

Directorate-General  
for internal market and industrial affairs

CCO/91/20 (Rev. 1)

CC/91/16 (Rev. 1)

Comité consultatif pour  
l'ouverture des marchés publics

Comité consultatif  
pour les marchés publics

Advisory Committee on the  
Opening-up of Public Procurement

Advisory Committee  
for Public Procurement

Beratender Ausschuß für die Öffnung  
des öffentlichen Auftragswesens

Beratender Ausschuß für  
öffentliches Auftragswesen

COMPENDIUM  
OF THE PRINCIPAL  
LEGAL TEXTS  
FOR PUBLIC PROCUREMENT

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EDITION: MARCH 1991

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**GENERAL LIST  
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A. Currently applicable procedural rules

**I. Public works contracts**

- 1. Directive 71/304/EEC of 26.7.1971

OJ L 185/1 of 16.8.1971

COUNCIL DIRECTIVE concerning the abolition of restrictions on freedom to provide services in respect of public works contracts to contractors acting through agencies of branches

- 2. Directive 71/305/EEC of 26.7.1971

OJ L 185/5 of 16.8.1971

COUNCIL DIRECTIVE concerning the coordination of procedures for the award of public works contracts

- 3. Directive 89/440/EEC of 18.7.1989

OJ L 210/1 of 21.7.1989

COUNCIL DIRECTIVE amending Directive 71/305/EEC concerning coordination of procedures for the award of public works contracts

- 4. Decision 90/380/EEC of 13.7.1990

OJ L 187/55 of 19.7.1990

COMMISSION DECISION concerning the updating of Annex I to Council Directive 89/440/EEC

**II. Public supply contracts**

- 5. Directive 77/62/EEC of 21.12.1976

OJ L 13/1 of 15.1.1977

COUNCIL DIRECTIVE coordinating procedures for the award of public supply contracts

- 6. Directive 80/767/EEC of 22.7.1980

OJ L 215 of 18.8.1980

COUNCIL DIRECTIVE adapting and supplementing in respect of certain contracting authorities Directive 77/62/EEC coordinating procedures for the award of public supply contracts

- 7. Directive 88/295/EEC of 22.3.1988

OJ L 127/1 of 20.5.1988

COUNCIL DIRECTIVE amending Directive 77/62/EEC relating to the coordination of procedures on the award of public supply contracts and repealing certain provisions of Directive 80/767/EEC

**III. Thresholds 1990/1991**

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**B. Procedural rules adopted, but  
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I. **"Remedies Directive"**

Directive 89/665/EEC of 21 December 1989 on the coordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts

OJ L 395 of 30.12.1989

deadline for transposition: 21.12.1991

II. **"Utilities Directive"**

Directive 90/531/EEC of 17.9.1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

OJ L 297 of 29.10. 1990

deadline for adoption of transposition measures: 1.7.1992  
deadline for implementation of transposition measures:  
1.1.1993  
except for Spain :1.1.1986, and Greece and Portugal: 1.1.1998



C. Survey on rules and publications

1. Public works contracts

1. Directive 71/304/EEC of 26.7.1971  
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2. Directive 71/305/EEC of 26.7.1971  
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3. Declaration by the Council  
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4. Directive 72/277/EEC of 26.7.1972  
OJ L 176 of 3.8.1972

5. Directive 78/669/EEC of 2.8.1978  
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6. Directive 89/440/EEC  
OJ L 210/1 of 21.7.1989

- Adoption procedure
- Commission proposal COM(86)679 final of 23.12.1986 (not published)
- first reading by EP: 18.5.1988, OJ C 167 of 26.7.1988, p. 64
- modified Commission proposal: COM(88)354 of 21.6.1988
- Council common position of 4.11.1988
- Second reading by EP: 15.2.1989; OJ C 69 of 20.3.1989
- re-examined Commission proposal: COM(89)141 final of 4.4.1989; OJ C 115 of 8.5.1989
- Final adoption by the Council: 18.7.1989

7. Commission Decision 90/380/EEC of 13.7.1990 updating Annex I of the Directive  
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8. Technical standards for construction products

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1. Directive 70/32/EEC of 17.12.1969  
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OJ C 11/2 of 15.1.1977
6. Directive 80/767/EEC of 22.7.1980  
OJ L 215/1 of 18.8.1980
7. Directive 88/295/EEC of 22.3.1988  
OJ L 127/1 of 20.5.1988

### **Adoption procedure**

- Commission proposal: COM(86)297 final  
OJ C 173 of 11.7.1986
- first reading by EP: OJ C 68/7 of 16.3.1987
- modified Commission proposal: COM(87)233 final; OJ C  
161/10 of 19.6.1987
- Council common position: 5.10.1987
- second reading by EP: OJ C 13 of 18.1.1988
- re-examined Commission proposal: COM(88)42 final/2; OJ C  
65/5 of 10.3.1988
- final adoption by the Council: 22.3.1988

### **III. GATT rules (Public supply contracts)**

1. GATT Agreement on Government Procurement  
OJ L 71 of 17.3.1980
2. Commission Statement  
OJ C 211/1 of 19.8.1980
3. Council Resolution  
OJ C 211/2 of 19.8.1980
4. Statement by the Council and the Commission  
OJ C 211/3 of 19.8.1980
5. Communication on a Council Decision of 25.1.1983  
OJ C 69/3 of 15.3.1983
6. Council Decision 87/565/EEC of 16.11.1987  
OJ L 345 of 9.12.1987

### **IV. Technical standards/Information technology**

Council Decision 87/95/EEC of 22.12.1986  
OJ L 36 of 7.2.1987

### **V. Thresholds for Application of the Directives on Public Works and Public Supply Contracts**

for 1988/89: OJ C 330 of 9.12.1987  
for 1990/91: OJ C 18 of 25.1.1990

## **VI. "Remedies Directive"**

Directive 89/665/EEC of 21 December 1989 on the coordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts

OJ L 395 of 30.12.1989

### **Adoption procedure**

- Commission proposal: COM(87)134 final of 1.7.1987  
OJ C 36 of 28.8.1987
- First reading by EP: OJ C 167 of 27.6.1988, p. 77
- Modified Commission proposal: COM(88)733 final of 8.12.1988  
OJ C 15 of 19.1.1989
- Council Common position: 24.7.1989
- Second reading by EP: 23.11.1989
- Final adoption: 23.12.1989

## **VII. Public service contracts**

Commission proposal COM(90)372 of 6 December 1990

OJ C 23 of 31.1.1991

- Proposal for a Council Directive relating to the coordination of procedures on the award of public service contracts

VIII. Procurement rules in the fields of water, energy, transport, telecommunications

1. Telecommunications sector:

- a) Council Statement of 21.12.1976  
OJ C 11/3 of 15.1.1977
- b) Recommendation 84/550/EEC of 12.11.1984  
OJ L 298 of 16.11.1984

2. Communication COM(88)376 final of 11.10.1988, Supplement 6/88 to the Bulletin of the European Communities

3. "Utilities Directive"

Directive 90/531/EEC of 17.9.1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

OJ L 297 of 29.10. 1990

Adoption procedure

- a) Water, Energy, Transport: proposal for a Directive: COM(88)377 final of 11.10.1988  
OJ C 319 of 12.12.1988
- b) Telecommunications: proposal for a Directive: COM(88)378 final of 11.10.1988  
OJ C 40 of 17.2.1989
- c) Legislative procedure for both proposals:
  - First reading by EP: 25.5.1989  
OJ C 158 of 26.6.1989
  - Modified Commission proposal: COM(89)380 final of 31.8.1989  
OJ C 264 of 16.10.1989
  - Council common position: 29.3.1990
  - Second reading by EP: 13.6.1990
  - Re-examined Commission proposal: COM(90)301 of 12.7.1990 (not published)
  - Final adoption by the Council: 17.9.1990

IX. "Remedies/Utilities Directive"

Commission proposal COM(90)297 of 30.7.1990

OJ C 216 of 31.8.1990

- Proposal for a Council Directive 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

**X. Regional and social aspects**

1. Commission statement on regional preference rules applicable to public works contracts  
OJ C 182/3 of 19.7.1989
2. Commission Communication on regional and social aspects COM(89)400 of 27.7.1989  
OJ C 311 of 12.12.1989 + rectification OJ C 4 of 9.1.1990
3. Parliament resolution of 17.5.1990 on regional preferences  
OJ C 149/125 of 18.6.1990
4. Communication on development of subcontracting in the Community:  
COM(89)402 final of 7.8.1989
5. Council resolution on the development of subcontracting in the Community  
OJ C 254 of 7.10.1989
6. Commission communication on the promotion of SME participation  
COM(90)166 of 7.5.1990

## XI. Advisory Committees

### 1. Advisory Committee for Public Procurement

Council Decision 71/306/EEC of 26.7.1971

OJ L 185 of 16.8.1971

modified by

Council Decision 77/63/EEC of 21.12.1976

OJ L 13 of 15.1.1977

### 2. Advisory Committee on the Opening-Up of Public Procurement

Commission Decision 87/305/EEC of 26.5.1987

OJ L 152 of 12.6.1987

Commission Decision 87/560/EEC of 13.7.1987

OJ L 338 of 28.11.1987

#### Nomination of the Members

- OJ C 317 of 28.11.1987

- OJ C 163 of 22.6.1988

- OJ C 108 of 28.4.1989

- OJ C 260 of 13.10.1989

- OJ C 203 of 14. 8.1990

## XII. General information and monitoring of compliance with EC-rules

1. Guide to the Community rules: OJ C 358 of 21.12.1987

2. Notice to the member States concerning EC structural funds

OJ C 22/3 of 28.1.1989



**LEGAL TEXTS**





**PUBLIC WORKS CONTRACTS**



**COUNCIL DIRECTIVE**

**of 26 July 1971**

**concerning the abolition of restrictions on freedom to provide services in respect of public works contracts and on the award of public works contracts to contractors acting through agencies of branches**

**(C 71/304/EEC)**

**THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 54 (2) and 63 (2) thereof;

Having regard to the General Programme for the abolition of restrictions on freedom of establishment,<sup>1</sup> and in particular Title IV B thereof;

Having regard to the General Programme for the abolition of restrictions on freedom to provide services,<sup>2</sup> and in particular Title V C (e) (1) thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament<sup>3</sup>;

Having regard to the Opinion of the Economic and Social Committee<sup>4</sup>;

Whereas detailed provisions for the attainment of freedom of establishment and freedom to provide services and detailed provisions concerning transitional measures have already been laid down in respect of activities of self-employed persons which fall within ISIC Major Group 40 by Council Directives Nos 64/427/EEC and 64/429/EEC of 7 July 1964<sup>5</sup>; whereas, in conformity with these Directives, authorities awarding contracts may not practise against the natural or legal persons governed by private law to whom a contract is awarded any

discrimination based on the nationality of subcontractors; whereas restrictions are provisionally permitted only in respect of the award of public works contracts where they concern participation in public works contracts by way of provision of services or through agencies or branches; whereas, consequently, the provisions of the afore-mentioned Directives have a general application which renders superfluous their repetition in this Directive;

Whereas works contracts coming within ISIC Major Group 40 may be awarded to or performed by bodies holding concessions granted by the State, by regional or local authorities or by other legal persons governed by public law; whereas this Directive must therefore include such contracts in its scope which represent a considerable number of works; whereas otherwise its scope would be substantially reduced;

Whereas the Treaty establishing the European Atomic Energy Community contains in Article 97 a special provision concerning the construction of nuclear installations of a scientific or industrial nature; whereas, in accordance with Article 232 of the Treaty establishing the European Economic Community, such cases must be excluded from the scope of this Directive;

Whereas, since the adoption of the General Programmes, the European Economic Community has drawn up its own nomenclature of industrial activities, entitled 'Nomenclature of Industries in the European Communities' (NICE); whereas this nomenclature, which contains references to national nomenclatures, is therefore better adapted to the needs of the Member States than the ISIC nomenclature ('International Standard Industrial Classification of all Economic Activities'); whereas the NICE nomenclature should therefore be used, provided that this will not have the effect of altering the timetable laid down in the General Programmes,

<sup>1</sup> OJ No 2, 15.1.1962, p. 36/62.

<sup>2</sup> OJ No 2, 15.1.1962, p. 36/62.

<sup>3</sup> OJ No 62, 12.4.1965, p. 883/65.

<sup>4</sup> OJ No 13, 29.1.1965, p. 158/65.

<sup>5</sup> OJ No 117, 23.7.1964, p. 1863/64 and p. 1880/64.

which refers to the ISIC nomenclature; whereas the use of the NICE nomenclature in this Directive cannot have such effect;

Whereas reference is frequently made to technical specification in public works contracts; whereas the Council, in its statement made at the adoption of the General Programmes, laid down that technical specifications should not contain any discriminatory clause; whereas, consequently, it is necessary to include certain details on this in the Directive;

Whereas provisions applicable to all activities of self-employed persons and relating to movement and residence of persons enjoying freedom of establishment and freedom to provide services are or will be the subject of separate Directives; whereas the system applicable to paid employees accompanying the person providing services or acting on his behalf is governed by provisions laid down pursuant to Articles 48 and 49 of the Treaty;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall abolish, in respect of the natural persons and companies or firms covered by Title 1 of the General Programmes, and providing services or act through agencies or branches, (hereinafter called 'beneficiaries'), the restriction referred to in Title III of those General Programmes affecting the right to enter into, award, perform or participate in the performance of public works contracts on behalf of the State, or regional or local authorities or legal persons governed by public law.

Article 2

1. The provisions of this Directive shall apply to activities of self-employed persons which are covered by Major Group 40 in Annex I to the General Programme for the abolition of restrictions on freedom of establishment. Such activities correspond to those which fall within Major Group 40 of the 'Nomenclature of Industries in the European Communities' (NICE); they are given in the Annex to this Directive.

2. The Directive shall not apply to:

- (a) industrial installations of the mechanical, electrical or energy-producing variety, with the exception of any part of such installations which

comes within the province of building or civil engineering;

- (b) the construction of nuclear installations of a scientific or industrial nature;
- (c) excavation, shaft-sinking, dredging and waste disposal works carried out in connection with the extraction of minerals (mining and quarrying industries).

Article 3

1. Member States shall in particular abolish the following restrictions:

- (a) those which prevent beneficiaries from providing services under the same conditions and with the same rights as nationals of that country; the restrictions to be abolished shall include in particular provisions laid down by law, regulation or administrative action and those administrative practices which impose or permit the application of discriminatory treatment, to the prejudice of beneficiaries, by natural or legal persons to whom a contract has been awarded for the execution or management of works or for the management of public services by means of a grant of special or exclusive rights, in respect of contracts which such persons may in their turn award for the execution of such works;
- (b) those existing by reason of administrative practices which result in treatment being applied to beneficiaries that is discriminatory by comparison with that applied to nationals;
- (c) those existing by reason of provisions or practices which, although applicable irrespective of nationality, nonetheless hinder exclusively or principally the professional or trade activities of nationals of other Member States; discriminatory technical specifications, in particular, are among the restrictions to be abolished; they shall not, however, be considered to be discriminatory when they are justified by the subject of the contract.

2. Member States shall ensure in particular that:

- (a) beneficiaries may, under the same conditions as nationals, obtain for the carrying out of works on their territory the various forms of credit, aid and subsidy provided for the purpose by the public authorities;
- (b) beneficiaries shall have access without restriction and in any event under the same conditions as

nationals, to the supply facilities which the State is in a position to control and which they need for the performance of their contract.

*Article 5*

This Directive is addressed to the Member States.

*Article 4*

Done at Brussels, 26 July 1971.

Member States shall adopt the measures necessary to comply with this Directive within twelve months of its notification and shall forthwith inform the Commission thereof.

*For the Council*

*The President*

A. MORO

ANNEX

LIST OF PROFESSIONAL TRADE ACTIVITIES

as set out in the Nomenclature of Industries in the European Communities (NICE)

<i>Major Group</i>	<i>Group</i>
40	CONSTRUCTION
400	Construction (non-specialised); demolition
400.1	Non-specialised construction
400.2	Demolition
401	Construction of buildings (dwellings or other)
401.1	General building work
401.2	Roofing
401.3	Construction of chimneys and furnaces
401.4	Weatherproofing
401.5	Re-dressing and maintenance of facades
401.6	Scaffolding
401.7	Other building activities (including structural work)
402	Civil engineering; building of roads, bridges, railways, etc.
402.1	General civil engineering
402.2	Earth-moving work above ground
402.3	Building of engineering structures on land (above or below ground)
402.4	Building of inland waterway and maritime engineering structures
402.5	Highway construction (including airport and runway construction)

<i>Major Group</i>	<i>Group</i>
	402.6 Specialist activities in other fields of civil engineering (including installation of roads signs and signals and seamarks, installation of mains and pipelines for gas, water and hydrocarbons, and installation of electric power transmission and telecommunication lines)
403	Installation work
	403.1 General installation
	403.2 Services (gas, water and sanitary equipment installation)
	403.3 Heating and ventilation installation (installation of central-heating, air-conditioning, and ventilation plant)
	403.4 Heat, sound and vibration insulation
	403.5 Installation of electricity
	403.6 Installation of aerials, lightning conductors, telephones, etc.
404	Decorating and finishing
	404.1 General decorating and finishing
	404.2 Plastering
	404.3 Woodwork, with particular reference to installation of wooden fittings (including laying of wooden floors)
	404.4 Painting and glazing, wallpapering
	404.5 Application of facings and coverings for floors and walls (fixing of tiles, other floor coverings and adhesive finishings)
	404.6 Miscellaneous finishing work (including installation of stoves and fireplaces, etc.)

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THE EUROPEAN COMMUNITIES

OJ No L 185 - 16.8.71  
L 185/5

COUNCIL DIRECTIVE

of 26 July 1971

concerning the coordination of procedures for the award of public works contracts

(71/305/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAVING REGARD to the Treaty establishing the European Economic Community, and in particular Articles 57(2), 66 and 100 thereof;

HAVING REGARD to the General Programme for the abolition of restrictions on freedom of establishment (1), and in particular Title IV B1 thereof;

HAVING REGARD to the General Programme for the abolition of restrictions on freedom to provide services (2), and in particular Title V C(e) 1 thereof;

HAVING REGARD to the proposal from the Commission;

HAVING REGARD to the Opinion of the European Parliament (3);

HAVING REGARD to the Opinion of the Economic and Social Committee (4);

WHEREAS the simultaneous attainment of freedom of establishment and freedom to provide services in respect of public works contracts awarded in Member States on behalf of the State, or regional or local authorities or other legal persons governed by public law entails not only the abolition of restrictions but also the coordination of national procedures for the award of public works contracts;

WHEREAS such coordination should take into account as far as possible the procedures and administrative practices in force in each Member State;

WHEREAS the Council, in its statement concerning the aforementioned General Programmes, has stressed that coordination should be based on the following principles: prohibition of technical specifications that have a discriminatory effect, adequate advertising of contracts, the fixing of objective criteria for participation and the introduction of a procedure of joint supervision to ensure the observation of these principles;

WHEREAS some of the bodies which currently administer transport services in the Member States are governed by public law and some by private law; whereas, in accordance with the objectives of the common transport policy, equality of

(1) OJ No 2, 15 January 1962, p 36/62  
 (2) OJ No 2, 15 January 1962, p 32/62  
 (3) OJ No 62, 13 April 1965, p 883/65  
 (4) OJ No 63, 13 April 1965, p 929/65



EEC Dir No 71/305/EEC of 26.7.71

treatment should be ensured not only between separate undertakings concerned with a single mode of transport but also between such undertakings and undertakings concerned with other modes of transport;

WHEREAS, therefore, pending the adoption of provisions concerning the coordination of procedures which take into account the special circumstances described above, it is necessary to exclude from the scope of this Directive authorities referred to above which, by reason of their legal status, would fall within its scope;

WHEREAS it is necessary to avoid the subjection of the production, distribution and transmission or transportation services for water and energy to different systems for their works contracts, depending on whether they come under the State, or regional or local authorities or other legal persons governed by public law or whether they have separate legal personality; whereas it is therefore necessary to exclude from the scope of this Directive those services referred to above which, by reason of their legal status, would fall within its scope until such time as a definitive solution can be adopted in the light of experience;

WHEREAS provision must be made for exceptional cases where measures concerning the coordination of procedures may not necessarily be applied, but such cases must be expressly limited;

WHEREAS works contracts of less than 1,000,000 units of account can, for the moment, be exempted from competition as provided for under this Directive, and it is appropriate to provide for their exemption from coordination measures; whereas, in the light of experience, the Commission will at a later date submit to the Council a new proposal for a Directive whose aim is to lower the threshold for the application of coordination measures to public works contracts;

WHEREAS to ensure development of effective competition in the field of public contracts it is necessary that contract notices drawn up by the authorities of Member States awarding contracts be advertised throughout the Community; whereas the information contained in these notices must enable contractors established in the Community to determine whether the proposed contracts are of interest to them; whereas, for this purpose, it is appropriate to give them adequate information about the services to be provided and the conditions attached thereto; whereas, more particularly, in restricted procedures advertisement is intended to enable contractors of Member States to express their interest in contracts by seeking from the authorities awarding contracts invitations to tender under the required conditions;

WHEREAS additional information concerning contracts must, as is customary in Member States, be given in the contract documents for each contract or else in an equivalent document;

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General Provisions

Article 1

For the purposes of this Directive:

- (a) "Public works contracts" are contracts for pecuniary consideration concluded in writing between a contractor (a natural or legal person) and an authority awarding contracts as defined under (b), which have as their object one of the activities referred to in Article 2 of the Council Directive of 26 July 1971 concerning the abolition of restrictions on freedom to provide services in the field of public works contracts and on the award of public works contracts to contractors through acting agents or branches (2);
- (b) the State, regional or local authorities and the legal persons governed by public law (or, in Member States where this concept is unknown, equivalent bodies) specified in Annex I shall be regarded as "authorities awarding contracts";

a contractor who has submitted a tender shall be designated by the term "tenderer", and one who has sought an invitation to take part in a restricted procedure, by the term "candidate".

Article 2

In awarding public works contracts, the authorities awarding contracts shall apply their national procedures adapted to the provisions of this Directive.

Article 3

1 In the event of the authorities awarding contracts concluding a contract of the same type as that indicated in Article 1(a) except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with payment, the provisions of this Directive shall not apply to this so called "concession" contract. In all other cases, application of the procedures for the award of public contracts shall be compulsory.

2 When the concessionaire is himself one of the authorities awarding contracts, he must apply the national procedures for the award of public works contracts adapted to the provisions of this Directive for works to be carried out by third parties.

3 When the State, a regional or local authority or one of the legal persons governed by public law specified in Annex I grants to a concessionaire other than an authority awarding contracts the right to have public works carried out

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(2) OJ No L 185, 16 August 1971, p 1

EEC Dir No 71/305/EEC of 26.7.71

and to exploit them, the concession contract shall stipulate that such concessionaire must observe the principle of non-discrimination on grounds of nationality in respect of contracts awarded to third parties.

4 Public works contracts awarded by bodies which are governed by public law and which administer transport services shall not be subject to the provisions of this Directive.

5 The provisions of this Directive shall not apply to public works contracts awarded by the production, distribution, transmission or transportation services for water and energy.

#### Article 4

The Directive shall not apply to public contracts awarded by a Member State:

- in pursuance of an international agreement concluded with a third country which, in respect of the award of contracts, contains provisions which differ from those of this Directive;
- to undertakings of third countries, in pursuance of an international agreement which excludes undertakings of Member States;
- in accordance with the particular procedure of an international organisation.

#### Article 5

1 National procedures whereby any interested contractor may tender shall be subject to the provisions relating to "open procedures" within the meaning of this Directive (Articles 10 to 13, 16, 20 and 23 to 29).

2 National procedures whereby contractors may tender only if invited to do so by the authorities awarding contracts shall be subject to the provisions relating to "restricted procedures" within the meaning of this Directive (Articles 10 to 12, 14, 15, 17, 18, 20 to 29).

3 Contracts awarded in the cases referred to in Article 9 shall be subject to the provisions of Article 10 only.

#### Article 6

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

In particular, authorities awarding contracts shall include in the contract notice as accurate as possible a description of the works to be carried out so as to enable interested contractors to form a valid idea of the project. Furthermore, authorities awarding contracts shall, in accordance with the provisions of Articles 23 to 28, set out in such contract notice the personal, technical and financial conditions to be fulfilled by candidates.

Where such procedure is adopted, authorities awarding contracts shall apply the common advertising rules relating to restricted procedure and to the criteria for qualitative selection.

#### Article 7

1 The provisions of Titles II, III and IV and Article 9 shall apply, under the conditions laid down in Article 5, to public works contracts whose estimated value is not less than 1,000,000 units of account.

2 No contract may be split up with the intention of avoiding the application of this Article.

#### Article 8

When calculating the amounts referred to in Articles 7, 9 and 29 account shall be taken not only of the amount of the works contracts but also of the estimated value of the supplies needed to carry out the works which are made available to the contractor by the authorities awarding contracts.

#### Article 9

Authorities awarding contracts may award their works contracts without applying the provisions of this Directive, except those of Article 10, in the following cases:

- (a) in the absence of tenders, or in the event of irregular tenders following adoption of one of the procedures laid down in this Directive, or in the event of tenders which are unacceptable under national provisions that are in accordance with the provisions of Title IV, insofar as the terms of the original contract are not substantially altered;
- (b) when, for technical or artistic reasons or for reasons connected with the protection of exclusive rights, the works may only be carried out by a particular contractor;
- (c) for works carried out purely for purposes of research, experiment, study or development;
- (d) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseen by the authorities awarding contracts, the time limit laid down in other procedures cannot be kept;
- (e) when works are declared secret or when their execution must be accompanied by special security measures in accordance with the provisions laid down by law, regulation or administrative action in force in the Member State concerned, or when the protection of the basic interests of that State's security so requires;

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(f) for additional works not included in the contract originally considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for carrying out the work described therein, on condition that the award is made to the contractor carrying out such work;

- when such works cannot be technically or financially separated from the main contract without great inconvenience to the authorities awarding contracts;

- or when such works, although separable from the execution of the original contract, are strictly necessary to its later stages;

however, the aggregate value of contracts awarded for additional works may not exceed 50% of the value of the original contract;

(g) for new works consisting of the repetition of similar works entrusted to the undertaking to which the same authorities awarding contracts awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded according to the procedure referred to in Article 5;

as soon as the first project is put up for tender, notice must be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the authorities awarding contracts when they apply the provisions of Article 5. This procedure may only be applied during the three years following the conclusion of the original contract;

(h) in exceptional cases, when the nature of the works or risks attached thereto do not permit prior overall pricing.

Before the end of June of each year, Member States shall send the Commission a statement of the number and total value of contracts awarded in the preceding year on the basis of the present Article, at least as regards contracts awarded by States, Länder, regions, provinces or départments. Member States shall, as far as possible, classify the contracts awarded according to each of the cases cited in this Article.

## TITLE II

### Common Rules in the Technical Field

#### Article 10

1 The technical specifications defined in Annex II and the description of testing, checking, acceptance and calculation methods shall figure in the general documents or in the contractual documents relating to each contract. Such technical specifications may be defined by reference to national standards.

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

#### Article 11

When projects are put up for competition or when invitations to tender permit contractors to submit variations on a project of the administration, the authorities awarding contracts may not reject a tender solely on the grounds that it has been drawn up using a method of design calculation which differs from that used in the country where the contract is being awarded, provided that the tender accords with the terms and conditions of the contract documents. The tenderer must include with his tender all the evidence needed for examining the project and must supply any additional explanations which the authorities awarding contracts consider necessary.

### TITLE III

#### Common Advertising Rules

#### Article 12

Authorities awarding contracts who wish to award a public works contract by open or restricted procedure shall make known their intention by means of a notice.

Such notice shall be sent to the Official Publications Office of the European Communities and shall be published in full in the Official Journal of the European Communities in the official languages of the Communities, the original text alone being authentic.

Under the accelerated procedure provided for in Article 15, the notice shall be published in its original language only, in the four editions of the Official Journal of the European Communities.

The notice referred to in the preceding paragraph shall be published in the Official Journal of the European Communities not later than nine days after the date of despatch and, in the case of the accelerated procedure provided for in Article 15, not later than five days after that date.

The notice shall not be published in the official journals or in the specialist press of the country of the authorities awarding contracts before the date of its despatch and it shall mention this date. It shall not contain information other than that published in the Official Journal of the European Communities.

The authorities awarding contracts must be able to supply evidence of the date of despatch.

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#### Article 13

In open procedures, the time limit for the receipt of tenders shall be fixed by the authorities awarding contracts at no less than 36 days from the date of sending the notice. Provided it has been requested in good time, additional information relating to the contract documents shall be supplied by the authorities awarding contracts not later than six days before the final date fixed for receipt of tenders.

Where tenders can only be made after a visit to the site or after inspection of the documents supporting the contract documents, the time limits laid down in the preceding paragraph shall be extended accordingly.

#### Article 14

In restricted procedures, the time limit for receipt of requests to participate shall be fixed by the authorities awarding contracts at not less than twenty one days from the date of sending the notice.

The authorities awarding contracts shall simultaneously and in writing invite the selected candidates to submit their tenders.

The time limit for the receipt of tenders shall be fixed by the authorities awarding contracts at not less than twenty-one days from the date of sending the written invitation. Provided it has been requested in good time, additional information relating to the contract documents must be supplied by the authorities awarding contracts at least six days before the final date fixed for receipt of tenders.

When tenders can only be made after a visit to the site or after inspection of the documents supporting the contract documents, the time limits laid down in the preceding paragraph shall be extended accordingly.

#### Article 15

In cases where urgency renders impracticable the time limits laid down in the preceding Article, the authorities awarding contracts may apply the shorter time limits specified below:

- a time limit for the receipt of requests to participate which shall be not less than twelve days from the date of sending the notice;
- a time limit for the receipt of tenders which shall be not less than ten days from the date of the invitation to tender.

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

Requests for participation in contracts and invitations to tender may be made in writing or by telegram, telex or telephone. When requests to participate are made by telegram, telex or telephone, they must be confirmed in writing.

Article 16

In open procedures, the notice shall include at least the following information:

- (a) the date of despatch to the Official Publications Office of the European Communities;
- (b) the award procedure chosen;
- (c) the site; the nature and extent of the services to be provided and the general nature of the work; if the contract is subdivided into several lots: the order of size of the different lots and the possibility of tendering for one, for several, or for all of the lots; if the notice concerns a contract which, apart from the possible carrying out of works, entails the drawing up of a project, then only the information needed by contractors to understand the purpose of the contract and to tender accordingly;
- (d) any time limit for the completion of the works;
- (e) the address of the service awarding the contract;
- (f) the address of the service from which the contract documents and additional documents may be requested and the final date for making such a request; also the amount and terms of payment of any sum for such documents;
- (g) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (h) the persons authorised to be present at the opening of tenders and the date, time and place of this opening;
- (i) information about deposits and any other guarantees, whatever their form, which may be required by the authorities awarding contracts;
- (j) the main terms concerning financing and payment and/or references to the provisions laid down by law or regulation in which these are contained;
- (k) the specific legal form which will, if necessary, be assumed by the group of contractors to whom the contract is awarded;
- (l) the minimum economic and technical standards which the authorities awarding contracts require of contractors for their selection; these requirements may not be other than those specified in Articles 25 and 26;
- (m) the period during which tenderers shall be bound to keep open their tenders.

Article 17

In restricted procedures, the notice shall include at least the following information:

- (a) the information given in Article 16(a), (b), (c), (d), (e) and (k);



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- (b) the final date for receipt of requests to participate, the address to which they must be sent and the language or languages in which they must be written;
- (c) the final date for which invitations to tender shall be issued by the service awarding the contract;
- (d) the information to be given in the request to participate, in the form of statements which can later be checked concerning the contractor's personal position and the minimum economic and technical standards which the authorities awarding contracts require of contractors for their selection; these requirements may not be other than those specified in Articles 25 and 26.

#### Article 18

An invitation to tender under restricted procedures shall include at least the following information:

- (a) the information given in Article 16(f), (g), (i) and (j);
- (b) a reference to the notice mentioned in Article 17;
- (c) an indication of any documents to be annexed, either to support the verifiable statements furnished by the candidate in accordance with Article 17(d), or to supplement the information provided for in that Article under the same conditions as those laid down in Articles 25 and 26;
- (d) the criteria for the award of the contract if these are not given in the notice.

#### Article 19

The authorities awarding contracts may publish in the Official Journal of the European Communities notices of public works contracts which are not subject to the compulsory advertising measures provided for in this Directive, where the value of such contract is not less than 500,000 units of account.

### TITLE IV

#### Common Rules on Participation

#### Article 20

Contracts shall be awarded on the basis of the criteria laid down in Chapter 2 of this Title, after the suitability of contractors not excluded under the provisions of Article 23 has been checked by the authorities awarding contracts in accordance with the criteria of economic and financial standing and of technical knowledge or ability referred to in Articles 25 to 28.

#### Article 21

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

Article 22

In restricted procedures, within the meaning of Article 5(2), the authorities awarding contracts shall on the basis of the information given in accordance with the provisions of Article 17(d), select which candidates they shall invite to tender.

Each Member State shall ensure that authorities awarding contracts issue invitations to those nationals of other Member States who satisfy the necessary requirements, under the same conditions as to its own nationals.

Chapter 1Criteria for Qualitative selectionArticle 23

Any contractor may be excluded from participation in the contract who:

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

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

- for (a) (b) or (c), the production of an extract from the "judicial record" or failing this, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or in the country whence that person comes showing that these requirements have been met;

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- for (e) or (f), a certificate issued by the competent authority in the Member State concerned.

Where the country concerned does not issue such documents or certificates, they may be replaced by a declaration on oath (or, in Member States where there is no provision for declarations on oath, by a solemn declaration) made by the person concerned before a judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes.

Member States shall, within the time limit laid down in Article 32, designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

#### Article 24

Any contractor wishing to take part in a public works contract may be requested to prove his enrolment in the professional or trade register under the conditions laid down by the laws of the community country in which he is established: in Belgium, the registre du commerce - Handelsregister; in Germany, the Handelsregister and the Handwerksrolle; in France, the registre du commerce and the rèpertoire des métiers; in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato and the Registro delle commissioni provinciali per l'artigianato; in Luxembourg, the registre aux firmes and the règle de la Chambre des métiers; in the Netherlands, the Handelsregister; in Denmark, Aktieselskabsregistret foreningsregistret og handelsregistret.

As regards the United Kingdom and Ireland, proof of entry in a trade register for unregistered companies is replaced by a certificate issued by the Registrar of Companies showing that the company is incorporated.

#### Article 25

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

- (a) appropriate statements from bankers;
- (b) the presentation of the firm's balance sheets or extracts from the balance sheets, where publication of the balance sheet is required under company law in the country in which the contractor is established;
- (c) a statement of the firm's overall turnover and the turnover on construction works for the three previous financial years.

The authorities awarding contracts shall specify in the notice or in the invitation to tender, which reference or references they have chosen and what references other than those mentioned under (a), (b) or (c) are to be produced.

If, for any valid reason, the contractor is unable to supply the references requested by the authorities awarding contracts, he may prove his economic and financial standing by any other document which the authorities awarding contracts consider appropriate.

Article 26

Proof of the contractor's technical knowledge or ability may be furnished by:

- (a) the contractor's educational and professional qualifications and/or those of the firm's managerial staff, and, in particular, those of the person or persons responsible for carrying out the works;
- (b) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed. Where necessary, the competent authority shall submit these certificates to the authority awarding contracts direct;
- (c) a statement of the tools, plant and technical equipment available to the contractor for carrying out the work;
- (d) a statement of the firm's average annual manpower and the number of managerial staff for the last three years;
- (e) a statement of the technicians or technical divisions which the contractor can call upon for carrying out the work, whether or not they belong to the firm.

The authorities awarding contracts shall specify in the notice or in the invitation to tender which of these references are to be produced.

Article 27

The authority awarding contracts may, within the limits of Articles 23 to 26, invite the contractor to supplement the certificates and documents submitted or to clarify them.

Article 28

1 Member States who have official lists of recognised contractors must, when this Directive enters into force, adapt them to the provisions of Article 23(a) to (d) and (g) and of Articles 24 to 26.

2 Contractors registered in these lists may, for each contract, submit to the authority awarding contracts a certificate of registration issued by the competent authority. This certificate shall state the references which enabled them to be registered in the list and the classification given in this list.

3 Certified registration in such lists by the competent bodies shall, for the authorities of other Member States awarding contracts, constitute a presumption of suitability for works corresponding to the contractor's classification only as regards Articles 23(a) to (d) and (g), 24, 25(b) and (c) and 26(b) and (d) and not as regards Articles 25(a) and 26(a), (c) and (e).

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

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The authorities of other Member States awarding contracts shall apply the above provisions only in favour of contractors who are established in the country holding the official list.

4 For the registration of contractors of other Member States in such a list, no further proofs and statements may be required other than those requested of nationals and, in any event, only those provided for under Articles 23 to 26.

5 Member States holding an official list shall communicate to other Member States the address of the body to which requests for registration may be made.

## Chapter 2

### Criteria for the Award of Contracts

#### Article 29

1 The criteria on which the authorities awarding contracts shall base the award of contracts shall be:

- either the lowest price only;
- or, when the award is made to the most economically advantageous tender, various criteria according to the contract: eg price, period for completion, running costs, profitability, technical merit.

2 In the later instance, the authorities awarding contracts shall state in the contract documents or in the contract notice all the criteria they intend to apply to the award, where possible in descending order of importance.

3 The price criterion as calculated in accordance with current national regulations (Italian "anonymous envelope" procedure) may be retained for a period of three years following expiry of the time limit laid down in Article 32 for contracts whose estimated value does not exceed 10 million units of account, and for seven years from the same date for contracts whose estimated value is between 1 and 2 million units of account.

4 The provisions of paragraph 1 shall not apply when a Member State bases the award of contracts on other criteria, within the framework of rules whose aim is to give preference to certain tenderers by way of aid, on condition that the rules invoked are in conformity with the Treaty, in particular Articles 92 et seq.

5 If, for a given contract, tenders are obviously abnormally low in relation to the transaction, the authority awarding contracts shall examine the details of the tenders before deciding to whom it will award the contract. The result of this examination shall be taken into account.

For this purpose it shall request the tenderer to furnish the necessary explanations and, where appropriate, it shall indicate which parts it finds unacceptable.

If the documents relating to the contract provide for its award at the lowest price tendered, the authority awarding contracts must justify to the Advisory Committee set up by the Council Decision of 26 July 1971 (6), the rejection of tenders which it considers to be too low.

## TITLE V

### Final Provisions

#### Article 30

The Calculation of the time limit for receipt of tenders or requests to participate shall be made in accordance with Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (7).

#### Article 31

The cost of publication in the Official Journal of the European Communities of the notices provided for under Articles 12 and 19, shall be defrayed by the Communities in accordance with the procedure and conditions published in the Official Journal.

#### Article 32

Member States shall adopt the measures necessary to comply with this Directive within twelve months of its notification and shall forthwith inform the Commission thereof.

#### Article 33

Member States shall ensure that the text of the main provisions of national law which they adopt in the field covered by this Directive is communicated to the Commission.

#### Article 34

This Directive is addressed to the Member States.

Done at Brussels, 26 July 1971.

For the Council

The President

A. MORO

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(6) OJ No L 185, 16 August 1971, p 15

(7) OJ No L 124, 8 June 1971, p 1

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ANNEX I

List of legal persons governed by public law (or, in Member States where this concept is unknown, equivalent bodies) covered by Article 1(b).

I In all Member States:

Associations governed by public law formed by regional or local authorities eg associations de communes, syndicats de communes, Gemeindeverbände etc.

II In Belgium:

- |   |   |
|---|---|
| - le Fonds des routes                                 | - het wegenfonds                                    |
| - la Régie des voies aériennes                        | - de Regie der luchtwegen                           |
| - public assistance commissions                       |   |
| - structures of the Church                            |   |
| - L'Office régulateur de la navigation intérieure     | - de Dienst voor regeling van de binnenvaart        |
| - la Régie des services frigorifiques de l'Etat belge | - de Regie der Belgische Rijkskoel en vriesdiensten |

III In Germany:

the bundesunmittelbare Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts

IV In France:

- other administrative public bodies at national, departmental and local levels.

V In Italy:

- state universities, state university institutes, consortia for university development works,
- higher scientific and cultural institutes, astronomical, astrophysical, geophysical and vulcanological observatories
- the Enti di riforma fondiaria
- relief and charity organisations

VI In Luxembourg:

- social insurance offices
- other public administrative bodies

VII In the Netherlands:

- the Waterschappen
- the Rijksuniversiteiten, the Academische Ziekenhuizen, the Gemeentelijke Universiteit van Amsterdam, the Rooms-Katholieke Universiteit van Nijmegen, the Vrije Universiteit van Amsterdam, the Technische Hogescholen

the Nederlandse Centrale Organisatie voor toegepast natuurwetenschappelijk Onderzoek (TNO) and its dependent organisations

VIII In the United Kingdom:

- local authorities;
- new towns' corporations;
- Commission for the New Towns;
- Scottish Special Housing Association;
- Northern Ireland Housing Executive.

IX In Denmark:

- "andre forvaltningssubjektter"

X In Ireland:

- other public authorities whose public works contracts are subject to control by the State.



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ANNEX II

Technical specifications within the meaning of this Directive

Within the meaning of this Directive, technical specifications in the field of public works contracts shall comprise all the technical requirements given in the contract documents which permit an objective description of a job, material, product or supply (especially quality, performance) so that that job, material, product or supply fulfils the purpose for which it is required by the authority awarding contracts.

These technical specifications shall include all the mechanical, physical and chemical properties, the classifications and standards, and the test,- checking, and acceptance conditions for works and for the materials and parts which they involve. They shall also include methods or techniques of construction and all the other technical conditions which the authority awarding contracts 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.

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DIRECTIVE

of 18 July 1989

amending Directive 71/305/EEC concerning coordination of procedures for the award of public works contracts

(89/440/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament (1),

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

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

Having regard to the conclusions drawn by successive meetings of the European Council on the need to establish such a market,

Having regard to the White Paper on completing the internal market and in particular to the timetable and programme laid down therein for the opening up of the market for public works contracts,

Having regard to the Commission's communication to the Council of 19 June 1986 on public procurement in the Community,

Whereas public works contracts are governed by Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (3), as last amended by the Act of Accession of Spain and Portugal, and Council Directive 72/277/EEC of 26 July 1972 concerning the details of publication of notices of public works contracts and concessions in the *Official Journal of the European Communities* (4), by the declaration of 26 July 1971 of the representatives of the Governments of the Member States, meeting within the Council, concerning procedures to be followed in the field of public works contracts (5), and by Council Decision 71/306/EEC of 26 July 1971 setting up an Advisory Committee for Public Contracts (6), as amended by Decision 77/63/EEC (7);

Whereas, in order to guarantee real freedom of establishment and freedom to provide services in the market for public works contracts, it is necessary to improve and extend the safeguards in the directives that are designed to introduce transparency into the procedures and practices for the award of such contracts, in order to be able to monitor compliance with the prohibition of restrictions more closely and at the same time to reduce disparities in the competitive conditions faced by nationals of different Member States;

Whereas this Directive does not prevent the application of, in particular, Article 36 of the Treaty;

Whereas it is to define more precisely what is meant by public works contracts in order to take account, in particular, of

(1) OJ No L 185, 16. 8. 1971, p. 5.

(2) OJ No L 176, 3. 8. 1972, p. 12.

(3) OJ No C 82, 16. 8. 1971, p. 13.

(4) OJ No L 185, 16. 8. 1971, p. 15.

(5) OJ No L 13, 15. 1. 1977, p. 15.

(1) OJ No C 167, 27. 6. 1988, p. 76 and OJ No C 69, 20. 3. 1989, p. 69.

(2) OJ No C 319, 30. 11. 1987, p. 55.

new forms of such contracts, and to lay down criteria for identifying all the entities which are subject to Directive 71/305/EEC;

Whereas the list of bodies and categories of studies in Annex I should be as exhaustive as possible;

Whereas it is also necessary to extend the provisions of Directive 71/305/EEC to works that are subsidized by the State but do not come within the terms of Article 1;

Whereas, in view of the increasing importance of concession contracts in the public works area and of their specific nature, the rules concerning advertising should be brought within Directive 71/305/EEC;

Whereas it is necessary to clarify the scope of the exemptions for certain sectors in order that divergences in the application of Directive 71/305/EEC due to divergent interpretations of the exemptions in different Member States do not increase;

Whereas the threshold value from which contracts are subject to Directive 71/305/EEC was set in 1971 at ECU 1 million and whereas, in view of the rise in the cost of construction work and the interest of small and medium-sized firms in bidding for medium-sized contracts, this threshold should now be set at ECU 5 million;

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

Whereas it is desirable to introduce provision for a negotiated procedure such as already exists in the practice of some Member States, in order to curtail the use of the exceptional procedure provided for in Article 9 of Directive 71/305/EEC;

Whereas the negotiated procedure should be considered to be exceptional and therefore only applicable in certain limited cases;

Whereas contracting authorities should be required to inform rejected candidates and tenderers of the reasons for rejection in their application or bid and to draw up a report on the conduct of the proceedings leading up to each award;

Whereas it is necessary to adapt the common rules in the technical field to the new Community policy on standards;

Whereas, to create the necessary conditions for efficient Community-wide competition for contracts so that firms from other Member States can bid on comparable terms to domestic firms and a greater level of interest and

participation in contracts is aroused from a larger number of contractors, all the operations and procedures involved in the competitive tendering for contracts should be made more transparent; whereas contracting authorities should also be required, to announce forthcoming public works projects throughout the Community, and to publish, in the same way, all relevant details of how contracts have been awarded;

Whereas, in order to improve access to contracts and allow a larger number of contractors to complete and to prepare their bids in reasonable time, especially for large projects which are generally of considerable technical and organizational complexity, the time limits for the receipt of applications to bid and tenders should be lengthened;

Whereas it is in the general interest to encourage technical advances in the construction and public works sector so that transfer of technology and know-how from one Member State to another benefits not only the general public but also the construction industry;

Whereas work is under way in the Community on methods of framing specifications in terms of performance requirements instead of as detailed technical prescriptions and contractors in the Community should immediately be given the opportunity to submit variants under certain conditions;

Whereas, to ensure transparency as to how contractors propose to carry out a contract, it must be made possible for contracting authorities to be informed of any part of the contract the tenderer intends to subcontract to third parties;

Whereas it could prove useful to provide for greater transparency as to the requirements regarding the protection and conditions of employment applicable in the Member State in which the works are to be carried out;

Whereas it is appropriate that national provisions for regional development requirements to be taken into consideration in the award of public works contracts should be made to conform to the objectives of the Community and be in keeping with the principles of the Treaty;

Whereas adequate statistical provision should be included in Directive 71/305/EEC in order to improve, and to put on a more systematic basis, information on the way in which contracting authorities award their contracts;

Whereas the Kingdom of Spain has recently adopted legislation to implement Directive 71/305/EEC; whereas, given the fact that the introduction of other amendments at this stage would adversely affect the adaptation of the private sector in that Member State, it is appropriate to grant the Kingdom of Spain an additional period to implement this Directive;

Whereas the Portuguese Republic is in need of a transitional period for similar reasons;

Whereas the Hellenic Republic will be adapting its legislation to Directive 71/305/EEC and whereas incorporation, at this stage, of other Community rules would have an adverse effect upon the public works contracts sector and in particular upon certain economically important factors such as the stability, transparency and maintenance, in the medium term, of commercial conditions;

Whereas in accordance with the conclusions of the said meetings of the European Council, of the White Paper and of the said Commission communication to the Council, Directive 77/305/EEC should be amended and Directive 72/277/EEC repealed,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 71/305/EEC is hereby amended as follows:

1. Article 1 is replaced by the following:

*Article 1*

For the purpose of this Directive:

(a) "public works contracts" are contracts for pecuniary interest concluded in writing between a contractor and a contracting authority as defined in (b), which have as their object either the execution, or both the execution and design, of works related to one of the activities referred to in Annex II or a work defined in (c) below, or the execution by whatever means of a work corresponding to the requirements specified by the contracting authority;

(b) "contracting authorities" shall be the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or 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, and
- having legal personality, and
- financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose

members are appointed by the State, regional or local authorities or by other bodies governed by public law.

The lists of bodies or of categories of such bodies governed by public law which fulfil the criteria referred to in the second subparagraph are set out in Annex I. These lists shall be as exhaustive as possible and may be reviewed in accordance with the procedure laid down in Article 30b. To this end, Member States shall periodically notify the Commission of any changes to their lists of bodies and categories of bodies;

(c) a "work" means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic and technical function;

(d) "public works concession" is a contract of the same type as that indicated in (a) except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with payment;

(e) "open procedures" are those national procedures whereby all interested contractors may submit tenders;

(f) "restricted procedures" are those national procedures whereby only those contractors invited by the contracting authority may submit tenders;

(g) "negotiated procedures" are those national procedures whereby contracting authorities consult contractors of their choice and negotiate the terms of the contract with one or more of them;

(h) a contractor who submits a tender shall be designated by the term "tenderer" and one who has sought an invitation to take part in a restricted and negotiated procedure by the term "candidate".

2. The following Articles are inserted:

*Article 1a*

1. Member States shall take the necessary measures to ensure that the contracting authorities comply or ensure compliance with this Directive where they subsidize directly by more than 50% a works contract awarded by an entity other than themselves.

2. Paragraph 1 shall concern only contracts covered by Class 50, Group 502, of the NACE nomenclature

and to contracts relating to building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes.

#### Article 1b

1. Should contracting authorities conclude a public works concession contract as defined in Article 1 (d), the advertising rules as described in Article 12 (3), (6), (7) and (9) to (13), and in Article 15a, shall apply to that contract when its value is not less than ECU 5 000 000.

2. The contracting authority may:

— either require the concessionaire to award contracts representing a minimum of 30% of the total value of the work for which the concession contract is to be awarded, to third parties, at the same time providing the option for candidates to increase this percentage. This minimum percentage shall be specified in the concession contract,

— or request the candidates for concession contracts to specify in their tenders the percentage, if any, of the total value of the work for which the concession contract is to be awarded which they intend to assign to third parties.

3. When the concessionaire is himself one of the authorities awarding contracts within the meaning of Article 1 (b), he shall comply with the provisions of this Directive in the case of works to be carried out by third parties.

4. Member States shall take the necessary steps to ensure that a concessionaire other than an authority awarding contracts shall apply the advertising rules listed in Article 12 (4), (6), (7), and (9) to (13), and in Article 15b, in respect of the contracts which it awards to third parties when the value of the contracts is not less than ECU 5 000 000. Advertising rules shall not be applied where works contracts meet the conditions laid down in Article 5 (3).

Undertakings which have formed a group in order to obtain the concession contract, or undertakings affiliated to them, shall not be regarded as third parties.

An "affiliated undertaking" means any undertaking over which the concessionaire may exercise, directly or indirectly, a dominant influence or which may exercise a dominant influence over the concessionaire or which, in common with the concessionaire, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation or the rules which govern it. A dominant influence on the part of an undertaking shall be presumed when, directly or indirectly in relation to another undertaking, it:

- holds the major part of the undertaking's subscribed capital, or
- controls the majority of the votes attaching to shares issued by the undertakings, or
- can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

A comprehensive list of these undertakings shall be enclosed with the candidature for the concession. This list shall be brought up to date following any subsequent changes in the relationship between the undertaking.

3. Article 2 is hereby repealed.

4. Article 3 (1), (2) and (3) is hereby repealed and paragraphs 4 and 5 thereof are replaced by the following:

4. This Directive shall not apply to:

- (a) works contracts awarded by carriers by land, air, sea or inland waterway;
- (b) works contracts awarded by contracting authorities, in so far as those contracts concern the production, transport and distribution of drinking water, or those contracting authorities whose principal activity lies in the production and distribution of energy;
- (c) works contracts which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of that State's security so requires.

5. Article 4 is replaced by the following:

#### Article 4

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

- (a) in pursuance of an international agreement, concluded in conformity with the EEC Treaty, between a Member State and one or more non-member countries and covering works 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 set up by Decision 71/306/EEC (1), as amended by Decision 77/63/EEC (2);

(b) to undertakings in a Member State or a non-member country in pursuance of an international agreement relating to the stationing of troops;

(c) pursuant to the particular procedure of an international organization.

(<sup>1</sup>) OJ No L 185, 16. 8. 1971, p. 15.

(<sup>2</sup>) OJ No L 13, 15. 1. 1977, p. 15.

6. The following Article is inserted:

*'Article 4a*

1. The provisions of this Directive shall apply to public works contracts whose estimated value net of VAT is not less than ECU 5 000 000.

2. The value of the threshold in national currencies shall normally be revised every two years with effect from 1 January 1993. The calculation of this value shall be based on the average daily values of these currencies in terms of the ecu over the 24 months terminating on the last day of October immediately preceding the 1 January revision. The values shall be published in the *Official Journal of the European Communities* at the beginning of November.

3. Where a work is subdivided into several lots, each one the subject of a contract, the value of each lot must be taken into account for the purpose of calculating the amounts referred to in paragraph 1. Where the aggregate value of the lots is not less than the amount referred to in paragraph 1, the provisions of that paragraph shall apply to all lots. Contracting authorities shall be permitted to depart from this provision for lots whose estimated value net of VAT is less than ECU 1 000 000, provided that the total estimated value of all the lots exempted does not, in consequence, exceed 20 % of the total estimated value of all lots.

4. No work or contract may be split up with the intention of avoiding the application of the preceding paragraphs.

5. When calculating the amounts referred to in paragraph 1 and in Article 5, account shall be taken not only of the amount of the public works contracts but also of the estimated value of the supplies needed to carry out the works which are made available to the contractor by the contracting authorities.'

7. Article 5 is replaced by the following:

*'Article 5*

1. In awarding public works contracts the contracting authorities shall apply the procedures defined in Article 1 (c), (f) and (g), adapted to this Directive.

2. The contracting authorities may award their public works contracts by negotiated procedure, with prior publication of a tender notice and after having selected the candidates according to qualitative public criteria, in the following cases:

(a) in the event of irregular tenders in response to an open or restricted procedure or in the event of tenders which are unacceptable under national provisions that are in accordance with the provisions of Title IV, in so far as the original terms of the contract are not substantially altered. The contracting authorities shall not, in these cases, publish a tender notice where they include in such negotiated procedure all the enterprises satisfying the criteria of Articles 23 to 28 which, during the prior open or restricted procedure, have submitted offers in accordance with the formal requirements of the tendering procedure;

(b) when the works involved are carried out purely for the purpose of research, experiment or development, and not to establish commercial viability or to recover research and development costs;

(c) in exceptional cases, when the nature of the works or the risks attaching thereto do not permit prior overall pricing.

3. The contracting authorities may award their public works contracts by negotiated procedure without prior publication of a tender notice, in the following cases:

(a) in the absence of tenders or of appropriate tenders in response to an open or restricted procedure in so far as the original terms of the contract are not substantially altered and provided that a report is communicated to the Commission at its request;

(b) when, for technical or artistic reasons or for reasons connected with the protection of exclusive rights, the works may only be carried out by a particular contractor;

(c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseen by the contracting authorities in question, the time limit laid down for the open, restricted or negotiated procedures referred to in paragraph 2 above cannot be kept. The circumstances invoked to justify extreme urgency must not in any event be attributable for the contracting authorities;

(d) for additional works not included in the project initially considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the carrying

out of the work described therein, on condition that the award is made to the contractor carrying out such work:

- when such works cannot be technically or economically separated from the main contract without great inconvenience to the contracting authorities, or
- when such works, although separable from the execution of the original contract, are strictly necessary to its later stages,

however, the aggregate value of contracts awarded for additional works may not exceed 50 % of the amount of the main contract;

- (e) for new works consisting of the repetition of similar works entrusted to the undertaking to which the same contracting authorities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded according to the procedures referred to in paragraph 4.

As soon as the first project is put up for tender, notice must be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting authorities when they apply the provisions of Article 4a. This procedure may only be applied during the three years following the conclusion of the original contract.

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

8. The following Article is inserted:

*Article 5a*

1. The contracting authority shall, within 15 days of the date on which the request is received, inform any eliminated candidate or tenderer who so requests of the reasons for rejection of his application or his tender, and, in the case of a tender, the name of the successful tenderer.

2. The contracting authority shall inform candidates or tenderers who so request of the grounds on which it decided not to award a contract in respect of which a prior call for competition was made, or to recommence the procedure. It shall also inform the Office for Official Publications of the European Communities of that decision.

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

- the name and address of the contracting authority, the subject and value of the contract,

- the names of the candidates or tenderers admitted and the reasons for their selection,

- the names of the candidates or tenderers rejected and the reasons for their rejection,

- the name of the successful tenderer and the reasons for his tender having been selected and, if known, any share of the contract the successful tenderer may intend to subcontract to a third party,

- for negotiated procedures, the circumstances referred to in Article 5 which justify the use of these procedures.

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

9. Article 7, 8 and 9 are hereby repealed.

10. Article 10 is replaced by the following:

*Article 10*

1. The technical specifications defined in Annex III shall be given in the general or contractual documents relating to each contract.

2. Without prejudice to the legally binding national technical rules and in so far as these are compatible with Community law, such technical specifications shall be defined by the contracting authorities by reference to national standards implementing European standards, or by reference to European technical approvals or by reference to common technical specifications.

3. A contracting authority may depart from paragraph 2 if:

(a) the standards, European technical approvals or common technical specifications do not include any provision for establishing conformity, or technical means do not exist for establishing satisfactorily the conformity of a product to these standards, European technical approvals or common technical specifications;

(b) use of these standards, European technical approvals or common technical specifications would oblige the contracting authority to acquire products or materials incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties, but only as part of a clearly defined and recorded strategy with a view to change-over, within a given period, to European standards, European technical approvals or common technical specifications;

(c) the project concerned is of a genuinely innovative nature for which use of existing European standards, European technical approvals or common technical specifications would not be appropriate.

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

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

- (a) shall be defined by reference to the national technical specifications recognized as complying with the basic requirements listed in the Community directives on technical harmonization, in accordance with the procedures laid down in those directives, and in particular in accordance with the procedures laid down in Council Directive 89/106/EEC of 21 December 1988 on construction products<sup>(1)</sup>;
- (b) may be defined by reference to national technical specifications relating to design and method of calculation and execution of works and use of materials;
- (c) may be defined by reference to other documents.

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

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

6. Unless such specifications are justified by the subject of the contract, Member States shall prohibit the introduction into the contractual clauses relating to a given contract of technical specifications which mention products of a specific make or source or of a particular process and which therefore favour or eliminate certain undertakings. In particular, the indication of trade marks, patents, types, or of a specific origin or production shall be prohibited. However, if such indication is accompanied by the words "or equivalent", it shall be authorized in cases where the authorities awarding contracts are unable to

give a description of the subject of the contract using specifications which are sufficiently precise and intelligible to all parties concerned.

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

11. Article 11 is hereby repealed.

12. Articles 12 to 15 are replaced by the following:

*Article 12*

1. Contracting authorities shall make known, by means of an indicative notice, the essential characteristics of the works contracts which they intend to award and the estimated value of which is not less than the threshold laid down in Article 4a (1).

2. Contracting authorities who wish to award a public works contract by open, restricted or negotiated procedure referred to in Article 5 (2), shall make known their intention by means of a notice.

3. Contracting authorities who wish to award a works concession contract shall make known their intention by means of a notice.

4. Works concessionaires, other than a contracting authority, who wish to award a work contract to be carried out by third parties as defined in Article 1b (4), shall make known their intention by means of a notice.

5. Contracting authorities who have awarded a contract shall make known the result by means of a notice. However, certain information on contract award may, in certain cases, not be published where release of such information would impede law enforcement or otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of particular enterprises, public or private, or might prejudice fair competition between contractors.

6. The contracting authorities shall send the notices referred to in the preceding paragraphs as rapidly as possible and by the most appropriate channels to the Office for Official Publications of the European Communities. In the case of the accelerated procedure referred to in Article 15, the notice shall be sent by telex, telegram or telefax.

(a) The notice referred to in paragraph 1 shall be sent as soon as possible after the decision approving the planning of the works contracts that the contracting authorities intend to award;

(b) the notice referred to in paragraph 5 shall be sent at the latest 48 days after the award of the contract in question.

7. The notices referred to in paragraphs 1, 2, 3, 4 and 5 shall be drawn up in accordance with the models



given in Annexes IV, V and VI, and shall specify the information requested in those Annexes.

In open, restricted and negotiated procedures, the contracting authorities may not require any conditions but those specified in Articles 25 and 26 when requesting information concerning the economic and technical standards which they require of contractors for their selection (point 11 of Annex IV B, point 10 of Annex IV C and point 9 of Annex IV D).

8. The notices referred to in paragraphs 1 and 5 above shall be published in full in the *Official Journal of the European Communities* and in the TED data bank in the official languages of the Communities, the original text alone being authentic.

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

10. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In the case of the accelerated procedure referred to in Article 15, this period shall be reduced to five days.

11. The notice shall not be published in the official journals or in the press of the country of the contracting authority before the abovementioned date of dispatch, and it shall mention this date. It shall not contain information other than that published in the *Official Journal of the European Communities*.

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

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

#### Article 13

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

2. The time limit for the receipt of tenders provided for in paragraph 1 may be reduced to 36 days where the contracting authorities have published a tender notice, drafted in accordance with the specimen in Annex IV A provided for in Article 12 (1), in the *Official Journal of the European Communities*.

3. Provided they have been requested in good time, the contract documents and supporting documents must be sent to the contractors by the contracting authorities or competent departments within six days of receiving their application.

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

5. Where the contract documents, supporting documents or additional information are too bulky to be supplied within the time limits laid down in paragraph 3 or 4 or where tenders can only be made after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limits laid down in paragraphs 1 and 2 shall be extended accordingly.

#### Article 14

1. In restricted procedures and negotiated procedures as described in Article 5 (2), the time limit for receipt of requests to participate fixed by the contracting authorities shall be not less than 37 days from the date of dispatch of the notice.

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

- (a) where appropriate, the address of the service from which the contract documents and supporting documents can be requested and the final date for making such a request; also the amount and terms of payment of any sum to be paid for such documents;
- (b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (c) a reference to the contract notice published;
- (d) an indication of any documents to be annexed, either to support the verifiable statements

furnished by the candidate in accordance with Article 12 (7), or to supplement the information provided for in that Article under the same conditions as those laid down in Article 25 and 26;

- (e) the criteria for the award of the contract if these are not given in the notice.

3. In restricted procedures, the time limit for receipt of tenders fixed by the contracting authorities may not be less than 40 days from the date of dispatch of the written invitation.

4. The time limit for receipt of tenders laid down in paragraph 3 may be reduced to 26 days where the contracting authorities have published the tender notice, drafted according to the specimen in Annex IV A provided for in Article 12 (1), in the *Official Journal of the European Communities*.

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

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

7. Where tenders can only be made after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limit laid down in paragraphs 3 and 4 shall be extended accordingly.

#### Article 15

1. In cases where urgency renders impracticable the time limits laid down in Article 14, the contracting authorities may fix the following time limits:

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

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

3. Requests for participation in contracts and invitations to tender must be made by the most rapid

means of communication possible. When requests to participate are made by telegram, telex, telefax or telephone, they must be confirmed by letter dispatched before the expiry of the time limit referred to in paragraph 1.

13. The following Articles are inserted:

#### Article 15a

Contracting authorities who wish to award a works concession contract as defined in Article 1 (d) shall fix a time limit for receipt of candidatures for the concession, which shall not be less than 52 days from the date of dispatch of the notice.

#### Article 15b

In works contracts awarded by a concessionaire of works other than an authority awarding contracts, the time limit for the receipt of requests to participate shall be fixed by the concessionaire at not less than 37 days from the date of dispatch of the notice, and the time limit for the receipt of tenders at not less than 40 days from the date of dispatch of the notice or the invitation to tender.

14. Articles 16, 17 and 18 are hereby repealed.

15. Articles 19 and 20 are replaced by the following:

#### Article 19

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

#### Article 20

Contracts shall be awarded on the basis of the criteria laid down in Chapter 2 of this Title, taking into account Article 20a, after the suitability of the contractors not excluded under Article 23 has been checked by the contracting authorities in accordance with the criteria of economic and financial standing and of technical knowledge or ability referred to in Articles 25 to 28.

16. The following Articles are inserted:

#### Article 20a

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

The contracting authorities shall state in the contract documents the minimum specifications to be respected

by the variants and any specific requirements for their presentation. They shall indicate in the tender notice whether variants will be considered.

Contracting authorities may not reject the submission of a variant on the sole grounds that it has been drawn up with technical specifications defined by reference to national standards transposing European standards, to European technical approvals or to common technical specifications referred to in Article 10 (2) or again by reference to national technical specifications referred to in Article 10 (5) (a) and (b).

#### Article 20b

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

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

#### 17. Article 22 is replaced by the following:

##### 'Article 22

1. In restricted and negotiated procedures the contracting authorities shall, on the basis of information given relating to the contractor's personal position as well as to the information and formalities necessary for the evaluation of the minimum conditions of an economic and technical nature to be fulfilled by him, select from among the candidates with the qualifications required by Articles 23 and 28 those whom they will invite to submit a tender or to negotiate.

2. Where the contracting authorities award a contract by restricted procedure, they may prescribe the range within which the number of undertakings which they intend to invite will fall. In this case the range shall be indicated in the contract notice. The range shall be determined in the light of the nature of the work to be carried out. The range must number at least 5 undertakings and may be up to 20.

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

3. Where the contracting authorities award a contract by negotiated procedure as referred to in Article 5 (2), the number of candidates admitted to negotiate may not be less than three provided that there is a sufficient number of suitable candidates.

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

#### 18. The following Article is added:

##### 'Article 22a

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

2. The contracting authority which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the work is to be carried out. This shall be without prejudice to the application of the provisions of Article 29 (5) concerning the examination of abnormally low tenders.'

#### 19. Article 24 is hereby replaced by the following:

##### 'Article 24

Any contractor wishing to take part in a public works contract may be requested to prove his enrolment in the professional or trade register under the conditions laid down by the laws of the Member State in which he is established:

- in Belgium, the registre du commerce — Handelsregister,
- in Denmark, the Erhvervs- og Selskabsstyrelsen,
- in Germany, the Handelsregister and the Handwerksrolle,
- in Greece, a declaration on the exercise of the profession of public works contractor made on oath before a notary may be required,
- in Spain, the Registro Oficial de Contratistas del Ministerio de Industria y Energia,
- in France, the registre du commerce and the répertoire des métiers,
- in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato,

- in Luxembourg, the registre aux firmes and the rôle de la Chambre des métiers, —
- in the Netherlands, the Handelsregister,
- in Portugal, the Comissão de Alvarás de Empresas de Obras Públicas e Particulares (CAEOPP),
- in the United Kingdom and Ireland, the contractor may be requested to provide a certificate from the Registrar of Companies or the Registrar of Friendly Societies or, if this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name.'

procedure shall be mentioned in the notice referred to in Article 12 (5).'

21. The following Articles are inserted in Title V:

*Article 29a*

1. Until 31 December 1992, this Directive shall not prevent the application of existing national provisions on the award of public works contracts which have as their objective the reduction of regional disparities and the promotion of job creation in regions whose development is lagging behind and in declining industrial regions, on condition that the provisions concerned are compatible with the Treaty, in particular with the principles of non-discrimination on grounds of nationality, freedom of establishment and freedom to provide services, and with the Community's international obligations.

2. Paragraph 1 shall be without prejudice to Article 29 (4).

*Article 29b*

1. Member States shall inform the Commission of national provisions covered by Article 29 (4) and Article 29a and of the rules for applying them.

2. Member States concerned shall forward to the Commission, every year, a report describing the implementation of these provisions. The reports shall be submitted to the Advisory Committee for Public Works Contracts.'

20. Article 29 (3) is hereby repealed and Article 29 (4) and (5) replaced by the following:

4. Paragraph 1 shall not apply when a Member State bases the award of contracts on other criteria, within the framework of rules in force at the time of the adoption of this Directive whose aim is to give preference to certain tenderers, on condition that the rules invoked are compatible with the Treaty.

5. If, for a given contract, tenders appear to be abnormally low in relation to the transaction, before it may reject those tenders the contracting authority shall request, in writing, details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received.

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

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

However, until the end of 1992, if current national law so permits, the contracting authority may exceptionally, without any discrimination on grounds of nationality, reject tenders which are abnormally low in relation to the transaction, without being obliged to comply with the procedure provided for in the first subparagraph if the number of such tenders for a particular contract is so high that implementation of this procedure would lead to a considerable delay and jeopardize the public interest attaching to the execution of the contract in question. Recourse to this exceptional

22. The following Articles are inserted:

*Article 30a*

1. In order to permit assessment of the results of applying the Directive, Member States shall forward to the Commission a statistical report on the contracts awarded by contracting authorities by 31 October 1993 at the latest for the preceding year and thereafter by 31 October of every second year.

Nevertheless, for the Hellenic Republic, the Kingdom of Spain and the Portuguese Republic, the date of 31 October 1993 shall be replaced by 31 October 1995.

2. This report shall detail at least the number and value of contracts awarded by each contracting authority or category of contracting authority above the threshold, subdivided as far as possible by procedure, category of work and the nationality of the contractor to whom the contract has been awarded, and in the case of negotiated procedures, subdivided in

accordance with Article 5, listing the number and value of the contracts awarded to each Member State and to third countries.

3. The Commission shall determine the nature of any additional statistical information, which is requested in accordance with the Directive, in consultation with the Advisory Committee for Public Works Contracts.

#### Article 30b

1. Annex I to this Directive shall be amended by the Commission when, in particular on the basis of the notifications from the Member States, it is necessary:

- (a) to remove from Annex I bodies governed by public law which no longer fulfil the criteria laid down in Article 1(b);
- (b) to include in that Annex bodies governed by public law which meet those criteria.

2. Amendments to Annex I shall be made by the Commission after consulting the Advisory Committee for Public Works Contracts.

The chairman of the committee shall submit to the committee a draft of any measures to be taken. The committee shall deliver its opinion on the draft, if necessary by taking a vote, within a time limit to be fixed by the chairman in the light of the urgency of the matter.

The opinion shall be recorded in the minutes. In addition, each Member State shall have the right to request that its position be recorded in the minutes.

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

3. Amended versions of Annex I shall be published in the *Official Journal of the European Communities*.

23. Article 31 is hereby repealed.

24. Annexes I and II of Directive 71/305/EEC are replaced by Annexes I to VI of this Directive.

#### Article 2

Directive 77/277/EEC of 26 July 1972 is hereby repealed.

#### Article 3

Member States shall bring into force the measures necessary to comply with this Directive not later than one year after the date of its notification (\*). They shall forthwith inform the Commission thereof.

Nevertheless, the Hellenic Republic, the Kingdom of Spain and the Portuguese Republic shall bring into force the necessary measures so as to comply with this Directive by not later than 1 March 1992.

#### Article 4

Member States shall ensure that the texts of the basic provisions of domestic law, whether laws, regulations or administrative provisions, which they adopt to implement with this Directive, are communicated to the Commission.

#### Article 5

This Directive is addressed to the Member States.

Done at Brussels, 18 July 1989.

*For the Council*

*The President*

R. DUMAS

(\*) This Directive was notified to the Member States on 19 July 1989.

## ANNEX I

## LISTS OF BODIES AND CATEGORIES OF BODIES GOVERNED BY PUBLIC LAW REFERRED TO IN ARTICLE 1 (b)

## I. In BELGIUM:

- le Fonds des Routes 1955-1969 — het Wegenfonds,
- la Régie des Voies Aériennes — de Regie der luchtwegen,
- public social assistance centres,
- church councils,
- l'Office Régulateur de la Navigation Intérieure — die Dienst voor regeling van de binnenvaart,
- la Régie des services frigorifiques de l'État belge — de Regie der Belgische Rijkskoel- en Vriesdiensten.

## II. In DENMARK:

andre forvaltningssubjekter.

## III. In GERMANY:

The bundesunmittelbaren Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts; the landesunmittelbaren Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts subject to State budgetary supervision.

## IV. In GREECE

other legal persons governed by public law whose public works contracts are subject to State control.

## V. In SPAIN:

other legal persons subject to public rules for the award of contracts.

## VI. In FRANCE:

- administrative public bodies at national, departmental and local levels,
- universities, public scientific and cultural bodies and other establishments as defined by the law setting out guidelines for Higher Education No 68-978 of 12 November 1968.

## VII. In IRELAND:

other public authorities whose public works contracts are subject to control by the State.

## VIII. In ITALY:

- State universities, State university institutes, consortia for university development works,
- higher scientific and cultural institutes, astronomical, astrophysical, geophysical or vulcanological observatories,
- the Enti di riforma fondiaria,
- welfare and benevolent institutes of all kinds.

## IX. In LUXEMBOURG:

public bodies subject to control by the Government, by an association of municipal corporations or by a municipal corporation.

## X. In THE NETHERLANDS:

- the Waterschappen,
- the instellingen van wetenschappelijk onderwijs vermeld in Artikel 15 van de Wet op het Wetenschappelijk Onderwijs (1960), the academische ziekenhuizen,
- the Nederlandse Centrale Organisatie voor toegepast natuurwetenschappelijk Onderzoek (TNO) and its dependent organizations.

XI. In PORTUGAL:

legal persons governed by public law whose public works contracts are subject to State control.

XII. In THE UNITED KINGDOM:

- education authorities,
- fire authorities,
- National Health Service authorities,
- police authorities,
- Commission for the New Towns,
- new towns corporations,
- Scottish Special Housing Association,
- Northern Ireland Housing Executive.

## ANNEX II

## LIST OF PROFESSIONAL ACTIVITIES

as set out in the general industrial classification of economic activities within the European Communities

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



## ANNEX III

## DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

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

1. *Technical specifications*: the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a work, material, product or supply, which permits a work, a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These technical prescriptions shall include levels of quality, performance, safety or dimensions, including the requirements applicable to the material, the product or to the supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. They shall also include rules relating to design and costing, the test, inspection and acceptances for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve.
2. *Standard*: a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory.
3. *European standard*: a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as 'European standards (EN)' or 'Harmonization documents (HD)' according to the common rules of these organizations.
4. *European technical approval*: a favourable technical assessment of the fitness for use of a product, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. The European agreement shall be issued by an approval body designated for this purpose by the Member State.
5. *Common technical specification*: a technical specification laid down in accordance with a procedure recognized by the Member States to ensure uniform application in all Member States which has been published in the *Official Journal of the European Communities*.
6. *Essential requirements*: requirements regarding safety, health and certain other aspects in the general interest, that the construction works can meet.

## ANNEX IV

## MODEL CONTRACT NOTICES

## A. Prior information

1. The name, address, telegraphic address, telephone, telex and facsimile numbers of the contracting authority:
2. (a) The site:
  - (b) The nature and extent of the services to be provided and, where relevant, the main characteristics of any lots by reference to the work:
  - (c) If available: an estimate of the cost range of the proposed services:
3. (a) Estimated date for initiating the award procedures in respect of the contract or contracts:
  - (b) If known: estimated date for the start of the work:
  - (c) If known: estimated timetable for completion of the work:
4. If known: terms of financing of the work and of price revision and/or references to the provisions in which these are contained:
5. Other information:
6. Date of dispatch of the notice:
7. Date of receipt of the notice by the Office for Official Publications of the European Communities:

## B. Open procedures

1. The name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority:
2. (a) The award procedure chosen:
  - (b) Nature of the contract for which tenders are being requested:
3. (a) The site:
  - (b) The nature and extent of the services to be provided and general nature of the work:
  - (c) If the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots:
  - (d) Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects:
4. Any time limit for completion:
5. (a) Name and address of the service from which the contract documents and additional documents may be requested:
  - (b) Where applicable, the amount and terms of payment of the sum to be paid to obtain such documents:
6. (a) The final date for receipt of tenders:
  - (b) The address to which they must be sent:
  - (c) The language or languages in which they must be drawn up:
7. (a) Where applicable, the persons authorized to be present at the opening of tenders:
  - (b) The date, hour and place of such opening:

8. Any deposit and guarantees required:
9. Main terms concerning financing and payment and/or references to the provisions in which these are contained:
10. Where applicable, the legal form to be taken by the grouping of contractors to whom the contract is awarded:
11. Minimum economic and technical standards required of the contractor to whom the contract is awarded:
12. Period during which the tenderer is bound to keep open his tender:
13. The criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents:
14. Where applicable, prohibition on variants:
15. Other information:
16. Date of publication of the prior information notice in the *Official Journal of the European Communities* or references to its non-publication:
17. Date of dispatch of the notice:
18. Date of receipt of the notice by the Office for Official Publications of the European Communities:

#### C. Restricted procedures

1. The name, address, telephone number, telex and facsimile numbers of the contracting authority:
2. (a) The award procedure chosen:
  - (b) Where applicable, justification for the use of the accelerated procedure:
  - (c) Name of the contract which tenders are being requested:
3. (a) The site:
  - (b) The nature and extent of the services to be provided and general nature of the work:
  - (c) If the work of the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots:
  - (d) Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects:
4. Any time limit for completion:
5. Where applicable, the legal form to be taken by the grouping of contractors to whom the contract is awarded:
6. (a) The final date for receipt of requests to participate:
  - (b) The address to which they must be sent:
  - (c) The language or languages in which they must be drawn up:
7. The final date for dispatch of invitations to tender:
8. Any deposit and guarantees required:
9. Main terms concerning financing and payment and/or the provisions in which these are contained:
10. Information concerning the contractor's personal position and minimum economic and technical standards required of the contractor to whom the contract is awarded:
11. The criteria for the award of the contract where they are not mentioned in the invitation to tender:

12. Where applicable, prohibition on variants:
13. Other information:
14. Date of publication of the prior information notice in the *Official Journal of the European Communities* or reference to its non-publication:
15. Date of dispatch of the notice:
16. Date of receipt of the notice by the Office for Official Publications of the European Communities:

#### D. Negotiated procedures

1. The name, address, telegraphic address, telephone, telex and facsimile numbers of the contracting authority:
2. (a) The award procedure chosen:
  - (b) Where applicable, justification for the use of the accelerated procedure:
  - (c) Nature of the contract for which tenders are being requested:
3. (a) The site:
  - (b) The nature and extent of the services to be provided and general nature of the work:
  - (c) If the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots:
  - (d) Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects:
4. Any time limit:
5. Where applicable, the legal form to be taken by the grouping of contractors to whom the contract is awarded:
6. (a) final date for receipt of tenders:
  - (b) The address to which they must be sent:
  - (c) The language or languages in which they must be drawn up:
7. Any deposit and guarantees required:
8. Main terms concerning financing and payment and/or the provisions in which these are contained:
9. Information concerning the contractor's personal position and information and formalities necessary in order to evaluate the minimum economic and technical standards required of the contractor to whom the contract is awarded:
10. Where applicable, prohibition on variants:
11. Where applicable, the names and addresses of suppliers already selected by the awarding authority:
12. Where applicable, date(s) of previous publications in the *Official Journal of the European Communities*:
13. Other information:
14. Date of publication of the prior information notice in the *Official Journal of the European Communities*:
15. Date of dispatch of the notice:
16. Date of receipt of the notice by the Office for Official Publications of the European Communities.

## E. Contract awards

1. Name and address of awarding authority:
2. Award procedure chosen:
3. Date of award of contract:
4. Criteria for award of contract:
5. Number of offers received:
6. Name and address of successful contractor(s):
7. Nature and extent of the services provided, general characteristics of the finished structure:
8. Price or range of prices (minimum/maximum) paid:
9. Where appropriate, value and proportion of contract likely to be subcontracted to third parties:
10. Other information:
11. Date of publication of the tender notice in the *Official Journal of the European Communities*:
12. Date of dispatch of the notice:
13. Date of receipt of the notice by the Office for Official Publications of the European Communities:

**ANNEX V****MODEL NOTICE OF PUBLIC WORKS CONCESSION**

1. The name, address, telegraphic address, telephone, telex and facsimile numbers of the contracting authority:
2. (a) The site:  
(b) The subject of the concession, nature and extent of the services to be provided:
3. (a) Final date for receipt of candidatures:  
(b) The address to which they must be sent:  
(c) The language or languages in which they must be drawn up:
4. Personal, technical and financial conditions to be fulfilled by the candidates:
5. The criteria for the award of the contract:
6. Where applicable, the minimum percentage of the works contracts awarded to third parties:
7. Other information:
8. Date of dispatch of the notice:
9. Date of receipt of the notice by the Office for Official Publications of the European Communities:

**ANNEX VI****MODEL NOTICE OF WORKS CONTRACTS AWARDED BY THE CONCESSIONNAIRE**

1. (a) The site:  
(b) The nature and extent of the service to be provided and the general nature of the work:
2. Any time limit for the completion of the works:
3. Name and address of the service from which the contract documents and additional documents may be requested:
4. (a) The final date for receipt of requests to participate and/or for receipt of tenders:  
(b) The address to which they must be sent:  
(c) The language or languages in which they must be drawn up:
5. Any deposit and guarantees required:
6. The economic and technical standards required of the contract:
7. The criteria for the award of the contract:
8. Other information:
9. Date of dispatch of the notice:
10. Date of receipt of the notice by the Office for Official Publications of the European Communities:

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**STATEMENT**

concerning Article 5 (4) of Directive 71/305/EEC

*The Council and the Commission state that in open and restricted procedures all negotiation with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out; however, discussions with candidates or tenderers may be held but only for the purpose of clarifying or supplementing the content of their tenders or the requirements of the contracting authorities and provided this does not involve discrimination.*

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## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 13 July 1990

concerning the updating of Annex I to Council Directive 89/440/EEC

(90/380/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European  
Economic Community,

Having regard to Articles 1 (b) and 30b of Council Direc-  
tive 71/305/EEC of 26 July 1971 concerning coordination  
of procedures for the award of public works contracts (1),  
as amended by Directive 89/440/EEC (2),

Following consultation of the Advisory Committee for  
Public Contracts,

Whereas Annex I to Directive 89/440/EEC contains lists  
of bodies or categories of such bodies governed by public  
law which fulfill certain criteria;

Whereas these lists should be as exhaustive as possible;

Whereas Annex I to Directive 89/440/EEC shall be  
amended by the Commission as appropriate, based on  
periodic notifications by the Member States of any  
changes of their lists;

Whereas it is desirable to amend Annex I to Directive  
89/440/EEC, based on notifications received from the  
Member States, to give effect to the amendment on the  
date by which Member States are required to bring into

force the measures necessary to comply with Directive  
89/440/EEC,

HAS ADOPTED THIS DECISION:

*Article 1*

Annex I to Directive 89/440/EEC is hereby replaced by  
the Annex to this Decision.

*Article 2*

This Decision shall apply from 19 July 1990.

*Article 3*

This Decision is addressed to the Member States.

Done at Brussels, 13 July 1990.

*For the Commission*

Martin BANGEMANN

*Vice-President*

(1) OJ No L 185, 16. 8. 1971, p. 5.

(2) OJ No L 210, 21. 7. 1989, p. 1.



## ANNEX

## ANNEX I

LISTS OF BODIES AND CATEGORIES OF BODIES GOVERNED BY PUBLIC LAW  
REFERRED TO IN ARTICLE 1 (b)

## I. In BELGIUM:

**Bodies**

- le Fonds des routes 1955-1969 — het Wegenfonds 1955-1969
- la régie des voies aériennes — de Regie de Luchtwegen
- l'office régulateur de la navigation intérieure — de Dienst voor Regeling van de Binnenvaart
- la régie des services frigorifiques de l'État belge — de Regie der Belgische Rijskoel- en Vriesdiensten

**Categories**

- les centres publics d'aide sociale (public social assistance centres)
- les fabriques d'église (church councils)

## II. DENMARK

**Bodies**

- Københavns Havn
- Danmarks Radio
- Det Landsdækkende Fjernsyn TV 2
- Danmarks Nationalbank
- Storebæltsforbindelsen A/S
- Kjøbenhavns Telefon Aktieselskab
- Jydsk Telefon-Aktieselskab
- Fyns Telefon
- Kommunedata
- Datacentralen I/S
- Kommunekemi

**Categories**

- De Kommunale Havne (municipal ports)
- Andre Forvaltningssubjekter (other public administrative bodies)

## III. In GERMANY:

**Categories**

Authorities, establishments and foundations governed by public law and created by federal, State or local authorities and non-commercial establishments subject to state control and operating in the general interest.

## IV. In GREECE:

**Categories**

Other legal persons governed by public law whose public works contracts are subject to State control.

## V. In SPAIN:

**Categories**

- Entidades Gestoras y Servicios Comunes de la Seguridad Social (administrative entities and common services of the health and social services)
- Organismos Autónomos de la Administración del Estado (independent bodies of the national administration)
- Organismos Autónomos de las Comunidades Autónomas (independent bodies of the autonomous communities)
- Organismos Autónomos de las Entidades Locales (independent bodies of local authorities)
- Otras entidades sometidas a la legislación de contratos del Estado español (other entities subject to Spanish State legislation on procurement)

## VI. In FRANCE :

**Bodies**

## 1. National public bodies :

## 1.1. With scientific, cultural and professional character :

- Collège de France
- Conservatoire national des arts et métiers
- Observatoire de Paris

## 1.2. Scientific and technological :

- Centre national de la recherche scientifique — CNRS
- Institut national de la recherche agronomique
- Institut national de la santé et de la recherche médicale
- ORSTOM — Institut français de recherche scientifique pour le développement en coopération

## 1.3. With an administrative character :

- Agence nationale pour l'emploi
- Caisse nationale des allocations familiales
- Caisse nationale d'assurance maladie des travailleurs salariés
- Caisse nationale d'assurance vieillesse des travailleurs salariés
- Office national des anciens combattants et victimes de la guerre
- Agences financières de bassins

**Categories**

## 1. National public bodies :

- Universités (universities)
- écoles normales d'instituteurs (teacher training colleges)

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

- collèges (secondary schools)
- lycées (secondary schools)
- établissements publics hospitaliers (public hospitals)
- offices publics d'habitation à loyer modéré (OPHLM) (public offices for low-cost housing)

## 3. Groupings of territorial authorities :

- syndicats de communes (associations of local authorities)
- districts (districts)
- communautés urbaines (municipalities)
- institutions interdépartementales et interrégionales (Institutions common to more than one department and interregional institutions)

## VII. In IRELAND

**Bodies**

- Shannon Free Airport Development Company Ltd
- Local Government Computer Services Board
- Local Government Staff Negotiations Board
- Coras Trachtála (Irish Export Board)
- Industrial Development Authority
- Irish Goods Council (Promotion of Irish Goods)
- Coras Beostoic agus Feola (CBF) (Irish Meat Board)
- Bord Fáilte Eireann (Irish Tourism Board)
- Údarás na Gaeltachta (Development Authority for Gaeltacht Regions)
- An Bord Pleanála (Irish Planning Board)

**Categories**

- Third-level educational bodies of a public character
- National training, cultural or research Agencies
- Hospital boards of a public character
- National health and social agencies of a public character
- Central and regional fishery boards

## VIII. In ITALY :

**Bodies**

- agenzia per la promozione dello sviluppo nel mezzogiorno

**Categories**

- enti portuali e aeroportuali (port and airport authorities)
- consorzi per le opere idrauliche (consortia for water engineering works)
- le università statali, gli istituti universitari statali, i consorzi per i lavori interessanti le università (State universities, State university institutes, consortia for university development work)
- gli istituti superiori scientifici e culturali, gli osservatori astronomici, astrofisici, geofisici o vulcanologici (higher scientific and cultural institutes, astronomical, astrophysical, geophysical or vulcanological observatories)
- enti di ricerca e sperimentazione (organizations conducting research and experimental work)
- le istituzioni pubbliche di assistenza e di beneficenza (public welfare and benevolent institutions)
- enti che gestiscono forme obbligatorie di previdenza ed assistenza (agencies administering compulsory social security and welfare schemes)
- consorzi di bonifica (land reclamation consortia)
- enti di sviluppo o di irrigazione (development or irrigation agencies)
- consorzi per le aree industriali (associations for industrial areas)
- comunità montane (groupings of municipalities in mountain areas)
- enti preposti a servizi di pubblico interesse (organizations providing services in the public interest)
- enti pubblici proposti ad attività di spettacolo, sportivo, turistiche e del tempo libero (public bodies engaged in entertainment, sport, tourism and leisure activities)
- enti culturali e di promozione artistica (organizations promoting culture and artistic activities),

## IX. In LUXEMBOURG

**Categories**

- Les établissements publics de l'État placés sous la surveillance d'un membre du Gouvernement (public establishments of the State placed under the supervision of a member of the Government)
- Les établissements publics placés sous la surveillance des communes (public establishments placed under the supervision of the communes)
- Les syndicats de communes créés en vertu de la loi du 14 février 1900 telle qu'elle a été modifiée à la suite (associations of communes created under the law of 14 February 1900 as subsequently modified)

## X. In NETHERLANDS :

**Bodies**

- de Nederlandse Centrale Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek (TNO) en de daaronder ressorterende organisaties

**Categories**

- de waterschappen (administration of water engineering works)
- de instellingen van wetenschappelijk onderwijs vermeld in artikel 8 van de Wet op het Wetenschappelijk Onderwijs (1985), de academische ziekenhuizen (institutions for scientific education, as listed in Article 8 of the Scientific Education Act (1985) (Wet op het Wetenschappelijk Onderwijs (1985)), teaching hospitals)

## XI. In PORTUGAL :

**Categories**

- Estabelecimentos Públicos de Ensino, investigação Científica e Saúde (public establishments for education, scientific research and health)
- Institutos Públicos sem carácter comercial ou industrial (public institutions without commercial or industrial character)
- Fundações Públicas (public foundations)
- Administrações Gerais e Juntas Autónomas (general administration bodies and independent councils)

## XII. In the UNITED KINGDOM :

**Bodies**

- National Rivers Authority
- National Research Development Corporation
- Universities Funding Council
- Polytechnics and Colleges Funding Council
- Central Blood Laboratory Service
- Health And Safety Executive
- Northern Ireland Housing Executive
- Public Health Laboratory Service
- Scottish Homes
- Commission for the New Towns
- Design Council
- Arbitration, Conciliation and Advisory Service
- Cardiff Bay Development Corporation
- Development Board for Rural Wales
- London Docklands Development Corporation
- Merseyside Development Corporation
- English industrial Estates Corporation
- Scottish Development Agency
- Urban Development Corporation
- Welsh Development Agency

**Categories**

- Education authorities
  - Research councils
  - National health service authorities
  - New town corporations
  - Fire authorities
  - Police authorities'
-



**PUBLIC SUPPLY  
CONTRACTS**



## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DIRECTIVE

of 21 December 1976

coordinating procedures for the award of public supply contracts

(77/62/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

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

Whereas restrictions on the free movement of goods in respect of public supplies are prohibited by the terms of Articles 30 *et seq.* of the Treaty;

Whereas that prohibition should be supplemented by the coordination of the procedures relating to public supply contracts in order, by introducing equal conditions of competition for such contracts in all the Member States, to ensure a degree of transparency allowing the observance of this prohibition to be better supervised;

Whereas access to public supply contracts for products originating in countries other than the Member States is the subject of the Council resolution of 21 December 1976 <sup>(3)</sup> and of the Commission statement of 21 December 1976 <sup>(4)</sup>;

Whereas, in the case of public works contracts, coordination was based on certain principles relating to the prohibition of technical specifications having a discriminatory effect, to the advertising of contracts throughout the Community, to the fixing of objective criteria as to entitlement to compete for contracts and the introduction of a joint supervision procedure to ensure observance of these principles; whereas this method and these principles should be applied likewise to public supply contracts with adjustments to take account of the individual character of the contracts in question;

Whereas this Directive does not prevent the application, in particular, of Articles 36 and 223 of the Treaty;

Whereas the bodies currently administering transport services in the Member States are governed in some cases by public law, in others by private law;

<sup>(1)</sup> OJ No C 46, 9. 5. 1972, p. 34.

<sup>(2)</sup> OJ No C 30, 25. 3. 1972, p. 17.

<sup>(3)</sup> OJ No C 11, 15. 1. 1977, p. 1.

<sup>(4)</sup> OJ No C 11, 15. 1. 1977, p. 2.



whereas, in accordance with the objectives of the common transport policy equality of treatment should be ensured not only between separate undertakings concerned with the same mode of transport but also between such undertakings and undertakings concerned with other modes of transport;

Whereas, pending the drafting of measures for coordinating the procedures applicable to transport bodies and in view of the said special circumstances, those authorities referred to above, which by reason of their legal status would fall within it, should be excluded from the scope of the Directive;

Whereas it is necessary to avoid subjecting the production, distribution and transmission or transport services for water and energy and telecommunications services to different supply contract systems, depending on whether they come under the State, regional or local authorities or other legal persons governed by public law or whether they have separate legal personality; whereas it is therefore necessary to exclude from the scope of the Directive those services referred to above which by reason of their legal status would fall within its scope until such time as a final solution can be adopted in the light of experience;

Whereas provision must be made for exceptional cases where measures concerning the coordination of procedures may not necessarily be applied, but such cases must be expressly limited;

Whereas supply contracts of less than 200 000 European units of account can be exempted, inasmuch as their impact on competition is limited;

Whereas by Decision No 3289/75/ECSC of 18 December 1975 <sup>(1)</sup> the Commission, with the assent of the Council, defined a European unit of account which represents an average value of the variations in the currencies of the Member States; whereas the value of this unit of account in each of the currencies of the Member States is determined daily; whereas its use for the purposes of the Directive requires that a reference date be fixed;

Whereas to ensure development of effective competition in the field of public contracts it is

necessary that contract notices drawn up by the contracting authorities of Member States be advertised throughout the Community; whereas the information contained in these notices must enable suppliers established in the Community to determine whether the proposed contracts are of interest to them; whereas for this purpose it is appropriate to give them adequate information about the goods to be supplied; whereas, more particularly in restricted procedures, advertisement is intended to enable suppliers of Member States to express their interest in contracts by seeking from the contracting authorities invitations to tender under the required conditions;

Whereas additional information concerning contracts must, as is customary in the Member States, be given in the contract documents for each contract or in an equivalent document;

Whereas, as indicated in the Council resolution of 21 December 1976 <sup>(2)</sup>, the Directive will be reviewed and may be revised,

HAS ADOPTED THIS DIRECTIVE:

#### TITLE I

#### General provisions

#### Article 1

For the purpose of this Directive:

- (a) 'public supply contracts' shall be contracts for pecuniary consideration concluded in writing between a supplier (a natural or legal person) and one of the contracting authorities defined in (b) below for delivery of the products. Such delivery may in addition include siting and installation operations;
- (b) 'contracting authorities' shall be the State, regional or local authorities and the legal persons governed by public law or, in Member States where the latter are unknown, bodies corresponding thereto as specified in Annex I;
- (c) a supplier who submits a tender shall be designated by the term 'tenderer', and one who has sought an invitation to take part in a restricted procedure by the term 'candidate'.

<sup>(1)</sup> OJ No L 327, 19. 12. 1975, p. 4.

<sup>(2)</sup> OJ No C 11, 15. 1. 1977, p. 3.

*Article 2*

1. In awarding public supply contracts, the contracting authorities shall apply their national procedures, adapted to this Directive.
2. This Directive shall not apply to:
  - (a) public supply contracts awarded by bodies which administer transport services;
  - (b) public supply contracts awarded by bodies which administer production, distribution and transmission or transport services for water or energy and telecommunications services.
3. When the State, a regional or local authority or one of the legal persons governed by public law or corresponding bodies specified in Annex I grants to a body other than the contracting authority — regardless of its legal status — special or exclusive rights to engage in a public service activity, the instrument granting this right shall stipulate that the body in question must observe the principle of non-discrimination by nationality when awarding public supply contracts to third parties.

*Article 3*

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

- (a) pursuant to an international agreement concluded between a Member State and one or more non-member countries and covering supplies intended for the joint implementation or exploitation of a project by the signatory States; every agreement shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Decision 71/306/EEC <sup>(1)</sup>, as amended by Decision 77/63/EEC <sup>(2)</sup>;
- (b) to undertakings in a Member State or a non-member country in pursuance of an international agreement relating to the stationing of troops;
- (c) pursuant to the particular procedure of an international organization.

<sup>(1)</sup> OJ No L 185, 16. 8. 1971, p. 15.

<sup>(2)</sup> See page 15 of this Official Journal.

*Article 4*

1. National procedures whereby any interested supplier may tender shall be subject to the provisions relating to 'open procedures' within the meaning of this Directive (Articles 7 to 10, 13, 17, 18 and 20 to 25).
2. National procedures whereby suppliers may tender only if invited to do so by the contracting authorities shall be subject to the provisions relating to 'restricted procedures' within the meaning of this Directive (Articles 7 to 9, 11, 12, 14, 15 and 17 to 25).
3. Contracts awarded in the cases referred to in Article 6 shall be subject to the provisions of Article 7 only.

*Article 5*

1. (a) The provisions of Titles II, III and IV and of Article 6 shall apply, under the conditions laid down in Article 4, to public supply contracts whose estimated value net of VAT is not less than 200 000 European units of account.
- (b) The European unit of account shall be that defined by Decision No 3289/75/ECSC.
- (c) The exchange value in national currencies to be applied shall be the average of the daily value of these currencies over the preceding 12 months calculated on the last day of October every two years, with effect from the following 1 January. This exchange value, calculated by the Commission, shall be published in the *Official Journal of the European Communities* during the first days of November.
- (d) The method of calculation laid down in subparagraph (c) shall be examined, on the Commission's initiative, within the Advisory Committee for Public Contracts two years after its initial application.
- (e) This method shall in any event be reviewed once the Council has acted on the proposal for a Regulation, submitted by the Commission, applying the European unit of account (EUA) to the general budget of the European Communities and to the legal acts adopted by the institutions.

2. In the case of regular supply contracts or of contracts which are to be renewed within a given

time the aggregate cost during the 12 months following first delivery or during the term of the contract where this is greater than 12 months must be taken as the basis for the application of paragraph 1.

3. If a proposed purchase of supplies of the same type may lead to contracts being awarded at the same time in separate parts, the estimated value of the sum total of these parts must be taken as the basis for the application of paragraph 1.

4. No purchase requirement for a certain quantity of supplies may be split up with the intention of avoiding the application of this Article.

#### Article 6

1. Contracting authorities may award their supply contracts without applying the procedures referred to in Article 4 (1) and (2) in the following cases:

- (a) in the absence of tenders, or in the event of irregular tenders following adoption of one of the procedures laid down in this Directive, or in the event of tenders which are unacceptable under national provisions that are in accordance with the provisions of Title IV, in so far as the original terms for the contract are not substantially altered;
- (b) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the goods supplied may be manufactured or delivered only by a particular supplier;
- (c) where the articles involved are manufactured purely for purposes of research, experiment, study or development;
- (d) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities, the time limit laid down in the procedures covered by Article 4 (1) and (2) cannot be kept;
- (e) for additional deliveries by the original supplier which are intended either as part replacement of normal supplies or installations, or as the extension of existing supplies or installations where a change of supplier would compel the contracting authority to purchase equipment having different technical characteristics which

would result in incompatibility or disproportionate technical difficulties of operation or maintenance;

- (f) for goods quoted and purchased on a commodity market in the Community;
- (g) when supplies are declared secret or when their delivery must be accompanied by special security measures in accordance with the provisions laid down by law, regulation or administrative action in force in the Member State concerned, or when the protection of the basic interests of that State's security so requires;
- (h) for equipment supply contracts in the field of data-processing, and subject to any decisions of the Council taken on a proposal from the Commission and defining the categories of material to which the present exception does not apply. There can no longer be recourse to the present exception after 1 January 1981 other than by a decision of the Council taken on a proposal from the Commission to modify this date.

2. Before the end of June of each year, Member States shall send the Commission a statement of the number and total value of contracts awarded in the preceding calendar year on the basis of provisions (a) to (f) of paragraph 1, at least as regards contracts awarded by States, Länder, regions, provinces or departments. Member States shall, as far as possible, classify the contracts awarded according to each of the categories in the foregoing provisions.

## TITLE II

### Common rules in the technical field

#### Article 7

1. The technical specifications defined in Annex II and the description of testing, checking and acceptance methods shall figure in the general or the contractual documents relating to each contract. Such technical specifications may be defined by reference to appropriate standards.

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

1. Community standards which are binding by virtue of an act of the Communities;
2. other Community standards (in particular ECSC standards) or European standards (in particular ESC and CENELEC standards) accepted by the country of the contracting authority;
3. international standards accepted by the country of the contracting authority (in particular ISO and IEC standards);
4. the national standards of the country of the contracting authority;
5. any other standard.

2. Unless such specifications are justified by the subject of the contract, Member States shall prohibit the introduction into the contractual clauses relating to a given contract of technical specifications which mention goods of a specific make or source or of a particular process and which have the effect of favouring or eliminating certain undertakings or products. In particular, the indication of trade marks, patents, types or specific origin or productions shall be prohibited; however, such an indication accompanied by the words 'or equivalent' shall be authorized where the subject of the contract cannot otherwise be described by specifications which are sufficiently precise and fully intelligible to all concerned.

Article 8

When projects are put up for competition or when invitations to tender permit tenderers to submit variations on a project of the administration, the contracting authorities may not reject a tender solely on the grounds that it has been drawn up by means of different technical calculations from those used in the country where the contract is being awarded, provided that the tender accords with the terms and conditions of the contract documents. Tenderers must include with their tenders all the evidence needed for examining the project and must supply any additional explanations which the contracting authorities consider necessary.

TITLE III

Common advertising rules

Article 9

1. Contracting authorities who wish to award a public supply contract by open or restricted

procedure shall make known their intention by means of a notice.

2. Such notice shall be sent as soon as possible by the most appropriate channels to the Office for Official Publications of the European Communities and shall be published in full in the *Official Journal of the European Communities* in the official languages of the Communities, the original text alone being authentic. It shall be drawn up in accordance with the models given in Annex III.

3. Under the accelerated procedure provided for in Article 12, the notice shall be published, in its original language only, in all editions of the *Official Journal of the European Communities*.

4. The notice referred to in the preceding paragraphs shall be published in the *Official Journal of the European Communities* not later than nine days after the date of dispatch and, in the case of the accelerated procedure provided for in Article 12, not later than five days after that date.

5. The notice shall not be published in the Official Journals or in the press of the country of the contracting authorities before the date of its dispatch, and it shall mention this date. It shall not contain information other than that published in the *Official Journal of the European Communities*.

6. The contracting authorities must be able to supply evidence of the date of dispatch.

7. The cost of the publication of notices in the *Official Journal of the European Communities* shall be borne by the Communities. No notice may be longer than one page of the Journal; that is to say, approximately 650 words. Notices shall be drawn up in accordance with the model notices contained in Annex III. Every edition of the *Official Journal of the European Communities* which contains a notice or notices shall reproduce the model notice or notice on which the published notice or notices are based.

Article 10

1. In open procedure, the time limit for the receipt of tenders fixed by the contracting authorities shall be not less than 36 days from the date of dispatch of the notice.

2. Provided they have been requested in good time, the contract documents and supporting documents must be sent to the suppliers by the contracting authorities or competent departments within four working days of receiving their application.

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

4. Where tenders can only be made after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limit laid down in paragraph 1 shall be extended accordingly.

#### Article 11

1. In restricted procedures, the time limit for receipt of requests to participate fixed by the contracting authorities shall be not less than 21 days from the date of dispatch of the notice.

2. The contracting authorities shall simultaneously and in writing invite all successful candidates to submit their tenders. The letter of invitation shall be accompanied by the contract documents and supporting documents.

3. The time limit for the receipt of tenders fixed by the contracting authorities shall be not less than 21 days from the date of dispatch of the written invitation.

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

5. Applications to be invited to compete and invitations to do so may be transmitted by letter, telegram, telex or telephone; if by one of the last three, they must be confirmed by letter.

6. Where tenders can only be made after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limit laid down in paragraph 3 shall be extended accordingly.

#### Article 12

1. In cases where urgency renders impracticable the time limits laid down in Article 11, the contracting authorities may fix the following time limits:

- (a) a time limit for the receipt of requests to participate which shall be not less than 12 days from the date of dispatch of the notice;
- (b) a time limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender.

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

3. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex or telephone, they must be confirmed in writing.

#### Article 13

In open procedures the notice shall include at least the following information:

- (a) the date of dispatch to the Office for Official Publications of the European Communities;
- (b) the award procedure chosen;
- (c) the place of delivery, the nature and quantity of the goods to be supplied, and, if the contract is divided in several parts, whether suppliers have the possibility of tendering for some and/or all of the goods required;
- (d) any time limit for delivery;
- (e) the address, telephone number and, where applicable, the telegraphic address and telex number of the contracting authority;
- (f) the address of the service from which the relevant documents may be requested and the final date for making such a request; also the amount and terms of payment of any sum payable for such documents;

- (g) the final date for receipts of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (h) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
- (i) information about deposits and any other guarantees, whatever their form, which may be required by the contracting authorities;
- (j) the main terms concerning financing and payment and/or references to the provisions laid down by law or regulation in which these are contained;
- (k) in application of Article 18, the specific legal form which the grouping of suppliers may be required to take if awarded the contract;
- (l) the information and formalities necessary for an appraisal of the minimum economic and technical standards which the contracting authorities require of suppliers for their selection; these requirements may not be other than those referred to in Articles 20, 22 and 23;
- (m) the period during which tenderers shall be bound to keep their tenders open.

Article 14

In restricted procedures, the notice shall include at least the following information:

- (a) the information given in Article 13 (a), (b), (c), (d), (e) and (k);
- (b) the final date for receipt of requests to participate, the address to which they must be sent and the language or languages in which they must be written;
- (c) the final date on which invitations to tender shall be issued by the contracting authority;
- (d) the information to be given in the request to participate, in the form of statements which can later be checked, concerning the supplier's personal position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards which the contracting authorities require of suppliers for their selection; these requirements may not be other than those referred to in Articles 20, 22 and 23.

Article 15

An invitation to tender under restricted procedures shall include at least the following information:

- (a) the information given in Article 13 (f), (g), (h), (i), (j) and (m);
- (b) a reference to the notice mentioned in Article 14;
- (c) an indication of any documents to be annexed, either to support the verifiable statements furnished by the candidate in accordance with Article 14 (d), or to supplement the information provided for in that Article under the conditions laid down in Articles 22 and 23;
- (d) the criteria for the award of the contract if these are not given in the notice.

Article 16

The contracting authorities may publish in the *Official Journal of the European Communities* notices of public supply contracts which are not subject to compulsory advertising measures provided for in this Directive, where the value of such contracts is not less than 100 000 European units of account.

TITLE IV

Common rules on participation

Article 17

1. Contracts shall be awarded on the basis of the criteria laid down in Chapter 2 of this Title after the suitability of suppliers not excluded under Article 20 has been checked. Checks shall be carried out by the contracting authorities in accordance with the criteria of economic, financial and technical capacity referred to in Articles 22 to 24.
2. The contracting authorities shall respect fully the confidential nature of any information furnished by the suppliers.

Article 18

Tenders may be submitted by groupings of suppliers. These groupings shall not be required to assume a specific legal form in order to submit the tender; however, the grouping selected may be required to do

so if it is awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

#### Article 19

1. In restricted procedures the contracting authorities shall on the basis of the information given in accordance with Article 14 (d) select from among the candidates eligible under Articles 20 to 24 those whom they will invite to tender.

2. Each Member State shall ensure that its contracting authorities issue invitations to those suppliers of other Member States who satisfy the necessary requirements under the same conditions as to its national suppliers.

#### Chapter 1

##### Criteria for qualitative selection

#### Article 20

1. Any supplier may be excluded from participation in the contract who:

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

established or those of the country of the contracting authority;

- (g) is guilty of serious misrepresentation in supplying the information required under this Chapter.

2. Where the contracting authority requires of the supplier proof that none of the cases quoted in (a), (b), (c), (e) or (f) of paragraph 1 applies to him, it shall accept as sufficient evidence:

- for (a), (b) or (c), the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a judicial or administrative authority in the country of origin or in the country whence that person comes showing that none of these cases applies to the supplier;
- for (e) or (f), a certificate issued by the competent authority in the Member State concerned.

3. Where the country in question does not issue such documents or certificates or where these do not cover all the cases quoted in (a), (b) or (c) of paragraph 1, they may be replaced by a declaration on oath made by the person concerned before a judicial or administrative authority, a notary or any other competent authority in the Member State concerned. In Member States where there is no provision for declaration on oath it may be replaced by a solemn declaration. The competent authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

4. Member States shall, within the time limit laid down in Article 30 designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

#### Article 21

Any supplier wishing to take part in a public supply contract may be requested to prove his enrolment in the professional or trade register under the conditions laid down by the laws of the Community country in which he is established: in Germany on the Handelsregister or Handwerksrolle; in Belgium on the registre du commerce/Handelsregister; in Denmark on the Aktieselskabs-Registret, Forenings-Registret or Handelsregistret; in France on the registre du commerce and répertoire des métiers; in Italy on the registro della camera di commercio, industria, agricoltura e artigianato or registro delle commissioni provinciali per

l'artigianato; in Luxembourg on the registre aux firmes and the rôle de la chambre des métiers, and in the Netherlands on the Handelsregister. In the United Kingdom and Ireland the supplier may be requested to show that he is certified as incorporated or registered by the Registrar of Companies or the Registrar of Friendly Societies or, if he is not so certified, by providing a certificate of a declaration on oath that he is carrying on business in the trade in question in the country in which he is established, at a specific place of business and under a specific trading name.

#### Article 22

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

- (a) appropriate statements from bankers;
- (b) submission of the undertaking's balance-sheets or extracts therefrom;
- (c) a statement of the undertaking's overall turnover and its turnover in respect of the goods to which the contract relates for the three previous financial years.

2. The contracting authorities shall specify in the notice or in the invitation to tender which reference or references they have chosen and which references other than those mentioned under paragraph 1 are to be produced.

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

#### Article 23

1. Evidence of the supplier's technical capacity may be furnished by one or more of the following means according to the nature, quantity and purpose of the goods to be supplied:

- (a) a list of the principal deliveries effected in the past three years, with the sums, dates and recipients, public or private, involved:
  - where to public authorities awarding contracts, evidence to be in the form of certificates issued or countersigned by the competent authority;
  - where to private purchasers, delivery to be certified by the purchaser or, failing this,

simply declared by the supplier to have been effected;

- (b) a description of the undertaking's technical facilities, its measures for ensuring quality and its study and research facilities;
- (c) indication of the technicians or technical bodies involved, whether or not belonging directly to the undertaking, especially those responsible for quality control;
- (d) samples, description and/or photographs of the products to be supplied, the authenticity of which must be certified if the contracting authority so requests;
- (e) certificates drawn up by official quality control institutes or agencies of recognized competence attesting conformity to certain specifications or standards of goods clearly identified by references to specifications or standards;
- (f) where the goods to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier is established, subject to that body's agreement, on the production capacities of the supplier and if necessary on his study and research facilities and quality control measures.

2. The contracting authority shall specify in the notice which references he wishes to receive.

3. The extent of the information referred to in paragraph 1 must be confined to the subject of the contract and the contracting authority must take into consideration the legitimate interests of the supplier as regards the protection of the technical secrets of his undertaking.

#### Article 24

Within the limits of Articles 20 to 23 the contracting authority may invite the suppliers to supplement the certificates and documents submitted or to clarify them.

### Chapter 2

#### Criteria for the award of contracts

#### Article 25

1. The criteria on which the contracting authority shall base the award of contracts shall be:



- (a) either the lowest price only;
- (b) or, when the award is made to the most economically advantageous tender, various criteria according to the contract in question: e.g. price, delivery date, running costs cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance.
2. In the latter instance, the contracting authorities shall state in the contract documents or in the contract notice all the criteria they intend to apply to the award where possible in descending order of importance.
3. The Italian 'anonymous envelope' procedure may be retained for a period of three years following expiry of the time limit laid down in Article 30.
4. Paragraph 1 shall not apply when a Member State bases the award of contracts on other criteria within the framework of rules existing at the time this Directive is adopted, whose aim is to give preference to certain tenderers, on conditions that the rules invoked are compatible with the Treaty.
5. If, for a given contract, tenders are obviously abnormally low in relation to the goods to be supplied, the contracting authority shall examine the details of the tenders before deciding to whom it will award the contract. For this purpose it shall request the tenderer to furnish the necessary explanations and, where appropriate, it shall indicate which parts it finds unacceptable.
6. The result of the examination referred to in paragraph 5 shall be taken into account when the contract is awarded.
7. If the documents relating to the contract provide for its award at the lowest price tendered, the contracting authority must justify the rejection of tenders which it considers to be too low to the Advisory Committee for Public Contracts.

#### TITLE V

#### Final provisions

##### Article 26

This Directive shall not prevent the implementation of provisions contained in Italian Law No 835 of 6 October 1950 (Official Gazette No 245 of 24 October

1950 of the Italian Republic) and in modifications thereto in force on the date on which this Directive is adopted; this is without prejudice to the compatibility of these provisions with the Treaty.

##### Article 27

1. Member States shall inform the Commission of national provisions covered by Articles 25 (4) and 26 and of the rules for applying them.
2. Member States concerned shall forward to the Commission, initially 30 months after notification of the Directive and thereafter every year, a report describing the implementation of these provisions. The reports shall be submitted to the Advisory Committee for Public Contracts.

##### Article 28

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

##### Article 29

1. In order to allow assessment of the results of applying the Directive, Member States shall forward an annual statistical report to the Commission on the contracts awarded by the central or federal contracting authorities in accordance with this Directive, the first one to be submitted 30 months after notification of the Directive. The Commission shall determine the nature of the statistical information after consulting the Advisory Committee for Public Contracts.
2. Taking into account in particular the outcome of the multilateral trade negotiations, the Commission shall, after consulting the Advisory Committee for Public Contracts, determine the extent, breakdown and arrangements for the publication of this statistical report.
3. The Commission may request information concerning contracts awarded by other authorities which are entitled to award contracts and which are subject to the Directive with a view to discussing

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

contracts in the Advisory Committee for Public Contracts.

*Article 30*

Member States shall adopt the measures necessary to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

*Article 31*

Member States shall ensure that the texts of the basic provisions of domestic law, whether laws, regulations

or administrative provisions, which they adopt in the field covered by this Directive, are communicated to the Commission.

*Article 32*

This Directive is addressed to the Member States.

Done at Brussels, 21 December 1976.

*For the Council*

*The President*

A. P. L. M. M. van der STEE

ANNEX I

LIST OF LEGAL PERSONS GOVERNED BY PUBLIC LAW AND BODIES CORRESPONDING THERETO REFERRED TO IN ARTICLE 1 (b)

I. In all Member States:

associations governed by public law or bodies corresponding thereto formed by regional or local authorities, e.g. 'associations de communes', 'syndicats de communes', 'Gemeindeverbände', etc.

II. In Germany:

the 'bundesunmittelbaren Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts'; the 'landesunmittelbaren Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts' subject to State budgetary supervision.

III. In Belgium:

- 'le Fonds des Routes 1955-1969' — 'het Wegenfonds',
- 'la Régie des Voies Aériennes' — 'de Regie der luchtwegen',
- public social assistance centres,
- church councils,
- 'l'Office Régulateur de la Navigation Intérieure' — 'de Dienst voor regeling van de binnenvaart',
- 'la Régie des services frigorifiques de l'État belge' — 'de Regie der Belgische Rijkskoel- en Vriesdiensten'.

IV. In Denmark:

'andre forvaltningssubjekter'.

V. In France:

- administrative public bodies at national, regional, departmental and local levels,
- universities, public scientific and cultural bodies and other establishments as defined by the Law setting out guidelines for Higher Education No 68-978 of 12 November 1968

**VI. In Ireland:**

other public authorities whose public supply contracts are subject to control by the State.

**VII. In Italy:**

- State universities, State university institutes, consortia for university development works,
- higher scientific and cultural institutes, astronomical, astrophysical, geophysical or vulcanological observatories,
- the 'Enti di riforma fondiaria',
- welfare and benevolent institutes of all kinds.

**VIII. In Luxembourg:**

public bodies subject to control by the Government, by an association of municipal corporations or by a municipal corporation.

**IX. In the Netherlands:**

- the 'Waterschappen',
- the 'instellingen van wetenschappelijk onderwijs vermeld in Article 15 van de Wet op het Wetenschappelijk Onderwijs (1960)', the 'academische ziekenhuizen',
- the 'Nederlandse Centrale Organisatie voor toegepast natuurwetenschappelijk Onderzoek (TNO)' and its dependent organizations.

**X. In the United Kingdom:**

- Education Authorities,
- Fire Authorities,
- National Health Service Authorities,
- Police Authorities,
- Commission for the New Towns,
- New Towns Corporations,
- Scottish Special Housing Association,
- Northern Ireland Housing Executive.

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**ANNEX II****TECHNICAL SPECIFICATIONS WITHIN THE MEANING OF THIS DIRECTIVE**

Within the meaning of this Directive, technical specifications in the field of public supply contracts shall comprise all the technical requirements given in the contract documents which permit an objective description of a material, product or supply (especially quality, performance) so that that material, product or supply fulfils the purpose for which it is intended by the contracting authority.

The technical specifications shall include all the relevant mechanical, physical and chemical properties, the classifications and standards, and the test, inspection and acceptance conditions for supplies or the materials and parts which they involve, in so far as they are required by the contracting authority. A sample of the material or part to be supplied may be provided in addition to or in substitution for the technical specifications.

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ANNEX III

MODEL NOTICES OF SUPPLY CONTRACTS

A. Open procedures

1. The name, address, telephone number and, where applicable, telegraphic address and telex number of the contracting authority (Article 13 (e)):
2. The award procedure chosen (Article 13 (b)):
3. (a) The place of delivery (Article 13 (c)):  
(b) The nature and quantity of goods to be supplied (Article 13 (c)):  
(c) Whether suppliers can tender for some and/or all of the goods required (Article 13 (c)):
4. Any time limit for delivery (Article 13 (d)):
5. (a) Name and address of the service from which the relevant documents may be requested (Article 13 (f)):  
(b) The final date for making such request (Article 13 (f)):  
(c) Where applicable, the amount and terms of payment of any sum payable for such documents (Article 13 (f)):
6. (a) The final date for receipt of tenders (Article 13 (g)):  
(b) The address to which they must be sent (Article 13 (g)):  
(c) The language or languages in which they must be drawn up (Article 13 (g)):
7. (a) The persons authorized to be present at the opening of tenders (Article 13 (h)):  
(b) The date, time and place of this opening (Article 13 (h)):
8. Any deposits and guarantees required (Article 13 (i)):
9. The main terms concerning financing and payment and/or references to the provisions regulating these (Article 13 (j)):
10. Where applicable, the legal form to be taken by the grouping of suppliers winning the contract (Article 13 (k)):
11. The information and formalities necessary for an appraisal of the minimum economic and technical standards required of the supplier (Article 13 (l)):
12. The period during which the tenderer is bound to keep open his tender (Article 13 (m)):
13. The criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned if they do not appear in the contract documents (Article 25):
14. Other information:
15. The date of dispatch of the notice (Article 13 (a)):

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**B. Restricted procedures**

1. The name, address, telephone number and, where applicable, telegraphic address and telex number of the contracting authority (Article 14 (a)):
  2. The award procedure chosen (Article 14 (a)):
  3. (a) The place of delivery (Article 14 (a)):  
(b) The nature and quantity of goods to be supplied (Article 14 (a)):  
(c) Whether suppliers can tender for some and/or all of the goods required (Article 14 (a)):
  4. Any time limit for delivery (Article 14 (a)):
  5. Where applicable, the legal form to be assumed by the grouping of suppliers winning the contract (Article 14 (a)):
  6. (a) The final date for the receipt of requests to participate (Article 14 (b)):  
(b) The address to which they must be sent (Article 14 (b)):  
(c) The language or languages in which they must be drawn up (Article 14 (b)):
  7. The final date for the dispatch of invitations to tender (Article 14 (c)):
  8. Information concerning the supplier's personal position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him (Article 14 (d)):
  9. The criteria for the award of the contract if these are not stated in the invitation to tender (Article 15 (d)):
  10. Other information:
  11. The date of dispatch of the notice (Article 14 (a)):
-

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 22 July 1980

adapting and supplementing in respect of certain contracting authorities Directive  
77/62/EEC coordinating procedures for the award of public supply contracts

(80/767/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

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

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

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

Whereas by its Decision 80/271/EEC concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations <sup>(4)</sup> the Council approved on behalf of the European Economic Community *inter alia* the Agreement on government procurement, hereinafter referred to as 'the Agreement', the purpose of which is to establish an international framework of balanced rights and obligations with respect to government procurement with a view to achieving liberalization and expansion of world trade;

Whereas the provisions of the Agreement will also apply to relations between Member States;

Whereas Directive 77/62/EEC <sup>(5)</sup> coordinated the national procedures relating to public supply contracts in order to introduce equal conditions of competition for such contracts in all the Member States;

Whereas, 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 that Agreement;

Whereas, certain provisions of the Agreement introduce more favourable conditions for tenderers than those laid down in Directive 77/62/EEC;

Whereas, when contracts are awarded by contracting authorities within the meaning of the Agreement, the opportunities for access to Community public contracts available under the Treaty to undertakings and products from the Member States must be at least as favourable as the conditions of access to public contracts within the Community accorded under the arrangements contained

<sup>(1)</sup> OJ No C 287, 17. 11. 1979, p. 9.<sup>(2)</sup> OJ No C 117, 12. 5. 1980, p. 87.<sup>(3)</sup> OJ No C 182, 21. 7. 1980, p. 8.<sup>(4)</sup> OJ No L 71, 17. 3. 1980, p. 1.<sup>(5)</sup> OJ No L 13, 15. 1. 1977, p. 1.

in the Agreement to undertakings and products from third countries which are signatories to the Agreement;

Whereas it is therefore necessary to adapt and supplement the provisions of Directive 77/62/EEC in respect of certain contracting authorities;

Whereas the provisions of this Directive will have to be re-examined in the light of the way in which the Member States apply this Directive and the Agreement, and of the results of the further negotiations provided for in Article IX (6) of the Agreement,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. For the purposes of this Directive, 'contracting authorities' means the entities referred to in Annex I and, to the extent that rectifications, modifications or amendments may have been made, their successor entities.

2. The Commission shall update Annex I on the basis of any such rectifications, modifications or amendments and shall have the updated version published in the *Official Journal of the European Communities*.

Article 2

1. In awarding public supply contracts, the contracting authorities referred to in Article 1 shall be subject to the provisions of Directive 77/62/EEC save as otherwise provided in this Directive.

2. The application of paragraph 1 to public contracts with an estimated value net of VAT which is between the sum laid down in Article 3 and 200 000 European units of account shall in particular be confined to:

- purchasing contracts,
- the products listed in Annex II where the contracts are awarded by contracting authorities in the field of defence.

In addition, such public contracts shall not be subject to Article 9 (2) to (7) of Directive 77/62/EEC if the organ used for publication under Article V (3) of the Agreement is other than the *Official Journal of the European Communities*.

Article 3

The value of 200 000 European units of account laid down in Article 5 (1) (a) of Directive 77/62/EEC shall be replaced by 140 000 European units of account in

respect of the contracting authorities covered by this Directive.

After consulting the Advisory Committee for Public Contracts, the Commission shall decide on any adjustments to be made to the latter value on the basis of the procedures adopted for determining the value in European units of account of the amount given in Article 1 (1) (b) of the Agreement.

The adjusted values shall be published in the *Official Journal of the European Communities*.

Article 4

Article 6 (1) (f) of Directive 77/62/EEC shall not apply.

Article 5

The contracting authorities shall prepare a report in writing on each contract awarded under Article 6 (1) (a) to (c) of Directive 77/62/EEC. They shall ensure that each report contains the name of the contracting authority, the value and kind of goods purchased and the country of origin, and a statement of whichever of the circumstances referred to in paragraph 1 (a) to (e) prevailed at the time when the contract was awarded. The report shall remain with the contracting authority concerned. If needed, this information shall be supplied to the authorities responsible for the contracting authority in order that it may, if required, be used by the Commission and, through the Commission, by the Advisory Committee for Public Contracts.

Article 6

1. In open procedures, the time limit for the receipt of tenders fixed by the contracting authorities shall be not less than 42 days from the date of dispatch of the notice to the bodies competent to publish such notice.

2. In restricted procedures, the time limit for the receipt of applications to be invited to tender fixed by the contracting authorities shall be not less than 42 days from the date of dispatch of the notice to the bodies competent to publish such notice.

3. The bodies competent to publish the notices referred to in paragraphs 1 and 2 shall do so not later than 12 days after the date of dispatch of the said notices.

4. In restricted procedures, the time limit for the receipt of tenders fixed by the contracting authorities shall not be less than 30 days from the date of dispatch of the written invitation.

#### *Article 7*

For the purposes of the award of public contracts by the contracting authorities referred to in Article 1 (1), Member States shall apply in their relations conditions as favourable as those which they grant to third countries in implementation of the Agreement, in particular those in Articles V and VI on the selective procedure, information and review. The Member States shall to this end consult each other within the Advisory Committee for Public Contracts on the measures to be taken pursuant to the Agreement.

#### *Article 8*

1. The Commission shall ensure that this Directive is applied in consultation with the Advisory Committee for Public Contracts and where appropriate will submit new proposals to the Council with the aim in particular of harmonizing the measures taken by the Member States for application of this Directive. These proposals shall be made within two years of the entry into force of this Directive.

2. The Commission shall review this Directive and any new measures which may be adopted by virtue of

paragraph 1, having regard to the results of the further negotiations provided for in Article IX (6) of the Agreement and shall, if necessary, submit appropriate proposals to the Council.

#### *Article 9*

Member States shall adopt the measures necessary to comply with this Directive not later than 1 January 1981. They shall forthwith inform the Commission thereof.

#### *Article 10*

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

#### *Article 11*

This Directive is addressed to the Member States.

Done at Brussels, 22 July 1980.

*For the Council*

*The President*

G. THORN



ANNEX I

BELGIUM

I. MINISTERIAL DEPARTMENTS

1. Services du premier ministre	Diensten van de Eerste Minister
2. Ministère des affaires économiques	Ministerie van Economische Zaken
3. Ministère des affaires étrangères, du commerce extérieur et de la coopération au développement	Ministerie van Buitenlandse Zaken, van Buitenlandse Handel en van Ontwikkelingssamenwerking
4. Ministère de l'agriculture	Ministerie van Landbouw
5. Ministère des classes moyennes	Ministerie van de Middenstand
6. Ministère des communications	Ministerie van Verkeerswezen
7. Ministère de la défense nationale	Ministerie van Landsverdediging
8. Ministère de l'éducation nationale et de la culture	Ministerie van Nationale Opvoeding en Cultuur
9. Ministère de l'emploi et du travail	Ministerie van Tewerkstelling en Arbeid
10. Ministère des finances	Ministerie van Financiën
11. Ministère de l'intérieur	Ministerie van Binnenlandse Zaken
12. Ministère de la justice	Ministerie van Justitie
13. Ministère de la prévoyance sociale	Ministerie van Sociale Voorzorg
14. Ministère de la santé publique et de l'environnement	Ministerie van Volksgezondheid en Leefmilieu
15. Ministère des travaux publics — Fonds des routes — Fonds des bâtiments	Ministerie van Openbare Werken — Wegenfonds — Gebouwenfonds
16. Régie des postes (1)	Regie der Posterijen (1)

II. LIST OF MINISTRIES AND STATE DEPARTMENTS WHOSE PURCHASING IS EFFECTED THROUGH THE ENTITIES LISTED AT I.

Premier ministre	Eerste Minister
Vice-premier ministre et ministre de la fonction publique	Vice-Eerste Minister en Minister van Openbaar Ambt
Vice-premier ministre et ministre de la défense nationale	Vice-Eerste Minister en Minister van Landsverdediging
Ministre de la justice	Minister van Justitie
Ministre des affaires étrangères	Minister van Buitenlandse Zaken
Ministre des affaires économiques	Minister van Economische Zaken
Ministre de la prévoyance sociale et secrétaire d'État aux affaires sociales, adjoint au ministre des affaires wallonnes	Minister van Sociale Voorzorg en Staatssecretaris voor Sociale Zaken, toegevoegd aan de Minister voor Waalse Aangelegenheden
Ministre des communications	Minister van Verkeerswezen
Ministre de l'éducation nationale (néerlandaise)	Minister van Nationale Opvoeding (Nederlands)
Ministre de l'agriculture et des classes moyennes	Minister van Landbouw en Middenstand
Ministre de la culture néerlandaise et ministre des affaires flamandes	Minister van de Nederlandse Cultuur en Minister voor Vlaamse Aangelegenheden

(1) Postal business only.

Ministre de l'éducation nationale (française)	Minister van Nationale Opvoeding (Frans)
Ministre de la santé publique et de l'environnement	Minister van Volksgezondheid en Leefmilieu
Ministre des finances	Minister van Financiën
Ministre du commerce extérieur	Minister van Buitenlandse Handel
Ministre de la coopération au développement	Minister van Ontwikkelingssamenwerking
Ministre des postes, télégraphes et téléphones et ministre des affaires bruxelloises (1)	Minister van Posterijen, Telegrafie en Telefonie en Minister voor Brusselse Aangelegenheden (1)
Ministre des pensions	Minister van Pensioenen
Ministre de l'emploi et du travail	Minister van Tewerkstelling en Arbeid
Ministre de l'intérieur	Minister van Binnenlandse Zaken
Ministre de la politique scientifique	Minister van Wetenschapsbeleid
Ministre de la culture française	Minister van Franse Cultuur
Ministre des travaux publics et ministre des affaires wallonnes	Minister van Openbare Werken en Minister voor Waalse Aangelegenheden
Secrétaire d'État à l'économie régionale, adjoint au ministre des affaires wallonnes	Staatssecretaris voor de regionale economie, toegevoegd aan de Minister voor Waalse Aangelegenheden
Secrétaire d'État au budget, adjoint au premier ministre, et secrétaire d'État à l'économie régionale, adjoint au ministre des affaires flamandes	Staatssecretaris voor de begroting, toegevoegd aan de Eerste Minister en Staatssecretaris voor de Regionale Economie, toegevoegd aan de Minister voor Vlaamse Aangelegenheden
Secrétaire d'État à la réforme des institutions, adjoint au premier ministre	Staatssecretaris voor Institutionele Hervormingen, toegevoegd aan de Eerste Minister
Secrétaire d'État à la culture française, adjoint au ministre de la culture française	Staatssecretaris voor Franse Cultuur, toegevoegd aan de Minister voor Franse Cultuur
Secrétaire d'État aux affaires économiques, adjoint au ministre des affaires économiques, et	Staatssecretaris voor Economische Zaken, toegevoegd aan de Minister voor Economische Zaken en
secrétaire d'État aux affaires sociales, adjoint au ministre des affaires flamandes	Staatssecretaris voor Sociale Zaken, toegevoegd aan de Minister voor Vlaamse Aangelegenheden
Secrétaire d'État à la réforme des institutions, adjoint au vice-premier ministre	Staatssecretaris voor Institutionele Hervormingen, toegevoegd aan de Vice-Eerste Minister
Secrétaire d'État à la culture néerlandaise, adjoint au ministre de la culture néerlandaise, et	Staatssecretaris voor Nederlandse Cultuur, toegevoegd aan de Minister voor Nederlandse Cultuur en
secrétaire d'État aux affaires sociales, adjoint au ministre des affaires bruxelloises	Staatssecretaris voor Sociale Zaken, toegevoegd aan de Minister voor Brusselse Aangelegenheden

### III. GOVERNMENT INSTITUTIONS

1. Régie des services frigorifiques de l'État belge	Regie der Belgische Rijkskoel- en Vriesdiensten
2. Fonds général des bâtiments scolaires de l'État	Gebouwenfonds voor de Rijksscholen
3. Fonds de construction d'institutions hospitalières et médico-sociales	Fonds voor de bouw van ziekenhuizen en medisch-sociale inrichtingen
4. Institut national du logement	Nationaal Instituut voor de huisvesting
5. Société nationale terrienne	Nationale landmaatschappij
6. Office national de sécurité sociale	Rijksdienst voor sociale zekerheid
7. Institut national d'assurances sociales pour travailleurs indépendants	Rijksinstituut voor de sociale verzekeringen der zelfstandigen
8. Institut national d'assurance maladie-invalidité	Rijksinstituut voor ziekte- en invaliditeitsverzekering

(1) Postal business only.

9. Caisse nationale des pensions de retraite et de survie	Rijkskas voor de rust- en overlevingspensioenen
10. Office national des pensions pour travailleurs salariés	Rijksdienst voor werknemerspensioenen
11. Caisse auxiliaire d'assurance maladie-invalidité	Hulpkas voor ziekte- en invaliditeitsverzekering
12. Fonds des maladies professionnelles	Fonds voor de beroepsziekten
13. Caisse nationale de crédit professionnel	Nationale Kas voor beroepskrediet
14. Caisse générale d'épargne et de retraite	Algemene Spaar- en lijfrentekas
15. Office national des débouchés agricoles et horticoles	Nationale Dienst voor afzet van land- en tuinbouwprodukten
16. Office national du lait et de ses dérivés	Nationale Zuiveldienst
17. Office national de l'emploi	Rijksdienst voor arbeidsvoorziening

## DENMARK

## DANISH GOVERNMENT PROCUREMENT ENTITIES

- |  |  |
|--|--|
| 1. Statsministeriet  |  |
| 2. Arbejdsministeriet  | — fire direktorater og institutioner   |
| 3. Udenrigsministeriet                                       | — to departementer   |
| 4. Boligministeriet  | — ét direktorat  |
| 5. Finansministeriet<br>(tre departementer)                  | — Direktoratet for statens indkøb<br>— tre andre institutioner                                     |
| 6. Ministeriet for skatter og afgifter<br>(to departementer) | — fem direktorater og institutioner  |
| 7. Fiskeriministeriet  | — fire institutioner   |
| 8. Handels- og industriministeriet                           | — Forsøgsstationen Risø<br>— 20 direktorater og institutioner                                      |
| 9. Indenrigsministeriet                                      | — Statens Seruminstitut<br>— Civilforsvarsstyrelsen<br>— tre andre direktorater og institutioner   |
| 10. Justitsministeriet                                       | — Rigspolitichefen<br>— tre andre direktorater og institutioner                                    |
| 11. Kirkeministeriet   |  |
| 12. Landbrugsministeriet                                     | — 19 direktorater og institutioner   |
| 13. Ministeriet for forureningsbekæmpelse                    | — fem direktorater   |
| 14. Ministeriet for Grønland                                 | — Den kgl. grønlandske Handel (1)<br>— Grønlands tekniske Organisation<br>— to andre institutioner |
| 15. Ministeriet for kulturelle anliggender                   | — to direktorater og adskillige statsejede<br>museer og højere uddannelsesinstitutioner            |
| 16. Socialministeriet  | — fem direktorater   |
| 17. Undervisningsministeriet                                 | — Rigshospitalet<br>— seks direktorater<br>— 11 universiteter og andre højere læreanstalter        |
| 18. Økonomiministeriet<br>(3 departementer)                  |  |
| 19. Ministeriet for offentlige arbejder (2)                  | — Statshavne og statslufthavne<br>— fire direktorater og adskillige institutioner                  |
| 20. Forsvarsministeriet                                      |  |

(1) Products for resale or for use in the production of goods for sale are not included.

(2) With the exception of Danish State Railways. Ministry of Posts and Telecommunications, postal business only.

## FRANCE

## LIST OF ENTITIES

## (1) Main purchasing entities

A. *General budget*

Premier ministre

Ministre délégué auprès du premier ministre, chargé de la condition féminine

Ministre de la justice

Ministre de la santé et de la famille

Ministre de l'intérieur

Ministre des affaires étrangères

Ministre de la défense

Ministre du travail et de la participation

Ministre de la coopération

Ministre de l'économie

Ministre du budget

Ministre de l'environnement et du cadre de vie

Ministre de l'éducation

Ministre des universités

Ministre de l'agriculture

Ministre de l'industrie

Ministre des transports

Ministre du commerce et de l'artisanat

Ministre du commerce extérieur

Ministre de la jeunesse, des sports et des loisirs

Ministre de la culture et de la communication

Secrétaire d'État aux postes et télécommunications (\*)

Secrétaire d'État aux anciens combattants

Secrétaire d'État auprès du premier ministre

Secrétaire d'État auprès du premier ministre (relations avec le Parlement)

Secrétaire d'État auprès du premier ministre (recherche)

Secrétaire d'État auprès du garde des Sceaux, ministre de la justice

Secrétaire d'État auprès du ministre de la santé et de la famille

Secrétaire d'État auprès du ministre de l'intérieur (départements et territoires d'outre-mer)

Secrétaire d'État auprès du ministre de l'intérieur (collectivités locales)

Secrétaire d'État auprès du ministre des affaires étrangères

Secrétaire d'État auprès du ministre du travail et de la participation (formation professionnelle)

Secrétaire d'État auprès du ministre du travail et de la participation (travailleurs manuels et immigrés)

(\*) Postal business only.

Secrétaire d'État auprès du ministre du travail et de la participation (emploi féminin)  
 Secrétaire d'État auprès du ministre de l'environnement et du cadre de vie (logement)  
 Secrétaire d'État auprès du ministre de l'environnement et du cadre de vie (environnement)  
 Secrétaire d'État auprès du ministre de l'éducation  
 Secrétaire d'État auprès du ministre de l'agriculture  
 Secrétaire d'État auprès du ministre de l'industrie (petite et moyenne industrie)

B. *Budget Annex*

In particular:

-- Imprimerie nationale

C. *Special Treasury accounts*

In particular:

— Fonds forestier national  
 — Soutien financier de l'industrie cinématographique  
 — Fonds spécial d'investissement routier  
 -- Fonds national d'aménagement foncier et d'urbanisme  
 -- Union des groupements d'achats publics (UGAP)

(2) National administrative public bodies

Académie de France à Rome  
 Académie de marine  
 Académie des sciences d'outre-mer  
 Agence centrale des organismes de sécurité sociale (ACOSS)  
 Agences financières de bassins  
 Agence nationale pour l'amélioration des conditions de travail (ANACT)  
 Agence nationale pour l'amélioration de l'habitat (ANAH)  
 Agence nationale pour l'emploi (ANPE)  
 Agence nationale pour l'indemnisation des Français d'outre-mer (ANIFORM)  
 Assemblée permanente des chambres d'agriculture (APCA)  
 Bibliothèque nationale  
 Bibliothèque nationale et universitaire de Strasbourg  
 Bureau d'études des postes et télécommunications d'outre-mer (BEPTOM)  
 Caisse d'aide à l'équipement des collectivités locales (CAECL)  
 Caisse autonome de la reconstruction  
 Caisse des dépôts et consignations  
 Caisse nationale des allocations familiales (CNAF)  
 Caisse nationale des autoroutes (CNA)  
 Caisse nationale d'assurance-maladie des travailleurs salariés (CNAM)  
 Caisse nationale d'assurance-vieillesse des travailleurs salariés (CNAVTS)  
 Caisse nationale militaire de sécurité sociale (CNMSS)  
 Caisse nationale des monuments historiques et des sites  
 Caisse nationale des télécommunications (1)

(1) Postal business only.

Caisse de prêts aux organismes HLM  
Casa de Velasquez  
Centre d'enseignement zootechnique de Rambouillet  
Centre d'études du milieu et de pédagogie appliquée du ministère de l'Agriculture  
Centre d'études supérieures de sécurité sociale  
Centres de formation professionnelle agricole  
Centre national d'art et de culture Georges Pompidou  
Centre national de la cinématographie française  
Centre national d'études et de formation pour l'enfance adaptée  
Centre national d'études et d'expérimentation du machinisme agricole  
Centre national d'études et de formation pour l'adaptation scolaire et l'éducation spécialisée (CNEFASFS)  
Centre national de formation et de perfectionnement des professeurs d'enseignement ménager et ménager agricole  
Centre national des lettres  
Centre national de documentation pédagogique  
Centre national des œuvres universitaires et scolaires (CNOUS)  
Centre national d'ophtalmologie des Quinze-Vingts  
Centre national de préparation au professorat de travaux manuels éducatifs et d'enseignement ménager  
Centre national de la promotion rurale de Marmhat  
Centre national de la recherche scientifique (C.N.R.S.)  
Centres pédagogiques régionaux  
Centres régionaux d'éducation populaire  
Centres régionaux d'éducation physique et sportive (CREPS)  
Centres régionaux des œuvres universitaires (CROUS)  
Centres régionaux de la propriété forestière  
Centre de sécurité sociale des travailleurs migrants  
Centres universitaires  
Chancelleries des universités  
Collèges  
Collèges agricoles  
Commission des opérations de Bourse  
Conseil supérieur de la pêche  
Conservatoire de l'espace littoral et des rivages lacustres  
Conservatoire national des arts et métiers  
Conservatoire national supérieur de musique  
Conservatoire national supérieur d'art dramatique  
Domaine de Pompadour  
École centrale — Lyon  
École centrale des arts et manufactures  
École française d'archéologie d'Athènes  
École française d'Extrême-Orient

École française de Rome  
École des hautes études en sciences sociales  
École nationale d'administration  
École nationale de l'aviation civile (ENAC)  
École nationale des Chartes  
École nationale d'équitation  
École nationale féminine d'agronomie de Marmilhat (Puy-de-Dôme)  
École nationale féminine d'agronomie de Toulouse (Hte-Garonne)  
École nationale du génie rural et des eaux et forêts (ENGRFF)  
Écoles nationales de l'industrie laitière  
Écoles nationales d'ingénieurs  
École nationale d'ingénieurs des industries des techniques agricoles et alimentaires  
Écoles nationales d'ingénieurs des travaux agricoles  
École nationale des ingénieurs des travaux ruraux et techniques sanitaires  
École nationale des ingénieurs des travaux des eaux et forêts (ENITFF)  
École nationale de la magistrature  
Écoles nationales de la marine marchande  
École nationale de la santé publique (ENSP)  
École nationale de ski et d'alpinisme  
École nationale supérieure agronomique - Montpellier  
École nationale supérieure agronomique --- Rennes  
École nationale supérieure des arts décoratifs  
École nationale supérieure des arts et industries — Strasbourg  
École nationale supérieure des arts et industries textiles — Roubaix  
École nationale supérieure d'arts et métiers  
École nationale supérieure des beaux-arts  
École nationale supérieure des bibliothécaires  
École nationale supérieure de céramique industrielle -- Sèvres  
École nationale supérieure de l'électronique et de ses applications (ENSEA)  
École nationale supérieure d'horticulture  
École nationale supérieure des industries agricoles alimentaires  
École nationale supérieure du paysage  
École nationale supérieure des sciences agronomiques appliquées (ENSSAA)  
Écoles nationales vétérinaires  
Écoles nationales de perfectionnement  
Écoles nationales de premier degré  
École nationale de voirie  
Écoles normales d'instituteurs et d'institutrices  
Écoles normales nationales d'apprentissage  
Écoles normales supérieures  
École polytechnique  
École de sylviculture — Crozny (Aube)



École technique professionnelle agricole et forestière de Meynac (Corrèze)  
École de viticulture et d'œnologie de la Tour Blanche (Gironde)  
École de viticulture — Avize (Marne)  
Établissement national de convalescentes du Vésinet (FNVCV)  
Établissement national de convalescents de Saint-Maurice  
Établissement national des invalides de la marine (ENIM)  
Établissement national de Koenigs Warter  
Fondation Carnegie  
Fondation Singer-Polignac  
Fonds d'action sociale pour les travailleurs migrants  
Hôpital-hospice national Dufresne-Sommeiller  
Institut d'élevage et de médecine vétérinaires des pays tropicaux (IEMVPT)  
Institut français d'archéologie orientale du Caire  
Institut géographique national  
Institut industriel du Nord  
Institut international d'administration publique (IIAP)  
Institut national agronomique de Paris-Grignon  
Institut national des appellations d'origine des vins et eaux-de-vie (INAOVFV)  
Institut national d'astronomie et de géophysique (INAG)  
Institut national de la consommation (INC)  
Institut national d'éducation populaire (INEP)  
Institut national d'études démographiques (INED)  
Institut national des jeunes aveugles — Paris  
Institut national des jeunes sourdes — Bordeaux  
Institut national des jeunes sourds — Chambéry  
Institut national des jeunes sourds — Metz  
Institut national des jeunes sourds — Paris  
Institut national de physique nucléaire et de physique des particules (IN2P3)  
Institut national de promotion supérieure agricole  
Institut national de la propriété industrielle —  
Institut national de la recherche agronomique (INRA)  
Institut national de recherche pédagogique (INRP)  
Institut national de la santé et de la recherche médicale (INSERM)  
Institut national des sports  
Instituts nationaux polytechniques  
Instituts nationaux des sciences appliquées  
Institut national supérieur de chimie industrielle de Rouen  
Institut de recherches d'informatique et d'automatique (IRIA)  
Institut de recherche des transports (IRT)  
Instituts régionaux d'administration  
Institut scientifique et technique des pêches maritimes (ISTPM)  
Institut supérieur des matériaux et de la construction mécanique de Saint-Ouen

- Lycées agricoles
- Lycées classiques et modernes
- Lycées d'enseignement professionnel
- Lycées techniques
- Musée de l'armée
- Musée Gustave Moreau
- Musée de la marine
- Musée national J. J. Henner
- Musée national de la légion d'honneur
- Musée postal
- Muséum national d'histoire naturelle
- Musée Auguste Rodin
- Observatoire de Paris
- Office de coopération et d'accueil universitaire
- Office français de protection des réfugiés et rapatriés
- Office national des anciens combattants
- Office national de la chasse
- Office national d'information sur les enseignements et les professions (ONISEP)
- Office national d'immigration (ONI)
- Office de la recherche scientifique et technique d'outre-mer (ORSTOM)
- Office universitaire et culturel français pour l'Algérie
- Palais de la découverte
- Parcs nationaux
- Réunion des musées nationaux
- Service national des examens du permis de conduire
- Syndicat des transports parisiens
- Thermes nationaux - Aix-les-Bains
- Universités

## FEDERAL REPUBLIC OF GERMANY

## LIST OF CENTRAL PURCHASING ENTITIES

1. Auswärtiges Amt
2. Bundesministerium für Arbeit und Sozialordnung
3. Bundesministerium für Bildung und Wissenschaft
4. Bundesministerium für Ernährung, Landwirtschaft und Forsten
5. Bundesministerium der Finanzen
6. Bundesministerium für Forschung und Technologie
7. Bundesministerium für Innerdeutsche Beziehungen
8. Bundesministerium des Inneren (nur Zivilgüter)
9. Bundesministerium für Jugend, Familie und Gesundheit
10. Bundesministerium der Justiz
11. Bundesministerium für Raumordnung, Bauwesen und Städtebau
12. Bundesministerium für das Post- und Fernmeldewesen (!)
13. Bundesministerium für Wirtschaft
14. Bundesministerium für wirtschaftliche Zusammenarbeit
15. Bundesministerium der Verteidigung

## Note

According to existing national obligations, the entities contained in this list shall, in conformity with special procedures, award contracts in certain regions which, as a consequence of the division of Germany, are confronted with economic disadvantages.

The same applies to the awarding of contracts to remove the difficulties of certain groups caused by the last war.

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(!) Postal business only.

## IRELAND

## 1. MAIN PURCHASING ENTITIES

- (a) Office of Public Works
- (b) Stationery Office

## 2. OTHER DEPARTMENTS

President's Establishment  
Office of the Houses of the Oireachtas (Parliament)  
Department of the Taoiseach (Prime Minister)  
Central Statistics Office  
Department of Finance  
Office of the Comptroller and Auditor-General  
Office of the Revenue Commissioners  
State Laboratory  
Office of the Attorney-General  
Office of the Director of Public Prosecutions  
Valuation Office  
Ordnance Survey  
Department of the Public Service  
Civil Service Commission  
Department of Economic Planning and Development  
Department of Justice  
Land Registry  
Charitable Donations and Bequests Office  
Department of the Environment  
Department of Education  
National Gallery of Ireland  
Department of the Gaeltacht (Irish-speaking areas)  
Department of Agriculture  
Department of Fisheries and Forestry  
Department of Labour  
Department of Industry, Commerce and Energy  
Department of Tourism and Transport  
Department of Foreign Affairs  
Department of Social Welfare  
Department of Health  
Department of Defence  
Department of Posts and Telegraphs (\*)

(\*) Postal business only.

## ITALY

## PURCHASING ENTITIES

1. Ministero del tesoro <sup>(1)</sup>
2. Ministero delle finanze <sup>(2)</sup>
3. Ministero di grazia e giustizia
4. Ministero degli affari esteri
5. Ministero della pubblica istruzione
6. Ministero dell'interno
7. Ministero dei lavori pubblici
8. Ministero dell'agricoltura e delle foreste
9. Ministero dell'industria, del commercio e dell'artigianato
10. Ministero del lavoro e della previdenza sociale
11. Ministero della sanità
12. Ministero per i beni culturali e ambientali
13. Ministero della difesa
14. Ministero del bilancio e della programmazione economica
15. Ministero delle partecipazioni statali
16. Ministero del turismo e dello spettacolo
17. Ministero del commercio con l'estero
18. Ministero delle poste e delle telecomunicazioni <sup>(3)</sup>

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<sup>(1)</sup> Acting as the central purchasing entity for most of the other Ministries or entities.

<sup>(2)</sup> Not including purchases made by the tobacco and salt monopolies.

<sup>(3)</sup> Postal business only.

## LUXEMBOURG

LIST OF CENTRAL PURCHASING ENTITIES FALLING WITHIN THE SCOPE OF THE  
DIRECTIVE

1. Ministère d'État : service central des imprimés et des fournitures de l'État
2. Ministère de l'agriculture : administration des services techniques de l'agriculture
3. Ministère de l'éducation nationale : écoles d'enseignement secondaire, d'enseignement moyen, d'enseignement professionnel
4. Ministère de la famille et de la solidarité sociale : maisons de retraite
5. Ministère de la force publique : armée -- gendarmerie -- police
6. Ministère de la justice : établissements pénitentiaires
7. Ministère de la santé publique : Mondorf-État, hôpital neuropsychiatrique
8. Ministère des travaux publics : bâtiments publics — ponts et chaussées
9. Ministère des finances : postes et télécommunications (\*)
10. Ministère des transports et de l'énergie : centrales électriques de la haute et basse Sûre
11. Ministère de l'environnement : commissariat général à la protection des eaux

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(\*) Postal business only.

## NETHERLANDS

## LIST OF ENTITIES

## A. Ministries and central governmental bodies

1. Ministerie van Algemene Zaken
2. Ministerie van Buitenlandse Zaken
3. Ministerie van Justitie
4. Ministerie van Binnenlandse Zaken
5. Ministerie van Defensie
6. Ministerie van Financiën
7. Ministerie van Economische Zaken
8. Ministerie van Onderwijs en Wetenschap
9. Ministerie van Volkshuisvesting en Ruimtelijke Ordening
10. Ministerie van Verkeer en Waterstaat <sup>(1)</sup>, met inbegrip van post, telefoon en telegrafie
11. Ministerie van Landbouw en Visserij
12. Ministerie van Sociale Zaken
13. Ministerie van Cultuur, Recreatie en Maatschappelijk Werk
14. Ministerie van Volksgezondheid en Milieuhygiëne
15. Ministerie van Ontwikkelingssamenwerking
16. Ministerie van Wetenschapsbeleid
17. Kabinet van Nederlandse-Antilliaanse Zaken
18. Hoge Colleges van Staat

## B. Central procurement offices

Entities listed above in A generally make their own specific purchases; other general purchases are effected through the entities listed below:

1. Rijksinkoophureau
2. Directoraat-generaal voor de Waterstaat
3. Dienst van de Kwartiermeester-generaal
4. Directie Materieel Koninklijke Luchtmacht
5. Hoofd afdeling Materieel Koninklijke Marine
6. Staatsdrukkerij en Uitgeverijbedrijf
7. Staatsbedrijf der Posten, Telegrafie en Telefonie, Centrale Afdeling Inkoop en Materieel controle <sup>(1)</sup>
8. Rijksautomobielcentrale
9. Rijkskantoor machmeccentrale
10. Staatsbosbeheer
11. Rijksdienst IJsschneerpolders

<sup>(1)</sup> Postal business only.

## UNITED KINGDOM

## LIST OF ENTITIES

Board of Inland Revenue

British Museum

British Museum (Natural History)

Cabinet Office

Central Office of Information

Charity Commission

Civil Service Department

- Ancient Monuments (Scotland) Commission
- Ancient Monuments (Wales) Commission
- Boundary Commission for England and Wales
- Boundary Commission for Northern Ireland
- Central Computer Agency
- Chessington Computer Centre
- Civil Service Catering Organization
- Civil Service College
- Civil Service Commission
- Civil Service Pay Research Unit
- Historical Manuscripts Commission
- Historical Monuments (England) Commission
- Medical Advisory Service
- Museums and Galleries Standing Commission
- Office of the Parliamentary Counsel
- Review Board for Government Contracts
- Royal Commission on Criminal Procedure
- Royal Commission on Environmental Pollution
- Royal Commission on Gambling
- Royal Commission on Legal Services (England, Wales and Northern Ireland)
- Royal Commission on Legal Services (Scotland)
- Royal Fine Art Commission (England)
- Royal Fine Art Commission (Scotland)

Crown Estate Office (Vote borne, services only)

Crown Office, Scotland

Customs and Excise Department

Department for National Savings

Department of Agriculture and Fisheries for Scotland

- Artificial Insemination Service
- Crofters Commission
- Red Deer Commission
- Royal Botanic Garden, Edinburgh etc.

Department of Education and Science

- University Grants Committee



## Department of Employment

Duchess of Gloucester House  
Employment Appeal Tribunal  
Industrial Tribunals  
Office of Manpower Economics  
Royal Commission on the Distribution of Income and Wealth

## Department of Energy

## Department of Health and Social Security

Attendance Allowance Board  
Central Council for Education and Training in Social Work  
Council for the Education and Training of Health Visitors  
Dental Estimates Board  
Joint Board of Clinical Nursing Studies  
Medical and Dental Referee Service  
Medical Boards and Examining Medical Officers (War Pensions)  
National Health Service  
National Health Service Authorities  
National Insurance Commissioners  
Occupational Pensions Board  
Prescription Pricing Authority  
Public Health Laboratory Service Board  
Supplementary Benefits Appeal Tribunals  
Supplementary Benefits Commission

## Department of Industry

Computer-Aided Design Centre  
Laboratory of the Government Chemist  
National Engineering Laboratory  
National Maritime Institute  
National Physical Laboratory  
Warren Spring Laboratory

## Department of Prices and Consumer Protection

Domestic Coal Consumers' Council  
Electricity Consultative Councils for England and Wales  
Gas Consumers' Councils  
Metrication Board  
Monopolies and Mergers Commission

## Department of the Environment

British Urban Development Services Unit  
Building Research Establishment  
Commons Commissioners - (except payment of rates)  
Countryside Commission  
Directorate of Estate Management Overseas  
Fire Research Station/Boreham Wood  
Hydraulics Research Station  
Local Valuation Panels  
Location of Offices Bureau  
Property Services Agency  
Rent Control Tribunals and Rent Assessment Panels and Committees

Department of the Government Actuary  
Department of the Registers of Scotland  
Department of Trade  
    Coastguard Services  
    British Export Marketing Centre, Tokyo  
    Market Entry Guarantee Scheme  
    Patent Office  
Department of Transport  
    Road Construction Units and Sub-Units  
    Transport and Road Research Laboratory  
    Transport Tribunal -- (except payment of rates)  
    Transport Users Consultative Committees -- (except payment of rates)  
Director of Public Prosecutions  
Exchequer and Audit Department  
Exchequer Office Scotland  
Export Credits Guarantee Department  
Foreign and Commonwealth Office  
    Government Communications Headquarters  
    Middle East Centre for Arab Studies  
    Wiston House Conference and European Discussion Centre  
Home Office  
    Gaming Board for Great Britain  
    Immigration Appeals Tribunal  
    Inspectors of Constabulary  
    Parole Board and Local Review Committees  
House of Commons  
House of Lords  
Imperial War Museum  
Intervention Board for Agricultural Produce  
Legal Aid Funds  
Lord Chancellor's Department  
    Council on Tribunals  
    County Courts  
    Courts Martial Appeal Court  
    Crown Courts  
    Judge Advocate General and Judge Advocate of the Fleet  
    Lands Tribunal  
    Law Commission  
    Pensions Appeal Tribunals  
    Supreme Court  
Ministry of Agriculture, Fisheries and Food  
    Advisory Services  
    Agricultural Development and Advisory Service  
    Agricultural Dwelling House Advisory Committees  
    Agricultural Land Tribunals  
    Agricultural Wages Board and Committees

Artificial Insemination Research Centres  
Central Council for Agricultural and Horticultural Cooperation  
Plant Pathology Laboratory  
Plant Variety Rights Office  
Royal Botanic Gardens, Kew

Ministry of Defence  
Procurement Executive

Meteorological Office

Ministry of Overseas Development  
Centre of Overseas Pest Research  
Directorate of Overseas Surveys  
Land Resources Division  
Tropical Products Institute

National Debt Office and Pensions Commutation Board

National Gallery

National Galleries of Scotland

National Library of Scotland

National Maritime Museum

National Museum of Antiquities of Scotland

National Portrait Gallery

Northern Ireland Government Departments and Public Authorities  
Department of the Civil Service  
Department of Agriculture  
Department of Commerce  
Department of Education  
Department of the Environment  
Department of Finance  
Department of Health and Social Services  
Department of Manpower Services  
Northern Ireland Police Authority

Northern Ireland Office  
Coroners Courts  
County Courts  
Crown Solicitor's Office  
Department of the Director of Public Prosecutions  
Enforcement of Judgements Office  
Forensic Science Service  
Magistrates Courts  
Pensions Appeal Tribunals  
Probation Service  
Registration of Electors and Conduct of Elections  
State Pathologist Service  
Supreme Court of Judicature and Court of Criminal Appeal of Northern Ireland

Office of Fair Trading

Office of Population Censuses and Surveys  
National Health Service Central Register

Office of the Parliamentary Commissioner for Administration and  
Health Service Commissioners  
Paymaster General's Office  
Postal Business of the Post Office  
Privy Council Office  
Public Record Office  
Public Trustee Office  
Public Works Loan Commission  
Queen's and Lord Treasurer's Remembrancer  
Crown Office  
Department of Procurators Fiscal  
Lord Advocate's Department  
Lands Tribunal  
Registrar-General's Office, Scotland  
National Health Service Central Register  
Registry of Friendly Societies  
Royal Commission, etc. (see references under Civil Service Department)  
Commission on the Constitution  
Royal Commission on the National Health Service  
Royal Commission on Gambling  
Royal Hospital, Chelsea  
Royal Mint  
Royal Scottish Museum  
Science Museum  
Scottish Courts Administration  
Court of Session  
Court of Justiciary  
Accountant of Court's Office  
Sheriff Courts  
Scottish Land Court  
Scottish Law Commission  
Pensions Appeal Tribunals  
Scottish Development Department  
Local Government Reorganization Commissions etc.  
Rent Assessment Panel and Committees, etc.  
Scottish Economic Planning Department  
Scottish Electricity Consultative Councils  
Scottish Education Department  
Royal Scottish Museum  
Scottish Home and Health Department  
Common Services Agency  
Council for the Education and Training of Health Visitors  
Fire Service Training School  
Inspectors of Constabulary  
Local Health Councils

Mental Welfare Commission for Scotland  
National Health Service  
National Health Service authorities  
Parole Board for Scotland and Local Review Committees  
Planning Council  
Scottish Antibody Production Unit  
Scottish Crime Squad  
Scottish Criminal Record Office  
Scottish Council for Post-Graduate Medical Education and Training  
Scottish Police College  
Scottish Land Court  
Scottish Office  
Scottish Record Office  
Stationery Office  
Tate Gallery  
Treasury  
    Exchequer Office, Scotland  
    National Economic Development Council  
    Rating of Government Property Department  
Treasury Solicitor's Department  
    Department of the Director of Public Prosecutions  
    Law Officers' Department  
    Department of the Procurator-General and Treasury Solicitor  
Victoria and Albert Museum  
Wallace Collection  
Welsh Office  
    Central Council for Education and Training in Social Work  
    Commons Commissioners  
    Council for the Education and Training of Health Visitors  
Dental Estimates Board  
Local Government Boundary Commission  
Local Valuation Panels and Courts  
National Health Service  
National Health Service authorities  
Public Health Laboratory Service Board  
Rent Control Tribunals and Rent Assessment Panels and Committees

## ANNEX II

Chapter 25: Salt; sulphur; earths and stone; plastering materials, lime and cement

Chapter 26: Metallic ores, slag and ash

Chapter 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

*except:*

ex 27.10: special engine fuels

Chapter 28: Inorganic chemicals; organic and inorganic compounds of precious metals, of rare-earth metals, of radio-active elements and of isotopes

*except:*

ex 28.09: explosives

ex 28.13: explosives

ex 28.14: tear gas

ex 28.28: explosives

ex 28.32: explosives

ex 28.39: explosives

ex 28.50: toxic products

ex 28.51: toxic products

ex 28.54: explosives

Chapter 29: Organic chemicals

*except:*

ex 29.03: explosives

ex 29.04: explosives

ex 29.07: explosives

ex 29.08: explosives

ex 29.11: explosives

ex 29.12: explosives

ex 29.13: toxic products

ex 29.14: toxic products

ex 29.15: toxic products

ex 29.21: toxic products

ex 29.22: toxic products

ex 29.23: toxic products

ex 29.26: explosives

ex 29.27: toxic products

ex 29.29: explosives

Chapter 30: Pharmaceutical products

Chapter 31: Fertilizers

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

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



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

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 22 March 1988

amending Directive 77/62/EEC relating to the coordination of procedures on the award of public supply contracts and repealing certain provisions of Directive 80/767/EEC

(88/295/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100A thereof,

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

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

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

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

Whereas successive European Councils, from Brussels on 29 and 30 March 1985 to London on 5 and 6 December 1986, have drawn conclusions concerning the internal market;

Whereas the White Paper on the completion of the internal market fixes in particular a timetable and an action programme for the opening up of public supply contracts;

Having regard to the report on the application of Directive 77/62/EEC <sup>(4)</sup>, as last amended by the Act of Accession of Spain and Portugal and Directive 80/767/EEC <sup>(5)</sup>, submitted by the Commission to the Council on 14 December 1984 in reply to the Council resolution of 21 December 1976;

Whereas it is necessary to improve and extend the scope of the Directives by increasing the transparency of procedures and practices for the award of public supply contracts, and to make possible stricter enforcement of the prohibition of restrictions on the free movement of goods, which constitutes the basis of these Directives;

Whereas it is necessary to amend these Directives in order to incorporate changes to the GATT Agreement on Government Procurement of December 1986;

Whereas it is necessary to develop the conditions of effective competition for public supply contracts and the economic, budgetary and industrial benefits which result from it;

Whereas it is necessary to that end to define the extent of the exemptions by sector in order to ensure, in view of the divergent interpretations, that the imbalances in the application of the Directives between Member States do not increase;

<sup>(1)</sup> OJ No C 173, 11. 7. 1986, p. 4, OJ No C 161, 19. 6. 1987, p. 10 and OJ No C 303, 13. 11. 1987, p. 3.

<sup>(2)</sup> OJ No C 13, 18. 1. 1988, p. 66.

<sup>(3)</sup> OJ No C 68, 16. 3. 1987, p. 7.

<sup>(4)</sup> OJ No L 13, 15. 1. 1977, p. 1.

<sup>(5)</sup> OJ No L 215, 18. 8. 1980, p. 1.

Whereas the arrangements applicable to contracts awarded by contracting authorities in the defence sector need to be clarified by reference to the provisions of the Treaty;

Whereas it is appropriate to lay down the applicable thresholds, including the GATT-related threshold, in a single provision;

Whereas the open procedure best assures the establishment of equal conditions for participating in public contracts in all the Member States; whereas it is necessary to make the use of this procedure the rule, with the use of other procedures requiring a justification and the establishment of reports relating to it;

Whereas in order to limit the use of the single-tender procedure it is appropriate to create a negotiated procedure, which already exists in the practice of certain Member States, and in addition to define the conditions where extreme urgency can be invoked and the period during which additional deliveries can be carried out;

Whereas the negotiated procedure shall be considered as exceptional and therefore only be applied in certain specified cases;

Whereas it is necessary to adapt the common rules in the technical field to the new Community policy in respect of standardization;

Whereas all the operations and procedures related to the supply activities of the contracting authorities should be made more transparent; whereas to this end it is appropriate that the public buyers make known their purchasing programmes by means of advance information notices at Community level and that contracting authorities which use non-competitive tendering should permit other potential suppliers to establish and show their interest in such purchases and that information on the conditions under which contracts have been awarded should also be made public by the same method in order to stimulate more interest and participation on the part of a greater number of suppliers at Community level in public supply contracts;

Whereas it is necessary to fix certain time limits in order to avoid delays in the transmission of advance information notices and notices on contracts awarded;

Whereas the time limits for the receipt of requests for participation and tenders in the framework of public supply contracts should be extended in order to improve access and participation by a greater number of suppliers;

Whereas it is desirable for national provisions on the award of public supply contracts in favour of regional development to be included in the Community's objectives;

Whereas the Kingdom of Spain has recently adopted internal legislation to implement Directive 77/62/EEC; whereas, since further changes at this stage would adversely affect the adaptation of the private sector in that country, it is appropriate to allow the Kingdom of Spain additional time to implement the present Directive in its entirety;

Whereas the Portuguese Republic needs a transitional period for similar reasons;

Whereas the Hellenic Republic is in the process of adapting the national law to Directive 77/62/EEC and the incorporation at this stage of further Community rules would adversely affect the public supply contract sector, in particular with regard to certain economically significant factors, such as stability, transparency and the maintenance, in the medium term, of trading conditions;

Whereas, following the conclusions of the said European Councils and of the White Paper, and having regard to the said report, Directive 77/62/EEC should be amended and certain provisions of Directive 80/767/EEC repealed,

HAS ADOPTED THIS DIRECTIVE:

#### TITLE I

#### Amendments to Directive 77/62/EEC

##### Article 1

Directive 77/62/EEC is hereby amended in accordance with the provisions of this Title.

##### Article 2

In Article 1:

1. Point (a) is replaced by the following:

'(a) "public supply contracts" shall be contracts for pecuniary interest concluded in writing involving the purchase, lease, rental or hire purchase, with or without option to buy, of products between a supplier (a natural or legal person) and one of the contracting authorities defined in (b) below. The delivery of such products may in addition include siting and installation operations.'

2. The following points are added:

Article 5

(d) "open procedures" are those national procedures whereby all interested suppliers can present an offer;

Article 4 is deleted.

(e) "restricted procedures" are those national procedures whereby only those suppliers invited by the contracting authorities may submit tenders;

Article 6

(f) "negotiated procedures" are those national procedures whereby contracting authorities consult suppliers of their choice and negotiate the terms of the contract with one or several of them.'

Article 5 is replaced by the following:

'Article 5

1. (a) Titles II, III and IV and Article 6 shall apply to public supply contracts:

— awarded by the contracting authorities referred to in Article 1 (b) including contracts awarded by the contracting authorities in the field of defence listed in Annex I to Directive 80/767/EEC, in so far as the products not listed in Annex II to the said Directive are concerned, provided that the estimated value net of VAT is not less than 200 000 ECU,

— awarded under the terms and conditions of Directive 80/767/EEC by the contracting authorities listed in Annex I to the said Directive and whose estimated value net of VAT is not less than 130 000 ECU; in the case of contracting authorities in the field of defence, this shall apply only to contracts involving products covered by Annex II to the said Directive;

(b) the Directive shall apply to public supply contracts for which the estimated value equals or exceeds the threshold concerned at the time of publication of the notice in accordance with Article 9 (2);

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

(d) the method of calculation laid down in subparagraph (c) shall be examined, on the Commission's initiative, by the Advisory Committee for Public Contracts, in principle two years after its initial application.

Article 3

In Article 2:

1. Paragraph 1 is deleted.

2. Paragraph 2 is replaced by the following:

'2. This Directive shall not apply to:

(a) public supply contracts awarded by carriers by land, air, sea or inland waterway;

(b) public supply contracts awarded by contracting authorities in so far as those contracts concern the production, transport and distribution of drinking water or those contracting authorities whose principal activity lies in the production and distribution of energy, nor to those contracting authorities whose principal activity is to offer telecommunications services;

(c) supplies which are declared secret or when their delivery must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of that State's security so require.'

Article 4

The following Article is inserted:

'Article 2a

Without prejudice to Articles 2, 3 and 5 (1), this Directive shall apply to all products within the meaning of Article 1 (a), including those covered by contracts awarded by contracting authorities in the field of defence, except for the products to which the provisions of Article 223 (1) (b) of the Treaty apply.'

2. In the case of contracts for the lease, rental or hire purchase of products, the basis for calculating the estimated contract value shall be:

- in the case of fixed-term contracts, where their term is 12 months or less, the total contract value for its duration, or, where their term exceeds 12 months its total value including the estimated residual value,
- in the case of contracts for an indefinite period or in cases where there is doubt as to the duration of the contracts, the monthly value multiplied by 48.

3. In the case of regular supply contracts or of contracts which are to be renewed within a given time, either the aggregate cost of similar contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity or value over the subsequent 12 months or the estimated aggregate cost during the 12 months following first delivery or during the term of the contract where this is greater than 12 months must be taken as the basis for the application of paragraph 1. The selection of the valuation method shall not be used with the intention of avoiding the application of this Article.

4. If a proposed procurement of supplies of the same type may lead to contracts being awarded at the same time in separate parts, the estimated value of the total sum of these parts must be taken as the basis for the application of paragraphs 1 and 2.

5. In the cases where a proposed procurement specifies option clauses, the basis for calculating the estimated contract value shall be the highest possible total of the purchase, lease, rental, or hire-purchase permissible, inclusive of the option clauses.

6. No procurement requirement for a given quantity of supplies may be split up with the intention of avoiding the application of this Article.

Article 7

Article 6 is replaced by the following text:

Article 6

1. In awarding public supply contracts the contracting authorities shall apply the procedures laid down in Article 1 (d), (e) and (f), adapted to this Directive, in the cases set out below.

2. The contracting authorities may award their supply contracts using the restricted procedure in justified cases.

Such justification may *inter alia* be constituted by:

- a need to maintain a balance between contract value and procedural costs,
- the specific nature of the products to be procured.

3. The contracting authorities may award their supply contracts by negotiated procedure in the case of irregular tenders in response to an open or restricted procedure or in the case of tenders which are unacceptable under national provisions that are in accordance with provisions of Title IV, in so far as the original terms for the contract are not substantially altered. The contracting authorities shall in these cases publish a tender notice unless they include in such negotiated procedures all the enterprises satisfying the criteria of Articles 20 to 24 which, during the prior open or restricted procedure, have submitted offers in accordance with the formal requirements of the tendering procedure.

4. The contracting authorities may award their supply contracts by negotiated procedure without prior publication of a tender notice in the following cases:

- (a) in the absence of tenders in response to an open or restricted procedure in so far as the original terms of the contract are not substantially altered and provided that a report is communicated to the Commission;
- (b) when the articles involved are manufactured purely for the purpose of research, experiment, study or development, this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;
- (c) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the goods supplied may be manufactured or delivered only by a particular supplier;
- (d) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities, the time limits laid down for the open and restricted procedures cannot be met.

The circumstances invoked to justify extreme urgency must not in any case be attributable to the contracting authorities.

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

5. In all other cases, the contracting authorities shall award their supply contracts by the open procedure.

6. In the case of restricted or negotiated procedures, the contracting authorities shall draw up a written report which shall contain the justification for the use of that procedure and shall include at least the name and address of the contracting authority, the value, quantity and nature of products purchased, the number of requests to participate received, the number of candidates invited to submit an offer and, where applicable, the number of candidates rejected and the reasons for their rejection. The report shall also indicate in the case of the use of negotiated tender procedures the circumstances referred to in paragraphs 3 and 4 above with due justification which have led to the use of these procedures.

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

Article 8

Article 7 is replaced by the following:

Article 7

1. The technical specifications defined in Annex II shall be given in the general documents or the contractual documents relating to each contract.

2. Without prejudice to the legally binding national technical rules in so far as these are compatible with Community law, such technical specifications shall be defined by the contracting authorities by reference to national standards implementing European standards, or by reference to common technical specifications.

3. A contracting authority may depart from the principle laid down in paragraph 2, if:

(a) the standards do not include provision for establishing conformity, or technical means do not exist to establish satisfactorily conformity of a product to these standards;

(b) the application of paragraph 2 would prejudice the application of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment<sup>(1)</sup>, or Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications<sup>(2)</sup> or other Community instruments in specific service or product areas;

(c) use of these standards would oblige the contracting authority to acquire supplies incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties, but only as part of a clearly defined and recorded strategy with a view to changeover, within a determined period, to European standards or common technical specifications;

(d) the project concerned is of a genuinely innovative nature for which use of existing standards would not be appropriate.

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

5. In the absence of European standards or common technical specifications, the technical specifications may be defined, without prejudice to the principles of equivalence and mutual recognition of national technical specifications, by reference to other documents. In this case it is appropriate to make reference in order of preference to:

(a) national standards implementing international standards accepted in the country of the contracting authority;

(b) other national standards of the country of the contracting authority;

(c) any other standard.

6. Unless such specifications are justified by the subject of the contract, Member States shall prohibit the introduction into the contractual clauses relating to a given contract of technical specifications which mention goods of a specific make or source or of a particular process and which have the effect of favouring or eliminating certain undertakings or products. In particular, the indication of trade marks, patents, types or specific origin or production shall be prohibited; however, such an indication accompanied by the words "or equivalent" shall be authorized where the subject

of the contract cannot otherwise be described by specifications which are sufficiently precise and fully intelligible to all concerned.

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

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

#### Article 9

Article 9 is replaced by the following:

##### 'Article 9

1. The contracting authorities listed in Annex I to Directive 80/767/EEC shall make known, as from 1 January 1989, as soon as possible after the beginning of their budgetary year, by means of an indicative notice, the total procurement by product area of which the estimated value, taking into account the provisions of Article 5 of this Directive, is equal or greater than 750 000 ECU and which they envisage awarding during the coming 12 months.

The Council, acting on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall decide before 1 March 1990 on the extension of this obligation to the other contracting authorities covered by Article 1.

2. Contracting authorities who wish to award a public supply contract by open, restricted, or, under the conditions laid down in Article 6 (3), by negotiated procedure within the meaning of Article 1 shall make known their intention by means of a notice.

3. Contracting authorities who have awarded a contract shall make known the result by means of a notice. However, certain information on the contract award may not be published, in given cases, where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private, or might prejudice fair competition between suppliers.

4. The notices referred to in paragraphs 1, 2 and 3 shall be sent as rapidly as possible by the most appropriate channels to the Office for Official Publications of the European Communities. In the case of the accelerated procedure referred to in Article 12 the notice shall be sent by telex, telegram or facsimile.

(a) The notice referred to in paragraph 1 shall be sent as soon as possible after the beginning of each budgetary year;

(b) the notice referred to in paragraph 3 shall be sent at the latest 48 days after the award of the contract in question.

5. The notice shall be drawn up in accordance with the models given in Annex III.

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

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

7. The notice shall not be published in the Official Journals or the press of the country of the contracting authority before the date of its dispatch and it shall mention the latter date. This publication shall not contain information other than that published in the *Official Journal of the European Communities*.

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

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

#### Article 10

Article 10 (1) is replaced by the following:

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

#### Article 11

Article 11 (1), (2) and (3) is replaced by the following:

'1. In restricted procedures within the meaning of Article 1 (e) and negotiated procedures within the meaning of Article 1 (f) under the conditions laid down in Article 6 (3) the time limit for the receipt of requests to

participate fixed by the contracting authorities shall not be less than 37 days from the date of dispatch of the notice.

2. The contracting authorities shall simultaneously and in writing invite all successful candidates to submit their tenders. The letter of invitation shall be accompanied by the contract documents and supporting documents.

3. In restricted procedures the time limit for receipt of offers fixed by the contracting authorities may not be less than 40 days from the date of dispatch of the written invitation.'

#### Article 12

Article 12 (1) is replaced by the following:

'1. Where urgency renders impracticable the time limits referred to in Article 11, the contracting authorities may fix the following time limits:

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

#### Article 13

Articles 13, 14 and 15 are deleted.

#### Article 14

Article 19 (1) is replaced by the following:

'1. In restricted and negotiated procedures the contracting authorities shall, on the basis of information concerning the supplier's personal position and the information and formalities necessary for an appraisal of the minimum economic and technical conditions required of him, select from among the candidates with the qualifications required by Articles 20 to 24 those whom they will invite to submit a tender or to negotiate.'

#### Article 15

In Article 21 (1), after 'in the Netherlands on the Handelsregister', the following is inserted: 'and in Portugal on the Registo Nacional das Pessoas Colectivas.'

#### Article 16

Article 26 is replaced by the following:

#### 'Article 26

1. This Directive shall not prevent, until 31 December 1992, the application of existing national provisions on the award of public supply contracts which have as their objective the reduction of regional disparities and the promotion of job creation in the most disadvantaged regions and in declining industrial regions, on condition that the provisions concerned are compatible with the Treaty and with the Community's international obligations.

2. Paragraph 1 shall be without prejudice to Article 25 (4).'

#### Article 17

Article 29 is replaced by the following:

#### 'Article 29

1. In order to allow assessment of the results of applying this Directive, Member States shall communicate a statistical report to the Commission relative to contract awards:

- (a) not later than 31 October of each year for the preceding year in respect of the contracting authorities listed in Annex I to Directive 80/767/EEC;
- (b) not later than 31 October 1991 and for the Hellenic Republic, the Kingdom of Spain and the Portuguese Republic 31 October 1995 and thereafter 31 October of each second year for the preceding year in respect of contracting authorities within the meaning of Article 1 of this Directive, excluding those listed in Annex I to Directive 80/767/EEC.

2. This report shall detail at least:

- (a) the number and value of contracts awarded by each contracting authority above the threshold and, in the case of contracting authorities mentioned in Annex I to Directive 80/767/EEC, the value below the threshold;
- (b) the number and value of contracts awarded by each contracting authority above the threshold, subdivided by procedure, product and the nationality of the supplier to whom the contract has been awarded, and in the case of negotiated procedures, subdivided in accordance with Article 6, listing the number and value of the contracts



awarded to each Member State and to third countries, and in the case of Directive 80/767/EEC, the number and value of the contracts awarded to each signatory to the GATT Agreement on Government Procurement.

3. The Commission shall determine the nature of any additional statistical information, which is required in accordance with this Directive, in consultation with the Advisory Committee for Public Contracts.'

*Article 18*

Annexes I, II and III to the Directive are replaced by Annexes I, II and III to this Directive.

TITLE II

Deletion of certain provisions of Directive 80/767/EEC

*Article 19*

Articles 2, 3, 4, 5 and 6 of Directive 80/767/EEC are deleted.

TITLE III

Final provisions

*Article 20*

Member States shall adopt the measures necessary to comply with this Directive by 1 January 1989 and shall forthwith inform the Commission thereof.

However, with regard to the Hellenic Republic, the Kingdom of Spain and the Portuguese Republic, 1 January 1989 shall be replaced by 1 March 1992.

*Article 21*

Member States shall communicate to the Commission the texts of the main provisions of national law, whether laws, regulations or administrative provisions, which they adopt to comply with this Directive.

*Article 22*

This Directive is addressed to the Member States.

Done at Brussels, 22 March 1988.

*For the Council*

*The President*

M. BANGEMANN

## ANNEX I

## LIST OF LEGAL PERSONS GOVERNED BY PUBLIC LAW AND BODIES CORRESPONDING THERETO REFERRED TO IN ARTICLE 1 (b)

- i. In all Member States:  
associations governed by public law or bodies corresponding thereto formed by regional or local authorities, e.g. 'associations de communes', 'Gemeindeverbände', etc.
- ii. In Germany:  
'bundesunmittelbare Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts'; the 'landesunmittelbare Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts' subject to State budgetary supervision.
- iii. In Belgium:  
— 'le Fonds des Routes 1955—1969' — 'Het Wegenfonds',  
— 'la Régie des Voies Aériennes' — 'de Regie der Luchtwegen',  
— public social assistance centres,  
— church councils,  
— 'l'Office Régulateur de la Navigation Intérieure' — 'de Dienst voor Regeling van de Binnenvaart',  
— 'la Régie des services frigorifiques de l'État belge' — 'de Regie der Belgische Rijkskoel- en Vriesdiensten'.
- iv. In Denmark:  
'andre forvainingssubjekter'.
- v. In France:  
— administrative public bodies at national, regional, departmental and local levels,  
— universities, public scientific and cultural bodies and other establishments as defined by the Law setting out guidelines for Higher Education No 68-978 of 12 November 1968.
- vi. In Ireland:  
other public authorities whose public supply contracts are subject to control by the State.
- vii. In Italy:  
— State universities, State university institutes, consortia for university development works,  
— higher scientific and cultural institutes, astronomical, astrophysical, geophysical or vulcanological observatories,  
— the 'Enti di riforma fondiaria',  
— welfare and benevolent institutes of all kinds.
- viii. In Greece:  
other legal persons governed by public law whose public supply contracts are subject to State control.
- ix. In Luxembourg:  
public bodies subject to control by the Government, by an association of municipal corporations or by a municipal corporation.
- x. In the Netherlands:  
— the 'Waterschappen',  
— the 'instellingen van wetenschappelijk onderwijs vermeld in article 15 van de Wet op het Wetenschappelijk Onderwijs (1960)', the 'academische ziekenhuizen',  
— the 'Nederlandse Centrale Organisatie voor toegepast natuurwetenschappelijk onderzoek (TNO)' and its dependent organizations.

**XI. In Spain:**

other legal persons subject to public rules for the award of contracts.

**XII. In Portugal:**

legal persons governed by public law whose public supply contracts are subject to State control.

**XIII. In the United Kingdom:**

- Education Authorities,
  - Fire Authorities,
  - National Health Service Authorities,
  - Police Authorities,
  - Commission for the New Towns,
  - New Towns Corporations,
  - Scottish Special Housing Association,
  - Northern Ireland Housing Executive.
-

## ANNEX II

## DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purpose of this Directive:

1. '*technical specification*' means the totality of the technical requirements contained in particular in the tender documents defining the characteristics required of a product such as the level of quality, performance, safety or dimensions including the requirements applicable to the product in respect of terminology, symbols, tests and testing methods, packaging, marking and labelling which permit a material, a product or a supply to be described objectively in a manner such that it fulfils the use for which it is intended by the contracting authority;
  2. 'standard' means a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory;
  3. '*European standard*' means the standards approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (CENELEC) as 'European Standards (EN)' or 'Harmonization Documents (HD)' according to the Common Rules of these organizations;
  4. '*Common technical specification*' means a technical specification drawn up with a view to uniform application in all Member States of the Community.
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## ANNEX III

## MODEL NOTICES OF SUPPLY CONTRACTS

## A. Open procedures

1. Name, address and telephone, telegraphic, telex and facsimile numbers of the contracting authority.
2. (a) Award procedure chosen;  
(b) form of contract for which offers are invited.
3. (a) Place of delivery;  
(b) nature and quantity of the goods to be supplied;  
(c) indication of whether the suppliers can tender for some and/or all of the goods required;  
(d) derogation from the use of standards in accordance with Article 7.
4. Time limit for delivery, if any.
5. (a) Name and address of the service from which the relevant documents may be requested;  
(b) final date for making such requests;  
(c) where applicable, the amount and terms of payment of any sum payable for such documents.
6. (a) Final date for receipt of tenders;  
(b) address to which they must be sent;  
(c) language(s) in which they must be drawn up.
7. (a) Persons authorized to be present at the opening of tenders;  
(b) date, time and place of this opening.
8. (Where applicable) Any deposits and guarantees required.
9. The main terms concerning financing and payment and/or references to the relevant provisions.
10. Where applicable, the legal form to be taken by the grouping of suppliers winning the contract.
11. The information and formalities necessary for an appraisal of the minimum economic and technical standards required of the supplier.
12. Period during which the tenderer is bound to keep open his tender.
13. Criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned if they do not appear in the contract documents.
14. Other information.
15. Date of dispatch of the notice.
16. Date of receipt of the notice by the Office for Official Publications of the European Communities.

## B. Restricted procedures

1. Name, address and telephone, telegraphic, telex and facsimile numbers of the awarding authority.
2. (a) Award procedure chosen;  
(b) where applicable, justification for use of the accelerated procedure;  
(c) form of contract for which offers are invited.

3. (a) Place of delivery,
  - (b) nature and quantity of goods to be delivered;
  - (c) indication of whether the supplier can tender for some and/or all of the goods required;
  - (d) derogation from the use of standards in accordance with Article 7.
4. Time limit on delivery, if any.
5. Where applicable, the legal form to be assumed by the grouping of suppliers winning the contract.
6. (a) Final date for the receipt of requests to participate;
  - (b) address to which they must be sent;
  - (c) language(s) in which they must be drawn up.
7. Final date for the dispatch of invitations to tender.
8. Information concerning the supplier's own position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
9. Criteria for the award of the contract if these are not stated in the invitation to tender.
10. Other information.
11. Date of dispatch of the notice.
12. Date of receipt of the notice by the Office for Official Publications of the European Communities.

#### C. Negotiated procedures

1. Name, address and telephone, telegraphic, telex and facsimile number of the awarding authority.
2. (a) Award procedure chosen;
  - (b) where applicable, justification for use of the accelerated procedure;
  - (c) where applicable, form of contract for which offers are invited.
3. (a) Place of delivery;
  - (b) nature and quantity of goods to be delivered;
  - (c) indication of whether the suppliers can tender for some and/or all of the goods required;
  - (d) derogation from the use of standards in accordance with Article 7.
4. Time limit on delivery, if any.
5. Where applicable, the legal form to be assumed by a grouping of suppliers winning the contract.
6. (a) Final date for the receipt of requests to participate;
  - (b) address to which they must be sent;
  - (c) language(s) in which they must be drawn up.
7. Information concerning the supplier's own position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
8. Where applicable, the names and addresses of suppliers already selected by the awarding authority.
9. Date(s) of previous publications in the *Official Journal of the European Communities*.

10. Other information.
11. Date of dispatch of the notice.
12. Date of receipt of the notice by the Office for Official Publications of the European Communities.

#### D. Pre-information procedures

1. Name, address and telephone, telegraphic, telex and facsimile numbers of the awarding authority and of the service from which additional information may be obtained.
2. Nature and quantity or value of the products to be supplied.
3. Estimated date of the commencement of the procedures of the award of the contract(s) (if known).
4. Other information.
5. Date of dispatch of the notice.
6. Date of receipt of the notice by the Office for Official Publications of the European Communities.

#### E. Contract awards

1. Name and address of awarding authority.
  2. (a) Award procedure chosen;  
(b) in respect of the contracting authorities listed in Annex I to Directive 80/767/EEC, where appropriate, justification in accordance with Article 6 (3) and (4) for the use of such procedures.
  3. Date of award of contract.
  4. Criteria for award of contract.
  5. Number of offers received.
  6. Name(s) and address(es) of supplier(s).
  7. Nature and quantity of goods supplied, where applicable, by supplier.
  8. Price or range of prices.
  9. Other information.
  10. Date of publication of the tender notice in the *Official Journal of the European Communities*.
  11. Date of dispatch of the notice.
  12. Date of receipt of the notice by the Office for Official Publications of the European Communities.
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**"REMEDIES " DIRECTIVE**





## COUNCIL DIRECTIVE

of 20 December 1989

on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts

(89/653/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

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

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

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

Whereas Community Directives on public procurement, in particular Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts <sup>(4)</sup>, as last amended by Directive 89/440/EEC <sup>(5)</sup>, and Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts <sup>(6)</sup>, as last amended by Directive 88/295/EEC <sup>(7)</sup>, do not contain any specific provisions ensuring their effective application;

Whereas the existing arrangements at both national and Community levels for ensuring their application are not always adequate to ensure compliance with the relevant Community provisions particularly at a stage when infringements can be corrected;

Whereas the opening-up of public procurement to Community competition necessitates a substantial increase in the guarantees of transparency and non-discrimination; whereas, for it to have tangible effects, effective and rapid remedies must be available in the case of infringements of Community law in the field of public procurement or national rules implementing that law;

Whereas in certain Member States the absence of effective remedies or inadequacy of existing remedies deter

Community undertakings from submitting tenders in the Member State in which the contracting authority is established; whereas, therefore, the Member States concerned must remedy this situation;

Whereas, since procedures for the award of public contracts are of such short duration, competent review bodies must, among other things, be authorized to take interim measures aimed at suspending such a procedure or the implementation of any decisions which may be taken by the contracting authority; whereas the short duration of the procedures means that the aforementioned infringements need to be dealt with urgently;

Whereas it is necessary to ensure that adequate procedures exist in all the Member States to permit the setting aside of decisions taken unlawfully and compensation of persons harmed by an infringement;

Whereas, when undertakings do not seek review, certain infringements may not be corrected unless a specific mechanism is put in place;

Whereas, accordingly, the Commission, when it considers that a clear and manifest infringement has been committed during a contract award procedure, should be able to bring it to the attention of the competent authorities of the Member State and of the contracting authority concerned so that appropriate steps are taken for the rapid correction of any alleged infringement;

Whereas the application in practice of the provisions of this Directive should be re-examined within a period of four years of its implementation on the basis of information to be supplied by the Member States concerning the functioning of the national review procedures,

HAD ADOPTED THIS DIRECTIVE:

*Article 1*

1. The Member States shall take the measures necessary to ensure that, as regards contract award procedures falling within the scope of Directives 71/305/EEC and 77/62/EEC, decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in the following Articles, and, in particular, Article 2 (7) on the grounds that such decisions have infringed Community law in the field of public procurement or national rules implementing that law.

<sup>(1)</sup> OJ No C 230, 28. 8. 1987, p. 6 and OJ No C 15, 19. 1. 1989, p. 8.

<sup>(2)</sup> OJ No C 167, 27. 6. 1988, p. 77 and OJ No C 323, 27. 12. 1989.

<sup>(3)</sup> OJ No C 347, 22. 12. 1987, p. 23.

<sup>(4)</sup> OJ No L 185, 16. 8. 1971, p. 5.

<sup>(5)</sup> OJ No L 210, 21. 7. 1989, p. 1.

<sup>(6)</sup> OJ No L 13, 15. 1. 1977, p. 1.

<sup>(7)</sup> OJ No L 127, 20. 5. 1988, p. 1.

2. Member States shall ensure that there is no discrimination between undertakings claiming injury in the context of a procedure for the award of a contract as a result of the distinction made by this Directive between national rules implementing Community law and other national rules.

3. The Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular public supply or public works contract and who has been or risks being harmed by an alleged infringement. In particular, the Member States may require that the person seeking the review must have previously notified the contracting authority of the alleged infringement and of his intention to seek review.

#### Article 2

1. The Member States shall ensure that the measures taken concerning the review procedures specified in Article 1 include provision for the powers to:

- (a) take, at the earliest opportunity and by way of interlocutory procedures, interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a public contract or the implementation of any decision taken by the contracting authority;
- (b) either set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or in any other document relating to the contract award procedure;
- (c) award damages to persons harmed by an infringement.

2. The powers specified in paragraph 1 may be conferred on separate bodies responsible for different aspects of the review procedure.

3. Review procedures need not in themselves have an automatic suspensive effect on the contract award procedures to which they relate.

4. The Member States may provide that when considering whether to order interim measures the body responsible may take into account the probable consequences of the measures for all interests likely to be harmed, as well as the public interest, and may decide not to

grant such measures where their negative consequences could exceed their benefits. A decision not to grant interim measures shall not prejudice any other claim of the person seeking these measures.

5. The Member States may provide that where damages are claimed on the grounds that a decision was taken unlawfully, the contested decision must first be set aside by a body having the necessary powers.

6. The effects of the exercise of the powers referred to in paragraph 1 on a contract concluded subsequent to its award shall be determined by national law.

Furthermore, except where a decision must be set aside prior to the award of damages, a Member State may provide that, after the conclusion of a contract following its award, the powers of the body responsible for the review procedures shall be limited to awarding damages to any person harmed by an infringement.

7. The Member States shall ensure that decisions taken by bodies responsible for review procedures can be effectively enforced.

8. Where bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given. Furthermore, in such a case, provision must be made to guarantee procedures whereby any allegedly illegal measure taken by the review body or any alleged defect in the exercise of the powers conferred on it can be the subject of judicial review or review by another body which is a court or tribunal within the meaning of Article 177 of the EEC Treaty and independent of both the contracting authority and the review body.

The members of such an independent body shall be appointed and leave office under the same conditions as members of the judiciary as regards the authority responsible for their appointment, their period of office, and their removal. At least the President of this independent body shall have the same legal and professional qualifications as members of the judiciary. The independent body shall take its decisions following a procedure in which both sides are heard, and these decisions shall, by means determined by each Member State, be legally binding.

#### Article 3

1. The Commission may invoke the procedure for which this Article provides when, prior to a contract being concluded, it considers that a clear and manifest infringement of Community provisions in the field of public procurement has been committed during a contract award procedure falling within the scope of Directives 71/305/EEC and 77/62/EEC.

2. The Commission shall notify the Member State and the contracting authority concerned of the reasons which have led it to conclude that a clear and manifest infringement has been committed and request its correction.

3. Within 21 days of receipt of the notification referred to in paragraph 2, the Member State concerned shall communicate to the Commission:

- (a) its confirmation that the infringement has been corrected; or
- (b) a reasoned submission as to why no correction has been made; or
- (c) a notice to the effect that the contract award procedure has been suspended either by the contracting authority on its own initiative or on the basis of the powers specified in Article 2 (1) (a).

4. A reasoned submission in accordance with paragraph 3 (b) may rely among other matters on the fact that the alleged infringement is already the subject of judicial or other review proceedings or of a review as referred to in Article 2 (8). In such a case, the Member State shall inform the Commission of the result of those proceedings as soon as it becomes known.

5. Where notice has been given that a contract award procedure has been suspended in accordance with paragraph 3 (c), the Member State shall notify the Commission when the suspension is lifted or another contract procedure relating in whole or in part to the same subject matter is begun. That notification shall confirm that the alleged infringement has been corrected or include a reasoned submission as to why no correction has been made.

*Article 4*

1. Not later than four years after the implementation of this Directive, the Commission, in consultation with the

Advisory Committee for Public Contracts, shall review the manner in which the provisions of this Directive have been implemented and, if necessary, make proposals for amendments.

2. By 1 March each year the Member States shall communicate to the Commission information on the operation of their national review procedures during the preceding calendar year. The nature of the information shall be determined by the Commission in consultation with the Advisory Committee for Public Contracts.

*Article 5*

Member States shall bring into force, before 21 December 1991, the measures necessary to comply with this Directive. They shall communicate to the Commission the texts of the main national laws, regulations and administrative provisions which they adopt in the field governed by this Directive.

*Article 6*

This Directive is addressed to the Member States.

Done at Brussels, 21 December 1989.

*For the Council*

*The President*  
É. CRESSON



**"UTILITIES" DIRECTIVE**

**(FORMERLY KNOWN AS  
EXCLUDED SECTORS)**



## COUNCIL RECOMMENDATION

of 12 November 1984

concerning the first phase of opening up access to public telecommunications contracts

(84/550/EEC)

## THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

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

Having regard to the communication from the Commission to the Council on telecommunications of 18 May 1984,

Having regard to the growing importance of telecommunications for the economic development of the Community,

Whereas, with a view to attaining the basic Treaty objective of creating a common market, the Council Declaration of December 1976 invited the Commission to propose measures whereby supply contracts awarded by the bodies in Member States responsible for telecommunications services can become subject to effective competition at Community level, on a reciprocal basis;

Whereas at the present stage of development it seems appropriate to differentiate between terminal apparatus on the one hand and switching and transmission apparatus forming part of the public networks on the other hand;

Whereas the Commission and the Member States have taken steps to develop a common market for telecommunications equipment, in particular by contributing to the elimination of barriers to trade, by means of measures that should lead progressively to the definition of common type-approval specifications for terminal apparatus and mutual recognition by administrations of type approvals for such apparatus;

Whereas the harmonization programme now being undertaken by the telecommunications administrations within the framework of the European Confe-

rence of Postal and Telecommunications Administrations (CEPT) should open up increasing possibilities for cross-frontier procurement during the 1980s;

Whereas for the purposes of this recommendation:

— 'telecommunications administrations' means the administrations and recognized private operating agencies recognized by the Community and offering telecommunications services,

— 'terminal apparatus' means apparatus connected to the extremities of a public telecommunications network to send, process or receive information,

— 'conventional terminals' means telephone apparatus for main telephone sets, private automatic exchanges (PABX) for conventional telephony, ordinary teleprinters and modems,

— 'new telematic terminals' means terminal apparatus other than conventional terminals,

— 'switching and transmission apparatus' means any apparatus other than terminal apparatus that is purchased by telecommunications administrations for use in their networks;

Whereas the purpose of this recommendation is to develop a common market for telecommunications equipment; whereas it therefore aims to offer telecommunications administrations a wider choice and to meet the absolute necessity to establish or consolidate a European industrial potential in the technologies concerned;

Whereas it is therefore to the Community's advantage that the telecommunications administrations should, in the course of an experimental phase, gradually contribute to the creation of this common market by inviting tenders in the other Community countries on a non-discriminatory basis for at least a minimum proportion of their supply contracts,

HEREBY RECOMMENDS:

— that the Governments of the Member States ensure that the telecommunications administrations provide opportunities for undertakings established in the other Community countries, following their usual procedures and on a non-discriminatory basis, to tender for:

<sup>(1)</sup> OJ No C 144, 15. 6. 1981, p. 71.

<sup>(2)</sup> OJ No C 138, 9. 6. 1981, p. 26.



1. all new telematic terminals and all conventional terminals for which there are common type-approval specifications;
  2. their contracts for switching and transmission apparatus and conventional terminal apparatus for which there are no common type-approval specifications for at least 10 % in value of their annual orders,
- that the Governments of the Member States report to the Commission at the end of each six-month period, starting at the end of 1984, on the measures taken by the telecommunications administrations to implement this policy, their practical effects, the problems encountered and any further action needed. These data will be examined by the Commission with the Senior Officials Group on Telecommunications set up by the Council on 4 November 1983.
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## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 17 September 1990

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

(90/531/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

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

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

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

Whereas the European Council has drawn conclusions concerning the need to bring about a single internal market;

Whereas restrictions on the free movement of goods and on the freedom to provide services in respect of supply

contracts awarded in the water, energy, transport and telecommunications sectors are prohibited by the terms of Articles 30 and 59 of the Treaty;

Whereas Article 97 of the Euratom Treaty prohibits any restrictions based on nationality as regards companies under the jurisdiction of a Member State where they desire to participate in the construction of nuclear installations of a scientific or industrial nature in the Community;

Whereas these objectives also require the coordination of the procurement procedures applied by the entities operating in these sectors;

Whereas the White Paper on the completion of the internal market contains an action programme and a timetable for opening up public procurement markets in sectors which are currently excluded from Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts <sup>(4)</sup>, as last amended by Council Directive 89/440/EEC <sup>(5)</sup>, and Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts <sup>(6)</sup>, as last amended by Directive 88/295/EEC <sup>(7)</sup>;

<sup>(1)</sup> OJ No C 264, 16. 10. 1989, p. 22.

<sup>(2)</sup> OJ No C 158, 26. 6. 1989, p. 258 and OJ No C 175, 16. 7. 1990, p. 78.

<sup>(3)</sup> OJ No C 139, 5. 6. 1989, pp. 23 and 31.

<sup>(4)</sup> OJ No L 185, 16. 8. 1971, p. 5.

<sup>(5)</sup> OJ No L 210, 21. 7. 1989, p. 1.

<sup>(6)</sup> OJ No L 13, 15. 1. 1977, p. 1.

<sup>(7)</sup> OJ No L 127, 20. 5. 1988, p. 1.

Whereas among such excluded sectors are those concerning the provision of water, energy and transport services and, as far as Directive 77/62/EEC is concerned, the telecommunications sector;

Whereas the main reason for their exclusion was that entities providing such services are in some cases governed by public law, in others by private law;

Whereas the need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in these sectors requires that the entities to be covered must be identified on a different basis than by reference to their legal status;

Whereas, in the four sectors concerned, the procurement problems to be solved are of a similar nature, so permitting them to be addressed in one instrument;

Whereas, among the main reasons why entities operating in these sectors do not purchase on the basis of Community-wide competition is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the national authorities, concerning the supply to, provision or operation of, networks for providing the service concerned, the exploitation of a given geographical area for a particular purpose, the provision or operation of public telecommunications networks or the provision of public telecommunications services;

Whereas the other main reason for the absence of Community-wide competition in these areas results from various ways in which national authorities can influence the behaviour of these entities, including participations in their capital and representation in the entities' administrative, managerial or supervisory bodies;

Whereas this Directive should not extend to activities of those entities which either fall outside the sectors of water, energy and transport services or outside the telecommunications sector, or which fall within those sectors but nevertheless are directly exposed to competitive forces in markets to which entry is unrestricted;

Whereas it is appropriate that these entities apply common procurement procedures in respect of their activities relating to water; whereas certain entities have been covered up to now by the Directives 71/305/EEC and 77/62/EEC in respect of their activities in the field of hydraulic engineering projects, irrigation, land drainage or the disposal and treatment of sewage;

Whereas, however, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area it will be used;

Whereas, when specific conditions are fulfilled, exploitation of a geographical area with the aim of exploring for or extracting oil, gas, coal or other solid fuels may be made subject to alternative arrangements which will enable the same objective of opening up contracts to be achieved; whereas the Commission must ensure that these conditions are complied with by the Member States who implement these alternative arrangements;

Whereas the Commission has announced that it will propose measures to remove obstacles to cross-frontier exchanges of electricity by 1992; whereas procurement rules of the type proposed for supplies of goods would not make it possible to overcome existing obstacles to the purchases of energy and fuels in the energy sector; whereas, as a result, it is not appropriate to include such purchases in the scope of this Directive, although it should be borne in mind that this exemption will be re-examined by the Council on the basis of a Commission report and Commission proposals;

Whereas Regulations (EEC) No 3975/87<sup>(1)</sup> and (EEC) No 3976/87<sup>(2)</sup>, Directive 87/601/EEC<sup>(3)</sup> and Decision 87/602/EEC<sup>(4)</sup> are designed to introduce more competition between the entities offering air transport services to the public and it is therefore not appropriate for the time being to include such entities in the scope of this Directive although the situation ought to be reviewed at a later stage in the light of progress made as regards competition;

Whereas, in view of the competitive position of Community shipping, it would be inappropriate for the greater part of the contracts in this sector to be subject to detailed procedures; whereas the situation of shippers operating sea-going ferries should be kept under review; whereas certain inshore and river ferry services operated by public authorities should no longer be excluded from the scope of Directives 71/305/EEC and 77/62/EEC;

Whereas it is appropriate to facilitate compliance with provisions relating to activities not covered by this Directive;

Whereas this Directive should not apply to procurement contracts which are declared secret or may affect basic State security interests or are concluded according to other rules set up by existing international agreements or international organizations;

(1) OJ No L 374, 31. 12. 1987, p. 1.  
(2) OJ No L 374, 31. 12. 1987, p. 9.  
(3) OJ No L 374, 31. 12. 1987, p. 12.  
(4) OJ No L 374, 31. 12. 1987, p. 19.

Whereas the Community's or the Member States' existing international obligations must not be affected by the rules of this Directive;

Whereas products, works or services must be described by reference to European specifications; whereas, in order to ensure that a product, work or service fulfils the use for which it is intended by the contracting entity, such reference may be complemented by specifications which do not change the nature of the technical solution or solutions set out in the European specification;

Whereas the principles of equivalence and of mutual recognition of national standards, technical specifications and manufacturing methods are applicable in the field of application of this Directive;

Whereas, when the contracting entities define by common accord with tenderers the deadlines for receiving tenders, they shall comply with the principle of non-discrimination, and whereas, if there is no such agreement, it is necessary to lay down suitable provisions;

Whereas it could prove useful to provide for greater transparency as to the requirements regarding the protection and conditions of employment applicable in the Member State in which the works are to be carried out;

Whereas it is appropriate that national provisions for regional development requirements to be taken into consideration in the award of public works contracts should be made to conform to the objectives of the Community and be in keeping with the principles of the Treaty;

Whereas contracting entities must not be able to reject abnormally low tenders before having requested in writing explanations as to the constituent elements of the tender;

Whereas, within certain limits, preference should be given to an offer of Community origin where there are equivalent offers of third country origin;

Whereas this Directive should not prejudice the position of the Community in any current or future international negotiations;

Whereas, based on the results of such international negotiations, this Directive should be extendable to offers of third country origin, pursuant to a Council Decision;

Whereas the rules to be applied by the entities concerned should establish a framework for sound commercial practice and should leave a maximum of flexibility;

Whereas, as a counterpart for such flexibility and in the interest of mutual confidence, a minimum level of transparency must be ensured and appropriate methods adopted for monitoring the application of this Directive;

Whereas it is necessary to adapt Directives 71/305/EEC and 77/62/EEC to establish well-defined fields of application; whereas the scope of Directive 71/305/EEC should not be reduced, except as regards contracts in the water and telecommunications sectors; whereas the scope of Directive 77/62/EEC should not be reduced, except as regards certain contracts in the water sector; whereas the scope of Directives 71/305/EEC and 77/62/EEC should not, however, be extended to contracts awarded by carriers by land, air, sea, inshore or inland waterway which, although carrying out economic activities of an industrial or commercial nature, belong to the State administration; whereas, nevertheless, certain contracts awarded by carriers by land, air, sea, inshore or inland waterway which belong to the State administration and are carried out only for reasons of public service should be covered by those Directives;

Whereas this Directive should be re-examined in the light of experience;

Whereas the opening up of contracts, on 1 January 1993, in the sectors covered by this Directive might have an adverse effect upon the economy of the Kingdom of Spain; whereas the economies of the Hellenic Republic and the Portuguese Republic will have to sustain even greater efforts; whereas it is appropriate that these Member States be granted adequate additional periods to implement this Directive,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

For the purposes of this Directive:

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

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

- is established for the specific purpose of meeting needs in the general interest, not being of a commercial or industrial nature, and
  - has legal personality, and
  - is financed for the most part by the State, or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law;
2. 'public undertaking' shall mean any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:
- hold the major of the undertaking's subscribed capital, or
  - control the majority of the votes attaching to shares issued by the undertaking, or
  - can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body;
3. 'supply and works contracts' shall mean contracts for pecuniary interest concluded in writing between one of the contracting entities referred to in Article 2 and a supplier or contractor and which have as their object:
- (a) in the case of supply contracts, the purchase, lease, rental or hire-purchase, with or without options to buy, of products or of software services. These contracts may in addition cover siting and installation operations.
- Software services shall be covered by this definition where they are procured by a contracting entity exercising an activity defined in Article 2(2)(d) and are for use in the operation of a public telecommunications network or are intended to be used in a public telecommunications service as such;
- (b) in the case of works contracts, either the execution, or both the execution and design or the realization, by whatever means, of building or civil engineering activities referred to in Annex XI. These contracts may, in addition, cover supplies and services necessary for their execution.

Contracts which include the provision of services other than those referred to in (a) and (b) shall be regarded as supply contracts if the total value of supplies, including siting and installation operations necessary for the execution of the contract and of software services within the meaning of subparagraph (a), is greater than the value of the other services covered by the contract;

- 4. 'framework agreement' shall mean an agreement between one of the contracting entities defined in Article 2 and one or more suppliers or contractors, the purpose of which is to establish the terms, in particular with regard to the prices and, where appropriate, the quantity envisaged, governing the contracts to be awarded during a given period;
- 5. 'tenderer' shall mean a supplier or contractor who submits a tender and 'candidate' shall mean a person who has sought an invitation to take part in a restricted or negotiated procedure;
- 6. 'open, restricted and negotiated procedures' shall mean the award procedures applied by contracting entities whereby:
  - (a) in the case of open procedures, all interested suppliers or contractors may submit tenders;
  - (b) in the case of the restricted procedures, only candidates invited by the contracting entity may submit tenders;
  - (c) in the case of negotiated procedures, the contracting entity consults suppliers or contractors of its choice and negotiates the terms of the contract with one or more of them;
- 7. 'technical specifications' shall mean the technical requirements contained in particular in the tender documents, defining the characteristics of a set of works, material, product or supply, and enabling a piece of work, a material, a product or a supply to be objectively described in a manner such that it fulfils the use for which it is intended by the contracting entity. These technical prescriptions may include quality, performance, safety or dimensions, as well as requirements applicable to the material, product, or supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. In the case of works contracts, they may also include rules for the design and costing, the test, inspection and acceptance conditions for works and 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;

8. 'standard' shall mean a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory;

9. 'European standard' shall mean a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (CENELEC) as a 'European Standard (EN)' or 'Harmonization Document (HD)', according to the common rules of those organizations, or by the European Telecommunications Standards Institute (ETSI) according to its own rules as a 'European Telecommunications Standard (ETS)';

10. 'common technical specification' shall mean a technical specification drawn up in accordance with a procedure recognized by the Member States which a view to uniform application in all Member States and published in the *Official Journal of the European Communities*;

11. 'European technical approval' shall mean a favourable technical assessment of the fitness for use of a product for a particular purpose, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use, as provided for in Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products<sup>(1)</sup>. European technical approval shall be issued by an approval body designated for this purpose by the Member State;

12. 'European specification' shall mean a common technical specification, a European technical approval or a national standard implementing a European standard;

13. 'public telecommunications network' shall mean the public telecommunications infrastructure which enables to be conveyed between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means.

'Network termination point' shall mean all physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to, and efficient communication through, that public network;

14. 'public telecommunications services' shall mean telecommunications services the provision of which the Member States have specifically assigned notably to one or more telecommunications entities.

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

Article 2

1. This Directive shall apply to contracting entities which:

- (a) are public authorities or public undertakings and exercise one of the activities referred to in paragraph 2;
- (b) or, when they are not public authorities or public undertakings, have as one of their activities any of those referred to in paragraph 2 or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

2. Relevant activities for the purposes of this Directive shall be:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of:
  - (i) drinking water, or
  - (ii) electricity, or
  - (iii) gas or heat,
 or the supply of drinking water, electricity, gas or heat to such networks;
- (b) the exploitation of a geographical area for the purpose of:
  - (i) exploring for or extracting oil, gas, coal or other solid fuels, or
  - (ii) the provision of airport, maritime or inland port or other terminal facilities to carriers by air, sea or inland waterway;
- (c) the operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

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

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

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

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

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

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

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

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

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

6. The contracting entities listed in Annexes I to X shall fulfil the criteria set out above. In order to ensure that the

lists are as exhaustive as possible, Member States shall notify the Commission of amendments to their lists. The Commission shall revise Annexes I to X in accordance with the procedure in Article 32.

### Article 3

1. Member States may request the Commission to provide that exploitation of geographical areas for the purpose of exploring for, or extracting, oil, gas, coal or other solid fuels shall not be considered to be an activity defined in Article 2 (2) (b) (i) and that entities shall not be considered as operating under special or exclusive rights within the meaning of Article 2 (3) (b) by virtue of carrying on one or more of these activities, provided that all the following conditions are satisfied with respect to the relevant national provisions concerning such activities:

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

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

- (a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies and works contracts, in particular as regards the information that the entity makes available to undertakings concerning its procurement intentions;
- (b) communicates to the Commission, under conditions to be defined by the latter in accordance with Article 32, information relating to the award of contracts.

3. As regards individual concessions or authorizations granted before the date on which Member States apply this Directive in accordance with Article 37, paragraphs 1 (a), (b) and (c) shall not apply, provided that at that date other entities are free to seek authorization for the exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels, on a non-discriminatory basis and in the light of objective criteria. Paragraph 1 (d) shall not apply as regards conditions or requirements established, applied or amended before the date referred to above.

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

The Commission shall take a decision in accordance with the procedure laid down in Article 32 (4) to (7). It shall publish its decision, giving its reasons, in the *Official Journal of the European Communities*.

It shall forward to the Council each year a report on the implementation of this Article and review its application in the framework of the report provided for in Article 36.

#### Article 4

- 1. When awarding supply or works contracts, the contracting entities shall apply procedures which are adapted to the provisions of this Directive.
- 2. Contracting entities shall ensure that there is no discrimination between different suppliers or contractors.
- 3. In the context of provision of technical specifications to interested suppliers and contractors, of qualification and selection of suppliers or contractors and of award of contracts, contracting entities may impose requirements with a view to protecting the confidential nature of information which they make available.

4. The provisions of this Directive shall not limit the right of suppliers or contractors to require a contracting entity, in conformity with national law, to respect the confidential nature of information which they make available.

#### Article 5

- 1. Contracting entities may regard a framework agreement as a contract within the meaning of Article 1 (3) 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 15 (2) (i) when awarding contracts based on that agreement.
- 3. Where a framework agreement has not been awarded in accordance with this Directive, contracting entities may not avail themselves of Article 15 (2) (i).
- 4. Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.

#### Article 6

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



Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

Article 7

1. The provisions of this Directive shall not apply to contracts awarded for purposes of re-sale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.

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

Article 8

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

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

Article 9

- 1. This Directive shall not apply to:
  - (a) contracts which the contracting entities listed in Annex I award for the purchase of water;
  - (b) contracts which the contracting entities specified in Annexes II, III, IV and V award for the supply of energy or of fuels for the production of energy.
- 2. The Council shall re-examine the provisions of paragraph 1 when it has before it a report from the Commission together with appropriate proposals.

Article 10

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

Article 11

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

- 1. pursuant to an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering supplies or works intended for the joint implementation or exploitation of a project by the signatory States; every agreement shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Council Decision 71/306/EEC (1), as last amended by Decision 77/63/EEC (2), or, in the case of agreements governing contracts awarded by entities exercising an activity defined in Article 2 (2) (d), the Advisory Committee on Telecommunications Procurement referred to in Article 31;
- 2. to undertakings in a Member State or a third country in pursuance of an international agreement relating to the stationing of troops;
- 3. pursuant to the particular procedure of an international organization.

Article 12

- 1. This Directive shall apply to contracts whose estimated value, net of VAT, is not less than:
  - (a) ECU 400 000 in the case of supply contracts awarded by entities exercising an activity defined in Article 2 (2) (a), (b) and (c);
  - (b) ECU 600 000 in the case of supply contracts awarded by entities exercising an activity defined in Article 2 (2) (d);
  - (c) ECU 5 million in the case of works contracts.
- 2. In the case of supply contracts for lease, rental or hire-purchase, the basis for calculating the contract value shall be:

(1) OJ No L 185, 16. 8. 1971, p. 15.  
(2) OJ No L 13, 15. 1. 1977, p. 15.

- (a) in the case of fixed term contracts, where their term is 12 months or less, the estimated total value for the contract's duration, or, where their term exceeds 12 months, the contract's total value including the estimated residual value;
- (b) in the case of contracts for an indefinite period or in cases where there is doubt as to the duration of the contracts, the anticipated total instalments to be paid in the first four years.

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

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

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

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

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

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

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

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

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

TITLE II

Technical specifications and standards

Article 13

1. Contracting entities shall include the technical specifications in the general documents or the contract documents relating to each contract.

2. The technical specifications shall be defined by reference to European specifications where these exist.

3. In the absence of European specifications, the technical specifications should as far as possible be defined by reference to other standards having currency within the Community.

4. Contracting entities shall define such further requirements as are necessary to complement European specifications or other standards. In doing so, they shall prefer specifications that indicate performance requirements rather than design or description characteristics unless the contracting entity has objective reasons for considering that such specifications are inadequate for the purposes of the contract.

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

which are sufficiently precise and fully intelligible to all concerned.

6. Contracting entities may derogate from paragraph 2 if:

- (a) it is technically impossible to establish satisfactorily that a product conforms to the European specifications;
- (b) the application of paragraph 2 would prejudice the application of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment <sup>(1)</sup>, or of Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications <sup>(2)</sup>;
- (c) in the context of adapting existing practice to take account of European specifications, use of these specifications would oblige the contracting entity to acquire supplies incompatible with equipment already in use or would entail disproportionate cost or disproportionate technical difficulty. Contracting entities which have recourse to this derogation shall do so only as part of a clearly defined and recorded strategy with a view to a change-over to European specifications;
- (d) the relevant European specification is inappropriate for the particular application or does not take account of technical developments which have come about since its adoption. Contracting entities which have recourse to this derogation shall inform the appropriate standardizing organization, or any other body empowered to review the European specification, of the reasons why they consider the European specification to be inappropriate and shall request its revision;
- (e) the project is of a genuinely innovative nature for which use of European specifications would not be appropriate.

7. Notices published pursuant to Article 16 (1) (a) shall indicate any recourse to the derogations referred to in paragraph 6.

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

#### Article 14

1. Contracting entities shall make available on demand to suppliers or contractors interested in obtaining a contract

the technical specifications regularly referred to in their supply or works contracts or the technical specifications which they intend to apply to contracts covered by periodic information notices within the meaning of Article 17.

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

### TITLE III

#### Procedures for the award of contracts

##### Article 15

1. Contracting entities may choose any of the procedures described in Article 1 (6), provided, subject to paragraph 2, a call for competition has been made in accordance with Article 16.

2. Contracting entities may use a procedure without prior call for competition in the following cases:

- (a) in the absence of tenders or suitable tenders in response to a procedure with a prior call for competition, provided that the original contract conditions have not been substantially changed;
- (b) where a contract is purely for the purpose of research, experiment, study or development and not for the purpose of ensuring profit or of recovering research and development costs;
- (c) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract may be executed only by a particular supplier or contractor;
- (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 and restricted procedures cannot be adhered to;
- (e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

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

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

- (f) for additional works not included in the project initially awarded or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the execution of the contract, on condition that the award is made to the contractor executing the original contract:
  - when such additional works cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities,
  - or when such additional works, although separable from the execution of the original contract, are strictly necessary to its later stages;
- (g) in the case of works contracts, for new works consisting of the repetition of similar works entrusted to the contractor to which the same contracting entities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded after a call for competition. As soon as the first project is put up for tender, notice must be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting entities when they apply the provisions of Article 12;
- (h) for supplies quoted and purchased on a commodity market;
- (i) for contracts to be awarded on the basis of a framework agreement, provided that the condition referred to in Article 5 (2) is fulfilled;
- (j) for bargain purchases, where it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a very short space of time at a price considerably lower than normal market prices;
- (k) for purchases of goods under particularly advantageous conditions either from a supplier definitively winding up his business activities or from the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure under national laws or regulations.

Article 16

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

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

- (a) the notice must refer specifically to the supplies or works which will be the subject of the contract to be awarded;
- (b) the notice must indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a notice of a call for competition and invite interested undertakings to express their interest in writing;
- (c) contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

3. 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.

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

Article 17

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

- (a) in the case of supply contracts, the total of the contracts for each product area of which the estimated value, taking into account the provisions of Article 12, is equal to or greater than ECU 750 000, and which they intend to award over the following 12 months;
- (b) in the case of works contracts, the essential characteristics of the works contracts which the contracting entities intend to award, the estimated value of which is not less than the threshold laid down in Article 12 (1).

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

3. Where the notice is used as a means of calling for competition in accordance with Article 16 (1) (b), it must have been published not more than 12 months prior to the date on which the invitation referred to in Article 16 (2) (c) is sent. Moreover, the contracting entity shall meet the deadlines laid down in Article 20 (2).

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

#### Article 18

1. Contracting entities which have awarded a contract shall communicate to the Commission, within two months of the award of the contract and under conditions to be laid down by the Commission in accordance with the procedure laid down in Article 32, the results of the awarding procedure by means of a notice drawn up in accordance with Annex XV.

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

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

#### Article 19

1. The contracting entities must be able to supply proof of the date of dispatch of the notices referred to in Articles 15 to 18.

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

3. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In exceptional cases it shall endeavour to publish the notice referred to in Article 16 (1) (a) within five days in response to a request by the contracting entity and provided the notice has been sent to the Office by electronic mail, telex or telefax. Each edition of the *Official Journal of the European Communities* which contains one or more notices shall reproduce the model notice or notices on which the published notice or notices are based.

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

5. Contracts in respect of which a notice is published in the *Official Journal of the European Communities* pursuant to Article 16 (1) shall not be published in any other way before that notice has been dispatched to the

Office for Official Publications of the European Communities. Such publication shall not contain information other than that published in the *Official Journal of the European Communities*.

#### Article 20

1. In open procedures the time limit for the receipt of tenders shall be fixed by contracting entities at not less than 52 days from the date of dispatch of the notice. This time limit may be shortened to 36 days where contracting entities have published a notice in accordance with Article 17 (1).

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

- (a) the time limit for receipt of requests to participate, in response to a notice published in accordance with Article 16 (1) (a) or in response to an invitation from a contracting entity in accordance with Article 16 (2) (c), shall, as a general rule, be at least five weeks from the date of dispatch of the notice and shall in any case not be less than the time limit for publication laid down in Article 19 (3) plus 10 days;
- (b) the time limit for receipt of tenders may be fixed by mutual agreement between the contracting entity and the selected candidates, provided that all tenderers are given equal time to prepare and submit tenders;
- (c) where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least three weeks and shall in any case not be less than 10 days from the date of the invitation to tender; the time allowed shall be sufficiently long to take account in particular of the factors mentioned in Article 22 (3).

#### Article 21

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

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

#### Article 22

1. Provided they have been requested in good time, the contract documents and supporting documents must be sent to the suppliers or contractors by the contracting entities as a general rule within six days of receipt of the application.

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

3. Where tenders require the examination of voluminous documentation such as lengthy technical specifications, a visit to the site or an on-the-spot inspection of the documents supporting the contract documents, this shall be taken into account in fixing the appropriate time limits.

4. Contracting entities shall invite the selected candidates simultaneously and in writing. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:

- (a) the address from which any additional documents can be requested, the final date for such requests and the amount and methods of payment of any sum to be paid for such documents;
- (b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (c) a reference to any tender notice published;
- (d) an indication of any document to be annexed;
- (e) the criteria for the award of the contract if these are not given in the notice;
- (f) any other special condition for participation in the contract.

5. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex, telefax, telephone or any electronic means, they must be confirmed by letter dispatched before the expiry of the time limit referred to in Article 20 (1) or of the time limit set by contracting entities pursuant to Article 20 (2).

*Article 23*

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

2. A contracting entity which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the work is to be carried out. This shall be without prejudice to the application of the provisions of Article 27 (5) concerning the examination of abnormally low tenders.

TITLE IV

Qualification, selection and award

*Article 24*

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

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

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

4. Contracting entities shall inform applicants of their decision as to qualification within a reasonable period. If the decision will take longer than six months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying a longer period and of the date by which its application will be accepted or refused.

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

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

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

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

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

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

#### Article 25

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

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

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

#### Article 26

Groupings of suppliers or contractors shall be permitted to tender or negotiate. The conversion of such groupings into a specific legal form shall not be required in order to submit a tender or to negotiate, but the grouping selected may be required so to convert itself once it has been awarded the contract where such conversion is necessary for the proper performance of the contract.

#### Article 27

1. The criteria on which the contracting entities shall base the award of contracts shall be:

- (a) the most economically advantageous tender, involving various criteria depending on the contract in question, such as: delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance, commitments with regard to spare parts, security of supplies and price; or
- (b) the lowest price only.

2. In the case referred to in paragraph 1 (a), contracting entities shall state in the contract documents or in the tender notice all the criteria they intend to apply to the award, where possible in descending order of importance.

3. Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting entities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by the contracting entities. Contracting entities shall state in the contract documents the minimum specifications to be respected by the variants and any specific requirements for their presentation. Where variants are not permitted, they shall so indicate in the contract documents.

4. Contracting entities may not reject the presentation of a variant on the sole ground that it was drawn up on the basis of technical specifications defined with reference to European specifications or to national technical specifications recognized as complying with the essential requirements within the meaning of Directive 89/106/EEC.

5. If, for a given contract, tenders appear abnormally low in relation to the services, the contracting entity shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received. It may set a reasonable period within which to reply.

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

Contracting entities may reject tenders which are abnormally low owing to the receipt of State aid only if they have consulted the tenderer and if the tenderer has not been able to show that the aid in question has been notified

to the Commission pursuant to Article 93 (3) of the Treaty or has received the Commission's approval. Contracting entities which reject a tender under these circumstances shall inform the Commission thereof.

Article 28

1. Article 27 (1) shall not apply where a Member State bases the award of contracts on other criteria within the framework of rules in force at the time of adoption of this Directive whose aim is to give preference to certain tenderers provided the rules invoked are compatible with the Treaty.

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

Article 29

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

2. Any tender made for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods<sup>(1)</sup>, as last amended by Regulation (EEC) No 3860/87<sup>(2)</sup>, exceeds 50 % of the total value of the products constituting the tender. For the purposes of this Article, software used in the equipment of telecommunication networks shall be considered as products.

3. Subject to paragraph 4, where two or more tenders are equivalent in the light of the award criteria defined in Article 27, preference shall be given to the tenders which may not be rejected pursuant to paragraph 2. The prices of tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

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

5. For the purposes, in this Article, of determining the proportion referred to in paragraph 2 of products originating in third countries, 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.

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

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.

TITLE V

Final provisions

Article 30

1. The value in national currencies of the thresholds specified in Article 12 shall in principle be revised every two years with effect from the date provided for in Directive 77/62/EEC as far as the thresholds for supply and software service contracts are concerned and from the date provided for in Directive 71/305/EEC as far as the threshold for works contracts are concerned. The calculation of such value shall be based on the average daily values of those currencies expressed in ecus over the 24 months terminating on the last day of October preceding the revision with effect from 1 January. The values shall be published in the *Official Journal of the European Communities* at the beginning of November.

2. The method of calculation laid down in paragraph 1 shall be examined pursuant to the provisions of Directive 77/62/EEC.

Article 31

1. The Commission shall be assisted, as regards procurement by the contracting entities exercising an activity defined in Article 2 (2) (d), by a Committee of

(1) OJ No L 148, 28. 6. 1968, p. 1.  
(2) OJ No L 363, 23. 12. 1987, p. 30.



an advisory nature which shall be the Advisory Committee on Telecommunications Procurement. The Committee shall be composed of representatives of the Member States and chaired by a representative of the Commission.

2. The Commission shall consult this Committee on:

- (a) amendments to Annex X;
- (b) revision of the currency values of the thresholds;
- (c) the rules concerning contracts awarded under international agreements;
- (d) the review of the application of this Directive;
- (e) the procedures described in Article 32 (2) relating to notices and statistical accounts.

#### Article 32

1. Annexes I to X shall be revised in accordance with the procedure laid down in paragraphs 3 to 7 with a view to ensuring that they fulfil the criteria of Article 2.

2. The conditions for the presentation, dispatch, reception, translation, keeping and distribution of the notices referred to in Articles 16, 17 and 18 and of the statistical reports provided for in Article 34 shall be established, for the purposes of simplification, in accordance with the procedure laid down in paragraphs 3 to 7.

3. The revised Annexes and the conditions referred to in paragraphs 1 and 2 shall be published in the *Official Journal of the European Communities*.

4. The Commission shall be assisted by the Advisory Committee for Public Contracts and, in the case of the revision of Annex X, by the Advisory Committee on Telecommunications Procurement provided for in Article 31 of this Directive.

5. The Commission representative shall submit to the Committee a draft of the decisions to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

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

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

#### Article 33

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

- (a) the qualification and selection of contractors or suppliers and award of contracts;
- (b) recourse to derogations from the use of European specifications in accordance with Article 13 (6);
- (c) use of procedures without prior call for competition in accordance with Article 15 (2);
- (d) non-application of Titles II, III and IV in accordance with the derogations provided for in Title I.

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

#### Article 34

1. The Member States shall ensure that each year, in accordance with the arrangements to be laid down under the procedure provided for in Article 32 (3) to (7), the Commission receives a statistical report concerning the total value, broken down by Member State and each category of activity to which Annexes I to X refer, of the contracts awarded below the thresholds defined in Article 12 which would, if they were not below those thresholds, be covered by this Directive.

2. Arrangements shall be fixed in accordance with the procedure referred to in Article 32 to ensure that:

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

#### Article 35

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

2. This Directive shall not apply to:

- (a) contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (\*) or fulfilling the conditions in Article 6 (2) of the said Directive;

(b) supplies which are declared secret or when their delivery must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of that State's security so requires.

(\*) OJ No L 297, 29. 10. 1990, p. 1.'

2. Article 3 (4) and (5) of Directive 71/305/EEC is hereby replaced by the following:

'4. This Directive shall not apply to contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in water, energy, transport and telecommunications sectors (\*) or fulfilling the conditions in Article 6 (2) of the said Directive.

(\*) OJ No L 297, 29. 10. 1990, p. 1.'

Article 36

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

Article 37

1. Member States shall adopt the measures necessary to comply with this Directive by 1 July 1992. They shall forthwith inform the Commission thereof.
2. Member States may stipulate that the measures referred to in paragraph 1 shall apply only from 1 January 1993.

Nevertheless, in the case of the Kingdom of Spain, 1 January 1993 shall be replaced by 1 January 1996. As regards the Hellenic Republic and the Portuguese Republic, 1 January 1993 shall be replaced by 1 January 1998.

3. Council recommendation 84/550/EEC of 12 November 1984 concerning the first phase of opening up access to public telecommunications contracts <sup>(1)</sup> shall cease to have effect as from the date on which this Directive is applied by the Member States.

Article 38

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

Article 39

This Directive is addressed to the Member States.

Done at Brussels, 17 September 1990.

For the Council  
The President  
P. ROMITA

(1) OJ No L 298, 16. 11. 1984, p. 51.

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## ANNEX I

## PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER

## BELGIUM

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

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

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

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

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

## DENMARK

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

## GERMANY

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

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

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

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

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

## GREECE

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

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

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

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

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

## SPAIN

- Entities producing or distributing water pursuant to *Ley n° 7/1985 de 2 de abril de 1985. Reguladora de las Bases del Régimen local* and to *Decreto Real n° 781/1986 Texto Refundido Régimen local*.
- *Canal de Isabel II. Ley de la Comunidad Autónoma de Madrid de 20 de diciembre de 1984.*
- *Mancomunidad de los Canales de Taibilla, Ley de 27 de abril de 1946.*

## FRANCE

Entities producing or distributing water pursuant to the:

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

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

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

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

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

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

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

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

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

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

## IRELAND

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

## ITALY

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

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

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

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

## LUXEMBOURG

Local authorities distributing water.

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

## NETHERLANDS

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

**PORTUGAL**

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

Local authorities producing or distributing water.

**UNITED KINGDOM**

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

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

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

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## ANNEX II

## PRODUCTION, TRANSPORT OR DISTRIBUTION OF ELECTRICITY

## BELGIUM

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

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

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

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

## DENMARK

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

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

## GERMANY

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

## GREECE

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

## SPAIN

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

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

## FRANCE

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

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

*Compagnie nationale du Rhône.*

## IRELAND

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

## ITALY

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

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

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

## LUXEMBOURG

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

*Société électrique de l'Our (SEO).*

*Syndicat de Communes SIDOR.*

## NETHERLANDS

*Elektriciteitsproductie Oost-Nederland.*

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

*Elektriciteitsbedrijf Zuid-Holland (EZH)*

*Elektriciteitsproduktiemaatschappij Zuid-Nederland (EPZ).*

*Provinciale Zeeuwse Energie Maatschappij (PZEM).*

*Samenwerkende Elektriciteitsbedrijven (SEP).*

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

## PORTUGAL

*Electricidade de Portugal (EDP)*, set up pursuant to the *Decreto-Lei nº 502/76 de 30 de Junho de 1976.*

Entities distributing electricity pursuant to *artigo 1º do Decreto-Lei nº 344-B/82 de 1 de Setembro de 1982*, amended by *Decreto-Lei nº 297/86 de 19 de Setembro de 1986.* Entities producing electricity pursuant to *Decreto Lei nº 189/88 de 27 de Maio de 1988.*

Independant producers of electricity pursuant to *Decreto Lei nº 189/88 de 27 de Maio de 1988.*

*Empresa de Electricidade dos Açores — EDA, EP*, created pursuant to the *Decreto Regional nº 16/80 de 21 de Agosto de 1980.*

*Empresa de Electricidade da Madeira, EP*, created pursuant to the *Decreto-Lei nº 12/74 de 17 de Janeiro de 1974* and regionalized pursuant to the *Decreto-Lei nº 31/79 de 24 de Fevereiro de 1979*, *Decreto-Lei nº 91/79 de 19 de Abril de 1979.*

## UNITED KINGDOM

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

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

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

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



## ANNEX III

## TRANSPORT OR DISTRIBUTION OF GAS OR HEAT

## BELGIUM

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

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

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

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

## DENMARK

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

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

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

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

## GERMANY

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

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

## GREECE

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

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

## SPAIN

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

## FRANCE

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

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

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

*Compagnie française du méthane* transporting gas.

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

## IRELAND

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

*Dublin Corporation*, supplying heat to the public.

## ITALY

SNAM and SGM e Montedison transporting gas.

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

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

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

## LUXEMBOURG

*Société de transport de gaz SOTEG SA.*

*Gaswierk Esch-Uelzecht SA.*

*Service industriel de la commune de Dudelange.*

*Service industriel de la commune de Luxembourg.*

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

## NETHERLANDS

*NV Nederlandse Gasunie*

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

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

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

## PORTUGAL

*Petroquímica e Gás de Portugal, EP Decreto-Lei nº 346-A/88 de 29 de Setembro de 1988.*

## UNITED KINGDOM

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

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

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

## ANNEX IV

## EXPLORATION FOR AND EXTRACTION OF OIL OR GAS

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

## BELGIUM

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

*Arrêté royal du 15 novembre 1919.*

*Arrêté royal du 7 avril 1953.*

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

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

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

## DENMARK

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

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

## GERMANY

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

## GREECE

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

## SPAIN

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

## FRANCE

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

## IRELAND

*Continental Shelf Act 1960.*

*Petroleum and Other Minerals Development Act 1960.*

*Ireland Exclusive Licensing Terms 1975.*

*Revised Licensing Terms 1987.*

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

## ITALY

*Legge 10 febbraio 1953, n. 136.*

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

## LUXEMBOURG

NETHERLANDS

*Mijnwet nr. 285 van 21 april 1810.*

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

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

PORTUGAL

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

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

UNITED KINGDOM

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

*Petroleum (Production) Act (Northern Ireland) 1964.*



## ANNEX V

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

## BELGIUM

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

## DENMARK

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

## GERMANY

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

## GREECE

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

## SPAIN

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

## FRANCE

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

## IRELAND

*Bord na Mona.*

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

## ITALY

*Carbo Sulcis SpA*

## LUXEMBOURG

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## NETHERLANDS

—

## PORTUGAL

*Empresa Carbonífera do Douro.*

*Empresa Nacional de Urânio.*

## UNITED KINGDOM

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

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

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

## ANNEX VI

## CONTRACTING ENTITIES IN THE FIELD OF RAILWAY SERVICES

## BELGIUM

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

## DENMARK

*Danske Statsbaner (DSB)*

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

## GERMANY

*Deutsche Bundesbahn*

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

## GREECE

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

## SPAIN

*Red Nacional de Los Ferrocarriles Españoles.*

*Ferrocarriles de Via Estrecha (FEVE).*

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

*Eusko Trenbideak (Bilbao).*

*Ferrocarriles de la Generalitat Valenciana (FGV).*

## FRANCE

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

## IRELAND

*Iarnrod Éireann (Irish Rail).*

## ITALY

*Ferrovie dello Stato*

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

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

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

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

## LUXEMBOURG

*Chemins de fer luxembourgeois (CFL).*

NETHERLANDS

*Nederlandse Spoorwegen NV.*

PORTUGAL

*Caminhos de Ferro Portugueses.*

UNITED KINGDOM

*British Railways Boards.*

*Northern Ireland Railways.*



## ANNEX VII

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

## BELGIUM

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

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

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

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

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

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

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

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

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

## DENMARK

*Danske Statsbaner (DSB)*

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

## GERMANY

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

## GREECE

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

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

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

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

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

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

## SPAIN

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

*Corporación metropolitana de Madrid*.

*Corporación metropolitana de Barcelona*.

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

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

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

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

#### FRANCE

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

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

#### IRELAND

*Iarnrod Éireann (Irish Rail)*.

*Bus Éireann (Irish Bus)*.

*Bus Átha Cliath (Dublin Bus)*.

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

#### ITALY

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

Entities providing transport services to the public pursuant to Article 1, n. 4 or n. 15 of *Regio Decreto 15 ottobre 1925, n. 2578 — Approvazione del Testo unico della legge sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province*.

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

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

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

#### LUXEMBOURG

*Chemins de fer du Luxembourg (CFL)*.

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

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

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

#### NETHERLANDS

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

#### PORTUGAL

*Rodoviaria Nacional, EP*.

*Companhia Carris de ferro de Lisboa*.

*Metropolitano de Lisboa, EP*.

*Serviços de Transportes Colectivos do Porto*.

*Serviços Municipalizados de Transporte do Barreiro.*

*Serviços Municipalizados de Transporte de Aveiro.*

*Serviços Municipalizados de Transporte de Braga.*

*Serviços Municipalizados de Transporte de Coimbra.*

*Serviços Municipalizados de Transporte de Portalegre.*

**UNITED KINGDOM**

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

*Glasgow Underground.*

*Greater Manchester Rapid Transit Company.*

*Docklands Light Railway.*

*London Underground Ltd.*

*British Railways Board.*

*Tyne and Wear Metro.*

## ANNEX VIII

## CONTRACTING ENTITIES IN THE FIELD OF AIRPORT FACILITIES

## BELGIUM

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

## DENMARK

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

## GERMANY

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

## GREECE

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

International airports operating pursuant to presidential decree 647/1981.

## SPAIN

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

## FRANCE

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

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

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

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

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

## IRELAND

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

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

## ITALY

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

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

## LUXEMBOURG

*Aéroport de Findel*.

## NETHERLANDS

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

**PORTUGAL**

Airports managed by *Aerportos de Navegação Aérea (ANA)*, EP pursuant to *Decreto-Lei nº 246/79*.

*Aeroporto do Funchal* and *Aeroporto de Porto Santo*, regionalized pursuant to the *Decreto-Lei nº 284/81*.

**UNITED KINGDOM**

Airports managed by *British Airports Authority plc*.

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

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## ANNEX IX

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

## BELGIUM

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

*Port autonome de Liège.*

*Port autonome de Namur.*

*Port autonome de Charleroi.*

*Port de la ville de Gand.*

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

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

*Port de Nieuwport.*

*Port d'Ostende.*

## DENMARK

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

## GERMANY

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

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

## GREECE

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

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

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

## SPAIN

*Puerto de Huelva* set up pursuant to the *Decreto de 2 de octubre de 1969, n° 2380/69. Puertos y Faros. Otorga Régimen de Estatuto de Autonomía al Puerto de Huelva.*

*Puerto de Barcelona* set up pursuant to the *Decreto de 25 de agosto de 1978, n° 2407/78, Puertos y Faros. Otorga al de Barcelona Régimen de Estatuto de Autonomía.*

*Puerto de Bilbao* set up pursuant to the *Decreto de 25 de agosto de 1978, n° 2048/78. Puertos y Faros. Otorga al de Bilbao Régimen de Estatuto de Autonomía.*

*Puerto de Valencia* set up pursuant to the *Decreto de 25 de agosto de 1978, n° 2409/78. Puertos y Faros. Otorga al de Valencia Régimen de Estatuto de Autonomía.*

*Juntas de Puertos* operating pursuant to the *Lei 27/68 de 20 de junio de 1968; Puertos y Faros. Juntas de Puertos y Estatutos de Autonomía* and to the *Decreto de 9 de abril de 1970, n° 1350/70. Juntas de Puertos. Reglamento.*

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

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

## FRANCE

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

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

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

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

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

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

## IRELAND

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

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

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

## ITALY

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

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

## LUXEMBOURG

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

## NETHERLANDS

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

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

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

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

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

## PORTUGAL

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

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

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

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

## UNITED KINGDOM

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

ANNEX X

OPERATION OF TELECOMMUNICATIONS NETWORKS OR PROVISION OF TELECOMMUNICATIONS SERVICES

BELGIUM

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

DENMARK

*Kjøbenhavns Telefon Aktieselskab.*

*Jydsk Telefon.*

*Fyns Telefon.*

*Statens Teletjeneste.*

*Tele Sønderjylland.*

GERMANY

*Deutsche Bundespost — Telekom.*

*Mannesmann — Mobilfunk GmbH.*

GREECE

*OTE/Hellenic Telecommunications Organization.*

SPAIN

*Compañía Telefónica Nacional de España.*

FRANCE

*Direction générale des télécommunications.*

*Transpac.*

*Telecom service mobile.*

*Société française de radiotéléphone.*

IRELAND

*Telecom Éireann.*

ITALY

*Amministrazione delle poste e delle telecomunicazioni.*

*Azienda di stato per i servizi telefonici.*

*Società italiana per l'esercizio telefonico SpA.*

*Italcable.*

*Telespazio SpA.*

LUXEMBOURG

*Administration des postes et télécommunications.*

NETHERLANDS

*Koninklijke PTT Nederland NV and subsidiaries (1).*

(1) Except PTT Post BV.



**PORTUGAL.**

*Telefones de Lisboa e Porto, SA.*

*Companhia Portuguesa Rádio Marconi.*

*Correios e Telecomunicações de Portugal.*

**UNITED KINGDOM**

*British Telecommunications plc.*

*Mercury Communications Ltd.*

*City of Kingston upon Hull.*

*Racal Vodafone.*

*Telecoms Securicor Cellular Radio Ltd (Cellnet).*

## ANNEX VI

## LIST OF PROFESSIONAL ACTIVITIES AS SET OUT IN THE GENERAL INDUSTRIAL CLASSIFICATION OF ECONOMIC ACTIVITIES WITHIN THE EUROPEAN COMMUNITIES

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

## ANNEX XII

## A. OPEN PROCEDURES

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Nature of the contract (supply or works; where appropriate, state if it is a framework agreement).
3. (a) Place of delivery, or site.  
(b) Nature and quantity of the goods to be supplied;  
or  
the nature and extent of the services to be provided and general nature of the work.  
(c) Indication of whether the suppliers can tender for some and/or all of the goods required.  
If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots.  
(d) Authorization to submit variants.  
(e) For works contracts:  
information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Derogation from the use of European specifications, in accordance with Article 13 (6).
5. Time limits for delivery or completion.
6. (a) Name and address of the service 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.
7. (a) The final date for receipt of tenders.  
(b) The address to which they must be sent.  
(c) The language or languages in which they must be drawn up.
8. (a) Where appropriate, the persons authorized to be present at the opening of tenders.  
(b) The date, hour and place of such opening.
9. Where appropriate, any deposits and guarantees required.
10. Main terms concerning financing and payment and/or references to the provisions in which are contained.
11. Where appropriate, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded.
12. Minimum economic and technical conditions required of the supplier or contractor to whom the contract is awarded.
13. Period during which the tenderer is bound to keep open his tender.
14. The criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.

- 
15. Other information.
  16. Where appropriate, the reference to publication of the periodic information notice in the Official Journal to which the contract refers.
  17. Date of dispatch of the notice by the contacting entities.
  18. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

**B. RESTRICTED PROCEDURES**

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Nature of the contract (supply or works; where appropriate, state if it is a framework agreement).
3. (a) Place of delivery, or site.  
(b) Nature and quantity of the goods to be supplied;  
or  
the nature and extent of the services to be provided and general nature of the work.  
(c) Indication of whether the suppliers can tender for some and/or all of the goods required.  
If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots.  
(d) Authorization to submit variants.  
(e) For works contracts:  
information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Derogation from the use of European specifications, in accordance with Article 13 (6).
5. Time limits for delivery or completion.
6. Where appropriate, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded.
7. (a) The final date for receipt of requests to participate.  
(b) The address to which they must be sent.  
(c) The language or languages in which they must be drawn up.
8. The final date for dispatch of invitations to tender.
9. Where appropriate, any deposits and guarantees required.
10. Main terms concerning financing and payment and/or references to the texts in which these are contained.
11. Information concerning the supplier's or contractor's position and minimum economic and technical conditions required of him.
12. The criteria for the award of the contract where they are not mentioned in the invitation to tender.
13. Other information.
14. Where appropriate, the reference to publication of the periodic information notice in the Official Journal to which the contract refers.
15. Date of dispatch of the notice by the contracting entities.
16. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

## C. NEGOTIATED PROCEDURES

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Nature of the contract (supply or works; where appropriate, state if it is a framework agreement).
3. (a) Place of delivery, or site.  
(b) Nature and quantity of the goods to be supplied;  
or  
the nature and extent of the services to be provided and general nature of the work.  
(c) Indication of whether the suppliers can tender for some and/or all of the goods required.  
If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots.  
(d) For works contracts:  
information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Derogation from the use of European specifications, in accordance with Article 13 (6).
5. Time limit for delivery or completion.
6. Where appropriate, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded.
7. (a) The final date for receipt of tenders.  
(b) The address to which they must be sent.  
(c) The language or languages in which they must be drawn up.
8. Where appropriate, any deposits and guarantees required.
9. Main terms concerning financing and payment and/or references to the texts in which these are contained.
10. Information concerning the supplier's or contractor's position and minimum economic and technical conditions required of him.
11. Where appropriate, the names and addresses of suppliers or contractors already selected by the contracting entity.
12. Where applicable, date(s) of previous publications in the *Official Journal of the European Communities*.
13. Other information.
14. Where appropriate, the reference to publication of the periodic information notice in the Official Journal to which the contract refers.
15. Date of dispatch of the notice by the contracting entities.
16. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

## ANNEX XIII

## NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Purpose of the qualification system.
3. Address where the rules concerning the qualification system can be obtained (if different from the address mentioned under 1.).
4. Where applicable, duration of the qualification system.

## ANNEX XIV

## PERIODIC INFORMATION NOTICE

A. *For supply contracts:*

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity or the service from which additional information may be obtained.
2. Nature and quantity or value of the services or products to be supplied.
3. (a) Estimated date of the commencement of the procedures of the award of the contract(s) (if known).  
(b) Type of award procedure to be used.
4. Other information (for example, indicate if a call for competition will be published later).
5. Date of dispatch of the notice by the contracting entities.
6. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

B. *For works contracts*

1. The name, address, telegraphic address, telephone, telex and telecopier number of the contracting entity.
2. (a) The site.  
(b) The nature and extent of the services to be provided, the main characteristics of the work or of the lots by reference to the work.  
(c) An estimate of the cost of the service to be provided.
3. (a) Type of award procedure to be used.  
(b) The date scheduled for initiating the award procedures in respect of the contract or contracts.  
(c) The date scheduled for the start of the work.  
(d) Planned time table for completion of the work.
4. Terms of financing of the work and of price revision.
5. Other information (for example, indicate if a call for competition will be published later).
6. Date of dispatch of the notice by the contracting entities.
7. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

## ANNEX XV

## NOTICE ON CONTRACTS AWARDED

I. INFORMATION FOR PUBLICATION IN THE *OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES*

1. Name and address of the contracting entity.
2. Nature of the contract (supply or works; where appropriate, state if it is a framework agreement).
3. At least a summary indication of the nature of the products, works or services provided.
4. (a) Form of the call for competition (notice on the existence of a qualification procedure; periodic information notice; call for tenders).  
(b) Reference of publication of the notice in the *Official Journal of the European Communities*.  
(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 15 (2).
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 under Article 15 (2) (j).
9. Name and address of successful supplier(s) or contractor(s).
10. State, where appropriate, whether the contract has been, or may be, sub-contracted.
11. Optional information:
  - value and share of the contract which may be sub-contracted to third parties,
  - award criteria,
  - price paid (or range of prices).

## II. INFORMATION NOT INTENDED FOR PUBLICATION

12. Number of contracts awarded (where an award has been split between more than one supplier).
13. Value of each contract awarded.
14. Country of origin of the product or service (EEC origin or non-Community origin; if the latter, broken down by third country).
15. Was recourse made to the exceptions to the use of European specifications provided for under Article 13 (6). If so, which?
16. Which award criteria was used (most economically advantageous: lowest price: criteria permitted under Article 28)?
17. Was the contract awarded to a bidder who submitted a variant, in accordance with Article 27 (3)?
18. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 27 (5)?
19. Date of transmission of the notice by the contracting entities.



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**STATEMENT****concerning Article 15 of Directive 90/531/EEC**

*The Council and the Commission state that in open and restricted procedures all negotiation with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out; however, discussions with candidates or tenderers may be held but only for the purpose of clarifying or supplementing the content of their tenders or the requirements of the contracting entities and provided this does not involve discrimination.*

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**REGIONAL AND SOCIAL  
ASPECTS**



## II

*(Preparatory Acts)*

## COMMISSION

## PUBLIC PROCUREMENT

Regional and social aspects

*COM(89) 400 final**(Commission communication of 22 September 1989)**(89/C 311/07)*

## I. INTRODUCTION

**The problem**

1. The liberalization of public procurement is part of the programme for the progressive establishment of the internal market in the period up to 31 December 1992, provided for under Article 8a of the EEC Treaty.

2. Article 8c provides that the Commission, in making its proposals, shall take into account the extent of the effort which the establishment of the internal market will require of economies showing differences in development, and that it may propose appropriate provisions.

3. Article 130(a) and (b) further lays down that the internal market shall take into account the strengthening of economic and social cohesion and shall contribute to their achievement.

4. This makes clear the obligation for the Commission to consider, both for the period during the establishment of the internal market and for the period after its completion, measures which would reinforce the Community's economic and social cohesion.

5. The concern with implementing the internal market in public procurement in a way that takes fully into account the needs of economic and social cohesion has been a consistent concern of the European Parliament. In its consideration of the different proposals which form the legislative programme on public procurement, the Parliament has adopted a series of amendments with this end in view. In particular, the Parliament has been concerned about measures intended to reduce regional disparities and to promote job creation in the least advantaged areas and in areas of industrial decline. However, its concerns have ranged wider, including actions to help in the fight against long-term unem-

ployment and in the insertion of young people in work; the respect for the appropriate provisions concerned with employment protection and working conditions; and sub-contracting, in the execution of public contracts.

6. The problem of regional preferences has also been discussed in Council on several occasions in connection with the modernization of the supplies and works Directives. A number of Member States have insisted on the need to ensure that preferences do not interfere with the proper functioning of the internal market.

7. The present communication represents the Commission's response to the requirements of the Treaty and the concerns expressed by the European Parliament and Council.

## II. Economic effects of opening up public procurement

8. The economic importance of public procurement derives in the first place from its scale. Some 15 % (ECU 592 000 million at 1989 prices) <sup>(1)</sup> of Community GDP is devoted to purchasing by the public sector and its agencies and of this some 7 to 10 % <sup>(1)</sup> (ECU 260 000 to 380 000 million) takes the form of contracts subject to formal purchasing procedures (the rest is accounted for by rents, heating, electricity, telephone, post, insurance and similar charges).

9. It is evident that the achievement of efficiency in public procurement is of major importance to the economic health of the Community.

<sup>(1)</sup> See European Economy: No 35 March 1988 para 54, para 3.4 and Tables 3.4.1 and 3.4.2: 1989 values assume no change in the ratio of public procurement to GDP as between 1985 and 1989: 1989 prices estimated on basis of implied deflators of private consumption given in Table 6: EEC Economic Forecasts, January 1989.

10. This requires both the fullest possible participation of all potential suppliers in the market place and the allocation of contracts in a way which ensures that the goods, services and works required by bodies in the public domain are obtained under the most favourable conditions.

11. Public procurement policy as expressed in the Directives on the procurement of supplies and public works and in the proposal for directives on the excluded sectors aims to enhance the efficiency of public procurement by organizing markets in a transparent manner that ensures that market information is available to would-be suppliers and contractors and facilitates their participation.

12. The efficient organization of public procurement in this way will have a significant positive economic effect. The estimates developed in the study of the cost of non-Europe show that the achievement of the internal market in public procurement will give rise to economies rising to as much as 0,5 % of Community GDP over the medium to long term.

These estimates assume:

	<i>(ECU '000 million)</i> <i>(1989 prices)</i>
(a) Savings to public procurement through selection of most competitive suppliers:	5,5
(b) Savings due to increased competition leading to alignment of domestic and external suppliers:	2,8
(c) Savings due to rationalization of production structures:	<u>8,9</u>
Total:	17,2 <sup>(1)</sup>

Additional savings in the defence sector would bring the total to over ECU 22 000 billion, at 1989 prices. The macro-economic consequences of such savings could, of themselves, provide the room for manoeuvre for a substantial enhancement to aggregate demand with consequential reinforcement of economic activity and employment. The cost of non-European study estimates the net gain in employment to approach 400 000 <sup>(2)</sup> if this room for manoeuvre is used appropriately.

13. At the same time it is clear that the direction of such a major share of economic resources constitutes a powerful economic instrument. The allocation of public

sector contracts can have an important, indeed determinant, influence on the economic strength and development of particular firms, sectors and regions.

14. The importance of this instrument is further enhanced by the uneven distribution of public procurement across different economic sectors. As was explained in a previous communication <sup>(1)</sup>, some 85 % of public procurement of supplies is concentrated on one third of the industrial sectors, including 28,6 % in building and construction, 13,7 % in the three major energy sectors (coal, refined petroleum products, electrical power), 8,3 % in transport equipment other than motor vehicles, 4,4 % in electrical goods, 3,2 % in chemical goods.

15. Many high technology markets including telecommunication and medical equipment depend heavily on public procurement. In information technology, generally, the public share amounts to some 60 % of the total market. The share of public procurement in building and civil engineering is around 30 %. The involvement of major equipment suppliers, particularly in the supply of the telecommunications, transport, energy and water sectors, means that the choice of one supplier rather than another, the rationalization of a sector, dramatic changes in technology or swings in the overall volume of demand for supplies can have a major impact on a regional or local economy and on the situation of its workforce.

16. It is implicit in the programme for the establishment of the single market in public procurement that removal of internal barriers will give rise to changes in the distribution of contracts and therefore to more efficient procurement. The overall benefits of this process have been described above. It is inevitable that such changes will imply rationalization; this is indeed the source of much of the saving referred to above. Although the studies already undertaken by the Commission show some of the scope for such rationalization, its regional, industrial and social consequences are not predictable <sup>(1)</sup> in detail at this stage and are, in any case, tied up with other major economic developments, with the interpenetration of other Community measures, such as freedom of establishment and common technical rules and with developments in public procurement itself, for example, in the field of sub-contracting.

17. In other words, while the overall consequences for economic demand and employment will be positive, the distribution of the pain and the gain between firms, groups and regions will only become apparent with time.

<sup>(1)</sup> op. cit. p. 57: Table 3.4.4 with 1989 prices estimated on the same basis.

<sup>(2)</sup> op. cit. (v. footnote p. 160).

<sup>(1)</sup> COM(88) 376.

18. The Commission is, however, committed to continuing the study of the regional effects of opening up public procurement in the excluded sectors (see paragraph 25).

19. It has also initiated a more general study on the threats and opportunities posed by the internal Market in the peripheral Member States. Results so far suggest that negative regional effects of opening-up public procurement are only likely to be significant in sectors such as construction, pharmaceuticals and textiles. Increased competition may not necessarily threaten domestic markets. There may, however, be a risk that the opportunities created by the opening-up of public procurement will not be seized, because of the historic legacy of protection, technological backwardness, low productivity, failure to organize markets, and poor exporting skills.

20. In summary, the completion of the internal market in public procurement affects economic and social cohesion by:

- increasing efficiency, and so reducing the burden on the public purse and enhancing macro-economic growth,
- promoting re-structuring and adjustment,
- creating the opportunity for firms, sectors and regions to exploit their particular skills and advantages to their economic benefit,
- influencing the direction in which many firms, sectors and regions develop, which may pose problems for economically weaker areas.

21. The economic and social effects of public procurement described above give rise to three distinct areas of policy development. These concern:

- policies for efficient procurement. These are the subject of the various proposals relating to public procurement which are to be found in the internal market White Paper<sup>(1)</sup>. They are not further discussed here,
- policies to facilitate restructuring and adjustment arising from the liberalization of public procurement and its subsequent development; these are briefly discussed in paragraphs 22 to 25 below,
- policies to ensure the full exploitation and development of particular resources, particularly relating to regions, small businesses and particular groups of individuals. These are discussed under four headings in chapter IV below.

### III. Restructuring and adjustment arising from liberalization of public procurement

22. Restructuring and adjustment is inevitable as a result of the achievement of the internal market in public procurement. Indeed, as was pointed out in the earlier communication referred to above, restructuring and adjustment of a number of major sectors appears to be inevitable quite independently of the changes in public procurement associated with the achievement of the internal market. The communication of 11 October 1988 predicted significant structural adjustment in the railway equipment industry, the heavy electrical industry and the telecommunications industry. Since then, important regrouping within each of these industries has indeed taken place.

23. The earlier communication also pointed out that, while some information was available as to the existing regional distribution of employment in the sectors concerned, it was impossible to predict, at this stage, the detailed impact of restructuring. This would depend, quite apart from the development of the general economic situation, on the speed and success with which individual firms moved to exploit new opportunities or to face new competitive pressures. Even if some of the firms at risk could be identified, the distribution of their productive plant means that the regional incidence of restructuring will depend on investment, development and rationalization plans adopted within those firms. For example, some 11 major production sites were identified for fossil boiler production, nine for steam turbine generators and 17 for transformers. The regional consequences of restructuring of the industries concerned will clearly depend on which, if any, of these sites expand or contract their employment.

24. To describe the difficulties in predicting problems is neither to deny that such problems may arise nor to resolve them. Even if the liberalization of public procurement produces an overall improvement in activity and employment and if the measures taken under the Structural Funds or as described elsewhere in this communication ensure full participation of the regions in these benefits, there will be a need for constant vigilance to ensure that the real readjustment problems, which are, in the end, experienced by individuals, are resolved satisfactorily.

25. The Commission has established a continuing study to identify as early as possible any emerging problems. If particular problems do emerge, appropriate social and regional policy measures may then be taken by the Community under the Structural Funds, and through recourse to the European Investment Bank and to other financial instruments.

<sup>(1)</sup> COM(85) 310.



#### IV. Fuller exploitation and development of economic resources

26. Regional enterprises and small businesses may not have the access to opportunities for specialization, to capital and to know-how which often reinforce the position of the centrally located areas of greatest economic advantage. Low wages in the peripheral areas do not necessarily compensate for higher productivity, better infrastructure serving industry and a more sophisticated approach to marketing and product development. With the completion of the internal market, regional enterprises are further being challenged to reach the average European performance level at a time when European standards of quality and efficiency in traditional labour-intensive industries are evolving rapidly.

27. Ignoring their vulnerability not only risks exposing regional enterprises to competition for which they are ill-prepared, organizationally, financially and technically. It also risks blocking the process of completing the internal market by encouraging apprehensive and defensive attitudes. Subsequent sections of this chapter examine ways in which the Community could respond to the specific challenges posed in the fields of employment, SME and regional policy.

##### IV.1. Preference schemes in public procurement

28. Preference schemes in public procurement are operated by certain Member States in favour of less-favoured regions, with the object of influencing the spatial distribution of economic activities. They constitute an addition to the classic instruments of regional development and generally aim at compensating for the handicaps faced by firms due to their location in the less-favoured and peripheral regions. In the case of the Federal Republic of Germany, the aim is to compensate for the economic disadvantages caused by the economic division of Germany. As a way of compensating for these handicaps, preference schemes in public procurement are policies which discriminate, by reserving markets or in terms of price or other conditions, in favour of suppliers or contractors of poor regions.

29. In general, it may be said that preferences in the area of supplies procurement have tended to be used to favour longer term regional development aims whereas, in the area of public works procurement, much more importance has been attached to the use of work contracts to provide an immediate response to employment problems.

30. The adoption of the Directives on public procurement of works (1971) and supplies (1976) led to the abolition of a number of such schemes and practices. Regional preferences have continued to operate in the Federal Republic of Germany, Greece, Italy and the United Kingdom. An outline of these schemes is given in the Annex hereto.

31. Such schemes raise a number of questions including their effectiveness as instruments of regional policy; their compatibility with the economic objectives of Community policy on public procurement; and not least their compatibility with Community law and the Community's international obligations.

32. As regards their effectiveness as instruments of regional policy, the following observations may be made on the economic characteristics of the different schemes.

33. The preference scheme in favour of the eastern frontier areas of Germany including Berlin appears to have been of limited economic significance in recent years. In 1986, the last year for which figures are available, the regions in question contained approximately 15 % of the population and enterprises located therein accounted for approximately 15,4 % of federal public procurement. The value of the contracts to which the preferences were in fact applied amounted to slightly more than ECU 142 million, that is 0,25 % of total federal public procurement. The cost to the federal budget was approximately ECU 2 million, that is, less than 1 % of the total expenditure on aid to the regions in question.

34. Although the preference scheme operated in the United Kingdom applied to 18 % of the country by population share, in 1981, the last year for which figures are available, enterprises located in those regions accounted for only 3,3 % of central government procurement. The preferences were actually applied to contracts representing only 0,02 % of total public procurement, the value of those contracts amounting to ECU 10,8 million. The cost to the public purse can be estimated to have been in the region of ECU 17 000. This very low figure refers to the cost of the 5,0 % price preference regime in Northern Ireland, the other scheme requiring preferred firms to be price competitive with the lowest bidder.

35. In neither the British nor the German case is there reliable evidence of the preference schemes having made a significant contribution to the development of the regions concerned. At the same time, there is no evidence either of them giving rise to significant distortions to trade whether within those countries or between them and other Member States.

36. The Greek regime applies to over 90 % of the national territory in which regions live 65 % of the population. Detailed information on the preferred regions' share of public procurement, the proportion and value of public contracts to which preferences are actually applied and the budgetary cost of the regime have not been made available to the Commission.

However, it is reported that due to the absence of competitive suppliers in any Greek region, approximately 40 % to 45 % of public procurement is represented by imports, a figure which is far above the Community average.

37. The aim of the scheme operated in Greece is to avoid too great a concentration of economic activities in Greater Athens, already a zone of high congestion, and to favour the development of other regions. However, while this scheme and other regional policy measures may have had some positive effects, they have not been sufficient to reverse the trend towards the concentration of modern, industrial sectors in Attica, with traditional activities located in the regions and islands.

38. In Italy, the schemes work by reserving a high percentage of contracts to firms in the regions concerned. Those regions contain approximately 40 % of the Italian population. Under the national regime, there is a basic reservation of 30 % of procurement which rises to 50 % in the case of supplies for public works financed by special intervention funds. Moreover, the reservation can be even greater because when in a given case it is not fully applied, the unused portion must be added to the future reserved allocation of the purchasing body. No public figures are available, but a recent submission to the Commission has estimated the amount of public procurement to which the reservations apply to be in the region of ECU 16 to 26 billion a year.

39. No compelling evidence exists as to whether the Italian preference regime has contributed significantly to the long-term economic development of the regions in question. In recent years, however, the regime has given rise to objections from firms situated in other parts of Italy and other Member States on the ground that it is an unacceptable restriction on their activities in those regions.

40. Historically, it may be argued that preferences may have contributed to a more balanced functioning of the economy, by helping to limit the widening of regional disparities through guaranteeing certain markets. They may also, in certain cases, have served more than a positive function, in providing the minimum of financial security necessary to the development of new technically innovative industries. There is no compelling evidence that, in general, the existing schemes have had the desired effects of long-term economic development. The absence of evidence, one way or the other, concerning the effect of these schemes is no doubt due in large part to the difficulty of analysing the effects of one policy instrument when so many other factors are present which influence the long-term economic development of the regions in question. In the case of the

German and British schemes their effects in general appear to be rather limited. The absence of sufficient data on the Greek regime make its impact hard to assess. On the other hand, the Italian regimes are significantly different both in their mechanisms and orders of magnitude. There is little doubt that contracts have been diverted to enterprises of the regions concerned to the point where the resulting distortions are causing problems not only in terms of the restrictive effects on imports from other Member States but also as regards the sales and development of firms in other Italian regions.

41. Indeed, in so far as the existing regional preference schemes privilege enterprises from particular regions to the exclusion of all others, they all pose problems from the point of view of their compatibility with the fundamental aims of Community procurement policy and indeed the Treaty itself. They do not operate in a way which ensures that similarly situated enterprises are treated equally. They may have as their effect directly to deprive particular suppliers, situated outside a given region, including those in regions at a similar level of economic disadvantage, of the award of a contract to the benefit of others, situated within that region. Even if they are not very successful at doing so, this appears to constitute an infringement of the EEC Treaty, notably its Articles 30 and 59. Article 92, notably its paragraphs 2 (c) and 3 (a), might appear to provide a framework within which schemes which operate as State aids could be accommodated. However, even if some schemes could be considered to be State aids within the meaning of the Treaty, which is itself an arguable matter, this does not resolve the overriding problem of the infringement of Article 30 and 59 for which a solution would remain to be found.

42. The Court of Justice has been requested by several Italian courts to give preliminary rulings concerning the compatibility with Community law of the preference system operated in Italy. The Commission in its written intervention has taken the view that the Italian system is incompatible with Article 30. The Court has not yet delivered its ruling. The condemnation of the Italian regime would of course have implications for the regimes of the other Member States, exposing such regimes to legal attack at national level.

#### IV.2. Non-discriminatory contract conditions

43. A further possible means of favouring the full exploitation of available economic resources arises from the use of non-discriminatory contract conditions.

44. In a recent case (31/87, Gebroeders Beentjes B.V. and the Netherlands) the Court of Justice was requested to rule on the compatibility with Community law of attaching a condition to the award of a public works contract under which the contractor was required to

engage a given number of long-term unemployed registered with a regional employment office. The Court held that such a condition is compatible with the public works Directive (71/305). It was nevertheless subject to the Treaty, particularly those provisions on freedom to provide services, freedom of establishment and non-discrimination on grounds of nationality. The Court referred the affair back to the national tribunal to establish whether or not the particular clause was, in the light of all the circumstances, compatible with the Treaty.

45. This judgement raises a number of interesting questions:

- could such conditions legitimately be applied to objectives other than the reduction of long-term unemployment; and if so, to what?
- within what limits can such conditions be applied?
- does the use of such conditions offer a useful policy instrument?

(a) *Legitimate objectives of contract conditions*

46. Although the Beentjes case concerned long-term unemployment, there is no reason to suppose that objectives other than the reduction of long-term unemployment would fall outside the area of liberty left to the Member States by Directive 71/305. Other categories of unemployment, for example, of the young, would appear to be an equally legitimate concern. The same probably applies to a broad range of social matters including, for example, professional training, health and safety, labour relations and the suppression of racial, religious discrimination or discrimination on the grounds of sex. In these areas too, the procurement Directives neither forbid nor expressly authorize Member States to regulate the matter. Accordingly, they and procuring entities are free under Community law to pursue such objectives, provided they respect the Directives' provisions and the constraints of the Treaty. It also follows that Member States are free under Community law to restrict the capacity of procuring entities to pursue objectives of this kind.

(b) *Limits to the application of contract conditions*

47. The Court drew a distinction between the contractual condition concerning long-term unemployment on the one hand and the criteria for selection of firms and the criteria for the award of a contract on the other. The condition was not relevant to an assessment of the bidders' economic, financial or

technical capacity to carry out the work. Nor did it form part of the criteria applied by the purchasing authority to decide to whom to award the contract. It was simply an obligation which the firm securing the contract would have to accept.

48. However, in some cases, conditions of the contract will concern matters also relevant to the selection criteria or to the award criteria. For example, making the extent to which tenderers would employ the long-term unemployed into one of the criteria for identifying the most economically advantageous tender, even if the obligation to employ the number of long-term unemployed indicated in his offer was expressed as a contract condition, would raise difficulties with Article 29 of the Directive on public works. The 'various criteria' given as examples in that Directive all relate to matters which affect the economic benefit to the contracting entity of the offer in question in the context of the subject matter of a particular works contract. A tenderer's capacity to employ the long-term unemployed does not normally have any impact on the economic benefit of the contract to the procuring entity. Economic benefits which may result, for example, through the reduction of welfare payments or an increase in spending by those employed, are indirect and quite extraneous to the subject matter of the contract itself. Unless particular circumstances could be shown to exist under which employment of the long term unemployed would improve the economic benefits of the contract to the procuring entity, this criterion would not be compatible with the Directive. The same applies to other criteria which have nothing to do with the subject matter of a particular contract.

49. Further, the Court stressed that contract conditions must in any event respect relevant provisions of Community law. It referred in particular to restrictions flowing from the Treaty principles of right of establishment and freedom to provide services and to the principle of non-discrimination on grounds of nationality. In this context, it considered that the contract condition could breach the non-discrimination principle if it appeared that it could only be fulfilled by national firms or if it would be more difficult to fulfil for bidders coming from other Member States.

50. Much will therefore depend on the precise condition imposed and its practical effects on bidders from other Member States. Some examples may serve to clarify the problem.

51. A simple condition requiring the winning tenderer to employ a given number or percentage of unemployed or long term unemployed or young unemployed for the execution of the works contract would not seem to

discriminate against bidders from other Member States. All bidders, national and other, will have to take on persons presently unemployed and all have similar opportunities (and difficulties) to do so.

52. But a requirement that the winning tenderer employ a given percentage of persons resident in the area in question would, on the face of it, be discriminatory. Local firms will in all probability already employ local residents and, in any case, will be familiar with the local labour market. Firms from outside the locality and *a fortiori* from other Member States will be much less likely to employ residents and will have to prospect the local labour market from scratch. They clearly risk being disadvantaged.

53. In between these extremes lie cases which would require careful evaluation. For example, a requirement for the winning tenderer to recruit a given number or percentage of long term unemployed registered with the local employment office, the kind of clause that gave rise to the Beentjes case, would raise the question as to whether it is easier for the local firm to do so than an outsider. A commitment by the local authorities to make available a supply of the appropriate labour, for example through an employment agency, might give some guarantee that it is not. Where action is taken in accordance with the plans referred to in the Structural Funds Regulations or in the context of a project financed by an aid notified to the Commission, the fact that the plan was considered or the aid examined at Community level without objection would imply that the Commission considered it non-discriminatory, unless some particular factor arose to show the contrary which was not apparent earlier.

54. A further dimension of the problem needs to be considered. The Court limited itself in Beentjes to the suggestion that the condition might discriminate against outside contractors. However, discrimination might also arise against other Community workers. Cases will have to be evaluated from this point of view also.

55. Thus it is apparent that the compatibility of contract conditions with Community law requires, on the basis of present legislation, a case by case analysis. This applies not only to conditions addressing unemployment, but to other fields that could be imagined.

56. In the field of training, for example, a condition that firms employ a given number or proportion of trainees exclusively from national training programmes would appear to discriminate against trainees in equivalent schemes in other Member States. It would accordingly not be admissible. On the other hand, an obligation to employ trainees which does not limit their provenance on national lines would not appear to pose a problem.

57. In the area of equal opportunities, an obligation to employ a given number or proportion of women or persons from some other category not based on nationality would also not appear to give rise to difficulty, though of course a definitive judgement necessarily depends on an appreciation of all the material facts of a particular case.

58. The same applies to clauses designed to ensure that firms respect prevalent terms and conditions of employment when working in a particular locality. All firms whether local, national or from another State are treated equally. Neither foreign firms nor foreign workers are disadvantaged by comparison with nationals of the Member State in question. However, a condition that all persons employed in execution of the contract benefit from the local terms and conditions would pose problems if it were intended to apply also to persons in other Member States. Even in the works context, some employees who work on the contract may be employed outside the territory of the State of the contracting authority. In the supplies context, this situation is of course much more common. It is difficult to see what justification there could be for admitting requirements which would permit national contracting authorities to export local terms and conditions of employment to other Member States. Such requirements could provoke intolerable conflicts of law and policy and also eliminate important elements of the competitive advantage of firms in States with lower labour costs, in particular, less developed regions. The Court did not address this issue in the Beentjes judgement and great care should be taken in drawing any inferences about it from that source.

59. In summary, the doctrine of the Court in the Beentjes case leaves the application of contract conditions limited in three ways:

- the contract condition should be independent of the assessment of the bidders capacity to carry out the work or of award criteria,

- it should not infringe other principles of Community law, particularly that of right of establishment, freedom to provide services and non-discrimination on the grounds of nationality. In practice this appears to require a case-by-case examination,
- it only authorizes conditions which seek to realize objectives on the territory of the State of the contracting authority.

(c) *Do such conditions offer a useful policy instrument?*

60. The usefulness of the possibilities offered by the judgement in the Beentjes case as a policy instrument is limited in three ways.

61. In the first place, the scope for the use of conditions is much more limited in the area of supplies than in the area of public works. Given that supplies contracts are largely executed in the factory, it is hard to imagine how conditions of a social nature could be applied in the award of a supplies contract without either discriminating between domestic and other suppliers or seeking to achieve objectives outside the territory of the State of the contracting authority. It is in the case of works contracts, where the work is for the most part carried out on the territory of the State of the contracting authority, that the possibility of satisfying the Court's requirements is most likely to be met.

62. In the second place, the usefulness of the instrument is in practice limited by the primary objective of the contract itself. A contracting authority which plans the construction of a building or a bridge is likely, in most cases, to want the construction to be carried out under the circumstances which give rise to the best and most efficient construction giving best value for money. This limits the extent to which other goals may be pursued which may adversely affect the contract's primary objective.

63. In the third place, the need for a case-by-case examination of the compatibility of particular conditions with the circumstances of individual contracts limits the confidence with which particular conditions can be imposed. The risk that a condition will be contested by a participant in an award procedure, leading to delays and additional costs, with a possible reduction in efficiency as well, makes the use of the instrument uncertain as to its results. While the uncertainty may diminish as experience is gained in using this type of clause, it inevitably calls for a cautious approach at present.

64. However, despite these limitations, contract conditions do appear to offer a policy instrument which, in circumstances where there is a ready supply of labour,

such as long-term unemployed or unemployed young people, can be used to help in the insertion of unemployed people in work. In view of the difficulties inherent in establishing non-discriminatory conditions, additional security as to the legitimacy of such schemes could be obtained by discussing them with the Commission in advance. They could also be used for other ends, where not forbidden by national law, such as ensuring that work carried out on a particular site respects certain working conditions, for example, those generally prevailing in the area in question.

#### IV.3. Promoting the participation of SMEs in public procurement

65. Promoting the participation of SMEs in public procurement is an important factor in economic and social cohesion, both at national and Community level. Small and medium-sized firms are often less well informed of the opportunities offered in this field, or hesitate to venture to negotiate transnational contracts with administrations, with which they are not acquainted (problems of language, contract terms, movement, delays in payment, legal remedies in case of dispute). SME participation in public procurement has, in any case, been relatively low in the Community, compared with the United States, Canada and Japan. The Commission is assessing in depth all the aspects of the problem, in the light of a recent study<sup>(1)</sup>. A more detailed and comprehensive communication to the Council will be prepared on SME participation in public procurement and also a draft Commission recommendation to the Member States on certain aspects of this problem (see paragraphs 99 and 100 below).

66. At the national level, the problem is perhaps less sensitive, but it is real. That is why, for several years, in the majority of industrialized countries, contracting authorities have implemented measures to increase the share of SMEs in public procurement.

67. In addition, the Community has already implemented measures to stimulate the participation of SMEs in public procurement on a Community scale. Their coverage could be developed later. These measures are analysed through the six facets presented below.

##### (a) *Better information of SMEs concerning public procurement markets*

68. The Community provides means whereby contracting authorities and the SMEs themselves can obtain information about public procurement; in particular, the network of Euro-info-centres, linked to

<sup>(1)</sup> 'SMEs and Public Procurement', prepared by WS Atkins for the Commission in 1988.

the TED data base, ensures the circulation of contract notices and assists SMEs in responding to those which are of interest to them. There is provision, within the scope of the amended Directives on public procurement, for the publication of information on purchasing programmes for supplies ('pre-information' procedure) and also of information concerning the award of contracts.

69. These actions in the information field could be further developed by complementing the provisions in the Directives with other measures of a non-obligatory character. These could include:

- the development of data banks permitting those contracting authorities that wish to do so to publish, efficiently and at low cost, contracts below the thresholds in the Directives and so make them available to SMEs throughout the Community,
- the incorporation in such data banks of information on potential SME suppliers indicating their field of activity, their previous experience in supplying the public sector, and other information relating to equality assurance,
- the organization of public procurement fairs designed to bring SMEs into new relationships with the contracting authorities of other Member States. Useful information could be made available to SMEs through the TED data base.

(b) *Training of managers of firms*

70. The training of managers of firms is an essential dimension in the integration of SMEs in the single market. This is why the Commission has recently adopted a programme 'Preparing the SMEs for the Europea of 1992' through which it will support relevant training projects. The better the training of managers of small and medium-sized enterprises, the more these enterprises will be disposed to develop their business, the field of public procurement included, on a Community scale.

(c) *Improved access to larger contracts: division of larger contracts into lots*

71. The break up of larger contracts carries the risks of adding to administrative costs and offering a pretext for evasion of the thresholds of application of the public procurement Directives. It is not therefore attractive, if the only objective is to encourage the participation of SMEs. This does not, however, apply to the division of a larger contract into lots. The contracts for the lots would still be subject to the Directives, including their publication provisions. This would allow smaller firms, which could not bid for the whole, to try for a part of the work.

72. The objection may be made that such approaches may be inconsistent with the search for economies of scale. This objection seems to be without foundation, as long as bids may be made for all the lots. In these circumstances, an SME bidding for one lot will have to make an offer as economically attractive as another enterprise bidding for the whole and exploiting the economies of scale. The SME's chances of winning the lot will then depend on it having a compensating competitive advantage, for example, greater flexibility or lower overheads.

73. Division of larger contracts into lots is compatible with the Directives. However, it should be possible to make this clearer either in the texts of the Directives themselves or, if that must await a more convenient time in the future, in a Council resolution or recommendation which would in effect be a formal interpretation of how the Directives may be applied in this area.

(d) *An active sub-contracting policy*

74. Sub-contracting also plays an important role in improving the access of SMEs to larger contracts. It is perceived in most Member States as an effective means of encouraging greater competitiveness and greater efficiency and fairness in public procurement. The Community might seek to develop the use of sub-contracting to favour SMEs in the following ways:

- clarify the extent to which the Directives already provide scope for sub-contracting to be used for this purpose,
- facilitate the development of new relationships between prime contractors and sub-contractors by making more information available, particularly as regards the indication by the tenderer, when he submits his tender, of his intention to sub-contract, and through the publication of such information when notice is given of the award of a contract,
- treating SMEs on a basis of equality with prime contractors, particularly from a legal, technical and financial point of view,
- clarifying the legal status of sub-contractors as regards their rights and obligations.

75. Nothing, however, should be done which permits abuse of sub-contracting to the detriment of respect for the obligations of prime contractors and sub-contractors. Particular attention should therefore be paid to abuses in the fields of tax and social security, to ensuring that prime contractors are in a position to pay sub-contractors on time. In certain cases, contracting authorities should be prepared, perhaps, to ensure direct payment themselves.

76. Steps should also be taken to see that prime contracting authorities fulfil their responsibility to give sub-contractors no less favourable terms than they receive from contracting authorities and possibly assist them in meeting quality requirements.

77. The availability of effective remedies for sub-contractors in case of unjustifiable non-payment or failure of the prime contractor or possibly other unfair practices such as unreasonable certification requirements could also serve to strengthen the security of SMEs.

78. Finally, standard contractual provisions on sub-contracting might be developed, with the object of producing broadly similar legal results in all Member States. This would allow SMEs to seek sub-contracts in other countries with greater confidence. Prime contractors would also have the advantage of increased confidence that a sub-contractor from another Member State was aware of the main legal provisions determining his rights and responsibilities.

*(e) Mutual guarantees of fair and effective performance*

79. An important constraint on SME participation public contracts is the lack of confidence on both sides that the relationship will lead to an outcome that is effective and fair. Measures have been taken in some national contexts to address this problem by reducing difficulties relating to:

- availability of financial guarantees to ensure that SMEs do not withdraw offers once made and perform contracts to time and specification,
- improvement in the conditions for granting such guarantees,
- the creation of mutual insurance systems to guarantee the solvency of enterprises, as well as the good execution of contracts,
- ensuring efficient and fair payment systems.

*(f) Association of enterprises*

80. Cooperation between SMEs can help to compensate for their weaknesses. For example, contracting authorities could assess the capacity of a

joint venture to undertake a contract on the basis of the combined financial and technical capacity of the association as such. Such cooperation between SMEs in various Member States could take place within the legal framework of the European Economic Interest Grouping (EEIG) from July 1989 onwards.

**IV.4. Greater regional participation in Community public procurement**

81. Opening up the public procurement market poses specific challenges to the enterprises of the less-favoured regions. These include historic dependence on regional preferences or other forms of protection, the relative absence of economies of scale, due to the smaller scale of regional firms, and the need for greater adaptability and mobility of labour, of capital and of know-how. Specifically, regional firms will need to be able to adapt to the high technical standards of the larger market rather than depend on traditional relationships with established, often local, purchasers and they will need to develop a marketing capability appropriate to the needs of a wider, more competitive market.

82. The measures discussed, under non-discriminatory contract conditions and promotion of the participation of SMEs in public procurement, can be applied anywhere in the Community. Although, they may be more difficult to apply in the less developed regions, they are, nevertheless, of particular relevance to the problems of those regions. This appears clearly on close examination. Non-discriminatory contract conditions directed at the alleviation of unemployment or underemployment will have a particular relevance in areas where these problems are most serious. Those areas include in particular the declining industrial areas but also less developed regions of the Community. Similarly, measures to help SMEs participate in public contracts have a particular relevance to the less developed regions in view of the dominance of SMEs in the local economy. In addition, in both categories of less favoured region, it is small and medium-sized firms which frequently hold out the best prospects of growth. Further there exist possibilities in eligible areas for the Structural Funds to contribute towards the support measures outlined for SMEs.

83. Measures could be addressed to enterprises in particular regions to improve their participation in public procurement contracts, concentrating on established

areas of vulnerability: planning and organization; marketing; access to information about the wider public procurement market; access to capital and technical support; and improvement of labour and management skills.

84. Measures could include the introduction or expansion of advice and assistance mechanisms and services intended to help regional enterprises take the fullest advantage of public procurement. This could cover:

- market research and services, including research and evaluation services for diagnosis of the capacities and potential of firms to respond to the needs of contracting entities,
- the setting up of seminars and hearings related to specific potential public sector demands, allowing dialogue between public and private decision makers and encouraging the active participation of the latter,
- assistance with product and process development, including financial aid such as under-writing of the development of new products designed to meet the needs of the public sector,
- better dissemination of the results of the Community research programmes to regional enterprises and administrations,
- support for converting production to European technical standards and specifications, which are now becoming obligatory for contracting authorities; the provision of technical laboratories for testing and certifying conformity of products and processes with such standards,
- technical assistance related to bid preparation for non-local contracts, including assistance with language problems,
- facilitating access, perhaps via the European Investment Bank to capital needed for participation in public contracts,
- reinforcement of the Europartenariat and other measures to encourage joint ventures, including participation of banks and financial institutions where Feder guarantees are in operation,
- training in marketing, including Erasmus-type exchanges of managers to prepare them for the choice of specialization which the opening-up of

public procurement may well impose on some regional enterprises,

- vocational training related to changed production requirements.

85. Taking measures along those lines in particular regions would not preclude Community assistance to maximize the impact, where most needed, of certain of the proposals put forward for SMEs in Chapter IV.3.

86. Such measures could take the form of State aids. Such aids would have to be notified in accordance with the provisions of Article 93 of the EEC Treaty with a view to seeking their approval by the Commission.

87. It is clear that measures of this type should be prepared and executed in a way consistent with the ultimate objective of putting regional firms in a position to make serious bids for contracts, not only in their own regions, but also in the wider Community public procurement market. The aim is not to protect regional markets. Specific conditions might therefore need to be imposed by the Commission to ensure that the contacts established between contracting authorities and suppliers were not such as to distort the markets. It could be necessary, for example, to ensure that the public procurement function and the function of providing technical or financial assistance were kept strictly separate and, if necessary, carried out by separate bodies.

#### V. Policy on regional and social aspects of public procurement

88. As was made clear in Chapter II, the operation of the internal market is such as to create opportunities for businesses to exploit.

89. The Commission's concern, in developing its policy for social and economic cohesion in the operation of public procurement, is to ensure that the opportunities for participation are widely spread among all groups and regions; and to assist the less advantaged to participate in the market and to exploit their opportunities to the full.

90. Thus whereas the creation of a transparent public procurement regime with readily available information facilitates participation, policies could be developed in favour of particular groups or regions positively to encourage them to exploit their capacities within the single public procurement market.



91. Such an approach does not admit of a simple policy decision which is self-executing — in the sense that the single market, once brought into existence, may tend to be. Rather, it requires the identification of a series of measures, which may be used in different combinations in different circumstances, and which may be put into effect at national, regional or local level with, where appropriate, Community measures too.

92. The following sections review each of the policy areas discussed in Chapter IV with a view to setting out the Commission's policy orientations.

### V.1. Approach to the problem of regional preferences

93. The Commission intends to undertake urgent discussions with the Member States concerned with a view to bringing any infringements to an end at the latest by 31 December 1992. It will give priority to the elimination of infringements resulting from the operation of preferences above the thresholds in the existing Directives<sup>(1)</sup>. In addition, measures to help regional enterprises to exploit fully the opportunities in the single market will also be explored. Such measures could include those outlined in the previous chapter on promoting greater SME and regional participation in public procurement (paragraphs 65 to 87).

94. It should be recalled that the thresholds in the Directives have been fixed to identify the level at which there is a real prospect of cross-frontier trade. Following this line of thinking, it will be possible in certain cases to demonstrate that preferences operating in these circumstances are not economically significant. This will only be possible where the regime is, itself, transparent. Procurement regimes which simply reserve public purchases to national firms can hardly be regarded as falling within this category. Where a regime operates through a transparent mechanism such as second bidding or an acceptable price preference, in the range of 5 % to 10 %, however, the demonstration should be possible. The Commission will examine systems which operate below the threshold in terms of the transparency of the procurement mechanism and of the impact on trade and will adopt the appropriate decision.

95. The Commission will present a report during 1995 on the operation of the regimes as modified and their effects on the internal market.

<sup>(1)</sup> In the case of supplies contracts, the thresholds are ECU 137 000 for central government authorities covered by the GATT code and ECU 200 000 for other authorities. The threshold for work contracts is being raised to ECU 5 million.

96. The Commission, in its general approach to preference schemes, must also take account of the Community's international obligations under the GATT Agreement on Government procurement, adopted in 1980, and modified in 1987. The Agreement applies to the procurement of supplies above a threshold, at present equivalent to ECU 137 000, by listed entities, which are in practice agencies of central government. The Commission, in particular, must take account of the provisions of Article 11 on national treatment and non-discrimination. With regard to preferences applied by central government entities questions might be raised as to their compatibility with Community obligations under the code, when they have not been notified and accepted by the other parties. The Commission will remain vigilant in ensuring that the Community's obligations in this connection are respected.

### V.2. Measures to exploit the single public procurement market

#### (a) *Non-discriminatory contract conditions*

97. The opportunities for the exploitation of non-discriminatory contract conditions under the Directives as presently drafted are, as was shown in IV.2, wide in scope but subject to limitations which can only be evaluated on a case-by-case basis.

98. Publicity in the contract notice for such conditions is in any case indispensable, as was made clear by the Court. On this basis, the Commission will strictly monitor use of such conditions with a view to ensuring that they do not infringe Community law.

#### (b) *Measures in favour of the participation of SMEs*

99. As has been explained in section IV.3 above, a series of measures has already been taken with a view to assisting SMEs fully to exploit their competitive advantages within the public procurement market. The Commission will continue to seek ways of further developing such actions, including the communication referred to in paragraph 65.

100. Certain of these measures will be included in a draft Commission recommendation to Member States which will be the subject of consultation with the Advisory Committees on public procurement and interested parties.

101. The Commission will continue to work with the appropriate authorities with a view to developing a better information base concerning SMEs and the markets of potential interest to them. If necessary, it will make appropriate proposals. The Commission considers that

the adoption of its proposal for the modification of the public works Directive (1), which provides, where appropriate, for publication of the share of the contract which the winning bidder intends to put out to subcontract, would constitute a useful step in this direction.

(c) *Greater regional participation*

102. Member States may include measures of the type indicated in both Chapter IV.3 and Chapter IV.4 above in the multiannual plans to be submitted under the Structural Funds Regulation (Regulation (EEC) No 2052/88). These plans would then be the basis for Community support frameworks to be negotiated between the Commission and the Member States. The nature of the measures put forward would appear to be best suited to the European Regional Development Fund, the European Social Fund and, in certain cases, the European Investment Bank.

103. The Commission will examine, in the light of studies on the impact of public procurement and other studies concerning the internal market and measures proposed by Member States in the development plans and priorities included in the Community support framework, if it is necessary to initiate supplementary measures in favour of regions eligible for the Structural Funds, which face problems associated with the impact of the opening-up of public procurement and the achievement of the internal market.

104. The measures containing State aids would have to be notified to the Commission under the terms of Article 93 (3). The method of applying Article 92 to regional aids is set out in an explanatory memorandum published in the *Official Journal of the European Communities* No C 212 of 12 August 1988.

(d) *Conclusion: future work*

105. Further work is necessary to develop action both within the context of the promotion of small and medium-sized enterprises (see paragraphs 99 to 101) and of measures to assist regions in difficulty (see paragraphs 102 to 104) and in other areas, where further study and discussion may be required. A coordinated work programme will embrace the following action:

- further guidance to Member States on the use of non-discriminatory contract conditions to pursue social objectives, in the light of developments in the practice of contracting authorities,
- preparation of a detailed and comprehensive communication on SMEs and public procurement with a view to bringing forward proposals, where appropriate, such as:

- the improvement of the quality of information on contracts available to potential bidders,
- further clarification of the extent to which the Directives permit division into lots and sub-contracting,
- clarification of the legal status of sub-contractors,
- development of standard sub-contracting provisions,
- in the light of a study recently carried out for the Commission, exploration of more favourable conditions for financial guarantees, including encouragement of systems of collective insurance to guarantee the solvency of enterprises,
- development of more effective inter-SME and SME and non-SME cooperation, in particular, within the framework of the European Economic Interest Grouping (EEIG),
- finalization of the proposed Commission recommendation on measures to promote the participation of small and medium-sized enterprises in public procurement, in the light of this communication,
- the conclusion of the study on the need for accompanying measures in sectors previously excluded from the operation of the public procurement Directives,
- the examination, in the light of studies on the impact of public procurement and other studies concerning the internal market and measures proposed by Member States in the development plans and priorities included in the Community support framework, of whether it is necessary to initiate supplementary measures in favour of regions eligible for the Structural Funds, which face problems associated with the impact of the opening-up of public procurement and the achievement of the internal market,
- further study of the operation of other measures, listed in paragraph 84, and in particular those aimed at improving the quality and flow of information between potential contractors and sub-contractors and contracting authorities including the development of electronic bidding information services,
- intensified regional dissemination of the results of research programmes relevant to public procurement,
- further examination, in consultation with the European Investment Bank, of the problems of access to capital needed for participation in public procurement.

(1) COM(89) 141 of 4 April 1989.

## ANNEX

## Regimes of preference in procurement in force in the Member States

Member State	Legal basis	Coverage (a) Demand side (b) Supply side	Method of application
FEDERAL REPUBLIC OF GERMANY	Federal Law	(a) public contracts (supplies/works) (b) enterprises producing or persons established within Berlin West or zone within 50 km of frontier with DDR	— obligation to include (b) — in lists for selective tendertag — obligation to give preference to (b) if equal lowest tenderer or within a percentage of 0,5 % of lowest tenderer for contracts of DM 1 million or more (Note: in case of Berlin regime of regional preference co-exists with turnover tax concessions which have a direct impact on tender prices)
GREECE	National legislation	(a) public contracts (suppliers) (b) (i) enterprises established in regions i.e. at a distance of more than 50 km from Athens (ii) enterprises established in the Greek Islands	(b) (i) up to 7 % price advantage over lowest tender (ii) up to 10 % price advantage over lowest tender
ITALY	National legislation  Regional	(a) public supplies contracts (national and regional administration public corporations) (b) enterprises established in Mezzogiorno, Latium, Trieste (a) public works contracts of regional, local administrations, public corporations (b) enterprises established in Sicily for at least three years	30 % quota allocated to regions indicated under (b), but with competitive tendering within quota 50 % quota for supplies for public works assisted from special intervention funds — when price considerations equal 40 % minimum participation of Sicilian enterprises — residential, school buildings: 25 % pre-fabricated building material to be supplied by Sicilian enterprises — preferences for subcontracting
UNITED KINGDOM	Administrative practice (non-obligatory)  Administrative practice (non-obligatory but general in practice)	A. General preference scheme (a) procurement of supplies by central government, nationalized industries, other public authorities (b) enterprises established in listed development areas B. Special preference scheme (a) enterprises in listed development areas (b) enterprises in listed development areas (a) procurement of supplies by Northern Ireland government departments (b) persons or enterprises trading Northern Ireland products	When price and other considerations are equal, public contracts let to (b)  No price advantage, but qualifying firms (b) may be given opportunity of taking 25 % of an order at a price which entails no additional cost to purchaser  — general preference for Northern Ireland products given conformity with specifications — 5 % price advantage to tenderers, if of benefit to employment in Northern Ireland

**GATT RULES**  
**( PUBLIC SUPPLY**  
**CONTRACTS )**



## AGREEMENT ON GOVERNMENT PROCUREMENT

## PREAMBLE

PARTIES TO THIS AGREEMENT (hereinafter referred to as 'Parties'),

CONSIDERING that Ministers agreed in the Tokyo Declaration of 14 September 1973 that comprehensive multilateral trade negotiations in the framework of the General Agreement on tariffs and trade (hereinafter referred to as 'General Agreement' or 'GATT') should aim *inter alia* to reduce or eliminate non-tariff measures or, where this is not appropriate, their trade restricting or distorting effects, and to bring such measures under more effective international discipline;

CONSIDERING that Ministers also agreed that negotiations should aim to secure additional benefits for the international trade of developing countries, and recognized the importance of the application of differential measures in ways which will provide special and more favourable treatment for them where this is feasible and appropriate;

RECOGNIZING that in order to achieve their economic and social objectives to implement programmes and policies of economic development aimed at raising the standard of living of their people, taking into account their balance-of-payments position, developing countries may need to adopt agreed differential measures;

CONSIDERING that Ministers in the Tokyo Declaration recognized that the particular situation and problems of the least developed among the developing countries shall be given special attention and stressed the need to ensure that these countries receive special treatment in the context of any general or specific measures taken in favour of the developing countries during the negotiations;

RECOGNIZING the need to establish an agreed international framework of rights and obligations with respect to laws, regulations, procedures and practices regarding government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade;

RECOGNIZING that laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and to foreign or domestic suppliers so as to afford protection to domestic products or suppliers and should not discriminate among foreign products or suppliers;

RECOGNIZING that it is desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement;

RECOGNIZING the need to establish international procedures on notification, consultation, surveillance and dispute settlement with a view to ensuring a fair, prompt and effective enforcement of the international provisions on government procurement and to maintain the balance of rights and obligations at the highest possible level;

HEREBY AGREE AS FOLLOWS:

*Article I*

## Scope and coverage

1. This Agreement applies to:
  - (a) any law, regulation, procedure and practice regarding the procurement of products by the entities<sup>(1)</sup> subject to this Agreement. This includes services incidental to the supply of products if the value of these incidental services does not exceed that of the products themselves, but not service contracts *per se*;
  - (b) any procurement contract of a value of SDR 150 000 or more<sup>(2)</sup>. No procurement requirement shall be divided with the intent of reducing the value of the resulting contracts below SDR 150 000. If an individual requirement for the procurement of a product or products of the same type results in the award of more than one contract or in contracts being awarded in separate parts, the value of these recurring contracts in the 12 months subsequent to the initial contract shall be the basis for the application of this Agreement;
  - (c) procurement by the entities under the direct or substantial control of Parties and other designated entities, with respect to their procurement procedures and practices. Until the review and further negotiations referred to in the final provisions, the coverage of this Agreement is specified by the lists of entities, and to the extent that rectifications, modifications or amendments may have been made, their successor entities, in Annex I.
  
2. The Parties shall inform their entities not covered by this Agreement and the regional and local governments and authorities within their territories of the objectives, principles and rules of this Agreement, in particular the rules on national treatment and non-discrimination, and draw their attention to the overall benefits of liberalization of government procurement.

<sup>(1)</sup> Throughout this Agreement, the word 'entities' is understood to include agencies.

<sup>(2)</sup> For contracts below the threshold, the Parties shall consider, in accordance with Article IX (6), the application in whole or in part of this Agreement. In particular, they shall review the procurement practices and procedures utilized and the application of non-discrimination and transparency for such contracts in connection with the possible inclusion of contracts below the threshold in this Agreement.

*Article II*

## National treatment and non-discrimination

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, the Parties shall provide immediately and unconditionally to the products and suppliers of other Parties offering products originating within the customs territories (including free zones) of the Parties, treatment no less favourable than:
  - (a) that accorded to domestic products and suppliers; and
  - (b) that accorded to products and suppliers of any other Party.
  
2. The provisions of paragraph 1 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, and other import regulations and formalities.
  
3. The Parties shall not apply rules of origin to products imported for purposes of government procurement covered by this Agreement from other Parties, which are different from the rules of origin applied in the normal course of trade and at the time of importation to imports of the same products from the same Parties.

*Article III*

## Special and differential treatment for developing countries

*Objectives*

1. The Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing countries, in particular the least-developed countries, in their need to:
  - (a) safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development;
  - (b) promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy;
  - (c) support industrial units so long as they are wholly or substantially dependent on government procurement;

(d) encourage their economic development through regional or global arrangements among developing countries presented to the Contracting Parties to the GATT and not disapproved by them.

2. Consistent with the provisions of this Agreement, the Parties shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of the least-developed countries and of those countries at low stages of economic development.

#### Coverage

3. With a view to ensuring that developing countries are able to adhere to this Agreement on terms consistent with their development, financial and trade needs, the objectives listed in paragraph 1 above shall be duly taken into account in the course of the negotiations with respect to the lists of entities of developing countries to be covered by the provisions of this Agreement. Developed countries, in the preparation of their lists of entities to be covered by the provisions of this Agreement shall endeavour to include entities purchasing products of export interest to developing countries.

#### Agreed exclusions

4. Developing countries may negotiate with other participants in the negotiation of this Agreement mutually acceptable exclusions from the rules on national treatment with respect to certain entities or products that are included in their lists of entities having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in paragraph 1 (a) to (c) above shall be duly taken into account. Developing countries participating in regional or global arrangements among developing countries referred to in paragraph 1 (d) above, may also negotiate exclusions to their lists, having regard to the particular circumstances of each case, taking into account *inter alia* the provisions on government procurement provided for in the regional or global arrangements concerned and taking into account, in particular, products which may be subject to common industrial development programmes.

5. After entry into force of this Agreement, the developing country Parties may modify their lists of entities in accordance with the provisions for modification of such lists contained in Article IX (5) of this Agreement, having regard to their development, financial and trade needs, or may request the

Committee to grant exclusions from the rules on national treatment for certain entities or products that are included in their lists of entities, having regard to the particular circumstances of each case and taking duly into account the provisions of paragraph 1 (a) to (c) above. The developing country Parties may also request, after entry into force of this Agreement, the Committee to grant exclusions for certain entities or products that are included in their lists in the light of their participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of paragraph 1 (d) above. Each request to the Committee by a developing country Party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.

6. Paragraphs 4 and 5 above shall apply *mutatis mutandis* to developing countries acceding to this Agreement after its entry into force.

7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 above shall be subject to review in accordance with the provisions of paragraph 13 of this Article.

#### Technical assistance for developing country Parties

8. Developed country Parties shall, upon request, provide all technical assistance which they may deem appropriate to developing country Parties in resolving their problems in the field of government procurement.

9. This assistance which shall be provided on the basis of non-discrimination among the developing country Parties shall relate *inter alia* to:

- the solution of particular technical problems relating to the award of a specific contract,
- any other problem which the Party making the request and another Party agree to deal with in the context of this assistance.

#### Information centres

10. The developed country Parties shall establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating *inter alia* to laws, regulations, procedures and practices regarding government



procurement, notices about proposed purchases which have been published, addresses of the entities covered by this Agreement, and the nature and volume of products purchased or to be purchased, including available information about future tenders. The Committee may also set up an information centre.

#### *Special treatment for least-developed countries*

11. Having regard to paragraph 6 of the Tokyo Declaration, special treatment shall be granted to the least-developed country Parties and to the suppliers in those countries with respect to products originating in those countries, in the context of any general or specific measures in favour of the developing country Parties. The Parties may also grant the benefits of this Agreement to suppliers in the least-developed countries which are not Parties, with respect to products originating in those countries.

12. Developed country Parties shall, upon request, provide assistance which they may deem appropriate to potential tenderers in the least-developed countries in submitting their tenders and selecting the products which are likely to be of interest to entities of developed countries as well as to suppliers in the least-developed countries and likewise assist them to comply with technical regulations and standards relating to products which are the subject of the proposed purchase.

#### *Review*

13. The Committee shall review annually the operation and effectiveness of this Article and after each three years of its operation on the basis of reports to be submitted by the Parties shall carry out a major review in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Article II, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 to 6 of this Article shall be modified or extended.

14. In the course of further rounds of negotiations in accordance with the provisions of Article IX (6), the developing country Parties shall give consideration to the possibility of enlarging their lists of entities having regard to their economic, financial and trade situation.

#### *Article IV*

##### *Technical specifications*

1. Technical specifications laying down the characteristics of the products to be purchased such as quality, performance, safety and dimensions, testing and test methods, symbols, terminology, packaging, marking and labelling, and conformity certification requirements prescribed by procurement entities, shall not be prepared, adopted or applied with a view to creating obstacles to international trade or have the effect of creating unnecessary obstacles to international trade.

2. Any technical specification prescribed by procurement entities shall, where appropriate:

- (a) be in terms of performance rather than design; and
- (b) be based on international standards, national technical regulations, or recognized national standards.

3. There shall be no requirement or reference to a particular trade mark or name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as 'or equivalent' are included in the tenders.

#### *Article V*

##### *Tendering procedures*

1. The Parties shall ensure that the tendering procedures of their entities are consistent with the provisions below. Open tendering procedures, for the purposes of this Agreement, are those procedures under which all interested suppliers may submit a tender. Selective tendering procedures, for the purposes of this Agreement, are those procedures under which, consistent with paragraph 7 and other relevant provisions of this Article, those suppliers invited to do so by the entity may submit a tender. Single tendering procedures, for the purposes of this Agreement, are those procedures where the entity contacts suppliers individually, only under the conditions specified in paragraph 15 below.

##### *Qualification of suppliers*

2. Entities, in the process of qualifying suppliers, shall not discriminate among foreign suppliers or between

domestic and foreign suppliers. Qualification procedures shall be consistent with the following:

- (a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;
- (b) any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to foreign suppliers than to domestic suppliers and shall not discriminate among foreign suppliers;
- (c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep foreign suppliers off a suppliers' list or from being considered for a particular proposed purchase. Entities shall recognize as qualified suppliers such domestic or foreign suppliers who meet the conditions for participation in a particular proposed purchase. Suppliers requesting to participate in a particular proposed purchase who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;
- (d) entities maintaining permanent lists of qualified suppliers shall ensure that all qualified suppliers so requesting are included in the lists within a reasonably short time;
- (e) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;
- (f) nothing in subparagraphs (a) to (e) above shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.

*Notice of proposed purchase and tender documentation*

3. Entities shall publish a notice of each proposed purchase in the appropriate publication listed in Annex

II. Such notice shall constitute an invitation to participate in either open or selective tendering procedures.

4. Each notice of proposed purchase shall contain the following information:

- (a) the nature and quantity of the products to be supplied, or envisaged to be purchased in the case of contracts of a recurring nature;
- (b) whether the procedure is open or selective;
- (c) any delivery date;
- (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;
- (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;
- (f) any economic and technical requirements, financial guarantees and information required from suppliers;
- (g) the amount and terms of payment of any sum payable for the tender documentation.

The entity shall publish in one of the official languages of the GATT a summary of the notice of proposed purchase containing at least the following:

- (i) subject matter of the contract;
- (ii) time limits set for the submission of tenders or an application to be invited to tender; and
- (iii) addresses from which documents relating to the contracts may be requested.

5. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each proposed purchase, invite tenders from the maximum number of domestic and foreign suppliers, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

6. (a) In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Annex III, a notice of the following:

- (i) the enumeration of the lists maintained, including their headings, in relation to the products or categories of products to be purchased through the lists;
- (ii) the conditions to be filled by potential suppliers in view of their inscription on those lists and the methods according to which each of those conditions be verified by the entity concerned;
- (iii) the period of validity of the lists, and the formalities for their renewal.
- (b) Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.
- (c) If, after publication of the notice under paragraph 3 above, a supplier not yet qualified requests to participate in a particular tender, the entity shall promptly start the procedure of qualification.
7. Suppliers requesting to participate in a particular proposed purchase shall be permitted to submit a tender and be considered provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under paragraphs 2 to 6 of this Article. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.
8. If after publication of a notice of a proposed purchase but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular proposed purchase shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.
9. (a) Any prescribed time limit shall be adequate to allow foreign as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the proposed purchase, the extent of subcontracting anticipated, and the normal time for transmitting tenders by mail from foreign as well as domestic points.
- (b) Consistent with the entity's own reasonable needs, any delivery date shall take into account the normal time required for the transport of goods from the different points of supply.
10. (a) In open procedures, the period for the receipt of tenders shall in no case be less than 30 days from the date of publication referred to in paragraph 3 of this Article.
- (b) In selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall in no case be less than 30 days from the date of publication referred to in paragraph 3; the period for receipt of tenders shall in no case be less than 30 days from the date of issuance of the invitation to tender.
- (c) In selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall in no case be less than 30 days from the date of the initial issuance of invitations to tender. If the date of initial issuance of invitations to tender does not coincide with the date of the publication referred to in paragraph 3, there shall in no case be less than 30 days between those two dates.
- (d) The periods referred to in (a), (b) and (c) above may be reduced either where a state of urgency duly substantiated by the entity renders impracticable the periods in question or in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 4 of this Article.
11. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the GATT.
12. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including the following:
- (a) the address of the entity to which tenders should be sent;
- (b) the address where requests for supplementary information should be sent;

- (c) the language or languages in which tenders and tendering documents must be submitted;
- (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;
- (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
- (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;
- (g) a complete description of the products required or of any requirements including technical specifications, conformity certification to be fulfilled by the products, necessary plans, drawings and instructional materials;
- (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of foreign products, customs duties and other import charges, taxes and currency of payment;
- (i) the terms of payment;
- (j) any other terms or conditions.
13. (a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.
- (b) In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate and shall reply promptly to any reasonable request for explanations relating thereto.
- (c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.
- Submission, receipt and opening of tenders and awarding of contracts*
14. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:
- (a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or telecopy are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the dispatch of a signed copy of the telex, telegram or telecopy. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or telecopy shall prevail where there is a difference or conflict between that content and any documentation received after the time limit; requests to participate in selective tendering procedures may be submitted by telex, telegram or telecopy;
- (b) the opportunities that may be given to tenderers to correct unintentional errors between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice;
- (c) a supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide;
- (d) all tenders solicited under open and selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings as well as the availability of information from the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. To this effect, and in connection with open procedures, entities shall establish provisions for the opening of tenders in the presence of either tenderers or their representatives, or an appropriate and impartial witness not connected with the procurement process. A report on the opening of tenders shall be drawn up in writing. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles VI and VII of this Agreement;
- (e) to be considered for award, a tender must, at the time of opening, conform to the essential

requirements of the notices or tenders documentation and be from suppliers which comply with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract;

- (f) unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic or foreign products, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous;
- (g) if it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation, the entity shall, in any subsequent negotiations, give equal consideration and treatment to all tenders within the competitive range;
- (h) entities should normally refrain from awarding contracts on the condition that the supplier provides offset procurement opportunities or similar conditions. In the limited number of cases where such requisites are part of a contract, Parties concerned shall limit the offset to a reasonable proportion within the contract value and shall not favour suppliers from one Party over suppliers from any other Party. Licensing of technology should not normally be used as a condition of award but instances where it is required should be as infrequent as possible and suppliers from one Party shall not be favoured over suppliers from any other Party.

#### *Use of single tendering*

15. The provisions of paragraphs 1 to 14 above governing open and selective tendering procedures need not apply in the following conditions, provided that single tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among foreign suppliers or protection to domestic producers:

- (a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have

been either collusive or do not conform to the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;

- (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, the products can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
- (c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products could not be obtained in time by means of open or selective tendering procedures;
- (d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies or installations, or as the extension of existing supplies or installations where a change of supplier would compel the entity to purchase equipment not meeting requirements of interchangeability with already existing equipment;
- (e) when an entity purchases prototypes or a first product which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent purchases of products shall be subject to paragraphs 1 to 14 of this Article<sup>1</sup>.

16. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 15 of this Article. Each report shall contain the name of the purchasing entity, value and kind of goods purchased, country of origin, and a statement of the conditions in paragraph 15 of this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles VI and VII of this Agreement.

<sup>(1)</sup> Original development of a first product may include limited production in order to incorporate the results of field testing and to demonstrate that the product is suitable for production in quantity to acceptable quality standards. It does not extend to quantity production to establish commercial viability or to recover research and development costs.

*Article VI***Information and review**

1. Any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, shall be published promptly by the Parties in the appropriate publications listed in Annex IV and in such a manner as to enable other Parties and suppliers to become acquainted with them. The Parties shall be prepared, upon request, to explain to any other Party their government procurement procedures. Entities shall be prepared, upon request, to explain to any supplier from a country which is a Party to this Agreement their procurement practices and procedures.

2. Entities shall, upon request by any supplier, promptly provide pertinent information concerning the reasons why that supplier's application to qualify for the suppliers' list was rejected, or why that supplier was not invited or admitted to tender.

3. Entities shall promptly, and in no case later than seven working days from the date of the award of a contract, inform the unsuccessful tenderers by written communication or publication that a contract has been awarded.

4. Upon request by an unsuccessful tenderer, the purchasing entity shall promptly provide that tenderer with pertinent information concerning the reasons why the tender was not selected, including information on the characteristics and the relative advantages of the tender selected, as well as the name of the winning tenderer.

5. Entities shall establish a contact point to provide additional information to any unsuccessful tenderer dissatisfied with the explanation for rejection of his tender or who may have further questions about the award of the contract. There shall also be procedures for the hearing and reviewing of complaints arising in connection with any phase of the procurement process, so as to ensure that, to the greatest extent possible, disputes under this Agreement will be equitably and expeditiously resolved between the suppliers and the entities concerned.

6. The government of the unsuccessful tenderer, which is a Party to this Agreement, may seek, without prejudice to the provisions under Article VII, such additional information on the contract award as may be necessary to ensure that the purchase was made fairly

and impartially. To this end, the purchasing government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders this information shall not be disclosed except after consultation with and agreement of the party which gave the information to the government of the unsuccessful tenderer.

7. Available information concerning individual contract awards shall be provided, upon a request, to any other Party.

8. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers, shall not be revealed without formal authorization from the party providing the information.

9. The Parties shall collect and provide to the Committee on an annual basis statistics on their purchases. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement:

- (a) global statistics on estimated value of contracts awarded, both above and below the threshold value;
- (b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products and either nationality of the winning tenderer or country of origin of the product, according to a recognized trade or other appropriate classification system;
- (c) statistics on the total number and value of contracts awarded under each of the cases of Article V (15).

*Article VII***Enforcement of obligations***Institutions*

1. There shall be established under this Agreement a Committee on Government Procurement (referred to in this Agreement as 'the Committee') composed of representatives from each of the Parties. This Committee shall elect its own chairman and shall meet

as necessary but not less than once a year for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.

2. The Committee may establish *ad hoc* panels in the manner and for the purposes set out in paragraph 8 of this Article and working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.

#### Consultations

3. Each Party shall afford sympathetic consideration to, and shall afford adequate opportunity for, consultations regarding representations made by another Party with respect to any matter affecting the operation of this Agreement.

4. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement, is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, by another Party or Parties, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultations. The Parties concerned shall initiate requested consultations promptly.

5. The Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall provide information concerning the matter subject to the provisions of Article VI (8), and attempt to conclude such consultations within a reasonably short period of time.

#### Dispute settlement

6. If no mutually satisfactory solution has been reached as a result of consultations under paragraph 4 between the Parties concerned, the Committee shall meet at the request of any Party to the dispute within 30 days of receipt of such a request to investigate the matter, with a view to facilitating a mutually satisfactory solution.

7. If no mutually satisfactory solution has been reached after detailed examination by the Committee under paragraph 6 within three months, the Committee shall, at the request of any Party to the dispute establish a panel to:

(a) examine the matter;

(b) consult regularly with the Parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;

(c) make a statement concerning the facts of the matter as they relate to application of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

8. In order to facilitate the constitution of panels, the chairman of the Committee shall maintain an informal indicative list of governmental officials experienced in the field of trade relations. This list may also include persons other than governmental officials. In this connection, each Party shall be invited to indicate at the beginning of every year to the chairman of the Committee the names of the one or two persons whom the Parties would be willing to make available for such work. When a panel is established under paragraph 7, the chairman, within seven days, shall propose to the parties to the dispute the composition of the panel consisting of three or five members and preferably government officials. The parties directly concerned shall react within seven working days to nominations of panel members by the chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as governmental representatives or as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

9. Each panel shall develop its own procedures. All Parties, having a substantial interest in the matter and having notified this to the Committee, shall have an opportunity to be heard. Each panel may consult with and seek information from any source it deems appropriate. Before a panel seeks such information from a source within the jurisdiction of a Party it shall inform the government of that Party. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the government or person providing the information, will be provided.

Where a mutually satisfactory solution to a dispute cannot be found or where the dispute relates to an interpretation of this Agreement, the panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee. Where an interpretation of this Agreement is not involved and where bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution had been reached.

10. The time required by panels will vary with the particular case. Panels should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, taking into account the obligation of the Committee to ensure prompt settlement in cases of urgency, normally within a period of four months from the date the panel was established.

*Enforcement*

11. After the examination is complete or after the report of a panel, working party or other subsidiary body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to these reports, the Committee shall take appropriate action normally within 30 days of receipt of the report unless extended by the Committee, including:

- (a) a statement concerning the facts of the matter;
- (b) recommendations to one or more parties; and/or
- (c) any other ruling which it deems appropriate.

Any recommendations by the Committee shall aim at the positive resolution of the matter on the basis of the operative provisions of this Agreement and its objectives set out in the Preamble.

12. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

13. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

*Balance of rights and obligations*

14. If the Committee's recommendations are not accepted by a Party, or Parties to the dispute, and if the Committee considers that the circumstances are serious enough to justify such action, it may authorize a Party or Parties to suspend in whole or in part, and for such time as may be necessary, the application of this Agreement to any other Party or Parties, as is determined to be appropriate in the circumstances.

*Article VIII*

*Exceptions to the Agreement*

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures necessary to protect public morals, order or safety, human, animal or plant life or health, intellectual property, or relating to the products of handicapped persons, of philanthropic institutions or of prison labour.

*Article IX*

*Final provisions*

*Acceptance and accession*

1. (a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community whose agreed lists of entities are contained in Annex I.



(b) Any government Contracting Party to the GATT not a Party to this Agreement may accede to it on terms to be agreed between that government and the Parties. Accession shall take place by the deposit with the Director-General to the Contracting Parties to the GATT of an instrument of accession which states the terms so agreed.

(c) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession, and whose agreed lists of entities are contained in Annex I.

(d) This Agreement shall be open to accession by any other government on terms related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the parties, by the deposit with the Director-General to the Contracting Parties to the GATT of an instrument of accession which states the terms so agreed.

(e) In regard to acceptance, the provisions of Article XXVI (5) (a) and (b) of the General Agreement would be applicable.

#### *Reservations*

2. Reservations may not be entered in respect of any of the provisions of this Agreement.

#### *Entry into force*

3. This Agreement shall enter into force on 1 January 1981 for the governments<sup>(1)</sup> which have accepted or acceded to it by that date. For each other government, it shall enter into force on the 30th day following the date of its acceptance or accession to this Agreement.

#### *National legislation*

4. (a) Each government accepting or acceding to this Agreement shall ensure, not later than the date

of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by the entities contained in its list annexed hereto, with the provisions of this Agreement.

(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

#### *Rectifications or modifications*

5. (a) Rectifications of a purely formal nature and minor amendments relating to Annexes I to IV to this Agreement shall be notified to the Committee and shall become effective provided there is no objection within 30 days to such rectifications or amendments.

(b) Any modifications to lists of entities other than those referred to in subparagraph (a) may be made only in exceptional circumstances. In such cases, a Party proposing to modify its list of entities shall notify the chairman of the Committee who shall promptly convene a meeting of the Committee. The Parties shall consider the proposed modification and consequent compensatory adjustments, with a view to maintaining a comparable level of mutually agreed coverage provided in this Agreement prior to such modification. In the event of agreement not being reached on any modification taken or proposed, the matter may be pursued in accordance with the provisions contained in Article VII of this Agreement, taking into account the need to maintain the balance of rights and obligations at the highest possible level.

#### *Reviews and negotiations*

6. (a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the contracting Parties to the GATT of developments during the periods covered by such reviews.

(b) Not later than the end of the third year from the entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to broadening and improving this Agreement on the basis of mutual reciprocity, having regard to the provisions of Article III relating to developing countries. In this connection, the Committee shall, at an early stage, explore the possibilities of expanding the coverage of this Agreement to include service contracts.

<sup>(1)</sup> For the purpose of this Agreement, the term 'government' is deemed to include the competent authorities of the European Economic Community.

*Amendments*

7. The parties may amend this Agreement having regard *inter alia* to the experience gained in its implementation. Such an amendment, once the parties have concurred in accordance with the procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

*Withdrawal*

8. Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the day on which written notice of withdrawal is received by the Director-General to the Contracting Parties to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.

*Non-application of this Agreement between particular Parties*

9. This Agreement shall not apply as between any two Parties if either of the parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

*Notes and Annexes*

10. The notes and Annexes to this Agreement constitute an integral part thereof.

*Secretariat*

11. This Agreement shall be serviced by the GATT secretariat.

*Deposit*

12. This Agreement shall be deposited with the Director-General to the Contracting Parties to the GATT, who shall promptly furnish to each Party and each Contracting Party to the GATT a certified copy thereof, of each rectification or modification thereto pursuant to paragraph 5 and of each amendment thereto pursuant to paragraph 7, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 1 and of each withdrawal therefrom pursuant to paragraph 8, of this Article.

*Registration*

13. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the lists of entities annexed hereto.

## NOTES

*Article I (1)*

Having regard to general policy considerations relating to tied aid, including the objective of developing countries with respect to the untying of such aid, this Agreement does not apply to procurement made in furtherance of tied aid to developing countries so long as it is practised by Parties.

*Article V (14) (b)*

Having regard to the general policy considerations of developing countries in relation to government procurement, it is noted that under the provisions of Article V (14) (b), developing countries may require incorporation of domestic content, offset procurement, or

transfer of technology as criteria for award of contracts. It is noted that suppliers from one Party shall not be favoured over suppliers from any other Party.

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#### Note concerning Annexes to the Agreement

The Annexes to this Agreement, which contain lists of purchasing entities <sup>(1)</sup> to which the provisions of the Agreement will apply, and the lists of publications referred to in Article V (3) and (6), and in Article VI (1) are not reproduced here owing to their bulk. They may be found annexed to the certified version of the Agreement on Government Procurement published by the GATT Secretariat in Geneva (dated 12 April 1979).

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<sup>(1)</sup> The following countries have deposited such lists of purchasing entities: Australia, EEC and its Member States, Finland, Hong Kong, India, Jamaica, Japan, Nigeria, Norway, Sweden, Switzerland and the United States.

I

(Information)

COUNCIL AND COMMISSION

COMMISSION STATEMENT  
concerning Article 115 of the Treaty

The Commission notes the concern expressed by the Council in its Resolution.

The Commission is aware that in awarding public supply contracts Member States may still, in accordance with the Treaty, apply certain measures of national commercial policy with regard to the eligibility of products originating in third countries for such contracts. The Commission recognizes that, until these national measures are harmonized within the framework of the contractual or unilateral common commercial policy and in the light of the outcome of current or future international negotiations, their application may give rise to difficulty in cases where tenders include products originating in third countries in free circulation in another Member State.

The Commission would recall that Article 115 of the Treaty enables the efficacy of such national measures to be safeguarded against deflection of trade resulting from the free movement within the Community of products originating in third countries.

In accordance with Article 115 of the Treaty, the Commission intends to authorize those Member States concerned which have applied for such authorization to provide, in respect of all entities not covered by the Agreement, in respect of entities covered by the Agreement vis-à-vis non-signatory countries and in respect of entities covered by the Agreement, but as regards products or contracts not covered by it, for the exclusion from their public contracts of certain products or categories of products originating in third countries which are in free circulation in another Member State, in all cases where similar arrangements are made as regards directly imported products originating in third countries.

The application of such measures will have effect only at the time of examination of tenders and not at the point of importation into the Member State concerned. These measures will not therefore entail any controls nor will they lead to the creation of any form of barrier at the frontiers within the Community and they will not affect the import arrangements for the import of products originating in third countries, nor in particular the extent of liberalization at Community or national level.

The Commission will make its decisions after examination of the applications of the Member States concerned. Applications shall specify the categories of goods and public contracts in question, the arrangements applied in the field of public contracts to such goods where they originate in third countries and are imported directly, and the grounds for the application of such arrangements.

**COUNCIL RESOLUTION**

of 22 July 1980

**concerning access to Community public supply contracts for products originating in third countries**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Whereas the aim of Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts <sup>(1)</sup> is to enable suppliers throughout the Community to compete for such contracts on equal terms, thereby creating a degree of market transparency which will improve the functioning of the common market in this sector and will, in particular, contribute to observance of the ban on restrictions of the free movement of goods;

Whereas by Decision 80/271/EEC concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations <sup>(2)</sup>, the Council, on behalf of the European Community, approved *inter alia* the Agreement on government procurement;

Whereas the implementation of Directive 77/62/EEC and of the Agreement on government procurement makes it necessary for the Community to determine the conditions under which public supply contracts awarded by Member States are to be opened to products originating in third countries; whereas this concerns entities not covered by the Agreement and products or contracts not covered by the Agreement or originating in non-signatory countries;

Whereas these conditions must, in particular, safeguard the interests of Member State producers by enabling them to participate in public contracts awarded by the various third countries;

Whereas, in this connection, the Community must aim at achieving a satisfactory degree of reciprocity in relations with signatory third countries and non-signatory third countries;

1. notes that the Member States may continue to apply, in accordance with the Treaty, existing commercial policy measures in respect of public supply contracts awarded;
  - by entities not covered by the Agreement;
  - for products and contracts not covered by the Agreement;
  - by entities covered by the Agreement in respect of non-signatory countries;
2. notes the possibility referred to by the Commission of taking any necessary protective measures, under Article 115 of the Treaty, to ensure that the implementation of such provisions is not obstructed by deflection of trade;
3. agrees to promote, on a proposal from the Commission, the coordination and progressive standardization of the policies referred to under 1.

<sup>(1)</sup> OJ No L 13, 15. 1. 1977, p. 1.

<sup>(2)</sup> OJ No L 71, 17. 3. 1980, p. 1.

**Statement by the Council and the Commission on Article V (14) (h) of the Agreement on government procurement resulting from the multilateral trade negotiations concluded under the GATT**

**The Council and the Commission state that, as regards the offset procurement referred to in Article V (14) (h) of the Agreement on government procurement, the purchasing entities of the Member States of the EEC may, under the conditions laid down in that provision, earmark such procurement by means of an appropriate clause inserted in the contract which they conclude with the supplier concerned in the third country, for Community manufacturers.**

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**Communication of the European Economic Community concerning the Agreement on Government Procurement concluded in the framework of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations**

By Council Decision 80/271/EEC of 10 December 1979, the European Economic Community concluded the Agreement on Government Procurement. In accordance with its terms of acceptance the Community applies the Agreement to the countries listed in Annex I to this communication.

The Community extended, by decision of 25 January 1983, the benefits of the Agreement on Government Procurement pursuant to Article III (11) to suppliers in the least-developed countries which are not parties to the Agreement and which are listed in Annex II to this communication with respect to products originating in those countries.

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*ANNEX I*

Austria	Norway
Canada	Singapore
Finland	Sweden
Hong Kong	Switzerland
Japan	United States

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*ANNEX II*

Afghanistan	Lesotho
Bangladesh	Malawi
Benin	Maldives
Bhutan	Mali
Botswana	Nepal
Burundi	Niger
Republic of Cape Verde	Rwanda
Central African Republic	Western Samoa
Chad	São Tomé and Príncipe
Comoros	Seychelles
Djibouti	Somalia
Ethiopia	Sudan
Gambia	Tanzania
Guinea	Tonga
Guinea Bissau	Uganda
Equatorial Guinea	Upper Volta
Haiti	Yemen (PDR)
Laos	Yemen (Yemen Arab Republic)

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## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DECISION

of 16 November 1987

concerning the conclusion of the Protocol amending the GATT Agreement on Government Procurement

(87/565/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas the Community and the other signatories to the GATT Agreement on Government Procurement<sup>(1)</sup> entered into negotiations under Article IX (6) (b) thereof with a view to improving certain provisions of the Agreement;

Whereas the results of these negotiations are acceptable to the Community,

HAS DECIDED AS FOLLOWS:

*Article 1*

The Protocol amending the GATT Agreement on Government Procurement is hereby approved on behalf of the European Economic Community.

The text of the Protocol is attached to this Decision.

*Article 2*

The President of the Council is hereby authorized to designate the person empowered to sign the Protocol in order to bind the Community.

Done at Brussels, 16 November 1987.

*For the Council*

*The President*

P. SIMONSEN

<sup>(1)</sup> OJ No L 71, 17. 3. 1980, p. 44.



**PROTOCOL AMENDING THE AGREEMENT ON GOVERNMENT PROCUREMENT**

THE PARTIES TO THE AGREEMENT on Government Procurement, (hereinafter referred to as the 'Agreement'),

ACTING in accordance with Article IX : 7 of the Agreement,

HEREBY AGREE to amend the Agreement as follows :

*Article I*

1. Article I : 1 (a)

First sentence : delete 'the procurement of products' and replace by 'any procurement of products, through such methods as purchase or as lease, rental or hire-purchase, with or without an option to buy'.

2. Article I : 1 (b)

(1) Replace 'SDR 150 000' in first and second sentence by 'SDR 130 000'.

(2) Add footnote 3 to first sentence :

'(?) This Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article V : 4.'

(3) Third sentence : Redraft the language after the comma as follows :

'the basis for application of this Agreement shall be either the actual value of similar recurring contracts concluded over the previous fiscal year or twelve months adjusted, where possible, for anticipated changes in quantity and value over the subsequent twelve months, or the estimated value of recurring contracts in the fiscal year or twelve months subsequent to the initial contract. The selection of the valuation method by the entity shall not be used with the purpose of circumventing the Agreement.'

(4) Add the following after the amended third sentence :

'In cases of contracts for the lease, rental, or hire-purchase of products, the basis for calculating the contract value shall be :

- (i) in the case of fixed-term contracts, where their term is twelve months or less, the calculation should be based on the total contract value for its duration, or, where their term exceeds

twelve months, its total value including the estimated residual value ;

(ii) in the case of contracts for an indefinite period, the monthly instalment multiplied by forty-eight ;

(iii) if there is any doubt, the second basis of calculation, namely (ii), is to be used.

In cases where a proposed procurement specifies the need for option clauses, the basis for application of this Agreement shall be the total value of the maximum permissible purchases, lease, rentals or hire-purchases, inclusive of optional purchases ;'

*Article II*

1. Add new Article II : 2 :

'2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement the Parties shall ensure :

(a) that their entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership ;

(b) that their entities shall not discriminate against locally-established suppliers on the basis of the country of production of the good being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of paragraph 4 of this Article.'

2. Renumber paragraphs 2 and 3 to become paragraphs 3 and 4.

*Article III*

1. Article III : 3

Replace 'purchasing' in last sentence by 'procuring'.

2. Article III : 7

The reference to paragraph 13 should be replaced by reference to paragraph 14.

3. Add new Article III : 10 :

'10. Technical assistance referred to in paragraphs 8 and 9 above would include translation of qualification documentation and tenders made by suppliers of developing country Parties from a GATT language designated by the entity, unless developed country Parties

deem translation as burdensome, and, in that case, explanation shall be given to developing country Parties upon their request addressed either to the developed country Parties or to their entities.'

4. Renumber paragraphs 10-14 to become paragraphs 11-15.

5. Article III : 10 (to become Article III : 11)

Replace 'notices about proposed purchases' in first sentence by 'notices about proposed procurements'; and replace 'purchased or to be purchased' in first sentence by 'procured or to be procured'.

6. Article III : 12 (to become Article III : 13)

Replace 'purchase' in last sentence by 'procurement'.

#### Article IV

1. Article IV : 1

Replace 'purchased' in first sentence by 'procured'.

2. Add new Article IV : 4 :

'4. Procurement entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.'

#### Article V

1. Article V : 1

The references to paragraphs '7' and '15' should be replaced by '8' and '16', respectively.

2. Article V : 2(b)

(1) Add new sentence at the beginning of the existing provision :

'(b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question.'

(2) the present sentence 'any conditions, etc.' should start with a capital letter. Semicolon at the end of present sentence should be replaced by period. The following sentence should be added thereafter :

'The financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity as well as

its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organizations';.

3. Article V : 2(c)

Replace 'purchase' in first, second and third sentence by 'procurement'.

4. Article V : 2(d)

Add the following words between 'shall ensure that' and 'all qualified suppliers' :

'suppliers may apply for qualification at any time; and that'.

5. Add new Article V : 2(f) :

'(f) the Parties shall ensure that

(i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for different procedures;

(ii) efforts be made to minimize differences — in qualification procedures between entities';.

6. Article V : 2(f) (to become Article V : 2(g))

Replace the words '(a) to (e) above' by '(a) to (f) above'.

7. Add new Article V : 3 :

'3. Entities shall not provide to any potential supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.'

8. Renumber Article V : 3-16 to become Article V : 4-17.

9. Article V : 3 (to become Article V : 4)

Replace 'purchase' in heading and first sentence by 'procurement'.

10. Article V : 4 (to become Article V : 5)

Replace 'purchase' in first sentence of both first and second part of this provision by 'procurement'.

11. Article V : 4(a) (to become Article V : 5(a))

(1) Redraft as follows :

'(a) the nature and quantity, including any options for additional quantities, of the products to be supplied and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring

- contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products to be procured;.
12. Replace period after subparagraph 4 (g) — to become 5 (g) — by semicolon.
13. Add new Article V : 5 (h):
- '(h) whether the entity is inviting offers for purchase, lease, rental of hire-purchase, or more than one of these methods.'
14. Article V : 5 (to become Article V : 6)
- Replace 'purchase' in first sentence by 'procurement'.
15. Article V : 6 (a) (i) (to become Article V : 7 (a) (i)).
- Replace 'purchased' by 'procured'.
16. Article V : 6 (c) (to become Article V : 7 (c)).
- Replace the reference to 'paragraph 3' by 'paragraph 4'.
17. Article V : 7 (to become Article V : 8).
- (1) Replace 'purchase' in first sentence by 'procurement'.
- (2) Replace the reference to 'paragraphs 2-6' by 'paragraphs 2-7'.
18. Article V : 8 (to become Article V : 9).
- Replace 'purchase' in both sentences by 'procurement'.
19. Article V : 9 (a) (to become Article V : 10 (a)).
- Replace 'purchase' by 'procurement'.
20. Article V : 9 (b) (to become Article V : 10 (b)).
- Redraft as follows:
- '(b) Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the proposed procurement, the extent of sub-contracting anticipated, and the realistic time required for production, de-stocking and transport of goods from the points of supply.'
21. Article V : 10 (a) (to become Article V : 11 (a)).
- Replace '30 days' by '40 days' and 'paragraph 3' by 'paragraph 4'.
22. Article V : 10 (b) (to become Article V : 11 (b)).
- (1) Replace '30 days' and 'paragraph 3' in the first sentence by '25 days' and 'paragraph 4 of this Article', respectively;
- (2) Replace '30 days' in the second sentence by '40 days'.
23. Article V : 10 (c) (to become Article V : 11 (c)).
- (1) Replace '30 days' in the first sentence by '40 days';
- (2) Replace 'paragraph 3' and '30 days' in the second sentence by 'paragraph 4 of this Article' and '40 days', respectively.
24. Article V : 10 (d) (to become Article V : 11 (d)).
- Redraft as follows:
- '(d) The periods referred to in (a), (b) and (c) above may be reduced in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 5 of this Article. In this case, the period for the receipt of tender shall in no case be less than 25 days. The second or subsequent publication should include a reference to permit the identification of the first publication.'
25. Add new Article V : 11 (e):
- '(e) The periods referred to in (a), (b), (c) and (d) above may be reduced where a state of urgency duly substantiated by the entity renders impracticable the periods in question but shall in no case be less than 10 days from the date of the publication referred to in paragraph 4 of this Article.'
26. Add new Article V : 11 (f):
- '(f) The Parties shall ensure that their entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.'
27. Article V : 12 (to become Article V : 13)
- Redraft first part as follows:
- '13. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including infor-

mation required to be published in the notice of proposed procurement, except for paragraph 5 (g) of this Article, and the following:

28. Article V : 14 (h) (to become Article V : 15 (h))

Add a sentence to the end of the existing provision as follows:

- (1) In the limited number of cases where offset procurement opportunities or similar conditions are required, these requirements shall be included in the notice of proposed procurement and tender documentation;

29. Note to Article V : 14 (h) (to become Note to Article V : 15 (h))

- (1) The reference in the first sentence to 'paragraph 14 (h)' should be replaced by 'paragraph 15 (h)'.

- (2) Add a second sentence, to read:

'When known, these requirements shall be specified in the notice of proposed procurement and tender documentation.'

30. Add new Article V : 15 (i):

- '(i) options clauses shall not be used in a manner which circumvents the provisions of the Agreement';

31. Add new Article V : 15 (j):

- '(j) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.'

32. Article V : 15 (to become Article V : 16).

The reference to 'paragraphs 1-14' in the first sentence should be replaced by 'paragraphs 1-15'.

33. Article V : 15 (d) (to become Article V : 16 (d)).

- (1) Replace 'purchase' by 'procure'.

- (2) Add footnote 4 at the end of this provision as follows:

(') It is the understanding that 'existing equipment' referred to in Article V : 16 (d) includes software to the extent that the initial procurement of the software was covered by the Agreement'.

34. Article V : 15 (e) (to become Article V : 16 (e))

- (1) Replace 'purchases' in first sentence by 'procures'. In second sentence replace 'purchases' by 'procurements' and the reference to 'paragraphs 1-14' by 'paragraphs 1-15'.

- (2) Renumber footnote 3 to become footnote 5.

35. Article V : 16 (to become Article V : 17)

- (1) In second sentence, replace 'purchasing' by 'procuring' and 'purchased' by 'procured'.

- (2) The references in first and second sentence to 'paragraph 15' should be replaced by 'paragraph 16'.

*Article VI*

1. Article VI : 1

Introduce the following new paragraph 1:

'1. Entities shall publish a notice in the appropriate publication listed in Annex II not later than sixty days after the award of a contract(s) under Article V : 15 or 16.

These notices shall contain (°):

- (a) nature and quantity of products in the contract award(s);
- (b) name and address of the entity awarding the contract;
- (c) date of award;
- (d) name(s) and address(es) of winning tenderer(s);
- (e) value of winning award(s) or the highest and lowest offer taken into account in the award of the contract;
- (f) where appropriate, means of identifying the notice issued under Article V : 4;
- (g) the type of procedure used;
- (h) where appropriate, justification according to Article V : 16 for the use of such procedure.'

(°) It is understood that certain information on the contract award may not be published in cases of those contracts where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.'

2. Renumber present Article VI: 1-9 to become Article VI: 2-10.

3. Article VI: 3 (to become Article VI: 4)

Replace the period at the end of the provision by comma, and add the following:

'the value or values of the tenders and the name and address of the winning tenderer. It is understood that the criteria contained in paragraph 9 of this Article are also applicable to the information requirements above.'

4. Article VI: 4 (to become Article VI: 5)

Replace 'purchasing' by 'procuring'.

5. Article VI: 6 (to become Article VI: 7)

Replace 'purchase' in first sentence by 'procurement'.

Replace 'purchasing' in second sentence by 'procuring'.

6. Article VI: 9 (to become Article VI: 10)

Amend first sentence as follows:

'The Parties shall collect and provide to the Committee on an annual basis statistics on their procurements covered by this Agreement.'

7. Article VI: 9 (a) (to become Article VI: 10 (a))

Delete the first word 'global', delete semicolon at the end and add the following: 'on a global basis and broken down by entities;'

8. Article VI: 9 (b) (to become Article VI: 10 (b))

Amend as follows:

'(b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products according to a uniform classification system to be determined by the Committee, and country of origin of the product;'

9. Article VI: 9 (c) (to become Article VI: 10 (c))

Amend as follows:

'(c) statistics, broken down by entity, and by category of product, on the number and total value of contracts awarded under each of the cases of Article V, paragraph 16 showing country of origin of the product;'

10. Add new Article VI: 10 (d):

'(d) statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in Annex I.'

#### *Article VII*

1. Article VII: 1

After the word 'Chairman' in second sentence, add 'and Vice-Chairman'.

2. Article VII: 5

The reference to 'Article VI, paragraph 8' should be replaced by 'Article VI, paragraph 9'.

#### *Article IX*

Article IX: 3

Footnote 4 should be renumbered footnote 7.

#### *Annex II*

The reference to 'Article V, paragraph 3' in the title should be replaced by 'Article V, paragraph 4'. The word 'Purchases' should be replaced by 'Procurements'.

#### *Annex III*

The reference to 'Article V, paragraph 6' should be replaced by 'Article V, paragraph 7'.

#### *Annex IV*

The reference to 'Article VI, paragraph 1' should be replaced by 'Article VI, paragraph 2'.

This Protocol shall be deposited with the Director-General to the Contracting Parties to the General Agreement on Tariffs and Trade who shall promptly furnish to each Party to the Agreement and to each contracting party to the General Agreement on Tariffs and Trade a certified copy thereof and a notification of each acceptance of the Protocol.

This Protocol shall be open for acceptance, by signature or otherwise, by the Parties to the Agreement, until 1 October 1987, provided that the period during which this Protocol may be accepted may, by a decision of the Committee on Government Procurement, be extended beyond that date.

Reservations may not be entered in respect of any of the provisions of this Protocol.

This Protocol shall enter into force on the ninetieth day following the date of its acceptance by all Parties to the Agreement, provided that it shall not enter into force before 1 January 1988.

This Protocol shall be enregistered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this second day of February, one thousand nine hundred and eighty-seven in a single copy, in the English, French and Spanish languages, each text being authentic.

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**Information regarding the signing and entry into force of the Protocol amending the  
GATT Agreement on Government Procurement**

The Protocol amending the GATT Agreement on Government Procurement was signed on 16 November 1987 by the Head of the Commission's Permanent Delegation in Geneva, Mr Tran van Tinh, with the effect of binding the Community.

This Protocol will enter into force on 14 February 1988.

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**ADVISORY COMMITTEES :**

- 1 . FOR PUBLIC PROCUREMENT**
- 2 . FOR OPENING - UP  
OF PUBLIC PROCUREMENT**





16.S.71

Official Journal of the European Communities

No L 185/15

## COUNCIL DECISION

of 26 July 1971

setting up an Advisory Committee for Public Works Contracts

(71/306/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the  
European Economic Community;

Having regard to the proposals from the  
Commission;

Having regard to the Opinion of the European  
Parliament<sup>1</sup>;

Having regard to the Opinion of the Economic and  
Social Committee<sup>2</sup>;

Whereas the implementation of the measures adopted  
by the Council in the field of public works contracts  
may raise problems which it seems desirable to  
examine in common;

Whereas it is advisable to set up for this purpose a  
Committee presided over by the Commission and  
composed of representatives of the Member States  
belonging to the authorities of those States;

HAS DECIDED AS FOLLOWS:

*Article 1*

An Advisory Committee for Public Works Contracts  
is hereby set up within the Commission.

*Article 2*

Without prejudice to the provisions of Articles 169  
and 170 of the Treaty, the Committee shall examine  
regularly, on the initiative of the Commission or at  
the request of a Member State, problems arising from  
the application of the measures adopted by the  
Council with regard to public works contracts,  
including special cases arising in this field. The  
Committee shall examine in particular the reasons for

which undertakings conforming to the criteria laid  
down by the Council may not have been consulted or  
may not have won the contract although they  
submitted the best tender.

*Article 3*

The Committee shall be composed of representatives  
of the Member States belonging to the authorities of  
those States.

Member States shall appoint as members of the  
Committee one member and one alternate for each  
country.

The Committee shall be chaired by an official of the  
Commission. The Chairman may be assisted by  
Commission officials. Secretarial services shall be  
provided by the Commission.

*Article 4*

The Committee shall be convened by its Chairman  
either on his own initiative or at the request of one of  
its members.

*Article 5*

Committee discussions shall be recorded in minutes.

*Article 6*

The Committee shall draw up its own rules of  
procedure.

Done at Brussels, 26 July 1971.

For the Council

The President

A. MORO

<sup>1</sup> OJ No 6, 12.4.1965, p. 853/65 and 859/65.

<sup>2</sup> OJ No 13, 29.1.1965, p. 150/65 and OJ No 63, 13.4.1965,  
p. 925/65.



**COUNCIL DECISION**

**of 21 December 1976**

**amending Decision 71/306/EEC setting up an Advisory Committee for Public Contracts**

**(77/63/EEC)**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the proposal from the Commission,

Whereas the implementation of the measures adopted by the Council in the field of public supply contracts may raise problems which it seems desirable to examine in common with those arising in the field of public works contracts;

Whereas it is advisable for this purpose to extend the function and composition of the Advisory Committee for Public Works Contracts,

HAS DECIDED AS FOLLOWS:

*Article 1*

Decision 71/306/EEC shall be amended as follows:

- (a) in Article 1, the word 'works' shall be deleted;
- (b) in Article 2, immediately after the words 'public works', the words 'and public supplies' shall be added; and

- (c) in the second paragraph of Article 3, the words 'one alternate' shall be deleted and the words 'one or two alternates' substituted.

*Article 2*

From the date on which this Decision takes effect, the Committee shall be renamed the Advisory Committee for Public Contracts.

*Article 3*

This Decision shall be published in the *Official Journal of the European Communities*.

It shall take effect on the date of its publication.

Done at Brussels, 21 December 1976.

*For the Council*

*The President*

A. P. L. M. M. van der STEE



COMMISSION DECISION

of 26 May 1987

setting up an advisory committee on the opening-up of public procurement

(87/305/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Economic Community,

Whereas a real and effective opening-up of public procurement throughout the Community constitutes a priority objective for the Community as regards the completion of the internal market by 1992;

Whereas the achievement of this objective implies that it is necessary for the Commission better to assess the economic, technical, legal and social realities of public procurement and for the interested parties to have a better grasp of the problems involved in applying the Community rules in this area;

Whereas close and continuous contact with the economic interests operating in the field of public procurement for supplies, works and services may contribute to this achievement;

Whereas the most appropriate method of organizing these contacts is to set up, under the auspices of the Commission, an advisory committee in which these interests are represented; whereas it is moreover appropriate to provide for the presence in this committee of particularly well-qualified persons capable of bringing their general knowledge of public procurement to bear at Community level,

HAS DECIDED AS FOLLOWS:

Article 1

An advisory committee on the opening-up of public procurement in the Community (hereinafter referred to as 'the committee') is hereby set up under the auspices of the Commission.

Article 2

The committee's task shall be to assist the Commission, either at the Commission's request or on its own initiative, in assessing the economic, technical, legal and social aspects of public procurement. The committee's task shall also be to enable the sectors concerned to appreciate more fully the problems involved in applying the Community rules in this area.

Article 3

The committee shall comprise 24 members at the most.

Article 4

The committee shall be composed of independent experts whose business and industrial experience and whose

competence regarding public procurement at Community level are widely recognized. The members of the committee shall be appointed by the Commission, after consulting the sectors of business and industry concerned.

Article 5

The term of office of members of the committee shall be two years. It shall be renewable. After the expiry of the two-year period, the members of the committee shall remain in office until they have been replaced or their term has been renewed.

A member's term of office shall end before the expiry of the two-year period upon his resignation or death. The Commission reserves the right to end a member's term of office at any time.

The member shall be replaced for the remainder of this term of office in accordance with the procedure provided for in Article 4.

The duties performed shall not be remunerated.

Article 6

The list of members shall be published by the Commission in the *Official Journal of the European Communities* for information purposes.

Article 7

The committee shall be chaired by a representative of the Commission.

Article 8

The committee may invite any person who is particularly qualified on an item entered on the agenda to participate in its work as an expert.

Experts shall take part in discussion only in respect of the question on which they were invited to attend.

Article 9

The committee may set up working parties,

Article 10

1. The Committee shall meet on the Commission's premises when convened by the Commission.

2. Representatives of the Commission departments concerned shall take part in the meetings of the committee and of the working parties.

3. The secretariat of the committee and the working parties shall be provided by the Commission departments.

*Article 11*

Without prejudice to the provisions of Article 214 of the Treaty, the members of the committee and, where appropriate, the experts invited under the procedure provided for in Article 8 shall be required not to disclose information they have acquired through the work of the committee or of the working parties, whenever the

Commission informs them that the opinion requested or the question put relates to a matter of a confidential nature.

In such cases, only the members of the committee and the representatives of the Commission departments shall attend the meetings.

*Article 12*

This Decision shall take effect on 26 May 1987.

*For the Commission*

COCKFIELD

*Vice-President*

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**COMMISSION DECISION**

of 17 July 1987

**amending Decision 87/305/EEC of 26 May 1987 setting up an advisory committee on the opening-up of public procurement**

(87/560/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Whereas the Commission, in its Decision of 87/305/EEC (1) has set up an advisory committee on the opening-up of public procurement with the task of assisting it in the economic, technical, legal and social aspects of public procurement ;

Whereas the number of members constituting the committee was initially fixed at a maximum of 24, as provided in Article 3 of the abovementioned Decision ;

Whereas the number of members originally fixed is proving insufficient to enable the Committee to carry out its task effectively, particularly the assessment of the social dimension of public procurement, and there is, therefore, ground for enlarging it,

HAS DECIDED AS FOLLOWS :

*Article 1*

Article 3 of Decision 87/305/EEC is replaced by the following text :

'The Committee shall comprise 25 members at most'.

*Article 2*

This Decision shall take effect on 17 July 1987.

Done at Brussels, 17 July 1987.

*For the Commission*

COCKFIELD

*Vice-President*

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(1) OJ No L 152, 12. 6. 1987, p. 32.