**LIST OF COMMUNITY LEGISLATION REFERRED TO IN ARTICLE 30(3)**

**A. TRANSPORT OR DISTRIBUTION OF GAS OR HEAT**

Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas <sup>(1)</sup>

**B. PRODUCTION, TRANSMISSION OR DISTRIBUTION OF ELECTRICITY**

Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity <sup>(2)</sup>

**C. PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER**

—

**D. CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES**

—

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

—

**F. CONTRACTING ENTITIES IN THE FIELD OF POSTAL SERVICES**

Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service <sup>(3)</sup>

**G. EXPLORATION FOR AND EXTRACTION OF OIL OR GAS**

Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons <sup>(4)</sup>

**H. EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS**

—

**I. CONTRACTING ENTITIES IN THE FIELD OF SEAPORT OR INLAND PORT OR OTHER TERMINAL EQUIPMENT**

—

**J. CONTRACTING ENTITIES IN THE FIELD OF AIRPORT INSTALLATIONS**

—

<sup>(1)</sup> OJ L 204, 21.7.1998, p. 1.

<sup>(2)</sup> OJ L 27, 30.1.1997, p. 20.

<sup>(3)</sup> OJ L 15, 21.1.1998, p. 14. Directive last amended by Directive 2002/39/EC (OJ L 176, 5.7.2002, p. 21).

<sup>(4)</sup> OJ L 164, 30.6.1994, p. 3.



## ANNEX XII

LIST OF ACTIVITIES AS SET OUT IN ARTICLE 1(2), (b) <sup>(1)</sup>

NACE <sup>(1)</sup>					
SECTION F			CONSTRUCTION		CPV Code
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures — clearing of building sites — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. — site preparation for mining: overburden removal and other development and preparation of mineral properties and sites This class also includes: — building site drainage — drainage of agricultural or forestry land	45110000
		45.12	Test drilling and boring	This class includes: — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes This class excludes: — drilling of production oil or gas wells, see 11.20 — water well drilling, see 45.25 — shaft sinking, see 45.25 — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	This class includes: construction of all types of buildings construction of civil engineering constructions bridges, including those for elevated highways, viaducts, tunnels and subways long-distance pipelines, communication and power lines	45210000

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





NACE (*)					
SECTION F			CONSTRUCTION		CPV Code
Division	Group	Class	Subject	Notes	
				<p>urban pipelines, urban communication and powerlines;</p> <p>ancillary urban works</p> <p>assembly and erection of prefabricated constructions on the site</p> <p>This class excludes:</p> <p>service activities incidental to oil and gas extraction, see 11.20</p> <p>erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28</p> <p>construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23</p> <p>building installation, see 45.3</p> <p>building completion, see 45.4</p> <p>architectural and engineering activities, see 74.20</p> <p>project management for construction, see 74.20</p>	
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <p>erection of roofs</p> <p>roof covering</p> <p>waterproofing</p>	45220000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <p>construction of highways, streets, roads, other vehicular and pedestrian ways</p> <p>construction of railways</p> <p>construction of airfield runways</p> <p>construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations</p> <p>painting of markings on road surfaces and car parks</p> <p>This class excludes:</p> <p>preliminary earth moving, see 45.11</p>	45230000
		45.24	Construction of water projects	<p>This class includes construction of:</p> <p>waterways, harbour and river works, pleasure ports (marinas), locks, etc.</p> <p>dams and dykes dredging</p> <p>subsurface work</p>	45240000
		45.25	Other construction work involving special trades	<p>This class includes:</p> <p>construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment:</p> <p>construction of foundations, including pile driving</p>	45250000



NACE (1)					
SECTION F			CONSTRUCTION		CPV Code
Division	Group	Class	Subject	Notes	
				<p>water well drilling and construction, shaft sinking</p> <p>erection of non-self-manufactured steel elements</p> <p>steel bending</p> <p>bricklaying and stone setting</p> <p>scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms</p> <p>erection of chimneys and industrial ovens</p> <p>This class excludes:</p> <p>renting of scaffolds without erection and dismantling, see 71.32</p>	
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <p>electrical wiring and fittings</p> <p>telecommunications systems</p> <p>electrical heating systems</p> <p>residential antennas and aerials</p> <p>fire alarms</p> <p>burglar alarm systems</p> <p>lifts and escalators</p> <p>lightning conductors, etc.</p>	45310000
		45.32	Insulation work activities	<p>This class includes:</p> <p>installation in buildings or other construction projects of thermal, sound or vibration insulation</p> <p>This class excludes:</p> <p>waterproofing, see 45.22</p>	45320000
		45.33	Plumbing	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <p>plumbing and sanitary equipment</p> <p>gas fittings</p> <p>heating, ventilation, refrigeration or air-conditioning equipment and ducts</p> <p>sprinkler systems</p> <p>This class excludes:</p> <p>installation of electrical heating systems, see 45.31</p>	45330000
		45.34	Other building installation	<p>This class includes:</p> <p>installation of illumination and signalling systems for roads, railways, airports and harbours</p>	45340000

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NACE (*)					
SECTION F			CONSTRUCTION		CPV Code
Division	Group	Class	Subject	Notes	
				installation in buildings or other construction projects of fittings and fixtures n.e.c.	
	45.4		Building completion		45400000
		45.41	Plastering	This class includes: application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials	45410000
		45.42	Joinery installation	This class includes: installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials  interior completion such as ceilings, wooden wall coverings, movable partitions, etc.  This class excludes: laying of parquet and other wood floor coverings, see 45.43	45420000
		45.43	Floor and wall covering	This class includes: laying, tiling, hanging or fitting in buildings or other construction projects of: ceramic, concrete or cut stone wall or floor tiles  parquet and other wood floor coverings carpets and linoleum floor coverings, including of rubber or plastic  terrazzo, marble, granite or slate floor or wall coverings  wallpaper	45430000
		45.44	Painting and glazing	This class includes: interior and exterior painting of buildings, painting of civil engineering structures installation of glass, mirrors, etc  This class excludes: installation of windows, see 45.42	45440000
		45.45	Other building completion	This class includes: installation of private swimming pools steam cleaning, sand blasting and similar activities for building exteriors  other building completion and finishing work n.e.c  This class excludes: interior cleaning of buildings and other structures, see 74.70	45450000
	45.5		Renting of construction or demolition equipment with operator		45500000

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NACE <sup>(1)</sup>					
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	CPV Code
		45.50	Renting of construction or demolition equipment with operator	This class excludes: renting of construction or demolition machinery and equipment without operators, see 71.32	45500000

<sup>(1)</sup> Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1), Regulation as last amended by Commission Regulation (EEC) No 761/93 (OJ L 83, 3.4.1993, p. 1).



*ANNEX XIII*

**INFORMATION TO BE INCLUDED IN CONTRACT NOTICES**

**A. OPEN PROCEDURES**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
3. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement or a dynamic purchasing system).

Category of service within the meaning of Annex XVII A or XVII B and description (nomenclature reference No(s)).

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

4. Place of delivery, site or place of performance of service.
5. For supplies and works:
  - (a) Nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));
  - (b) Indication of whether the suppliers may tender for some and/or all the goods required.
 

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

6. For services:

- (a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (c) Reference of the law, regulation or administrative provision;
  - (d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (e) Indication of whether service providers may tender for a part of the services concerned.
7. Where known, indication of whether authorisation to submit variants exists or not.
  8. Time limits for delivery or completion or duration of service contract and, as far as possible, the starting date.
  9. (a) Address from which the contract documents and additional documents may be requested;
    - (b) Where appropriate, the amount and terms of payment of the sum to be paid to obtain such documents.
  10. (a) Final date for receipt of tenders or indicative tenders where a dynamic purchasing system is introduced;
    - (b) Address to which they should be sent;

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- (c) Language or languages in which they should be drawn up.
11. (a) Where applicable, the persons authorised to be present at the opening of tenders;
  - (b) Date, time and place of such opening.
  12. Where applicable, any deposits and guarantees required.
  13. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
  14. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
  15. Minimum economic and technical conditions required of the economic operator to whom the contract is awarded.
  16. Period during which the tenderer is bound to keep open his tender.
  17. Where appropriate, particular conditions to which performance of the contract is subject.
  18. Criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications.
  19. Where appropriate, the reference to publication in the Official Journal of the European Union of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
  20. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.
  21. Date of dispatch of the notice by the contracting entity.
  22. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
  23. Any other relevant information.

**B. RESTRICTED PROCEDURES**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
3. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).

Category of service within the meaning of Annex XVII A or XVII B and description (nomenclature reference No(s)).

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

4. Place of delivery, site or place of performance of service.
5. For supplies and works:
  - (a) The nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));
  - (b) Indication of whether the suppliers may tender for some and/or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

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- (c) Information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
6. For services:
- (a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (c) Reference to the law, regulation or administrative provision;
  - (d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (e) Indication of whether service providers may tender for a part of the services concerned.
7. Where known, indication of whether authorisation to submit variants exists or not.
8. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
9. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
10. (a) Final date for receipt of requests to participate;  
 (b) Address to which they should be sent;  
 (c) Language or languages in which they should be drawn up.
11. Final date for dispatch of invitations to tender.
12. Where applicable, any deposits and guarantees required.
13. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
14. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.
15. Criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender.
16. Where appropriate, particular conditions to which performance of the contract is subject.
17. Where appropriate, the reference to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
18. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
19. Date of dispatch of the notice by the contracting entities.
20. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
21. Any other relevant information.

## C. NEGOTIATED PROCEDURES

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
3. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).



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Category of service within the meaning of Annex XVII A or XVII B and description (nomenclature reference No(s)).

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

4. Place of delivery, site or place of performance of service.
5. For supplies and works:
  - (a) The nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));
  - (b) Indication of whether the suppliers may tender for some and/or all the goods required.  
  
If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
6. For services:
  - (a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (c) Reference of the law, regulation or administrative provision;
  - (d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (e) Indication of whether service providers may tender for a part of the services concerned.
7. Where known, indication of whether authorisation to submit variants exists or not.
8. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
9. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
10. (a) Final date for receipt of requests to participate;  
(b) Address to which they should be sent;  
(c) Language or languages in which they should be drawn up.
11. Where appropriate, any deposits and guarantees required.
12. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
13. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.
14. Criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to negotiate.
15. Where appropriate, the names and addresses of the economic operators already selected by the contracting entity.
16. Where applicable, date(s) of previous publications in the *Official Journal of the European Union*.

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17. Where appropriate, particular conditions to which performance of the contract is subject.
18. Where appropriate, the reference to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
20. Date of dispatch of the notice by the contracting entity.
21. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
22. Any other relevant information.

**D. SIMPLIFIED CONTRACT NOTICE FOR USE IN A DYNAMIC PURCHASING SYSTEM <sup>(1)</sup>**

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

<sup>(1)</sup> With a view to admission to the system in order to be able subsequently to participate in the invitation to tender for the specific contract.

*ANNEX XIV***INFORMATION TO BE INCLUDED IN THE NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
3. Purpose of the qualification system (description of the goods, services or works or categories thereof to be procured through the system — nomenclature reference No(s)).
4. Conditions to be fulfilled by the economic operators in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested economic operators, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
5. Period of validity of the qualification system and the formalities for its renewal.
6. Reference to the fact that the notice acts as the call for competition.
7. Address where further information and documentation concerning the qualification system can be obtained (if different from the addresses mentioned under 1).
8. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time-limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
9. Where known, criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria, shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender or to negotiate.
10. Any other relevant information.



*ANNEX XV A*

**A INFORMATION TO BE INCLUDED IN THE PERIODIC INDICATIVE NOTICE**

**I. HEADINGS TO BE COMPLETED IN ALL CASES**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity or the service from which additional information may be obtained.
2. (a) For supply contracts: nature and quantity or value of the services or products to be supplied (nomenclature reference No(s)).  
(b) For works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work (nomenclature reference No(s)).  
(c) For service contracts: intended total procurement in each of the service categories listed in Annex XVII A (nomenclature reference No(s)).
3. Date of dispatch of the notice or of dispatch of the notice of the publication of this notice on the buyer profile.
4. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
5. Any other relevant information.

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

6. A reference to the fact that interested suppliers should advise the entity of their interest in the contract or contracts.
7. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
8. Time limit for the receipt of applications for an invitation to tender or to negotiate.
9. Nature and quantity of the goods to be supplied or general nature of the work or category of service within the meaning of Annex XVII A and description, stating if framework agreement(s) are envisaged, including any options for further procurement and the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, an estimate of the timing of the subsequent calls for competition.
10. State whether purchase, lease, rental or hire-purchase or any combination of these is involved.
11. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
12. Address to which interested undertakings should send their expressions of interest in writing.  
Time limit for receipt of expressions of interest.  
Language or languages authorised for the presentation of candidatures or tenders.
13. Economic and technical conditions, and financial and technical guarantees required of suppliers.
14. (a) Estimated date for initiating the award procedures in respect of the contract or contracts (if known);  
(b) Type of award procedure (restricted or negotiated);  
(c) The amount of and payment details for any sum to be paid to obtain documents concerning the consultation.
15. Where appropriate, particular conditions to which performance of the contract is subject.
16. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging

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appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

17. Where known, criteria referred to in Article 55 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned, where they do not appear in the specifications, or will not be indicated in the invitation to confirm interest referred to in Article 47 (5) or in the invitation tender or to negotiate.

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*ANNEX XV B*

**INFORMATION TO BE INCLUDED IN NOTICES OF PUBLICATION  
OF A PERIODIC INDICATIVE NOTICE ON A BUYER PROFILE NOT  
USED AS A MEANS OF CALLING FOR COMPETITION**

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



ANNEX XVI

**INFORMATION TO BE INCLUDED IN THE CONTRACT AWARD NOTICE**

**I. Information for publication in the *Official Journal of the European Union* <sup>(1)</sup>**

1. Name and address of the contracting entity.
2. Nature of the contract (supplies, works or services and Nomenclature reference No(s); where appropriate state if it is a framework agreement).
3. At least a summary indication of the nature and quantity of the products, works or services provided.
4. (a) Form of the call for competition (notice on the existence of a system of qualification; periodic notice; call for tenders);  
(b) Reference of publication of the notice in the *Official Journal of the European Union*;  
(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 40(3) or Article 32.
5. Award procedure (open, restricted or negotiated).
6. Number of tenders received.
7. Date of award of the contract.
8. Price paid for bargain purchases pursuant to Article 40(3)(j).
9. Name and address of the economic operator(s).
10. State, where appropriate, whether the contract has been, or may be, subcontracted.
11. Price paid or the prices of the highest and lowest tenders taken into account in the award of the contract.
12. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
13. Optional information:
  - value and share of the contract which has been or may be subcontracted to third parties,
  - award criteria.

**II. Information not intended for publication**

14. Number of contracts awarded (where an award has been split between several suppliers).
15. Value of each contract awarded.
16. Country of origin of the product or service (Community origin or non-Community origin; if the latter, broken down by third country).
17. Which award criteria were used (most economically advantageous; lowest price)?
18. Was the contract awarded to a tenderer who submitted a variant, in accordance with Article 36(1)?
19. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 57?
20. Date of transmission of the notice by the contracting entity.
21. In the case of contracts for services listed in Annex XVII B, agreement by the contracting entity to publication of the notice (Article 43(4)).

<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 XVII A (1)

## SERVICES WITHIN THE MEANING OF ARTICLE 31

Category No	Subject	CPC Reference No (1)	CPV Reference No
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000 to 50982000 (except for 50310000 to 50324200 and 50116510-9, 50190000-3, 50229000-6, 50243000-0)
2	Land transport services (2), including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 60112000-6 to 60129300-1 (except 60121000 to 60121600, 60122200-1, 60122230-0), and from 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 62100000-3 to 62300000-5 (except 62121000-6, 62221000-7)
4	Transport of mail by land (2) and by air	71235, 7321	60122200-1, 60122230-0 62121000-6, 62221000-7
5	Telecommunications services	752	From 64200000-8 to 64228200-2, 72318000-7, and from 72530000-9 to 72532000-3
6	Financial services: (a) Insurances services (b) Banking and investment services (2)	ex 81, 812, 814	From 66100000-1 to 66430000-3 and From 67110000-1 to 67262000-1 (3)
7	Computer and related services	84	From 50300000-8 to 50324200-4, From 72100000-6 to 72591000-4 (except 72318000-7 and from 72530000-9 to 72532000-3)
8	Research and development services (4)	85	From 73000000-2 to 73300000-5 (except 73200000-4, 73210000-7, 7322000-0)
9	Accounting, auditing and bookkeeping services	862	From 74121000-3 to 74121250-0
10	Market research and public opinion polling services	864	From 74130000-9 to 74133000-0, and 74423100-1, 74423110-4
11	Management consulting services (5) and related services	865, 866	From 73200000-4 to 73220000-0, From 74140000-2 to 74150000-5 (except 74142200-8), and 74420000-9, 74421000-6, 74423000-0, 74423200-2, 74423210-5, 74871000-5, 93620000-0

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

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

<sup>(1)</sup> CPC Nomenclature (provisional version), used to define the scope of Directive 93/38/EEC.

<sup>(2)</sup> Except for rail transport services covered by category 18.

<sup>(3)</sup> Except financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services. Also excluded: services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial services supplied at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive.

<sup>(4)</sup> Except research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority.

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



## ANNEX XVII B

## SERVICES WITHIN THE MEANING OF ARTICLE 32

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

<sup>(1)</sup> Except employment contracts.

*ANNEX XVIII***INFORMATION TO BE INCLUDED IN THE DESIGN CONTEST NOTICE**

1. Name, address, electronic address telephone, telex and fax numbers of the contracting authority and of the service from which additional documents may be obtained.
2. Project description (nomenclature reference No(s)).
3. Nature of the contest: open or restricted.
4. In the case of open contests: final date for receipt of projects.
5. In the case of restricted contests:
  - (a) the number of participants envisaged, or range;
  - (b) where applicable, names of participants already selected;
  - (c) criteria for the selection of participants;
  - (d) final date for receipt of requests to participate.
6. Where applicable, indication of whether participation is reserved to a particular profession.
7. Criteria to be applied in the evaluation of projects.
8. Where applicable, names of the selected members of the jury.
9. Indication of whether the decision of the jury is binding on the authority.
10. Where applicable, number and value of prizes.
11. Where applicable, details of payments to all participants.
12. Indication of whether the prize-winners are permitted any follow-up contracts.
13. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
14. Date of dispatch of the notice.
15. Date of receipt of the notice by the Office for Official Publications of the European Communities.
16. Any other relevant information

*ANNEX XIX***INFORMATION TO BE INCLUDED IN THE RESULTS OF DESIGN CONTEST NOTICES**

1. Name, address, telegraphic address and telephone, telex and fax numbers of the contracting authority.
2. Project description (nomenclature reference No(s)).
3. Total number of participants.
4. Number of foreign participants.
5. Winner(s) of the contest.
6. Where applicable, the prize(s).
7. Other information.
8. Reference of the design contest notice.
9. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
10. Date of dispatch of the notice.
11. Date of receipt of the notice by the Office for Official Publications of the European Communities.

*ANNEX XX***FEATURES CONCERNING PUBLICATION****1. Publication of notices**

- (a) ► **M2** Notices referred to in Articles 41, 42, 43 and 63 must be sent by the contracting entities to the Office for Official Publications of the European Communities in the format established by implementing measures to be adopted by the Commission in accordance with the procedure referred to in Article 68(2). ◀ The periodic indicative notices referred to in Article 41(1), published on a buyer profile as described in paragraph 2(b), must also use that format, as must the notice of such publication;
- (b) Notices referred to in Articles 41, 42, 43 and 63 must be published by the Office for Official Publications of the European Communities or by the contracting entities in the event of a periodic indicative notice published on a buyer profile in accordance with Article 41(1).  

In addition, contracting authorities may publish this information on the Internet on a 'buyer profile' as referred to in point 2(b);
- (c) The Office for Official Publications of the European Communities will give the contracting authority the confirmation referred to in Article 44(7).

**2. Publication of complementary or additional information**

- (a) Contracting entities are encouraged to publish the specifications and the additional documents in their entirety on the Internet;
- (b) The buyer profile may include periodic indicative notices as referred to in Article 41(1), information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address.

**3. Format and procedures for the electronic transmission of notices**

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



## ANNEX XXI

## DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive,

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



## ANNEX XXII

## SUMMARY TABLE OF THE TIME-LIMITS LAID DOWN IN ARTICLE 45

## Open procedures

<i>Time limit for receipt of tenders — without a periodic indicative notice</i>					
Time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 7	Effect on second subparagraph of paragraph 7
52	45	47	40	none	none
<i>With publication of a periodic indicative notice</i>					
A: Time limit in general	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 7	Effect on second subparagraph of paragraph 7
36	29	31	24	none	none
B: Minimum time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 7	Effect on second subparagraph of paragraph 7
22	15	17	10	The period of 10 days is extended to 15 days	The period of 17 days is extended to 22 days

## Restricted and negotiated procedures

<i>Time limit for the receipt of requests to participate:</i>					
General time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
37	30	Not applicable (n.a.)	n.a.	none	n.a.
Minimum time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
22	15	n.a.	n.a.	none	n.a.
Minimum time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8



▼B

15	8	n.a.	n.a.	The period of 8 days is extended to 15 days	n.a.
<i>Time limit for the receipt of tenders</i>					
A: Time limit in general	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
24	n.a.	19	n.a.	n.a.	none
B: Minimum time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
10	n.a.	5	n.a.	n.a.	The period of 5 days is extended to 10 days
C: Time limit set by agreement	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
	n.a.	n.a.	n.a.	n.a.	n.a.

**▼B**

*ANNEX XXIII*

**INTERNATIONAL LABOUR LAW PROVISIONS WITHIN THE  
MEANING OF ARTICLE 59(4)**

- Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- Convention 98 on the Right to Organise and Collective Bargaining;
- Convention 29 on Forced Labour;
- Convention 105 on the Abolition of Forced Labour;
- Convention 138 on Minimum Age;
- Convention 111 on Discrimination (Employment and Occupation);
- Convention 100 on Equal Remuneration;
- Convention 182 on Worst Forms of Child Labour.



## ANNEX XXIV

**REQUIREMENTS RELATING TO DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS TO PARTICIPATE, APPLICATIONS FOR QUALIFICATION AS WELL AS PLANS AND PROJECTS IN CONTESTS**

Devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests must guarantee, through technical means and appropriate procedures, at least that:

- (a) electronic signatures relating to tenders, requests to participate and applications for qualification as well as to the forwarding of plans and projects comply with national provisions adopted pursuant to Directive 1999/93/EC <sup>(1)</sup>;
- (b) the exact time and date of the receipt of tenders, requests to participate, applications for qualification as well as the submission of plans and projects can be determined precisely;
- (c) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
- (d) if that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
- (e) only authorised persons may set or change the dates for opening data received;
- (f) during the various stages of the qualification procedure, the contract award procedure or contest, access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;
- (g) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;
- (h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith.

<sup>(1)</sup> Directive 1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

*ANNEX XXV***TIME LIMITS FOR TRANSPOSITION AND IMPLEMENTATION**

Directive	Time limits for transposition	Time limits for implementation
93/38/EEC (OJ L 199, 9.8.1993, p. 84)	1.7.1994	Spain: 1.1.1997; Greece and Portugal: 1.1.1998
98/4/EC (OJ L 101, 1.4.1998, p. 1)	16.2.1999	Greece and Portugal: 16.2.2000

▼B

## ANNEX XXVI

CORRELATION TABLE <sup>(1)</sup>

This Directive	Directive 93/38/EEC	
Article 1(1)	Article 1(1), 1st sentence	
Article 1(2)(a)	Article 1(4), 1st sentence,	Adapted
Article 1(2)(b), 1st sentence	Article 1(4)(b), 1st sentence	Amended
Article 1(2)(b), 2nd sentence	Article 14(10), 2nd sentence	Adapted
Article 1(2)(c), 1st subparagraph	Article 1(4)(a)	Adapted
Article 1(2)(c), 2nd subparagraph		New
Article 1(2)(d), 1st subparagraph	Article 1(4)(c), 1st part	Adapted
Article 1(2)(d), 2nd subparagraph	Article 1(4), 2nd subparagraph	Adapted
Article 1(2)(d), 3rd subparagraph		New
Article 1(3)(a)		New
Article 1(3)(b)		New
Article 1(4)	Article 1(5)	Adapted
Article 1(5)		New
Article 1(6)		New
Article 1(7), 1st paragraph	Article 1(6), in fine	Amended
Article 1(7), 2nd paragraph		New
Article 1(7), 3rd subparagraph	Article 1(6), 1st sentence	Adapted
Article 1(8)		New
Article 1(9)(a) to (c)	Article 1(7)	Adapted
▼ <u>C1</u> Article 1(10)	Article 1(16)	Adapted
Article 1(11)		New
Article 1(12)		New
Article 1(13)		New
▼ <u>B</u>	Article 1(14) and (15)	Deleted
Article 2(1)(a)	Article 1(1)	
Article 2(1)(b)	Article 1(2)	
Article 2(2)	Article 2(1)	Adapted

<sup>(1)</sup> 'Adapted' indicates that the wording has been reformulated without changing the scope of the text of the repealed Directive. Changes to the scope of the provisions of the repealed Directive are denoted by the word 'Amended'.

## ▼B

This Directive	Directive 93/38/EEC	
Article 2(3)	Article 2(3)	Amended
Article 3(1)	Article 2(2)(a)(iii)	Adapted
Article 3(2)	Article 2(5)(b)	Adapted
Article 3(3)	Article 2(2)(a)(ii)	Adapted
Article 3(4)	Article 2(5)(a)	Adapted
Article 4(1)	Article 2(2)(a)(i)	Adapted
Article 4(2)	Article 6(2)	Adapted
Article 4(3)	Article 2(5)(a)	Adapted
Article 5(1)	Article 2(2)(c)	Amended
Article 5(2)	Article 2(4)	Amended
Article 6		New
Article 7	Article 2(2)(b)	
	Article 2(2)(d)	Deleted
Article 8	Article 2(6)	Amended
Article 9		New
Article 10	Article 4(2)	Amended
Article 11(1), 1st subparagraph	Article 33(2)	
Article 11(1), 2nd subparagraph	Article 33(3)	Amended
Article 11(2)	Article 33(1)	Amended
Article 12	Article 42a	
Article 13(1)	Article 4(3)	
Article 13(2)	Article 4(4)	Amended
Article 14	Article 5	
Article 15		New
Article 16	Article 14(1)	Amended
Article 17(1)	Article 14(2) and (6)	Amended
Article 17(2)	Article 14.(13)	Adapted
Article 17(3)	Article 14(9)	Amended
Article 17(4)	Article 14(11)	Adapted
Article 17(5)	Article 14(12)	Adapted
Article 17(6)(a), 1st subparagraph	Article 14(10), 3rd sentence	Amended
Article 17(6)(a), 2nd subparagraph	Article 14(10), 2nd subparagraph, 2nd sentence	Adapted

## ▼B

This Directive	Directive 93/38/EEC	
Article 17(6)(a), 3rd subparagraph	Article 14(10), 2nd subparagraph, 3rd sentence	Amended
Article 17(6)(b), 1st subparagraph	Article 14(10), 2nd subparagraph, 1st sentence	Amended
Article 17(6)(b), 2nd subparagraph	Article 14(10), 2nd subparagraph, 2nd sentence	Adapted
Article 17(6)(b), 3rd subparagraph		New
Article 17(7)	Article 14(7)	Amended
Article 17(8)	Article 14(8)	
Article 17(9)	Article 14(4)	Amended
Article 17(10)	Article 14(3)	Amended
Article 17(11)	Article 14(5)	
Article 18		New
Article 19	Article 7	
Article 20	Article 6(1) and (3)	Adapted
Article 21	Article 10	
Article 22(a)	Article 12, 1	Amended
Article 22(b)	Article 12, 2	
Article 22(c)	Article 12, 3	
Article 23(1)	Article 1(3)	
Article 23(2)	Article 13(1), 1st subparagraph, points (a) and (b)	Amended
Article 23(3), 1st subparagraph, point a	Article 13(1), 1st subparagraph in fine	Amended
Article 23, 1st subparagraph, points b and c		New
Article 23(3), 2nd subparagraph		New
Article 23(3), 3rd subparagraph	Article 13(1), 2nd subparagraph	Amended
Article 23(4)(a)	Article 13(1), 1st subparagraph, point b	Amended
Article 23(4)(b)		New
Article 23(4) in fine		New
Article 23(5)	Article 13(2)	Amended
Article 24(a)	Article 1(4),c,i	
Article 24(b)	Article 1(4),c,iii	
Article 24(c)	Article 1(4),c,iv	Amended

## ▼B

This Directive	Directive 93/38/EEC	
Article 24(d)	Article 1(4),c,v	
Article 24(e)	Article 1(4),c,vi	
	Article 1(4),c,ii and Annex XVI A, footnote 2	Deleted
Article 25	Article 11	Amended
Article 26(a)	Article 9(1),a	Adapted
Article 26(b)	Article 9(1),b	Adapted
	Article 9(2)	Deleted
	Article 3(1)	Deleted
Article 27	Article 3(2)	Amended
	Article 3(3) to (5)	Deleted
Article 28		New
Article 29		New
Article 30		New
	Article 8	Deleted
Article 31	Article 15	Adapted
Article 32	Article 16	
Article 33	Article 17	
Article 34	Article 18 and Article 34(4)	Amended
Article 35	Article 19	Adapted
Article 36, paragraph 1	Article 34(3)	Amended
Article 36(2)		New
Article 37	Article 27	Amended
Article 38		New
Article 39(1)	Article 29(1)	Amended
Article 39(2)	Article 29(2)	
Article 40(1)	Article 4(1)	
Article 40(2) and (3)	Article 20(1) and (2)	
Article 41(1), 1st subparagraph	Article 22(1)	Amended
Article 41(1), 2nd to 6th subparagraph		New
Article 41(2)	Article 22(4)	
Article 41(3)	Article 30(9)	Adapted
Article 42(1)	Article 21(1)	



## ▼B

This Directive	Directive 93/38/EEC	
Article 42(2)		New
Article 42(2)(a) and (b)	Article 21(2),a and b	Adapted
Article 42(2)(c), 1st sentence	Article 22(3), 1st sentence	
Article 42(2)(c), 2nd sentence	Article 22(3), 2nd sentence	
Article 43(1)	Article 24(1)	Amended
Article 43(2)	Article 24(2)	Adapted
Article 43(3)	Article 24(3), 1st to 3rd sentences	Adapted
Article 43(4)	Article 24(3), 4th sentence	Adapted
Article 43(5)	Article 24(4)	Adapted
Article 44(1)		New
Article 44(2)		New
Article 44(3), 1st subparagraph		New
Article 44(3), 2nd subparagraph, 1st sentence	Article 25(3), 1st sentence	Amended
Article 44(3), 2nd subparagraph, 2nd sentence	Article 25(3), 2nd sentence	Adapted
Article 44(4), 1st subparagraph	Article 25(2)	Amended
Article 44(4), 2nd subparagraph	Article 25(4)	
Article 44(5)	Article 25(5)	Amended
Article 44(6)	Article 25(1)	
Article 44(7)		New
Article 44(8)		New
	Article 25(3), 3rd sentence	Deleted
Article 45(1)		New
Article 45(2)	Article 26(1), 1st subparagraph, 1st sentence	
Article 45(3)	Article 26(2)	Adapted
Article 45(4)	Article 26(1), 2nd and 3rd sentences	Adapted
Article 45(5) to (8)		New
Article 45(9)	Article 28(3)	Amended
Article 45(10)		New
Article 46(1)	Article 28(1)	Amended
Article 46(2)	Article 28(2)	Amended
Article 47(1), 1st sentence	Article 28(4), 1st sentence	

## ▼B

This Directive	Directive 93/38/EEC	
Article 47(1), 2nd sentence, 1st indent		New
Article 47(1), 2nd sentence, 2nd indent	Article 28(4), 2nd sentence	Amended
Article 47(2)		New
Article 47(3)	Article 28(2)	Amended
Article 47(4), a to d	Article 28(4), a to d and f	Adapted
	Article 28(4)(f)	Deleted
Article 47(4)(e)	Article 28(4),e	Amended
Article 47(4)(f)		New
Article 47(5), a to h	Article 21(2),c	Adapted
Article 47(3), i		New
Article 48(1)	Article 28(6), 1st and 2nd sentences and 1st indent	Amended
Article 48(2)		New
Article 48(3)	Article 28(6), 2nd and 4th indent	Amended
Article 48(4)		New
Article 48(5)		New
Article 48(6)	Article 28(5)	Amended
Article 49(1)	Article 41(3)	Amended
Article 49(2), 1st subparagraph	Article 41(4), 1st subparagraph	Amended
Article 49(2), 2nd subparagraph	Article 41(2), 2nd subparagraph	Adapted
Article 49(3)	Article 30(4)	
Article 49(4)	Article 30(6)	Amended
Article 49(5)	Article 30(8)	Amended
Article 50(1)	Article 41(1)	Amended
Article 50(2)	Article 41(2)	
Article 51		New
Article 52(1)	Article 30(5)	Amended
Article 52(2)	Article 32	Amended
Article 52(3)		New
Article 53(1)	Article 30(1)	
Article 53(2)	Article 30(2)	Amended

## ▼B

This Directive	Directive 93/38/EEC	
Article 53(3)		New
Article 53(4)		New
Article 53(5)		New
Article 53(6)	Article 30(3)	
Article 53(7)	Article 30(7)	
Article 53(8)		New
Article 53(9)	Article 21(3)	
	Article 21(5)	Deleted
Article 54(1)		New
Article 54(2)	Article 31(1)	
Article 54(3)	Article 31(3)	Adapted
Article 54(4), 1st subparagraph	Article 31(2)	Adapted
Article 54(4), 2nd subparagraph		New
Article 54(5)		New
Article 54(6)		
Article 55(1)	Article 34(1)	
Article 55(2)	Article 34(2)	Amended
	Article 35(1) and (2)	Deleted
Article 56		New
Article 57(1) and (2)	Article 34(5), 1st and 2nd subparagraphs	Amended
Article 57(3)	Article 34(5), 3rd subparagraph	Amended
Article 58(1) and (2)	Article 36(1) and (2)	
Article 58(3)	Article 36(3) and (4)	Adapted
Article 58(4) and (5)	Article 36(5) and (6)	
Article 59(1), (2), (3), (5) and (6)	Article 37	Adapted
Article 59(4)		new
Article 60(1)	Article 23(3)	
Article 60(2)	Article 23(4)	
Article 61(1) and (2)	Article 23(1) and (2)	Amended
Article 62(1)	Article 6(1), Article 12	Amended
Article 62(2)		New
Article 63(1), 1st subparagraph	Article 21(4)	Amended

▼B

This Directive	Directive 93/38/EEC	
Article 63(1), 2nd subparagraph	Article 24(1) and (2), 2nd sentence	Adapted
Article 63(2)	Article 25	Amended
Article 64		New
Article 65(1)	Article 4(1)	Adapted
Article 65(2)	Article 23(5)	
Article 65(3)	Article 23(6), 1st subparagraph	
Article 66	Article 23(6), 2nd subparagraph	Amended
Article 67	Article 42	Amended
	Article 39	Deleted
Article 68(1)	Article 40(5)	Amended
Article 68(2)		New
Article 68(3)		New
Article 69(1), 1st subparagraph	Article 14(15), 1st sentence	Amended
Article 69(1), 2nd subparagraph	Article 14(15), 2nd sentence	Amended
Article 69(2), 1st subparagraph		New
Article 69(2), 2nd subparagraph	Article 14(14), 1st and 2nd sentences	Amended
Article 69(3)	Article 14(14), 3rd sentence and (15), 3rd sentence	Adapted
Article 70(1), point a	Article 40(1)	Amended
Article 70(1), point b	Article 40(2)	Adapted
Article 70(1), point c	Article 40(3)	Amended
Article 70(1), point d	Article 40(3)	Amended
Article 70(1), point e		New
Article 70(1), points f, g and h		New
Article 70(1), point i	Article 40(2) and 42(2)	Adapted
Article 70(1), point j	Article 14(16)	Adapted
	Article 40(4)	Deleted
	Article 43 and Article 44	Deleted
Article 71		New
Article 72		new
Annex I	Annex III	Adapted
Annex II	Annex II	Adapted

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This Directive	Directive 93/38/EEC	
Annex III	Annex I	Adapted
Annex IV	Annex VI	Adapted
Annex V	Annex VII	Adapted
Annex VI		New
Annex VII	Annex IV	Adapted
Annex VIII	Annex V	Adapted
Annex IX	Annex IX	Adapted
Annex X	Annex VIII	Adapted
Annex XI		New
Annex XII	Annex XI	Adapted
Annex XIII, A to C	Annex XII	Amended
Annex XIII, D		New
Annex XIV	Annex XIII	Amended
Annex XV, A	Annex XIV	Amended
Annex XV, B		New
Annex XVI	Annex XV	Amended
Annex XVII A	Annex XVI A	Amended
Annex XVII B	Annex XVI B	Adapted
Annexes XVIII and XIX	Annexes XVII and XVIII	Amended
Annex XX, point 1, a		New
Annex XX, point 1.b	Article 25(2)	Amended
Annex XX, point 1.c		New
Annex XX, points 2 and 3		New
Annex XXI, point 1	Article 1(8)	Amended
Annex XXI, point 2, 1st sentence	Article 1(9)	Adapted
Annex XXI, point 2, 1st indent		New
Annex XXI, point 2, 2nd indent	Article 1(10)	Amended
Annex XXI, point 2, 3rd indent		New
Annex XXI, point 3	Article 1(12)	Amended
Annex XXI, point 4	Article 1(11)	
	Article 1(13)	Deleted
Annex XXII		New
Annex XXIII		

**▼B**

This Directive	Directive 93/38/EEC	
Annex XXIV		New
Annex XXV		New
Annex XXVI		New