



## COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

### EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending

**Directive 92/50/EEC relating to the coordination of procedures for the award of public service contracts, Directive 93/36/EEC coordinating procedures for the award of public supply contracts, and Directive 93/37/EEC concerning the coordination of procedures for the award of public work contracts**

Proposal for a

### EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending

**Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors**

(presented by the Commission)

[REDACTED] Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

amending

95/ 0079(COD)

**Directive 92/50/EEC relating to the coordination of procedures for the award of public service contracts, Directive 93/36/EEC coordinating procedures for the award of public supply contracts, and Directive 93/37/EEC concerning the coordination of procedures for the award of public work contracts**

(.../..../EC)

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## EXPLANATORY MEMORANDUM

### I. Introduction

1. On 15 December 1993, the negotiations on a revision of the first Agreement on Government Procurement, hereinafter referred to as "the Agreement" had been concluded. On 15 April 1994, in parallel with the conclusion of the Uruguay Round, the European Union, inter alia, signed the new Agreement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade. The new Agreement will enlarge to a considerable extent the existing framework of balanced rights and obligations with respect to government procurement, as it has been estimated that the new Agreement, all in all, represents approximately ten times the coverage of the initial Agreement of 1979 and that the value of the procurements covered by the GPA will be of the order of about ECU 350 billions each year.
2. As compared to the previous Agreement of 1979, the new Agreement no longer covers supplies contracts only but also works and services and, besides the contracts awarded by the State, certain contracts awarded by public authorities at the regional and local level as well as certain contracts awarded within the water, electricity, urban transport, ports and airports sectors.
3. The realization of this Agreement by the Community does not, per se, render amendments of the Community legislation necessary. In fact, the Agreement, which the Community has entered into, forms an integral part of the Community legal order without implementing measures being necessary. Consequently, contracting authorities which are subject to both the directives and the Agreement must therefore apply two distinct legal orders to the same contract. However, to the extent that the provisions of the Agreement are more favourable on certain points than the Community rules, it is undeniable that the functioning of the Community regime will be affected.
4. It is therefore essential to guarantee that suppliers, contractors and service providers from the European Union benefit from a treatment, which is as favourable as that reserved for suppliers, contractors and service providers from third countries having signed the Agreement. To that end, it is proposed to align the provisions of the directives with those of the Agreement as soon as the latter are more favourable for the undertakings even if this entails introducing some supplementary obligations for the contracting authorities in the European Union.
5. To the extent that the provisions of the Agreement differ from those of the directives, it also seems appropriate to amend the latter in order that contracting authorities and contracting entities, which are subject to the Agreement, comply with it when behaving in conformity with the amended directives.
6. It is also important to simplify the application of the directives and to maintain the equilibrium, which has been reached in the "acquis communautaire". Most of the proposed amendments therefore concern the entire field of application of the directives. Such is, e.g., the case regarding the amendments of the thresholds.
7. The new Agreement provides in many respects for options and derogations which go beyond what is permissible under the existing EU rules, notably with regard to certain procedural obligations of public authorities. Given the will expressed not to undermine, even in part, the "acquis communautaire", it was not deemed appropriate to propose that they be changed.

## **II Scope of the proposal**

8. This proposal concerns the amendments to Directive 92/50/EEC ("Services Directive"), Directive 93/36/EEC ("Supplies Directive"), and Directive 93/37/EEC ("Works Directive") (hereafter referred to as "Services", "Supplies", "Works" or, if referred to together, "the Directives"), the changes to Directive 93/38/EEC ("Utilities Directive") being subject of the Commission's proposal for a Directive amending the Utilities Directive.
9. The main amendments, which are proposed, are the same for all three directives. They are the following:
  - As regards the field of application, the applicable thresholds are amended in order to align them with those provided for by the Agreement. These thresholds are slightly lower: 200 000 SDR(1) instead of 200 000 ECU for supplies and services contracts awarded by the regional and local contracting authorities, 5 000 000 SDR(1) instead of 5 000 000 ECU for works contracts awarded by the State and regional and local contracting authorities. The reduction is more important for service contracts awarded by the State as the applicable threshold pass from 200 000 ECU to 130 000 SDR(1).

It should be noted that the proposal, with regard to the procurement of services, goes slightly beyond what would have been required by the Agreement, as the Agreement only covers services listed in Annex IA of Directive 92/50/EEC (Services), the so called "priority services", with the further exception of R&D services. It would have thus been sufficient to limit the introduction of a new threshold to the procurement of these services. In order to avoid a multiplication of thresholds and a risk of abuses with regard to the classification of services contracts within one category or another, the proposal envisages one threshold for all service categories covered by the Directive, as is currently the case.

- Regarding the possibilities of assistance in the preparation of technical specifications, a new provision forbids public authorities from seeking or accepting technical advice on the preparation of tender documents from persons having a commercial interest therein, where this would have the effect of precluding competition. This means, on the other hand, that contracting authorities may seek or accept such advice in relation to a specific contract from undertakings, which could subsequently participate in the award procedure, where this would not prejudice the principle of equal treatment, notably by precluding competition. This provision has been introduced to render explicit what already follows implicitly from general principles of Community law and from recent jurisprudence.

(1) As of 1 January 1994, 200 000 SDR = 198 109 ECU, 5 000 000 SDR = 4 952 730 ECU, 130 000 SDR = 128 771 ECU.

- Regarding information to be given to rejected undertakings, the directives already oblige contracting authorities, who are so requested, to state the reasons for which a request for participation or a tender has been rejected. In accordance with the Agreement they must furthermore give information on the advantages of the tender chosen, except where there would be legitimate reasons for not disclosing this last type of information.
- Regarding the statistical obligations, Member States are requested to forward more detailed information on the contracts to the Commission in order that it may meet the international obligations ensuing from the Agreement.
- Finally, a new Article ensures globally that the opportunities for access to public contracts within the Community for undertakings, products and services from the Member States must be at least as favourable as those provided for by the Agreement for undertakings, products and services from third countries which are signatories to the Agreement.

10. A detailed analysis of the amendments is annexed hereto.

## **Annex: Detailed analysis of Articles**

The comments presented below relate to the amendments set out in Article 1 (Services Directive), Article 2 (Supplies Directive), and/or Article 3 (Works Directive) of this proposal.

### **(a) Threshold values**

The relevant provisions of the Directives fixing threshold values with regard to procurement of services, supplies and works (Art. 7 Services, Art. 5 Supplies, Art. 6 Works) are amended taking account of the new thresholds set out by the Agreement.

As regards the procurement of services, the new threshold implies a substantial lowering of the existing threshold regarding procurement done by central government authorities (to the equivalent in ecus of SDR 130.000), whereas the differences following from the new threshold established for the procurement of services and supplies by all other contracting authorities (the equivalent in ecus of SDR 200.000) and the procurement of works by all contracting authorities (the equivalent in ecus of SDR 5.000.000) are relatively small, in particular in view of the current exchange rate between SDR and ecus.

It should be noted that the proposal, with regard to the procurement of services, goes slightly beyond what would have been required by the Agreement, as the Agreement only covers services listed in Annex IA of Directive 92/50/EEC (Services), the so called "priority services", with the further exception of R&D services. It would have thus been sufficient to limit the introduction of a new threshold to the procurement of these services. In order to avoid a multiplication of thresholds and a risk of abuses with regard to the classification of services contracts within one category or another, the proposal envisages one threshold for all service categories covered by the Directive, as is currently the case.

As the threshold values of the Agreement expressed in ecus are subject to revision every two years, it was not possible to refer to the concrete threshold value in ecus in the relevant article itself. The chosen solution to remedy this situation provides for :

- a reference in the Article to the equivalent in ecus of the threshold fixed pursuant to the Agreement (Art. 7(1)(a) Services, Art. 5(1)(a) Supplies, Art. 6(1)(a) Works);
- an amendment in the text of the relevant provisions, referring to a periodical publication of the amount in ecus in the OJEC (Art. 7(1)(b) Services, Art. 5(1)(c) Supplies, 6(2)(a) Works).

(b) Further consequences of the new threshold for procurement of works and services

The introduction of a new threshold also implies a slight change with regard to the requirement of contracting authorities to publish an indicative notice on works contracts they intend to award, as this obligation, set out in Article 11(1) of Directive 93/37/EEC (Works), is linked, by means of a cross-reference, to the general threshold for works above which the Directive is applicable (Art. 6(1) Works). In order to maintain this coherence and to avoid a multiplication of thresholds, the existing cross-reference has not been changed. Contracting authorities are thus obliged to publish indicative notices with respect to works, when the work is estimated to be above the equivalent in ecus of SDR 5.000.000.

Currently, Directive 92/50/EEC (Services) applies to design contests organised as part of a procedure leading to a service contract whose estimated value is not less than the general threshold for services above which the Directive is applicable (Art. 13(1) Services), or in which the total amount of prizes and payments to participants is not less than ecus 200.000 (Art. 13(2) Services). Due to the fact that the general threshold, to which Article 13(1) of the Directive refers, has changed following the Agreement, it was felt appropriate to align Article 13(1) and (2) of the Directive accordingly. The amendments to Article 13 of the Directive do not only ensure to maintain the existing coherence and avoid a multiplication of thresholds. In addition, they allow for the continuation of the possibility foreseen under the Directive of awarding a service contract to the winner or one of the winners of a design contest by negotiated procedure without prior publication of a contract notice (Article 11(3)(c) Services).

(c) Information to rejected candidates and tenderers

In line with the Agreement, the existing Directives oblige contracting authorities, among others, to inform the candidates whose application has been turned down and the tenderers whose tenders have been rejected, where they so request, of the reasons for the rejection of their application or tender. As the Agreement, in addition, requires information on the relevant advantages of the tender selected, the corresponding provisions have been amended accordingly (Art. 12(1) Services, Art. 7(1) Supplies, Art. 8(1) Works). Taking account of the fact that contracting authorities may have legitimate reasons for not releasing certain information on the contract award, the amended provision, in line with the Agreement, provides for an exception to this rule.

(d) Assistance in the preparation of technical specifications or contract documents in general

In relation to the preparation of technical specifications or tender documents in general, the principles of equal treatment and fair competition would be at risk if such documents were to be prepared with the assistance of undertakings having a commercial interest in the specific procurement to which the documents relate. To avoid such situations, a new provision has been inserted in the Directives (Art. 14 (7) Services, Art. 8(7) Supplies, Art. 10(7) Works), inspired by a

corresponding rule in the agreement, forbidding contracting authorities to seek or accept advice from such persons or undertakings, where this would have the effect of precluding competition.

(e) Shortened deadlines following publication of an indicative notice

Art. 18(2) of Directive 92/50/EEC (Services) and Art. 12(2) of Directive 93/37/EEC (Works), allowing for shortened deadlines in open procedures following the publication of an indicative notice, as well as the corresponding provisions with regard to restricted and negotiated procedures (Art. 19(4) Services, Art. 13(4) Works), had to be amended to take account of the Agreement, as it makes this exemption conditional upon further requirements than those set out in the relevant rules up to now. Recourse to the derogation will thus only be permitted if the indicative notice had been published forty days and not more than twelve months in advance, and provided that it contained, in this case, at least as much information, as far as available at that time, as required in the tender notices regarding open procedures, and, where applicable, in restricted procedures or negotiated procedures. The amendment is useful, closing an existing gap in the relevant provisions, as it limits recourse to the derogation to those cases where the indicative notice may have fulfilled its "warning function" with regard to interested parties, justifying shorter deadlines in the later award procedure.

It has been felt advisable to align Directive 93/36/EEC (Supplies) to the other Directives on that point (Art. 10(2), 11(4) Supplies), as it does not as yet contain a similar derogation, due to the fact that the old Agreement did not allow for it.

(f) Conditions for the submission of tenders

This provision, while acknowledging that some contracting authorities allow for tenders to be submitted by telex, telegram, fax or any electronic means, establishes minimum rules to be fulfilled in such cases, in particular with regard to information these tenders must contain and the requirement that they must, except when transmitted by electronic mail, be confirmed by letter afterwards, within a certain deadline (Art. 23 Services, Art. 15 Supplies, Art. 18 Works). These rules, aimed at ensuring fair and transparent award procedures, will contribute to legal certainty, without minimising the contracting authorities' choice of derogating from the general rule that tenders should be submitted in writing directly or by mail.

(g) Article 38a Services and Article 33a Works

This provision, which is based on the current Article 28 of Directive 93/36/EEC, has been introduced to ensure that the opportunities for access to Community public contracts available under the Treaty to undertakings, products and services 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 in the Agreement to undertakings, products and services from third countries which are signatories to the Agreement.

#### (h) Statistical obligations

In order to permit assessment of the new coverage of the rules, the statistical reporting obligations of the Member States needed to be amended (Art. 39 Services, Art. 31 Supplies, Art. 34 Works). In line with the Agreement, this implies that :

- all contracting authorities will have to submit statistics annually and no longer biennially;
- with regard to procurement above the threshold, the existing obligations to submit statistical information will be extended on minor points, such as, for example, the requirement to indicate, as far as possible, the product or service category with reference to an agreed nomenclature to which the procurement belongs;
- all contracting authorities will have to supply information on contracts awarded under derogations to the Agreement : the details of information required differs between central government authorities, listed in Annex I to this proposal, and all other contracting authorities;
- the current obligation of central government authorities, listed in Annex I to Directive 93/36/EEC (Supplies) to provide data on below-threshold procurement with regard to supplies contracts will be extended to works as well as to services, as far as covered by the Agreement.

With regard to statistical reporting, it is thus not proposed to go beyond what is strictly required by the Agreement. The statistical information requested for GATT purposes shall thus not include information on R&D contracts (Cat. 8 of Annex IA Services) or "residual services" as referred to in Annex IB to Directive 92/50/EEC (Services).

In order to ensure that the European Union is in a position to fulfil its statistical obligations pursuant to the Agreement under all circumstances, it is proposed to extend the "Advisory Committee procedure" set out in the Directives (Art. 40(3) Services, Art. 32(2) Supplies, Art. 35(3) Works) to vest the Commission with a mandate to establish if other information and, where applicable, what kind, must be furnished by the Member States in order to comply with the Agreement.

#### (i) Obligation of transposition of this Directive and Communication of Measures

Article 4 of the proposal contains the standard provision on the obligations of Member States to transpose a Directive and to communicate the measures taken, accompanied by a correlation table, to the Commission.

(j) List of annexes

Annex I lists the "central government authorities" covered by Annex I to the Agreement. The Annex replaces and updates Annex I to Directive 93/36/EEC (Supplies).

Annex II (Model notices of services contracts), Annex III (Model notices of supply contracts), and Annex IV (Model notices of work contracts) have been amended on minor points, as required by the Agreement.

**DIRECTIVE .... / ..../ EC OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL**

**of ... ..... 199.**

**amending Directive 92/50/EEC relating to the coordination of procedures  
for the award of public service contracts, Directive 93/36/EEC  
coordinating procedures for the award of public supply contracts, and  
Directive 93/37/EEC concerning the coordination of procedures for the  
award of public work contracts**

**THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE  
EUROPEAN COUNCIL,**

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

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

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

Acting in accordance with the procedure referred to in Article 189b of the Treaty<sup>3</sup>,

Whereas by its Decision 94/800/EC concerning the conclusion of the multilateral agreements resulting from the Uruguay Round of trade negotiations<sup>4</sup>, the Council approved on behalf of the European Union 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 Directives 92/50/EEC, 93/36/EEC and 93/37/EEC coordinated the national procedures relating to services, supply and works 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 Union 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;

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1 OJ n°C

2 OJ n°C

3 OJ .....

4 OJ n° L 336, 23.12.1994, p.1

Whereas, certain provisions of the Agreement introduce more favourable conditions for tenderers than those laid down in Directives 92/50/EEC, 93/36/EEC and 93/37/EEC;

Whereas, when contracts are awarded by contracting authorities within the meaning of the agreement, the opportunities for access to public supplies, works and service 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 Union accorded under the arrangements contained 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 Directives 92/50/EEC, 93/36/EEC and 93/37/EEC;

Whereas the application of these Directives must be simplified and the equilibrium, which has been reached in the current Community legislation in the field of public procurement must be maintained;

Whereas it is therefore necessary to extend the applicability of the adaptations of the Directive 92/50/EEC to all the services covered by this Directive;

**HAVE ADOPTED THIS DIRECTIVE :**

**Article 1**

**Directive 92/50/EEC is hereby amended as follows:**

**1. Article 7(1), (2) and (3) are replaced by the following:**

"1.(a) This Directive shall apply to public service contracts:

*- awarded by the contracting authorities referred to in Article 1(b), provided that the estimated value net of VAT is not less than the equivalent in ecus of 200.000 SDR;*

*- awarded by the contracting authorities listed in Annex I to Directive 95/.../EC and whose estimated value net of VAT is not less than the equivalent in ecus of 130.000 SDR;*

*(b) the value of the thresholds in ecus and in national currencies shall, in principle, be revised every two years with effect from 1 January 1996. The calculation of these values shall be based on the average daily values of these*

currencies expressed in ecus and of the ecus expressed in SDR over the 24 months terminating on the last day of August immediately preceding the 1 January revision;

the method of calculation laid down in the present subparagraph shall be reviewed, on the Commission's initiative, by the Advisory Committee for Public Procurement, in principle two years after its initial application.

(c) the thresholds laid down in subparagraph (a) and the value of the thresholds in ecus and in national currencies shall be published in the Official Journal of the European Communities at the beginning of the month of November which follows the revision laid down in subparagraph b."

2. For the purposes of calculating the estimated value of the contract, the contracting authority shall include the estimated total remuneration of the service provider, taking account of the provisions of paragraphs 3 to 7.
3. The selection of the valuation method shall not be used with the intention of avoiding the application of this Directive, nor shall any procurement for a given amount of services be split up with the intention of avoiding the application of this Article".

**2. Article 7(8) is herewith repealed**

**3. Article 12(1) is replaced by the following:**

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

*However, contracting authorities may decide that certain information on the contract award, referred to in the first subparagraph of this paragraph, be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular service providers, public or private, or might prejudice fair competition between service providers."*

**4. Article 13(1) and (2) are amended as follows:**

"1. This Article shall apply to design contests organised as part of a procedure leading to the award of a service contract whose estimated value net of VAT is not less than:

- the value referred to in Article 7(1)(a) 1. indent, as regards contracting authorities referred to in Article 1(b), or

*- the value referred to in Article 7(1)(a) 2. indent, as regards contracting authorities listed in Annex I to Directive 95/.../EC."*

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

*-the value referred to in Article 7(1)(a) 1. indent, as regards contracting authorities referred to in Article 1(b), or*

*- the value referred to in Article 7(1)(a) 2. indent, as regards contracting authorities listed in Annex I to Directive 95/.../EC."*

**5. The following paragraph is added to Article 14 :**

*"7. Contracting authorities 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 anyone that may have a commercial interest in the procurement".*

**6. Article 18 (2) is amended as follows:**

*"2. The time limit for receipt of tenders laid down in paragraph 1 may be reduced to 36 days, where an indicative notice drafted in accordance with the model in Annex III.A. (Prior information) provided for in Article 15 (1) has been published in the Official Journal of the European Communities forty days and not more than twelve months before publication of the notice provided for in article 15 (2), provided that this notice contained, in addition, at least as much of the information referred to in the model in Annex III.B. (Open procedure) as was available at the time of publication of this notice."*

**7. Article 19 (4) is amended as follows:**

*"4. The time limit for receipt of tenders laid down in paragraph 3 may be reduced to 26 days where an indicative notice drafted according to the model in Annex III.A. (Prior information) provided for in Article 15 (1) has been published in the Official Journal of the European Communities forty days and not more than twelve months before publication of the notice provided for in article 15 (2), provided that this notice contained, in addition, at least as much of the information referred to in the model in Annex III.C. (Restricted procedure), or, where applicable, Annex III.D. (Negotiated procedure) as was available at the time of publication of this notice."*

**8. In article 23, a paragraph is added, reading as follows :**

*Tenders shall be submitted in writing directly or by mail. If tenders by telex, telegram, fax or any electronic means are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender; in open or restricted procedures, this information must in particular include the definitive price proposed by the tenderer and a statement that the tenderer agrees to all terms conditions and provisions of the invitation to tender. Where tenders are submitted by such means, they must, except when transmitted by electronic mail, be confirmed by letter dispatched before the expiration of the time limit set for the receipt of tenders. Tenders presented by telephone shall not be permitted.*

**9. The following article 38a is added :**

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

**10. Article 39 is replaced by the following :**

"1. In order to permit assessment of the results of applying the Directive, Member States shall, by 31 October 1997 at the latest for the preceding year and thereafter by 31 October of *every year*, forward to the Commission a statistical report on the service contracts awarded by contracting authorities.

2. This report shall detail at least :

(a) *in the case of contracting authorities listed in Annex I to Directive 95/.../EC, a summary, for each contracting authorities, of the value of contracts awarded below the threshold and details of the number and value of contracts awarded above the threshold, the latter being subdivided as far as possible by procedure, category of service according to the nomenclature referred to in Annex I and the nationality of the service provider to whom the contract has been awarded and in the case of the negotiated procedures, subdivided in accordance with Article 11, listing the number and value of the contracts awarded to each Member State and to third countries.*

(b) *in the case of all other contracting authorities subject to this Directive, details, for each category of contracting authority, of the value of contracts awarded above the threshold, subdivided, as far as possible, by procedure, category of service according to the nomenclature referred to in Annex I and the nationality of the service provider to whom the contract has been awarded in accordance with Article 11, listing the number and value of the contracts awarded to each Member State and to third countries;*

*(c) in the case of contracting authorities listed in Annex I to Directive 95/.../EC, details on the number and total value of contracts awarded by contracting authorities under derogations to the GATT Agreement; in the case of all other contracting authorities subject to this Directive, details, for each category of contracting authority, of the total value of contracts awarded under derogations to the Agreement.*

*(d) any other statistical information, to be determined pursuant to the procedure provided for in Article 40(3), which is required in accordance with the GATT Agreement.*

*The statistical information required under the present paragraph shall not include information concerning contracts having as their object services listed in category 8 of Annex IA or services listed in Annex IB, provided that their estimated value, net of VAT, is less than ecus 200.000.*

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

**11 - In Annex III, the models are replaced by those set out in Annex II to Directive 95/.../EC.**

## Article 2

Directive 93/36/EEC is hereby amended as follows :

**1. Article 5(1) is replaced by the following:**

"1.(a) Titles II, III and IV and Articles 6 and 7 shall apply to public supply contracts :

- awarded by the contracting authorities referred to in Article 1(b), including contracts awarded by the contracting authorities listed in Annex I in the field of defence in so far as the products not covered by Annex II are concerned, provided that the estimated value net of VAT is not less than *the equivalent in ecus of 200.000 SDR*;

- awarded by the contracting authorities listed in Annex I and whose estimated value net of VAT is not less than *the equivalent in ecus of 130.000 SDR*; in the case of contracting authorities in the field of defence, this shall apply only to contracts involving products covered by Annex II ;

(b) this 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 ecus and in national currencies shall, in principle, be revised every two years with effect from 1 January 1988. The calculation of these values shall be based on the average daily values of these currencies expressed in ecus and of the ecu expressed in SDRs over the 24 months terminating on the last day of August immediately preceding the 1 January revision;

the method of calculation laid down in the present subparagraph shall be reviewed, on the Commission's initiative, by the Advisory Committee for Public Contracts, in principle two years after its initial application;

(d) the thresholds laid down in subparagraph (a) and the value of the thresholds in ecus and in national currencies shall be published in the Official Journal of the European Communities at the beginning of the month of November which follows the revision laid down in the first part of subparagraph (c)

**2. Article 7(1) is replaced by the following:**

"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 of rejection of his application or his tender, and, in the case of a tender, *the*

*characteristics and relevant advantages of the tender selected as well as the name of the successful tenderer.*

*However, contracting authorities may decide that certain information on the contract award, referred to in the first subparagraph of this paragraph, be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular suppliers, public or private, or might prejudice fair competition between suppliers."*

**3. The following paragraph 7 is added to article 8**

*"7. Contracting authorities 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 anyone that may have a commercial interest in the procurement".*

**4. In article 10 a paragraph 1a is inserted, reading as follows :**

*"1a. The time limit for receipt of tenders laid down in paragraph 1 may be reduced to 36 days, where an indicative notice drafted in accordance with the model in Annex IV A (Prior information) provided for in Article 9(1) has been published in the Official Journal of the European Communities forty days and not more than twelve months before publication of the notice provided for in article 9 (2), provided that this notice contained, in addition, at least as much of the information referred to in the model in Annex IV B (Open procedure) as was available at the time of publication of this notice."*

**5. In article 11, a paragraph 3a is inserted, reading as follows :**

*"3a. The time limit for receipt of tenders laid down in paragraph 3 may be reduced to 26 days where an indicative notice drafted according to the model in Annex IV A (Prior information) provided for in Article 9(1) has been published in the Official Journal of the European Communities forty days and not more than twelve months before publication of the notice provided for in article 9 (2), provided that this notice contained, in addition, at least as much of the information referred to in the model in Annex IV C (Restricted Procedure), or, where applicable, Annex IV D (Negotiated procedure) as was available at the time of publication of this notice."*

**6. In article 15, a paragraph 3 is added, reading as follows :**

*"3. Tenders shall be submitted in writing directly or by mail. If tenders by telex, telegram, fax or any electronic means, are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender; in open or restricted procedures, this information must in particular include the definitive*

*price proposed by the tenderer and a statement that the tenderer agrees to all terms, conditions and provisions of the invitation to tender. Where tenders are submitted by such means, they must, except when transmitted by electronic mail, be confirmed by letter dispatched before the expiration of the time limit set for the receipt of tenders. Tenders presented by telephone shall not be permitted."*

**7. Article 29 is replaced by the following:**

"1. The Commission shall examine the application of this Directive in consultation with the Advisory Committee for Public Contracts and where appropriate shall submit new proposals to the Council with the aim in particular of harmonising the measures taken by the Member States for the implementation 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 XXIV(7)* of the GATT Agreement and shall, if necessary, submit appropriate proposals to the Council.

3. The Commission shall update Annex I, *in accordance with the procedure laid down in Article 32(2)*, on the basis of any rectifications, modifications or amendments *made thereto* and shall have the updated version published in the Official Journal of the European Communities."

**8. Article 31 is replaced by the following:**

"1. In order to permit assessment of the results of applying this Directive, Member States shall forward to the Commission, *not later than 31 October 1996 and in respect of the contracting authorities not listed in Annex I 31 October 1997 and thereafter 31 October of each year for the preceding year a statistical report on the supply contracts awarded by contracting authorities.*

2. The statistical report shall detail at least:

(a) *in the case of contracting authorities listed in Annex I, a summary, for each contracting authority, of the value of contracts awarded below the threshold and details of the number and value of contracts awarded above the threshold, the latter being subdivided as far as possible by procedure, category of product according to the nomenclature referred to in Article 9(1), 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;*

(b) *in the case of all other contracting authorities subject to this Directive, details, for each category of contracting authority, of the number and value of contracts awarded above the threshold, subdivided, as far as possible, by procedure, category of product according to the nomenclature referred to in Article 9(1) and the nationality of the supplier to whom the contract has been awarded, subdivided*

in accordance with Article 6, listing the number and value of the contracts awarded to each Member State and to third countries;

*(c) in the case of contracting authorities listed in Annex I, details on the number and total value of contracts awarded by contracting authorities under derogation to the GATT Agreement; in the case of all other contracting authorities subject to this Directive, details, for each category of contracting authority, of the total value of contracts awarded under derogation to the Agreement.*

*(d) any other statistical information, to be determined pursuant to the procedure provided for in Article 32(2), which is required in accordance with the GATT Agreement.*

3. The Commission shall determine in accordance with the procedure laid down in Article 32 (2) the nature of any additional statistical information, which is required in accordance with this Directive.

**9 - Annex I is replaced by Annex I to Directive 95/.../EC and in Annex IV, the models are replaced by those set out in Annex III to Directive 95/.../EC.**

### **Article 3**

**Directive 93/37/EEC is hereby amended as follows :**

**1. Article 6(1) and (2) are replaced by the following:**

"1.The provisions of this Directive shall apply to public works contracts whose estimated value net of VAT is not less than *the equivalent in ecus of 5.000.000 SDR.*

2.(a)The value of the threshold *in ecus and its value in national currencies* shall normally be revised every two years with effect from 1 January 1996. The calculation of *these values* shall be based on the average daily values of *the ecus expressed in SDR and of the national currencies* expressed in ecus over the 24 months terminating on the last day of August immediately preceding the 1 January revision.

The *threshold and its value expressed in ecus and in national currencies* shall be published in the Official Journal of the European Communities at the beginning of November which follows the revision laid down in the first part of this subparagraph.

(b) The method of calculation laid down in subparagraph (a) shall be reviewed, on a proposal from the Commission, by the Advisory Committee for Public Contracts in principle two years after its initial application.

**2. Article 8(1) is replaced by the following:**

"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 characteristics and relevant advantages of the tender selected as well as the name of the successful tenderer.*

*However, contracting authorities may decide that certain information on the contract award, referred to in the first subparagraph of this paragraph, be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular contractors, public or private, or might prejudice fair competition between contractors."*

**3. The following paragraph 7 is added to article 10**

*"7. Contracting authorities 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 anyone that may have a commercial interest in the procurement".*

**4. Article 12 (2) is amended as follows :**

*"2. The time limit for the receipt of tenders laid down in paragraph 1 may be reduced to 36 days, where the contracting authorities have published the notice provided for in Article 11(1), drafted in accordance with the model in Annex IV A (Prior information), in the Official Journal of the European Communities at least forty days and not more than twelve months before publication of the notice provided for article 11 (2), provided that this notice contained, in addition, at least as much of the information referred to in the model in Annex IV B (Open procedure) as was available at the time of publication of this notice."*

**5. Article 13 (4) is amended as follows :**

*"4. The time limit for the receipt of tenders laid down in paragraph 3 may be reduced to 26 days where the contracting authorities have published the notice provided for in Article 11 (1), drafted in accordance with the model in Annex IV A, at least forty days and not more than twelve months before publication of the notice provided for article 11 (2), provided that this notice contained, in addition, at least as much of the information referred to in the model in Annex IV C (Restricted procedure), or, where applicable, Annex IV D (Negotiated procedure) as was available at the time of publication of this notice.*

**6. The following paragraph is added to article 18**

*Tenders shall be submitted in writing directly or by mail. If tenders by telex, telegram, fax or any electronic means, are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender; in open or restricted procedures, this information must in particular include the definitive price proposed by the tenderer and a statement that the tenderer agrees to all terms, conditions and provisions of the invitation to tender. Where tenders are submitted by such means, they must, except when transmitted by electronic mail, be confirmed by letter dispatched before the expiration of the time limit set for the receipt of tenders. Tenders presented by telephone shall not be permitted.*

**7. The following article 33a is inserted, reading as follows :**

**Article 33a**

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

**8. Article 34 is replaced by the following :**

1.In order to permit assessment of the results of applying the Directive, Member States shall, *by 31 October 1997 at the latest for the preceding year, and thereafter by 31 October of every year*, forward to the Commission a statistical report on the works contracts awarded by contracting authorities.

2. The statistical reports shall detail at least :

*(a) in the case of contracting authorities listed in Annex I to Directive 95/.../EC, a summary, for each contracting authority, of the value of contracts awarded below the threshold and details of the number and value of contracts awarded above the threshold, the latter being subdivided as far as possible by procedure, category of work according to the nomenclature referred to in Annex II 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 7, listing the number and value of the contracts awarded to each Member State and to third countries.*

*(b) in the case of all other contracting authorities subject to this Directive, details, for each category of contracting authority, of the number and value of contracts awarded above the threshold, subdivided, as far as possible, by procedure, category of work according to the nomenclature referred to in Annex II and the nationality of the contractor to whom the contract has been awarded in accordance with Article 7, listing the number and value of the contracts awarded to each Member State and to third countries;*

*(c) in the case of contracting authorities listed in Annex I to Directive 95/.../EC, details on the number and total value of contracts awarded by contracting authorities under derogation to the GATT Agreement; in the case of all other contracting authorities subject to this Directive, details, for each category of contracting authority, of the total value of contracts awarded under derogation to the Agreement;*

*(d) any other statistical information, to be determined pursuant to the procedure provided for in Article 35(3), which is required in accordance with the GATT Agreement.*

3.The Commission shall determine in accordance with the procedure laid down in Article 35 (3) the nature of any additional statistical information, which is required under the Directive.

**9 - In annex IV, the models are replaced by those set out in Annex IV to Directive 95/.../EC.**

**Article 4**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1996. They shall forthwith inform the Commission thereof.

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

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive as well as a correlation table between this Directive and the national measures taken.

### **Article 5**

This Directive is addressed to the Member States.

## **ANNEX I**

### **LIST OF CONTRACTING AUTHORITIES SUBJECT TO THE GATT AGREEMENT ON GOVERNMENT PROCUREMENT ACCORDING TO ITS ANNEX I ("Central government authorities")**

#### **BELGIUM**

A. L'Etat, exception faite pour les marches passées dans le cadre de coopération au développement qui, en vertu d'accords internationaux conclus avec des pays tiers et se rapportant à la passation de marches, sont soumis à d'autres dispositions, incompatibles avec les dispositions du présent arrêté (1):

- la Régie des postes (2);
- la Régie des bâtiments;
- le Fonds des routes

B. Le Fonds général des bâtiments scolaires de l'Etat

Le Fonds de construction d'institutions hospitalières et médico-sociales

La Société nationale terrienne

L'Office national de sécurité sociale

L'Institut national d'assurances sociales pour travailleurs indépendants

L'Institut national d'assurance maladie-invalidité

L'Institut national de crédit agricole

L'Office national des pensions

L'Office central de crédit hypothécaire

L'Office national du ducroire

De Staat, met uitzondering van de opdrachten inzake ontwikkelingssamenwerking die, krachtens internationale overeenkomsten met derde landen inzake het plaatsen van opdrachten, andere bepalingen behelzen die niet verenigbaar zijn met de bepalingen van dit besluit (1):

- de Régie der Posterijen (2);
- de Régie der Gebouwen;
- het Wegenfonds

Het Algemeen Gebouwenfonds voor de rijksscholen

Het Fonds voor de bouw van ziekenhuizen en medisch-sociale inrichtingen

De Nationale Landmaatschappij

De Rijksdienst voor sociale zekerheid

Het Rijksinstituut voor de sociale verzekeringen der zelfstandigen

Het Rijksinstituut voor ziekte- en invaliditeitsverzekering

Het Nationaal Instituut voor landbouwkrediet

De Rijksdienst voor pensioenen

Het Centraal Bureau voor hypothecair krediet

De Nationale Delcrederedienst

La Caisse auxiliaire d'assurance maladie-invalidite	De Hulpkas voor ziekte- en invaliditeitsverzekering
Le Fonds des maladies professionnelles	Het Fonds voor de beroepsziekten
La Caisse nationale de credit professionnel	De Nationale Kas voor beroepskrediet
L'Office national des debouches agricoles et horticoles	De Nationale Dienst voor afzet van land- en tuinbouwprodukten
L'Office national du lait et de ses derives	De Nationale Zuiveldienst
L'Office national de l'emploi	De Rijksdienst voor arbeidsvoorziening
Regie des voies aeriennes	De Regie der Luchtwegen

## DENMARK

- |  |   |
|--|---|
| 1. Statsministeriet  | - to departementer  |
| 2. Arbejdsministeriet  | - fem direktorater og institutioner   |
| 3. Udenrigsministeriet (tre departementer)   |   |
| 4. Boligministeriet  | - fem direktorater og institutioner   |
| 5. Energiministeriet   | - et direktorat og Forsoegsanlaeg Risoe   |
| 6. Finansministeriet (to departementer)  | - fire direktorater og institutioner<br>inklusive Direktoratet for Statens Indkøb<br>- fem andre institutioner<br>- fem direktorater og institutioner   |
| 7. Ministeriet for Skatter og Afgifter (to<br>departementer)   |   |
| 8. Fiskeriministeriet  | - fire institutioner  |
| 9. Industriministeriet (Fulde navn:<br>Ministeriet for Industri, Handel,<br>Haandvaerk og Skibsfart) | - ni direktorater og institutioner  |
| 10. Indenrigsministeriet   |   |
| 11. Justitsministeriet- Rigschefen   | - Civilforsvarsstyrelsen  |
| 12. Kirkeministeriet   | - et direktorat   |
| 13. Landbrugsmiisteriet  | - fem andre direktorater og institutioner   |
| 14. Miljøem ministeriet  |   |
| 15. Kultur- og<br>Kommunikationsministeriet (1)  | - 19 direktorater og institutioner<br>- fem direktorater<br>- tre direktorater og adskillige statsejede<br>museer og højere<br>uddannelsesinstitutioner |
| 16. Socialministeriet  | - fire direktorater   |
| 17. Undervisningsministeriet   | - seks direktorater<br>- 12 universiteter og andre højere<br>laareanstalter   |
| 18. ØEkonomim ministeriet (tre<br>departementer)   |   |
| 19. Ministeriet for Offentlige Arbejder (2)  | - statshavne og statslufthavne<br>- fire direktorater og adskillige<br>institutioner  |
| 20. Forsvarsministeriet (3)  |   |
| 21. Sundhedsministeriet  | - adskillige institutioner inklusive Statens<br>Seruminstitut og Rigshospitalet   |

## FEDERAL REPUBLIC OF GERMANY

1. Auswaertiges Amt
2. Bundesministerium fuer Arbeit und Sozialordnung
3. Bundesministerium fuer Bildung und Wissenschaft
4. Bundesministerium fuer Ernaehrung, Landwirtschaft und Forsten
5. Bundesministerium der Finanzen
6. Bundesministerium fuer Forschung und Technologie
7. Bundesministerium des Inneren (nur ziviles Material)
8. Bundesministerium fuer Gesundheit
9. Bundesministerium fuer Frauen und Jugend
10. Bundesministerium fuer Familie und Senioren
11. Bundesministerium der Justiz
12. Bundesministerium fuer Raumordnung, Bauwesen und Staedtebau
13. Bundesministerium fuer Post- und Telekommunikation(1)
14. Bundesministerium fuer Wirtschaft
15. Bundesministerium fuer wirtschaftliche Zusammenarbeit
16. Bundesministerium der Verteidigung(2)
17. Bundesministerium fuer Umwelt, Naturschutz und Reaktorsicherheit

*NB:* According to existing national obligations, the entities contained in this list must, in conformity with special procedures, award contracts to certain groups in order to remove difficulties caused by the last war.

## FRANCE

### 1. Main purchasing entities

#### A. General budget

- Premier ministre
- Ministere d'Etat, ministere de l'education nationale de la jeunesse et des sports
- Ministere d'Etat, ministere de l'economie, des finances et du budget
- Ministere d'Etat, ministere de l'equipement, du logement, des transports et de la mer
- Ministere d'Etat, ministere des affaires etrangeres
- Ministere de la justice
- Ministere de la defense(3)
- Ministere de l'interieur et de la centralisation
- Ministere de l'industrie et de l'aménagement du territoire
- Ministere des affaires européennes
- Ministere d'Etat, ministere de la fonction publique et des reformes administratives
- Ministere du travail, de l'emploi et de la formation professionnelle
- Ministere de la coopération et du développement
- Ministere de la culture, de la communication, des grands travaux et du bicentenaire
- Ministere des départements et territoires d'outre-mer
- Ministere de l'agriculture et de la foret
- Ministere des postes, des telecommunications et de l'espace(4)
- Ministere charge des relations avec le Parlement
- Ministere de la solidarité, de la santé et de la protection sociale
- Ministere de la recherche et de la technologie
- Ministere du commerce extérieur
- Ministere delegue aupres du ministere d'Etat, ministere de l'economie, des finances et du budget, charge du budget
- Ministere delegue aupres du ministere d'Etat, ministere des affaires etrangeres, charge de la francophonie
- Ministere delegue aupres du ministere d'Etat, ministere des affaires etrangeres
- Ministere delegue aupres du ministere de l'industrie et de l'aménagement du territoire, charge de l'aménagement du territoire et des reconversions
- Ministere delegue aupres du ministere de l'industrie et de l'aménagement du territoire, charge du commerce et de l'artisanat
- Ministere delegue aupres du ministere de l'industrie et de l'aménagement du territoire, charge du tourisme
- Ministere delegue aupres du ministere de l'equipement, du logement, des transports et de la mer, charge de la mer
- Ministere delegue aupres du ministere de la culture, de la communication, des grands travaux et du Bicentenaire, charge de la communication
- Ministere delegue aupres du ministere de la solidarité, de la santé et de la protection sociale, charge des personnes agees
- Secretariat d'Etat charge des droits des femmes

- Secretariat d'Etat charge des anciens combattants et des victimes de guerre
- Secretariat d'Etat charge de la prevention des risques technologiques et naturels majeurs,
- Secretariat d'Etat aupres du premier ministre, charge du plan
- Secretariat d'Etat aupres du premier ministre, charge de l'environnement
- Secretariat d'Etat aupres du premier ministre
- Secretariat d'Etat aupres du premier ministre, charge de l'action humanitaire
- Secretariat d'Etat aupres du ministere d'Etat, ministere de l'education nationale de la jeunesse et des sports, charge de l'enseignement technique
- Secretariat d'Etat aupres du ministere d'Etat, ministere de l'education nationale de la jeunesse et des sports, charge de la jeunesse et des sports
- Secretariat d'Etat aupres du ministere d'Etat, ministere de l'economie, des finances et du budget, charge de la consommation
- Secretariat d'Etat aupres du ministere des affaires etrangeres, charge des relations culturelles internationales
- Secretariat d'Etat aupres du ministere de l'interieur, charge des collectivites territoriales
- Secretariat d'Etat aupres du ministere de l'equipement, du logement, des transports et de la mer, charge des transports routiers et fluviaux
- Secretariat d'Etat aupres du ministere du travail, de l'emploi et de la formation professionnelle, charge de la formation professionnelle
- Secretariat d'Etat aupres du ministere de la culture, de la communication, des grands travaux et du bicentenaire, charge des grands travaux
- Secretariat d'Etat aupres du ministere de la solidarite, de la sante et de la protection sociale, charge de la famille
- Secretariat d'Etat aupres du ministere de la solidarite, de la sante et de la protection sociale, charge des handicapes et des accidentes de la vie

## B. Budget Annex

In particular:

- Imprimerie nationale

## C. Special Treasury accounts

In particular:

- Fonds forestier national
- Soutien financier de l'industrie cinematographique et de l'industrie des programmes audiovisuels
- Fonds national d'amenagement foncier et d'urbanisme
- Caisse autonome de la reconstruction

## 2. National administrative public bodies

- Academie de France a Rome
- Academie de marine

- Academie des sciences d'outre-mer
- Agence centrale des organismes de securite sociale (ACOSS)
- Agences financieres de bassins
- Agence nationale pour l'amelioration des conditions de travail (ANACT)
- Agence nationale pour l'amelioration de l'habitat (ANAH)
- Agence nationale pour l'emploi (ANPE)
- Agence nationale pour l'indemnisation des francais d'outre-mer (ANIFOM)
- Assemblee permanente des chambres d'agriculture (APCA)
- Bibliotheque nationale
- Bibliotheque nationale et universitaire de Strasbourg
- Bureau d'etudes des postes et telecommunications d'outre-mer (BEPTOM)
- Caisse d'aide a l'equipement des collectivites locales (CAECL)
- Caisse des depots et consignations
- Caisse nationale des allocations familiales (CNAF)
- Caisse nationale d'assurance maladie des travailleurs salaries (CNAM)
- Caisse nationale d'assurance vieillesse des travailleurs salaries (CNAVTS)
- Caisse nationale des autoroutes (CNA)
- Caisse nationale militaire de securite sociale (CNMSS)
- Caisse nationale des monuments historiques et des sites
- Caisse nationale des telecommunications(5)
- Caisse de garantie du logement social
- Casa de Velasquez
- Centre d'enseignement zootechnique de Rambouillet
- Centre d'etudes du milieu et de pedagogie appliquee du ministere de l'agriculture
- Centre d'etudes superieures de securite sociale
- Centres de formation professionnelle agricole
- Centre national d'art et de culture Georges Pompidou
- Centre national de la cinematographie francaise
- Centre national d'etudes et de formation pour l'enfance inadaptee
- Centre national d'etudes et d'experimentation du machinisme agricole, du genie rural, des eaux et des forets
- Centre national et de formation pour l'adaptation scolaire et l'education specialisee (CNEFASES)
- Centre national de formation et de perfectionnement des professeurs d'enseignement menager agricole
- Centre national des lettres
- Centre national de documentation pedagogique
- Centre national des oeuvres universitaires et scolaires (CNOUS)
- Centre national d'ophthalmologie des quinze-vingts
- Centre national de preparation au professorat de travaux manuels educatifs et d'enseignement menager
- Centre national de promotion rurale de Marmilhat
- Centre national de la recherche scientifique (CNRS)
- Centre regional d'education populaire d'Ile-de-France
- Centres d'education populaire et de sport (CREPS)
- Centres regionaux des oeuvres universitaires (CROUS)
- Centres regionaux de la proprieté forestiere
- Centre de securite sociale des travailleurs migrants

- Chancelleries des universites
- Colleges d'Etat
- Commission des operations de bourse
- Conseil superieur de la peche
- Conservatoire de l'espace littoral et des rivages lacustres
- Conservatoire national des arts et metiers
- Conservatoire national superieur de musique
- Conservatoire national superieur d'art dramatique
- Domaine de Pompadour
- Ecole centrale - Lyon
- Ecole centrale des arts et manufactures
- Ecole francaise d'archeologie d'Athenes
- Ecole francaise d'Extreme-Orient
- Ecole francaise de Rome
- Ecole des hautes etudes en sciences sociales
- Ecole nationale d'administration
- Ecole nationale de l'aviation civile (ENAC)
- Ecole nationale des Chartes
- Ecole nationale d'équitation
- Ecole nationale du genie rural des eaux et des forets (ENGREF)
- Ecoles nationales d'ingenieurs
- Ecole nationale d'ingenieurs des industries des techniques agricoles et alimentaires
- Ecoles nationales d'ingenieurs des travaux agricoles
- Ecole nationale des ingenieurs des travaux ruraux et des techniques sanitaires
- Ecole nationale des ingenieurs des travaux des eaux et forets (ENITEF)
- Ecole nationale de la magistrature
- Ecoles nationales de la marine marchande
- Ecole nationale de la sante publique (ENSP)
- Ecole nationale de ski et d'alpinisme
- Ecole nationale superieure agronomique - Montpellier
- Ecole nationale superieure agronomique - Rennes
- Ecole nationale superieure des arts decoratifs
- Ecole nationale superieure des arts et industries - Strasbourg
- Ecole nationale superieure des arts et industries textiles - Roubaix
- Ecoles nationales superieures d'arts et metiers
- Ecole nationale superieure des beaux-arts
- Ecole nationale superieure des bibliothecaires
- Ecole nationale superieure de ceramique industrielle
- Ecole nationale superieure de l'electronique et de ses applications (ENSEA)
- Ecole nationale superieure d'horticulture
- Ecole nationale superieure des industries agricoles alimentaires
- Ecole nationale superieure du paysage (rattachee a l'école nationale superieure d'horticulture)
- Ecole nationale superieure des sciences agronomiques appliquees (ENSSA)
- Ecoles nationales veterinaires
- Ecole nationale de voile
- Ecoles normales d'instituteurs et d'institutrices
- Ecoles normales nationales d'apprentissage

- Ecoles normales superieures
- Ecole polytechnique
- Ecole technique professionnelle agricole et forestiere de Meymac (Correze)
- Ecole de sylviculture - Crogny (Aube)
- Ecole de viticulture et d'oenologie de la Tour Blanche (Gironde)
- Ecole de viticulture - Avize (Marne)
- Etablissement national de convalescents de Saint-Maurice
- Etablissement national des invalides de la marine (ENIM)
- Etablissement national de bienfaisance Koenigs-Wazter
- Fondation Carnegie
- Fondations Singer-Polignac
- Fonds d'action sociale pour les travailleurs immigrés et leurs familles
- Hopital-hospice national Dufresne-Sommeiller
- Institut de l'elevage et de medecine veterinaire des pays tropicaux (IEMVPT)
- Institut francais d'archeologie orientale du Caire
- Institut geographique 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 (INAOVEV)
- Institut national d'astronomie et de geophysique (INAG)
- Institut national de la consommation (INC)
- Institut national d'education populaire (INEP)
- Institut national d'études démographiques (INED)
- Institut national des jeunes aveugles - Paris
- Institut national des jeunes sourds - 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 (I.N2.P3)
- 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 national de recherche en informatique et en automatique (INRIA)
- Institut national de recherche sur les transports et leur sécurité (INRETS)
- Instituts régionaux d'administration
- Institut supérieur des matériaux et de la construction mécanique de Saint-Ouen
- Lycées d'Etat
- Musée de l'armée
- Musée Gustave Moreau
- Musée de la marine
- Musée national J.J. Henner

- Musee national de la Legion d'honneur
- Musee de la poste
- Museum national d'histoire naturelle
- Musee Auguste Rodin
- Observatoire de Paris
- Office de cooperation et d'accueil universitaire
- Office francais de protection des refugies et apatrides
- 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)
- ORSTOM - Institut francais de recherche scientifique pour le developpement en cooperation
- Office universitaire et culturel francais pour l'Algerie
- Palais de la decouverte
- Parcs nationaux
- Reunion des musees nationaux
- Syndicat des transports parisiens
- Thermes nationaux - Aix-les-Bains
- Universites

### 3. Other national public bodies

- Union des groupements d'achats publics (UGAP)

## **IRELAND**

### **1. Main purchasing entities**

- Office of Public Works

### **2. Other departments**

- President's Establishment
- Houses of the Oireachtas (Parliament)
- Department of the Taoiseach (Prime Minister)
- Central Statistics Office
- Department of the Gaeltacht (Irish-speaking areas)
- National Gallery of Ireland
- Department of Finance
- State Laboratory
- Office of the Comptroller and Auditor General
- Office of the Attorney general
- Office of the Director of Public Prosecutions
- Valuation Office
- Civil Service Commission
- Office of the Ombudsman
- Office of the Revenue Commissioners
- Department of Justice
- Commissioners of Charitable Donations and Bequests for Ireland
- Department of the Environment
- Department of Education
- Department of the Marine
- Department of Agriculture and Food
- Department of Labour
- Department of Industry and Commerce
- Department of Tourism and Transport
- Department of Communications
- Department of Defence(6)
- Department of Foreign Affairs
- Department of Social Welfare
- Department of Health
- Department of Energy

## **ITALY**

1. Ministero del tesoro(7)
2. Ministero delle finanze(8)
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(9)
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(10)
19. Ministero dell'ambiente
20. Ministero dell'università e della ricerca scientifica e tecnologica

NB: This Agreement 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 Agreement is adopted.

## **LUXEMBOURG**

1. Ministere d'Etat: service central des imprimés et des fournitures de l'Etat
2. Ministere de l'agriculture: administration des services techniques de l'agriculture
3. Ministere de l'éducation nationale: lycées d'enseignement secondaire et d'enseignement secondaire technique
4. Ministere de la famille et de la solidarité sociale: maisons de retraite
5. Ministere de la force publique: armée(11) - gendarmerie - police
6. Ministere de la justice: établissements pénitentiaires
7. Ministere de la santé publique: hôpital neuropsychiatrique
8. Ministere des travaux publics: bâtiments publics - ponts et chaussées
9. Ministere des communications: postes et telecommunications(12)
10. Ministere de l'énergie: centrales électriques de la Haute et Basse Sure
11. Ministere de l'environnement: commissariat général à la protection des eaux

## **THE NETHERLANDS**

### **A. Ministries and central government bodies**

1. Ministerie van Algemene Zaken
2. Ministerie van Buitenlandse Zaken
3. Ministerie van Justitie
4. Ministerie van Binnenlandse Zaken
5. Ministerie van Financien
6. Ministerie van Economische Zaken
7. Ministerie van Onderwijs en Wetenschappen
8. Ministerie van volkshuisvesting, Ruimtelijke Ordening en Milieubeheer
9. Ministerie van Verkeer en Waterstaat
10. Ministerie van Landbouw, Natuurbeheer en Visserij
11. Ministerie van Sociale Zaken en Werkgelegenheid
12. Ministerie van Welzijn, Volksgezondheid en Cultuur
13. Kabinet voor Nederlands Antilliaanse en Arubaanse Zaken
14. Hogere Colleges van Staat

### **B. Central procurement offices**

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

1. Directoraat-generaal Rijkswaterstaat
2. Directoraat-generaal voor de Koninklijke Landmacht(13)
3. Directoraat-generaal voor de Koninklijke Luchtmacht(14)
4. Directoraat-generaal voor de Koninklijke Marine(15)

## **UNITED KINGDOM**

Cabinet Office  
Civil Service College  
Civil Service Commission  
Civil Service Occupational Health Service  
Office of the Minister for the Civil Service  
Parliamentary Counsel Office  
Central Office of Information  
Charity Commission  
Crown Prosecution Service  
Crown Estate Commissioners  
Customs and Excise Department  
Department for National Savings  
Department of Education and Science  
University Grants Committee  
Department of Employment  
Employment Appeals Tribunal  
Industrial Tribunals  
Office of Manpower Economics  
Department of Energy  
Department of Health  
Central Council for Education and Training in Social Work  
Dental Estimates Board  
English National Board for Nursing, Midwifery and Health Visitors  
Medical Boards and Examining Medical Officers (War Pensions)  
National Health Service Authorities  
Prescriptions Pricing Authority  
Public Health Laboratory Service Board  
Regional Medical Service  
United Kingdom Central Council for Nursing, Midwifery and Health Visiting  
Department of Social Security  
Attendance Allowance Board  
Occupational Pensions Board  
Social Security Advisory Committee  
Supplementary Benefits Appeal Tribunals  
Department of the Environment  
Building Research Establishment  
Commons Commissioners  
Countryside Commission  
Fire Research Station (Boreham Wood)  
Historic Buildings and Monuments Commission  
Local Valuation Panels  
Property Services Agency  
Rent Assessment Panels  
Royal Commission on Environmental Pollution  
Royal Commission on Historical Monuments of England

Royal Fine Art Commission (England)  
Department of the Procurator General and Treasury Solicitor  
Legal Secretariat to the Law Officers  
Department of Trade and Industry  
Laboratory of the Government Chemist  
National Engineering Laboratory  
National Physical Laboratory  
Warren Spring Laboratory  
National Weights and Measures Laboratory  
Domestic Coal Consumers' Council  
Electricity Consultative Councils for England and Wales  
Gas Consumers' Council  
Transport Users Consultative Committee  
Monopolies and Mergers Commission  
Patent Office  
Department of Transport  
Coastguard Services  
Transport and Road Research Laboratory  
Transport Tribunal  
Export Credits Guarantee Department  
Foreign and Commonwealth Office  
Government Communications Headquarters  
Wilton Park Conference Centre  
Government Actuary's Department  
Home Office  
Boundary Commission for England  
Gaming Board for Great Britain  
Inspectors of Constabulary  
Parole Board and Local Review Committees  
House of Commons  
House of Lords  
Inland Revenue, Board of  
Intervention Board for Agricultural Produce  
Lord Chancellor's Department  
Council on Tribunals  
County Courts (England and Wales)  
Immigration Appellate Authorities  
Immigration Adjudicators  
Immigration Appeals Tribunal  
Judge Advocate-General and Judge Advocate of the Fleet  
Lands Tribunal  
Law Commission  
Legal Aid Fund (England and Wales)  
Pensions Appeals Tribunals  
Public Trustee Office  
Office of the Social Security Commissioners  
Special Commissioners for Income Tax (England and Wales)  
Supreme Court (England and Wales)

Court of Appeal: Civil and Criminal Divisions  
Courts Martial Appeal Court  
Crown Court  
High Court  
Value Added Tax Tribunals  
Ministry of Agriculture, Fisheries and Food  
Advisory Services  
Agricultural Development and Advisory Service  
Agricultural Dwelling House Advisory Committees  
Agricultural Land Tribunals  
Agricultural Science Laboratories  
Agricultural Wages Board and Committees  
Cattle Breeding Centre  
Plant Variety Rights Office  
Royal Botanic Gardens, Kew  
Ministry of Defence(16)  
Meteorological Office  
Procurement Executive  
National Audit Office  
National Investment Loans Office  
Northern Ireland Court Service  
Coroners Courts  
County Courts  
Crown Courts  
Enforcement of Judgements Office  
Legal Aid Fund  
Magistrates Court  
Pensions Appeals Tribunals  
Supreme Court of Judicature and Courts of Criminal Appeal  
Northern Ireland, Department of Agriculture  
Northern Ireland, Department for Economic Development  
Northern Ireland, Department of Education  
Northern Ireland, Department of the Environment  
Northern Ireland, Department of Finance and Personnel  
Northern Ireland, Department of Health and Social Services  
Northern Ireland Office  
Crown Solicitor's Office  
Department of the Director of Public Prosecutions for Northern Ireland  
Northern Ireland Forensic Science Laboratory  
Office of Chief Electoral Officer for Northern Ireland  
Police Authority for Northern Ireland  
Probation Board for Northern Ireland  
State Pathologist Service  
Office of Arts and Libraries  
British Library  
British Museum  
British Museum (Natural History)  
Imperial War Museum

Museums and Galleries Commission  
National Gallery  
National Maritime Museum  
National Portrait Gallery  
Science Museum  
Tate Gallery  
Victoria and Albert Museum  
Wallace Collection  
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  
Overseas Development Administration  
Overseas Development and National Research Institute  
Paymaster General's Office  
Postal Business of the Post Office  
Privy Council Office  
Public Record Office  
Registry of Friendly Societies  
Royal Commission on Historical Manuscripts  
Royal Hospital, Chelsea  
Royal Mint  
Scotland, Crown Office and Procurator  
Fiscal Service  
Scotland, Department of the Registers of Scotland  
Scotland, General Register Office  
National Health Service Central Register  
Scotland, Lord Advocate's Department  
Scotland, Queen's and Lord Treasurer's Remembrancer  
Scottish Courts Administration  
Accountant of Court's Office  
Court of Justiciary  
Court of Session  
Lands Tribunal for Scotland  
Pensions Appeal Tribunals  
Scottish Land Court  
Scottish Law Commission  
Sheriff Courts  
Social Security Commissioners' Office  
Scottish Office  
Central Services  
Department of Agriculture and Fisheries for Scotland  
Artificial Insemination Service  
Crofters Commission  
Red Deer Commission  
Royal Botanic Garden, Edinburgh  
Industry Department for Scotland

Scottish Electricity Consultative Councils  
Scottish Development Department  
Rent Assessment Panel and Committees  
Royal Commission on the Ancient and Historical Monuments of Scotland  
Royal Fine Art Commission for Scotland  
Scottish Education Department  
National Galleries of Scotland  
National Library of Scotland  
National Museums of Scotland  
Scottish and Health Departments  
HM Inspectorate of Constabulary  
Local Health Councils  
Mental Welfare Commission for Scotland  
National Board for Nursing, Midwifery and Health Visiting for Scotland  
Parole Board for Scotland and Local Review Committees  
Scottish Antibody Production Unit  
Scottish Council for Postgraduate Medical Education  
Scottish Crime Squad  
Scottish Criminal Record Office  
Scottish Fire Service Training School  
Scottish Health Boards  
Scottish Health Service - Common Services Agency  
Scottish Health Service Planning Council  
Scottish Police College  
Scottish Record Office  
HM Stationery Office  
HM Treasury  
Central Computer and Telecommunications Agency  
Chessington Computer Centre  
Civil Service Catering Organization  
National Economic Development Council  
Rating of Government Property Department  
Welsh Office  
Ancient Monuments (Wales) Commission  
Council for the Education and Training of Health Visitors  
Local Government Boundary Commission for Wales  
Local Valuation Panels and Courts  
National Health Service Authorities  
Rent Control Tribunals and Rent Assessment Panels and Committees

## GREECE

1. Ypoergeio Ethnikis Oikonomias
2. Ypoergeio Paideias & Thriskevmaton
3. Ypoergeio Emporioy
4. Ypoergeio Viomichanias-Energeias-Technologias
5. Ypoergeio Emporikis Naftilias
6. Ypoergeio Proedrias tis Kyvernisis
7. Ypoergeio Aigaioy
8. Ypoergeio Exoterikon
9. Ypoergeio Dikaiosynis
10. Ypoergeio Exoterikon
11. Ypoergeio Ergasias
12. Ypoergeio Politismoy kai Epistimon
13. Ypoergeio Perivallontos Chorotaxias & Dimosion Ergon
14. Ypoergeio Oikonomikon
15. Ypoergeio Metaforon kai Epikoinonion
16. Ypoergeio Ygeias, Pronoias & Koinonikon Asfaliseon
17. Ypoergeio Makedonias-Thrakis
18. Geniko Epiteleio Stratoy(17)
19. Geniko Epiteleio Naftikoy(18)
20. Geniko Epiteleio Aeroporias(19)
21. Ypoergeio Georgias
22. Geniki Grammateia Typoy kai Pliroforion
23. Geniki Grammateia Neas Genias
24. Geniko Chimeio toy Kratoys
25. Geniki Grammateia Laikis Epimorfosis
26. Geniki Grammateia Isotitas ton Dyo Fylon
27. Geniki Grammateia Koinonikon Asfaliseon
28. Geniki Grammateia Apodimoy Ellinismoy
29. Geniki Grammateia Viomichanias
30. Geniki Grammateia Erevnas kai Technologias
31. Geniki Grammateia Athlitsmoy
32. Geniki Grammateia Dimosion Ergon
33. Ethniki Statistiki Ypiresia
34. Ethnikos Organismos Pronoias
35. Organismos Ergatikis Estias
36. Ethniko Typografeio
37. Elliniki Epitropi Atomikis Energeias
38. Tameio Ethnikis Odopoiias
39. Ethniko Kapodistriako Panepistimio Athinon
40. Panepistimio Aigaioy
41. Aristoteleio Panepistimio Thessalonikis
42. Dimokriteio Panepistimio Thrakis
43. Panepistimio Ioanninon
44. Panepistimio Patron
45. Polytechneio Kritis

46. Sivitanideios Scholi
47. Panepistimio Makedonias (Oikonomikes & Koin/kes Epistimes)
48. Aiginiteio Nosokomeio
49. Areataieio Nosokomeio
50. Ethniko Kentro Dimosias Dioikisis
51. Ellinika Tachydromeia
52. Organismos Diacheirisis Dimosioy Ylikoy
53. Organismos Georgikon Asfaliseon
54. Organismos Scholikon Ktirion

## **SPAIN**

1. Ministerio de Asuntos Exteriores
2. Ministerio de Justicia
3. Ministerio de Defensa(20)
4. Ministerio de Economia y Hacienda
5. Ministerio del Interior
6. Ministerio de Obras Publicas y Transportes
7. Ministerio de Educacion y Ciencia
8. Ministerio de Trabajo y Seguridad Social
9. Ministerio de Industria, Comercio y Turismo
10. Ministerio de Agricultura, Pesca y Alimentacion
11. Ministerio para las Administraciones Publicas
12. Ministerio de Cultura
13. Ministerio de Relaciones con las Cortes y de la Secretaria del Gobierno
14. Ministerio de Sanidad y Consumo
15. Ministerio de Asuntos Sociales
16. Ministerio del Portavoz del Gobierno

## **PORTUGAL**

### **Presidencia do Conselho de Ministros**

1. Auditoria Juridica da Presidencia do Conselho de Ministros
2. Centro de Estudos e Formacao Autarquica
3. Centro de Estudos Tecnicos e Apoio Legislativo
4. Centro de Gestao da Rede Informatica do Governo
5. Conselho Nacional de Planeamento Civil de Emergencia
6. Conselho Permanente de Concertacao Social
7. Departamento de Formacao e Aperfeicoamento Profissional
8. Gabinete de Macau
9. Gabinete do Servico Civico dos Objectores de Consciencia
10. Instituto da Juventude
11. Instituto Nacional de Administracao
12. Secretaria-Geral da Presidencia do Conselho de Ministros
13. Secretariado para a Modernizacao Administrativa
14. Servico Nacional de Proteccao Civil
15. Servicos Sociais da Presidencia do Conselho de Ministros

### **Ministerio da Administracao Interna**

1. Direccao-Geral de Viacao
2. Gabinete de Estudos e Planeamento de Instalacoes
3. Governos Civis
4. Guarda Fiscal
5. Guarda Nacional Republicana
6. Policia de Seguranca Publica
7. Secretaria-Geral
8. Secretariado Tecnico dos Assuntos para o Processo Eleitoral
9. Servico de Estrangeiros e Fronteiras
10. Servico de Informacao e Seguranca
11. Servico Nacional de Bombeiros

### **Ministerio da Agricultura**

1. Agencia do Controlo das Ajudas Comunitarias ao Sector do Azeite
2. Direccao-Geral da Hidraulica e Engenharia Agricola
3. Direccao-Geral da Pecuaria
4. Direccao-Geral das Florestas
5. Direccao-Geral de Planeamento e Agricultura
6. Direccao-Geral dos Mercados Agricolais e da Industria Agro-alimentar
7. Direccao Regional de Agricultura da Beira Interior
8. Direccao Regional de Agricultura da Beira Litoral
9. Direccao Regional de Agricultura de Entre Douro e Minho
10. Direccao Regional de Agricultura de Tras-os-Montes

11. Direccao Regional de Agricultura do Alentejo
12. Direccao Regional de Agricultura do Algarve
13. Direccao Regional de Agricultura do Ribatejo e Oeste
14. Gabinete para os Assuntos Agricolas Comunitarios
15. Inspeccao Geral e Auditoria de Gestao
16. Instituto da Vinha e do Vinho
17. Instituto de Qualidade Alimentar
18. Instituto Nacional de Investigacao Agraria
19. Instituto Regulador Orientador dos Mercados Agricolas
20. Obra Social - Secretaria Geral
21. Rede de Informacao de Contabilidades Agricolas
22. Secretaria Geral
23. IFADAP - Instituto Financeiro de Apoio ao Desenvolvimento da Agricultura e Pescas
24. INGA - Instituto Nacional de Intervencao e Garantia Agricola

#### Ministerio do Ambiente e Recursos Naturais

1. Direccao-Geral da Qualidade do Ambiente
2. Direccao-Geral dos Recursos Naturais
3. Gabinete dos Assuntos Europeus
4. Gabinete de Estudos e Planeamento
5. Gabinete de Proteccao e Seguranca Nuclear
6. Instituto Nacional do Ambiente
7. Instituto Nacional de Defesa do Consumidor
8. Instituto Nacional de Meteorologia e Geofisica
9. Secretaria-Geral
10. Servico Nacional de Parques, Reservas e Conservacao da Natureza
11. Gabinete do Saneamento Basico da Costa do Estoril
12. Delegacoes Regionais
13. Instituto Nacional da Agua

#### Ministerio do Comercio e Turismo

1. Comissao de Aplicacao de Coimas em Materia Economica
2. Direccao-Geral de Concorrencia e Precos
3. Direccao-Geral de Inspeccao Economica
4. Direccao-Geral do Comercio Externo
5. Direccao-Geral do Comercio Interno
6. Direccao-Geral do Turismo
7. Fundo de Turismo
8. Gabinete para os Assuntos Comunitarios
9. ICEP - Instituto do Comercio Externo de Portugal
10. Inspeccao Geral de Jogos
11. Instituto de Promocao Turistica
12. Instituto Nacional de Formacao Turistica
13. Regioes de turismo
14. Secretaria-Geral

15. ENATUR - Empresa Nacional de Turismo, EP
16. AGA - Administracao-Geral do Acucar e do Alcool, EP

#### Ministerio da Defesa Nacional(21)

1. Estado-Maior General das Forcas Armadas
2. Estado-Maior da Forca Aerea
3. Comando Logistico-Administrativo da Forca Aerea
4. Estado-Maior do Exercito
5. Estado-Maior da Armada
6. Direccao-Geral do Material Naval
7. Direccao das Infra-Estruturas Navais
8. Direccao de Abastecimento
9. Fabrica Nacional de Cordoaria
10. Hospital da Marinha
11. Arsenal do Alfeite
12. Instituto Hidrografico
13. Direccao-Geral de Armamento
14. Direccao-Geral de Pessoal e Infra-estruturas
15. Direccao-Geral de Politica de Defesa Nacional
16. Instituto de Defesa Nacional
17. Secretaria-Geral

#### Ministerio da Educacao

1. Auditoria Juridica
2. Direccao-Geral da Administracao Escolar
3. Direccao-Geral da Extensao Educativa
4. Direccao-Geral do Ensino Superior
5. Direccao-Geral dos Desportos
6. Direccao-Geral dos Ensinos Basico e Secundario
7. Direccao Regional de Educacao de Lisboa
8. Direccao Regional de Educacao do Algarve
9. Direccao Regional de Educacao do Centro
10. Direccao Regional de Educacao do Norte
11. Direccao Regional de Educacao do Sul
12. Editorial do Ministerio da Educacao
13. Gabinete Coordenador do Ingresso no Ensino Superior
14. Gabinete de Estudos e Planeamento
15. Gabinete de Gestao Financeira
16. Gabinete do Ensino Tecnologico, Artistico e Profissional
17. Inspeccao Geral de Educacao
18. Instituto de Cultura da Lingua Portuguesa
19. Instituto de Inovacao Educacional
20. Instituto dos Assuntos Sociais da Educacao
21. Secretaria-Geral

#### Ministerio do Emprego e Seguranca Social

1. Auditoria Juridica
2. Caixa Nacional de Seguros e Doencas Profissionais
3. Caixas de Previdencia Social
4. Casa Pia de Lisboa
5. Centro Nacional de Pensoes
6. Centros Regionais de Seguranca Social
7. Comissao para a Igualdade e Direitos das Mulheres
8. Departamento de Estatistica
9. Departamento de Estudos e Planeamento
10. Departamento de Relacoes Internacionais e Convencoes da Seguranca Social
11. Departamento para Assuntos do Fundo Social Europeu
12. Departamento para os Assuntos Europeus e Relacoes Externas
13. Direccao-Geral da Accao Social
14. Direccao-Geral da Familia
15. Direccao-Geral das Relacoes de Trabalho
16. Direccao-Geral de Apoio Tecnico a Gestao
17. Direccao-Geral de Higiene e Seguranca no Trabalho
18. Direccao-Geral do Emprego e Formacao Profissional
19. Direccao-Geral dos Regimes de Seguranca Social
20. Fundo de Estabilizacao Financeira da Seguranca Social
21. Inspeccao Geral da Seguranca Social
22. Inspeccao Geral do Trabalho
23. Instituto de Gestao Financeira da Seguranca Social
24. Instituto do Emprego e Formacao Profissional
25. Instituto Nacional para o Aproveitamento dos Tempos Livres dos Trabalhadores
26. Secretaria-Geral
27. Secretariado Nacional de Reabilitacao
28. Servicos Sociais do MESS
29. Santa Casa da Misericordia de Lisboa

#### Ministerio das Financas

1. ADSE - Direccao-Geral de Proteccao aos Funcionarios e Agentes da Administracao Publica
2. Auditoria Juridica
3. Direccao-Geral da Administracao Publica
4. Direccao-Geral da Contabilidade Publica e Intendencia Geral do Orcamento
5. Direccao-Geral da Junta de Credito Publico
6. Direccao-Geral das Alfandegas
7. Direccao-Geral das Contribuicoes e Impostos
8. Direccao-Geral do Patrimonio do Estado
9. Direccao-Geral do Tesouro
10. Gabinete de Estudos Economicos
11. Gabinete dos Assuntos Europeus
12. GAFEEP - Gabinete para a analise do Financiamento do Estado e das Empresas Publicas

13. Inspeccao Geral de Financias
14. Instituto de Informatica
15. Junta de Credito Publico
16. Secretaria-Geral
17. SOFE - Servicos Sociais do Ministerio das Financias

#### Ministerio da Industria e Energia

1. Delegacao Regional da Industria e Energia de Lisboa e Vale do Tejo
2. Delegacao Regional da Industria e Energia do Alentejo
3. Delegacao Regional da Industria e Energia do Algarve
4. Delegacao Regional da Industria e Energia do Centro
5. Delegacao Regional da Industria e Energia do Norte
6. Direccao-Geral da Industria
7. Direccao-Geral da Energia
8. Direccao-Geral de Geologia e Minas
9. Gabinete de Estudos e Planeamento
10. Gabinete para a Pesquisa e Exploracao do Petroleo
11. Gabinete para os Assuntos Comunitarios
12. Instituto Nacional da Propriedade Industrial
13. Instituto Portugues da Qualidade
14. LNETI - Laboratorio Nacional de Engenharia e Tecnologia Industrial
15. Secretaria-Geral

#### Ministerio da Justica

1. Centro de Estudos Judiciarios
2. Centro de Identificacao Civil e Criminal
3. Centros de Observacao e Accao Social
4. Conselho Superior de Magistratura
5. Conservatoria dos Registros Centrais
6. Direccao-Geral dos Registros e Notariado
7. Direccao-Geral dos Servicos de Informatica
8. Direccao-Geral dos Servicos Judiciarios
9. Direccao-Geral dos Servicos Prisionais
10. Direccao-Geral dos Servicos Tutelares de Menores
11. Estabelecimentos Prisionais
12. Gabinete de Direito Europeu
13. Gabinete de Documentacao e Direito Comparado
14. Gabinete de Estudos e Planeamento
15. Gabinete de Gestao Financeira
16. Gabinete de Planeamento e Coordenacao do Combate a Drogas
17. Hospital-prisao de S. Joao de Deus
18. Instituto Corpus Christi
19. Instituto da Guarda
20. Instituto de Reinsersao Social
21. Instituto de S. Domingos de Benfica
22. Instituto Nacional da Politica e Ciencias Criminais

23. Instituto Navarro Paiva
24. Instituto Padre Antonio Oliveira
25. Instituto S. Fiel
26. Instituto S. Jose
27. Instituto Vila Fernando
28. Instituto de Criminologia
29. Instituto de Medicina Legal
30. Policia Judiciaria
31. Secretaria-Geral
32. Servicos Sociais

#### Ministerio das Obras Publicas, Transportes e Comunicacoes

1. Conselho de Mercados de Obras Publicas e Particulares
2. Direccao-Geral de Aviacao Civil
3. Direccao-Geral dos Edificios e Monumentos Nacionais
4. Direccao-Geral dos Transportes Terrestres
5. Gabinete da Travessia do Tejo
6. Gabinete de Estudos e Planeamento
7. Gabinete do No Ferroviario de Lisboa
8. Gabinete do No Ferroviario do Porto
9. Gabinete para a Navegabilidade do Douro
10. Gabinete para as Comunidades Europeias
11. Inspeccao Geral de Obras Publicas, Transportes e Comunicacoes
12. Junta Autonoma das Estradas
13. Laboratorio Nacional de Engenharia Civil
14. Obra Social do Ministerio das Obras Publicas, Transportes e Comunicacoes
15. Secretaria-Geral

#### Ministerio dos Negocios Estrangeiros

1. Direccao-Geral dos Assuntos Consulares e Administracao Financeira
2. Direccao-Geral das Comunidades Europeias
3. Direccao-Geral da Cooperacao
4. Instituto de Apoio a Emigracao e as Comunidades Portuguesas
5. Instituto de Cooperacao Economica
6. Secretaria-Geral

#### Ministerio do Planeamento e Administracao do Territorio

1. Academia das Ciencias
2. Auditoria Juridica
3. Centro Nacional de Informacao Geografica
4. Comissao Coordenadora da Regiao Centro
5. Comissao Coordenadora da Regiao de Lisboa e Vale do Tejo
6. Comissao Coordenadora da Regiao do Alentejo
7. Comissao Coordenadora da Regiao do Algarve
8. Comissao Coordenadora da Regiao Norte

9. Departamento Central de Planeamento
10. Direccao-Geral da Administracao Autarquica
11. Direccao-Geral do Desenvolvimento Regional
12. Direccao-Geral do Ordenamento do Territorio
13. Gabinete Coordenador do projecto do Alqueva
14. Gabinete de Estudos e Planeamento da Administracao do Territorio
15. Gabinete para os Aeroportos da Regiao Autonoma da Madeira
16. Inspeccao Geral de Administracao do Territorio
17. Instituto Nacional de Estatisticas
18. Instituto Antonio Sergio de Sector Cooperativo
19. Instituto de Investigacao Cientifica e Tropical
20. Instituto Geografico e Cadastral
21. Junta Nacional de Investigacao Cientifica e Tecnologica
22. Secretaria-Geral

- (1) Non-warlike materials contained in Annex II.
- (2) Postal business only.
- (3) With the exception od telecommunications services of the 'Post- og Telegrafvaesenet'.
- (4) With the exception of the 'Danske Statsbaner'.
- (5) Non-warlike materials contained in Annex II.
- (6) With the exception of telecommunications equipement.
- (7) Non-warlike materials contained in Annex II.
- (8) Non-warlike materials contained in Annex II.
- (9) Postal business only.
- (10) Postal business only.
- (11) Non-warlike materials contained in Annex II.
- (12) Acting as the central purchasing entity for most of the other Ministries or entities.
- (13) Not including purchases made by the tobacco and salt monopolies.
- (14) Non-warlike materials contained in Annex II.
- (15) Postal business only.
- (16) Non-warlike materials contained in Annex II.
- (17) Postal business only.
- (18) Non-warlike materials contained in Annex II.
- (19) Non-warlike materials contained in Annex II.
- (20) Non-warlike materials contained in Annex II.
- (21) Non-warlike materials contained in Annex II.
- (22) Non-warlike materials contained in Annex II.

## ANNEX II

### ***MODEL NOTICES OF SERVICES CONTRACTS***

#### **A. PRIOR INFORMATION**

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

#### **B. OPEN PROCEDURE**

1. Name, address, telegraphic address, telephone, telex and fax number of the contracting authority.
2. Category of service and description. CPC reference number. *Quantity, including, where applicable, any options for further procurement and, if known, an estimate of the timing when such options may be exercised. In the case of regular contracts or of contracts which are to be renewed within a given time, cf. Art. 7, also, if known, an estimate of the timing of the subsequent calls for tender for the services to be procured.*
3. Place of delivery.
4. (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
(b) Reference of the law, regulation or administrative provision.  
(c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
5. Indication of whether service providers can tender for a part of the services concerned.
6. Where applicable, non-acceptance of variants.
7. Time limits *for starting, delivery, or completion or duration of service contract.*
8. (a) Name and address of the service from which the necessary documents may be requested.

- (b) *Where applicable, final date for making such requests.*
- (c) Where applicable, the amount and terms of payment of any sum payable for such documents.
- 9. (a) *Final date for receipt of tenders.*  
 (b) *Address to which they must be sent.*  
 (c) *Language or languages in which they must be drawn up.*
- 10. (a) Persons authorised to be present at the opening of tenders.  
 (b) Date, time and place of such opening.
- 11. Where applicable, any deposits and guarantees required.
- 12. Main terms concerning financing and payment and/or references to the relevant provisions.
- 13. Where applicable, the legal form to be taken by the grouping of service providers winning the contract.
- 14. Information concerning the service provider's own position, and information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
- 15. Period during which the tenderer is bound to keep open his tender.
- 16. Criteria for the award of the contract and, if possible, their order of importance. Criteria other than the lowest price shall be mentioned if they do not appear in the contract documents.
- 17. Other information.
- 18. *Date(s) of publication of the prior information notice in the Official Journal of the European Communities or reference to its non-publication :*
- 19. Date of dispatch of the notice.
- 20. Date of receipt of the notice by the Office for Official Publications of the European Communities.
- 21. *Indication whether the procurement is covered by the GATT Agreement :*

### C. RESTRICTED PROCEDURE

- 1. Name, address, telegraphic address, telephone, telex and fax number of the contracting authority.
- 2. Category of service and description. CPC reference number. *Quantity, including, where applicable, any options for further procurement and, if known, an estimate of the timing when such options may be exercised. In the case of regular contracts or of contracts which are to be renewed within a given time, cf. Art. 7, also, if known, an estimate of the timing of the subsequent calls for tender for the services to be procured.*
- 3. Place of delivery.
- 4. (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
 (b) Reference of the law, regulation or administrative provision.  
 (c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
- 5. Indication of whether the service provider can tender for a part of the services concerned.

6. Envisaged number or range of service providers which will be invited to tender.
7. Where applicable, non-acceptance of variants.
8. Time limits *for starting, delivery, or* completion or duration of service contract.
9. Where applicable, the legal form to be assumed by the grouping of service providers winning the contract.
10. (a) Where applicable, justification for the use of the accelerated procedure.  
 (b) Final date for the receipt of requests to participate.  
 (c) Address to which they must be sent.  
 (d) Language(s) in which they must be drawn up.
11. Final date for dispatch of invitations to tender.
12. Where applicable, any deposits and guarantees required.
13. Information concerning the service provider's own position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
14. Criteria for the award of the contract and, if possible, their order of importance if these are not stated in the invitation to tender.
15. Other information.
16. *Date(s) of publication of the prior information notice in the Official Journal of the European Communities or reference 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.
19. *Indication whether the procurement is covered by the GATT Agreement.*

#### D. NEGOTIATED PROCEDURE

1. Name, address, telegraphic address, telephone, telex and fax number of the contracting authority.
2. Category of service and description. CPC reference number. *Quantity, including, where applicable, any options for further procurement and, if known, an estimate of the timing when such options may be exercised. In the case of regular contracts or of contracts which are to be renewed within a given time, cf. Art. 7, also, if known, an estimate of the timing of the subsequent calls for tender for the services to be procured.*
3. Place of delivery.
4. (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
 (b) Reference of the law, regulation or administrative provision.  
 (c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.

5. Indication of whether the service provider can tender for a part of the services concerned.
6. Envisaged number or range of service providers which will be invited to tender.
7. Where applicable, non-acceptance of variants.
8. Time limits *for starting, delivery, or* completion or duration of service contract.
9. Where applicable, the legal form to be assumed by the grouping of service providers winning the contract.
10. (a) Where applicable, justification for the use of the accelerated procedure.  
 (b) Final date for the receipt of requests to participate.  
 (c) Address to which they must be sent.  
 (d) Language(s) in which they must be drawn up.
11. Where applicable, any deposits and guarantees required
12. Information concerning the service provider's own position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
13. Where applicable, the names and addresses of service providers already selected by the contracting authority.
14. Other information.
15. Date of dispatch of the notice.
16. Date of receipt of the notice by the Office for Official Publications of the European Communities.
17. *Date(s) of previous publications in the Official Journal of the European Communities.*
18. *Indication whether the procurement is covered by the GATT Agreement.*

#### E. CONTRACT AWARD NOTICE

1. Name and address of the contracting authority.
2. Award procedure chosen. In the case of the negotiated procedure without prior publication of a tender notice, justification (Article 11(3)).
3. Category of service and description. CPC reference number. *Quantity of services procured.*
4. Date of award of the contract.
5. Criteria for award of the contract.
6. Number of tenders received.
7. Name and address of service provider(s).
8. Price or range of prices (minimum/maximum) paid.
9. *Value of winning award(s) or the highest and lowest offer taken into account in the award of the contract;*
10. Where appropriate, value and proportion of the contract which may be subcontracted to third parties.
11. Other information.
12. Date of publication of the contract notice in the Official Journal of the European Communities.
13. Date of dispatch of the notice.

14. Date of receipt of the notice by the Office for Official Publications of the European Communities.
15. In the case of contracts for services listed in Annex I B, agreement by the contracting authority to publication of the notice (Article 16(3))."

## ANNEX III

### MODEL NOTICES OF SUPPLY CONTRACTS

#### A. PRIOR INFORMATION

1. The name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority, and if different, of the service from which additional information may be obtained :
2. The nature and quantity or value of the products to be supplied. CPA reference number :
3. Estimated date for initiating the award procedures in respect of the contract or contracts (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 :
7. *Indication whether the procurement is covered by the GATT Agreement :*

#### B. OPEN PROCEDURES

1. The name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority :
2. (a) The award procedure chosen :  
(b) Form of the contract for which tenders are being requested :
3. (a) Place of delivery :  
(b) The nature of the goods to be supplied, *including whether tenders are requested for purchase, lease, rental or hire purchase or a combination of these;* CPA reference number:  
(c) quantity of the goods to be supplied, *including any options for further procurement and, if known, an estimate of the timing when such options may be exercised. In the case of regular contracts or of contracts known, an estimate of the timing of the subsequent calls for tender for the supplies to be procured:*  
(d) Indication of whether the supplier can tender for a part of the goods required :
4. Time limit for *starting, delivery, or completion or duration of supplies contract :*
5. (a) Name and address of the service from which the contract documents and additional documents may be requested :  
(b) *Where applicable,* the final date for making such requests :

- (c) 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) The persons authorised to be present at the opening of tenders :
- (b) The date, hour and place of such opening :
8. Where applicable, any deposits and guarantees required :
9. The 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 suppliers to whom the contract is awarded :
11. Information concerning the supplier's own position, and 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. 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 :
14. Where applicable, prohibition on variants :
15. Other information :
16. Date(s) 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 :
19. *Indication whether the procurement is covered by the GATT Agreement.*

### C. RESTRICTED PROCEDURES

- 1. The name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority :
- 2. (a) The award procedure chosen :
- (b) Where applicable, justification for use of the accelerated procedure :
- (c) Form of the contract for which tenders are being requested :
- 3. (a) Place of delivery :
- (b) The nature of the goods to be supplied, *including whether tenders are requested for purchase, lease, rental or hire purchase or a combination of these; CPA reference number :*
- (c) *the quantity of the goods to be supplied, including any options for further procurement and, if known, an estimate of the timing when such options may be exercised. In the case of regular contracts or of contracts which are to be renewed in a given time, cf. Art. 5, also, if known, an estimate of the subsequent calls for tender for the supplies to be procured :*
- (d) Indication of whether the supplier can tender for a part of the goods required :

4. Time limit for *starting, delivery, or completion or duration of supplies contract* :
5. Where applicable, the legal form to be assumed by the grouping of suppliers to whom the contract is awarded :
6. (a) The final date for the 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 the dispatch of invitations to tender :
8. Where applicable, any deposits and guarantees required :
9. 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 :
10. The criteria for the award of the contract where they are not mentioned in the invitation to tender :
11. Envisaged number or range of suppliers which will be invited to tender :
12. Where applicable, prohibition on variants :
13. Other information :
14. Date(s) of publication of the prior information notice in the Official Journal of the European Communities or references 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:
17. *Indication whether the procurement is covered by the GATT Agreement.*

#### D. NEGOTIATED PROCEDURES

1. The name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority :
2. (a) The award procedure chosen :
  - (b) Where applicable, justification for use of the accelerated procedure :
  - (c) Where applicable, form of contract for which tenders are invited :
3. (a) Place of delivery :
  - (b) The nature of the goods to be supplied, *including whether tenders are requested for rental, purchase, lease or hire purchase or a combination of these; CPA reference number :*
    - (c) *the quantity of the goods to be supplied, including any options for further procurement and, if known, an estimate of the timing when such options may be exercised. In the case of regular contracts or of contracts which are to be renewed in a given time, cf. Art. 5, also, if known, an estimate of the subsequent calls for tender for the supplies to be procured :*
      - (d) Indication of whether the suppliers can tender for a part of the goods required :
4. Time limit for *starting, delivery, completion or duration of supplies contract* :
5. Where applicable, the legal form to be assumed by a grouping of suppliers to whom the contract is awarded :

6. (a) The final date for the 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. Where applicable, any deposits and guarantees required :
8. Information concerning the supplier's personal position, and the information formalities necessary for an appraisal of the minimum economic and technical standards required of him :
9. Envisaged number or range of suppliers which will be invited to tender:
10. Where applicable, prohibition on variants :
11. Where applicable, the names and addresses of suppliers already selected by the contracting authority :
12. Where applicable, date(s) of previous publications in the Official Journal of the European Communities :
13. Other information :
14. Date of dispatch of the notice :
15. Date of receipt of the notice by the Office for Official Publications of the European Communities :
16. *Indication whether the procurement is covered by the GATT Agreement :*

## **E. CONTRACT AWARDS**

1. Name and address of the contracting authority :
2. Award procedure chosen. In the case of the negotiated procedure, without publication of a tender notice, justification (Article 6 (3)) :
3. Date of award of the contract :
4. Criteria for award of the contract :
5. Number of tenders received :
6. Name and address of supplier(s) :
7. The nature and quantity of goods supplied, where applicable, by supplier; CPA reference number :
8. Price or range of prices (minimum/maximum) paid :
9. *Value of winning award(s) or the highest and lowest offer taken into account in the award of the contract :*
10. Where appropriate, value and proportion of contract likely to be subcontracted to third parties :
11. Other information :
12. Date of publication of the tender notice in the Official Journal of the European Communities :
13. Date of dispatch of the notice :
14. Date of receipt of the notice by the Office for Official Publications of the European Communities :

## ANNEX IV

### **MODEL NOTICES OF WORKS CONTRACTS.**

#### **A. PRIOR INFORMATION**

1. Name, address, telephone number, telegraphic address, telex and fax numbers of the contracting authority.
2. (a) Site.  
(b) Nature and extent of the *works* to be provided and, where relevant, characteristics of any lots by reference to the work.  
(c) If available, an estimate of the cost range of the proposed *works*.
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.
8. *Indication whether the procurement is covered by the GATT Agreement.*

#### **B. OPEN PROCEDURES**

1. Name, address, telephone number, telegraphic address, telex and fax numbers of the contracting authority.
2. (a) Award procedure chosen.  
(b) Nature of the contract for which tenders are being requested:  
(a) Site.  
(b) Nature and extent of the *works* to be provided and general nature of the work, *including any options for further works and, if known, an estimate of the timing when such options may be exercised.*  
(c) If the work or the contract is subdivided into several lots, the size of 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 latter also involves the drawing up of projects.
3. Any time limit for *starting, completion or duration of works contract.*
4. (a) Name and address of the service from which the contract documents and additional documents may be requested.

- paid (b) Where applicable, the amount and terms of payment of the sum to be to obtain such documents.
6. (a) Final date for receipt of tenders.  
 (b) Address to which tenders must be sent.  
 (c) Language or languages in which tenders must be drawn up.
7. (a) Where applicable, the persons authorised to be present at the opening of tenders.  
 (b) Date, hour and place of opening of tenders.
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 the grouping of contractors to whom the contract is awarded.
11. Information concerning the contractor's personal position and 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.
- price 13. 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.
19. *Indication whether the procurement is covered by the GATT Agreement.*

### C. RESTRICTED PROCEDURES

1. Name, address, telephone number, telegraphic address, telex and fax numbers of the contracting authority.
2. (a) 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) Site.  
 (b) Nature and extent of the *works* to be provided and general nature of the work, *including any options for further works and, if known, an estimate of the timing when such options may be exercised.*  
 (c) If the work of the contract is subdivided into several lots, the size of 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 *starting, completion or duration of works contract.*
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 requests to participate.  
 (b) Address to which requests must be sent.  
 (c) Language or languages in which requests must be drawn up.
7. 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. 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.
17. *Indication whether the procurement is covered by the GATT Agreement.*

#### D. NEGOTIATED PROCEDURES

1. Name, address, telephone number, telegraphic address, telex and fax numbers of the contracting authority.
2. (a) 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) Site.  
 (b) Nature and extent of the services to be provided and general nature of work, *including any options for further works and, if known, an estimate of the timing when such options may be exercised.*  
 (c) If the work or the contract is subdivided into several lots, the size of 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 starting, completion or duration of works contract..*
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 *requests to participate.*  
 (b) Address to which *they* must be sent.  
 (c) 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, name and address of suppliers already selected by the awarding authority.
12. 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.
17. *Indication whether the procurement is covered by the GATT Agreement.*

## E. CONTRACT AWARDS

1. Name and address of awarding authority.
  2. Award procedure chosen. *In the case of the negotiated procedure without prior publication of a tender notice, justification (Article 7(4)).*
  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/quantity of the works provided, general characteristics of the finished structure.
  8. Price or range of prices (minimum/maximum) paid.
  9. *Value of winning award(s) or the highest and lowest offer taken into account in the award of the contract.*
  10. Where appropriate, value and proportion of contract likely to be subcontracted to third parties.
  11. Other information.
  12. Date of publication of the tender notice in the Official Journal of the European Communities.
  13. Date of dispatch of the notice.
  14. Date of receipt of the notice by the Office for Official Publications of the European Communities.
-

## FINANCIAL STATEMENT

### **1. TITLE OF OPERATION**

Proposal for a Parliament and Council Directive amending Directives 92/50/EEC (public service contracts), 93/36/EEC (public supply contracts) and 93/37/EEC (public works contracts).

### **2. BUDGET HEADING INVOLVED**

Article B5-304.

### **3. LEGAL BASIS**

Article 57 paragraph 2, Article 66, Article 100a of the Treaty establishing the European Union.

### **4. DESCRIPTION OF OPERATION**

#### **4.1 Specific objectives of operation**

The aim of amending Directives 92/50/EEC (public service contracts) and 93/36/EEC (public supply contracts) and 93/37/EEC (public works contracts) is to take certain provisions of the GATT Agreement on Government Procurement into account. This will notably ensure that the undertakings of the European Union benefit from a treatment, which is as favourable as that reserved for undertakings from third countries having signed the Agreement.

#### **4.2 Duration**

Permanent operation, although specific decisions are taken each year.

#### **4.3 Target population**

Contracting authorities and Community firms.

### **5. CLASSIFICATION OF EXPENDITURE**

#### **5.1 Non-compulsory expenditure.**

5.2 Differentiated appropriations.

## **6. TYPE OF EXPENDITURE**

These amendments will have only a limited impact on the budget; the lowering of the threshold for public service contracts awarded by central government will, among other things, increase the number of notices to be published in the Supplement to the Official Journal.

The resulting additional costs will be charged to the Community budget.

## **7. FINANCIAL IMPACT**

### **7.1 Method of calculating total cost of operation**

It is difficult to quantify the extra expenditure that will be occasioned by the entry into force of this Directive.

The Commission's information and monitoring activities are generally prompting the public authorities covered by the Directives to fulfil their advertising obligations more and more scrupulously.

The Commission has also taken major steps to reduce the costs of publishing notices, e.g. by standardizing them.

On the assumption that the Directives will enter into force at the beginning of 1996, the following method has been used for calculating the total cost of the operation:

- number of additional notices: 300
- cost of publishing each notice in the Official Journal: ECU 450
- total translation and publication costs: ECU 135.000.

The additional expenditure can therefore be estimated at ECU 135.000 in 1996.

### **7.2 Indicative schedule of commitment and payment appropriations.**

Not applicable (one-off operation).

## **8. ANTI-FRAUD MEASURES PLANNED**

The relevant Commission departments carry out checks on projects funded and on the performance of services and studies requested before making any payment, with due regard to contractual obligations and the principles of economy and sound financial or general management. Fraud prevention

measures (monitoring, submission of reports, etc) are written into all agreements or contracts concluded between the Commission and the recipients of funds.

## **9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS**

### **9.1 Specific and quantifiable objective of proposed operation.**

The amendments to the public procurement directives will help to ensure that undertakings of the European Union benefit from a treatment, which is as favourable as that reserved for undertakings from third countries, in particular as regards the information contained in the notices or given by contracting authorities when undertakings are eliminated from award procedures.

### **9.2 Grounds for the operation.**

This operation is a consequence of the international commitments entered into by the European Union under the GATT Agreement on Government Procurement.

### **9.3 Monitoring and evaluation of the operation.**

See point 7.1.

## **COMPETITIVENESS AND EMPLOYMENT IMPACT STATEMENT**

### **I. Title of the proposal**

Proposal for a Parliament and Council Directive amending Directives 92/50/EEC (public service contracts), 93/36/EEC (public supply contracts) and 93/37/EEC (public works contracts).

### **II. What is the main reason for introducing the measures?**

The taking into account in the above-mentioned Directives of the international obligations deriving from the new GATT Agreement on Government Procurement.

### **III Features of the businesses concerned**

1. In particular, are many SMEs involved?  
Public supply, public works and public service contracts are in many cases likely to interest SMEs, either directly or indirectly.
2. Are they concentrated in regions of the Community which are:
  - eligible for national regional aid schemes? No.
  - eligible for ERDF assistance? No.

### **IV. What direct obligations do these measures impose on businesses?**

None.

### **V. What indirect obligations are local authorities likely to impose on businesses?**

None.

### **VI. Do any special measures apply in respect of SMEs?**

This proposal does not contain any new measures applicable to SMEs.

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending**

**95/ 0080(COD)**

**Directive 93/38/EEC coordinating the procurement procedures of entities  
operating in the water, energy, transport and telecommunications sectors**

**(.../..../EC)**

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## ***EXPLANATORY MEMORANDUM***

### **I Introduction**

1. On 15 December 1993, the negotiations on a revision of the first Agreement on Government Procurement, hereinafter referred to as "the Agreement" had been concluded. On 15 April 1994, in parallel with the conclusion of the Uruguay Round, the European Union, inter alia, signed the new Agreement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade. The new Agreement will enlarge to a considerable extent the existing framework of balanced rights and obligations with respect to government procurement, as it has been estimated that the new Agreement, all in all, represents approximately ten times the coverage of the initial Agreement of 1979 and that the value of the procurements covered by the GPA will be of the order of about ECU 350 billions each year.
2. As compared to the previous Agreement of 1979, the new Agreement no longer covers supplies contracts only but also works and services and, besides the contracts awarded by the State, certain contracts awarded by public authorities at the regional and local level as well as certain contracts awarded within the water, electricity, urban transport, ports and airports sectors.
3. The realization of this Agreement by the Community does not, per se, render amendments of the Community legislation necessary. In fact, the Agreement, which the Community has entered into, forms an integral part of the Community legal order without implementing measures being necessary. Consequently, contracting authorities which are subject to both the directives and the Agreement must therefore apply two distinct legal orders to the same contract. However, to the extent that the provisions of the Agreement are more favourable on certain points than the Community rules, it is undeniable that the functioning of the Community regime will be affected.
4. It is therefore essential to guarantee that suppliers, contractors and service providers from the European Union benefit from a treatment, which is as favourable as that reserved for suppliers, contractors and service providers from third countries having signed the Agreement. To that end, it is proposed to align the provisions of the directives with those of the Agreement as soon as the latter are more favourable for the undertakings even if this entails introducing some supplementary obligations for the contracting entities in the European Union.
5. To the extent that the provisions of the Agreement differ from those of the directives, it seems appropriate to amend the latter in order that contracting authorities and contracting entities, which are subject to the Agreement, comply with it when behaving in conformity with the amended directives.
6. It is also important to simplify the application of the directives and to maintain the equilibrium, which has been reached in the "acquis communautaire". Most of the proposed amendments therefore concern the entire field of application of the directives.

### **II Scope of the proposal**

7. This proposal concerns the amendments to Directive 93/38/EEC ("utilities directive"), the changes to Directives 92/50/EEC ("Services Directive"), 93/36/EEC ("Supplies Directive") and 93/37/EEC ("Works Directive") being the subject of the Commission's proposal for a Directive amending these Directives.

8. As mentioned above, the Agreement covers works and supplies contracts as well as certain services contracts awarded by public authorities or public undertakings exercising certain of the activities covered by directive 93/38/EEC. The activities in question consist of:

- provision or operation of a network to provide the public with drinking water or electricity;
- exploitation of a geographical area in connection with the provision of airport, maritime or inland port facilities or other terminal facilities for air or water-borne transports; and
- operation of a public network providing transportation to the public by *urban* railway, tramway, bus or similar forms of transport;

As regards services contracts, the Agreement is also applicable where the above-mentioned entities award contracts for services listed in Annex XVI A of the directive, with the exception of the R & D services listed in category 8 of that Annex and with the exception of the services listed in Annex XVI B of the directive.

9. Directive 93/38/EEC, on the other hand, covers works, supplies and, in principle, *all* services contracts, awarded by public authorities, public undertakings *and other undertakings, operating on the basis of a special or exclusive right granted by a competent authority*. Common to these three types of contracting entities is that they must furthermore exercise a "relevant activity". Besides the activities, which are covered by the Agreement, such "relevant activities" include:

- provision or operation of a network to provide the public with gas or heat;
- exploitation of a geographical area in connection with exploration / extraction of oil, gas, coal or other solid fuels;
- operation of a public network providing transportation to the public by railway (other than *urban* railway); and
- provision or operation of a public telecommunications network or provision of telecommunications services.

10. Thus, the Agreement is applicable or not in function of the legal status of the entities in question. The directive, on the other hand, explicitly rejects the distinction based on legal status as a criterion for the applicability or non-applicability of the "utilities directive", cf. its recitals 8 and 9<sup>1</sup> and its article 2.

11. As can be seen from points 8 and 9 above, the Agreement has regard to only some but not all of the activities covered by the Directive, whose substantial rules, except for a limited number of special provisions, are applicable, without distinction, to all the types of activities covered. To introduce a number of differences in the legal regime applicable as a function of the activity exercised by the entities in question would lead to different legal regimes within the Community between entities operating in different but competing fields (e. g. electricity vs. gas and heat) - differences, which would furthermore be due not to factors internal to the Community but to the outcome of negotiations on external trade relations. In the case of entities carrying out more than one activity, application of different legal regimes would also risk entailing extra costs in relation to the administration of award procedures, thus potentially harming competitiveness.

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<sup>1</sup>These recitals are formulated as follows:

"8. Whereas the main reason for their exclusion was that entities providing such services are in some cases governed by public law, in others by private law;

"9. Whereas the need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in these sectors requires that the entities to be covered must be identified on a different basis than by reference to their legal status,"

12. Two main objectives of this proposal have been mentioned above, namely those of ensuring that the European Union does not offer more favourable conditions to undertakings from third countries than to its own undertakings and of preserving the existing equilibrium in the "acquis communautaire". Due to the differences in the respective fields of application, set out in points 8 and 9 above, the preservation of the equilibrium reached in the directive, acquires particular importance in relation to this proposal. Thus, in order to ensure equal treatment between private and public entities and in conformity with the Commission declaration concerning the extension of the benefits of Directive 93/38/EEC to third countries<sup>2</sup>, this proposal goes beyond the field of application of the Agreement to the extent that *all* the proposed amendments, except the statistical obligations, also apply to:

- R & D services;
- both public undertakings and private undertakings having special or exclusive rights;
- *all sectors currently covered* by the "utilities directive", thus including the four sectors mentioned under point 8 above (gas and heat distribution, extraction etc. of oil and gas, railway transport other than by urban railway and telecommunications), which are not covered by the GPA.

As regards the amendment of the thresholds, in particular, the proposal goes beyond the Agreement in so far as the amended threshold also apply to the services listed in Annex XVI B.

13. It should be pointed out that Article 36 of the Directive has not been amended and the Commission will be putting forward relevant proposals for decision pursuant to this Article.

14. Within the field of application described above, the main amendments bear on

- the thresholds: the directive currently distinguishes between the telecommunications sector and the other sectors covered by the directive. Change in this situation is not envisaged. Thus, the currently applicable thresholds in the telecommunications sector (5 000 000 ECU for works contracts and 600 000 ECU for supplies and service contracts) remain unaltered. As regards the remaining sectors, it is proposed to change the threshold for works contracts from 5 000 000 ECU to the equivalent in ECU of 5 000 000 SDR<sup>3</sup> and to change that for supplies and service contracts from 400 000 ECU to the equivalent in ECU of 400 000 SDR<sup>3</sup>.

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<sup>2</sup>This declaration reads as follows:

"The Commission declares that it will only propose draft Council decisions concerning the extension of the benefits of the provisions of Council Directive 93/38/EEC to third countries in such a way that there would be equal treatment between private and public entities. Moreover, in negotiating and applying the Community's undertakings arising from international agreements, the Commission shall ensure the rules in Member States governing the system of property ownership shall not be prejudiced (Art. 222 of the Treaty)."

<sup>3</sup>As of 1 January 1994:

5 000 000 SDR=4 952 730 ECUs, 400 000 SDR=396 218 ECUs.

- The possibilities of assistance in the preparation of technical specifications: a new provision is inserted in the proposal to forbid contracting authorities and entities from seeking or accepting technical advice on the preparation of technical specifications from persons having a commercial interest therein, where this would have the effect of precluding competition. This means, on the other hand, that contracting entities may seek or accept such advice in relation to a specific contract from undertakings, which could subsequently participate in the award procedure, where this would not prejudice the principle of equal treatment, notably by precluding competition. This provision has been introduced to render explicit what already follows implicitly from general principles of Community law and from recent jurisprudence.
- Information to be given to rejected undertakings: a new provision obliging contracting entities to inform, at their request, rejected undertakings of the reasons for rejection and of the advantages of the tender chosen, except where there would be legitimate reasons for not disclosing this last type of information.
- In line with the Agreement, a provision has been introduced to ensure that access to qualification systems can take place continuously, which is not ensured in the current text.
- The statistical obligations of Member States have been amended in order to allow the Community to meet its international obligations. It should be noted that, as indicated above, the provision is limited to the sectors of the "utilities directive", which are covered by the GPA and that it does not include information on either R & D services or the "residual" services listed in Annex XVI B. It does, however, go beyond the GPA in so far as it does not distinguish between public undertakings and private undertakings operating in the sectors covered by the Agreement.
- Finally, a new Article is proposed to ensure that the opportunities for access to Community public contracts available under the Treaty to undertakings, products and services 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 in the Agreement to undertakings, products and services from third countries which are signatories to the Agreement.

15. A detailed analysis of Articles is annexed hereto.

## Annex: Detailed analysis of Articles

16. The comments presented below relate to the amended or new provisions set out in Article 1 of this proposal.

### Article 14 (1) - (3) - Threshold values.

17. Article 14, paragraph 1, maintains the current set of threshold values with regard to procurement in the telecommunications sector, while paragraph 2 introduces the new thresholds set out by the Agreement, which, for the reasons explained above, are extended to all the remaining sectors of activities. It should be noted that the differences following from the new threshold established in paragraph 2 for the procurement of services and supplies by contracting entities other than those operating in the telecommunications sector (the equivalent in ecus of SDR 400.000) and the procurement of works by these contracting entities (the equivalent in ecus of SDR 5.000.000) are relatively small, particularly in view of the current exchange rate between SDR and ecus. The amendment of paragraph 3 is a simple consequence of the modifications to paragraphs 1 and 2.

18. The amendments to paragraphs 11 and 12 are a consequence of the amendments to Article 14, paragraphs 1 and 2.

19. As the threshold values of the Agreement expressed in ecus are subject to revision every two years, it was not possible to refer to the concrete threshold value in ecus in the relevant article itself. In line with the corresponding provision in Directive 93/36/EEC (Supplies), which already contains a reference to a "GATT threshold", the solution chosen to remedy this situation provides for :

- a reference in the Article to the equivalent in ecus of the threshold fixed pursuant to the Agreement (Art. 14 (2));
- an amendment in the text of the relevant provisions, referring to a periodical publication of the amount in ecus in the OJEC (Art. 14 (16)).

### Article 14 (15) - (17) Calculation of the value in national currencies and in Calculation of the value in ecus of the thresholds.

20. These provisions on the methods for the calculation of the equivalence in national currencies and of the SDR in ecus has been aligned as much as possible with the similar provisions in other public procurement directives. The transferral of provisions from the current Article 38 to Article 14 is envisaged in order to align this directive to the other public procurement directives in this respect also.

### Article 18 (9) Assistance in the preparation of technical specifications.

21. With regard to the preparation of technical specifications or tender documents in general, the principles of equal treatment and fair competition would be at risk if such documents were to be prepared with the assistance of undertakings having a commercial interest in the specific procurement to which the documents relate. To avoid such situations, a new provision has been inserted in the Directive (Art. 18 (9)), inspired by a corresponding rule in the Agreement, forbidding contracting entities to seek or accept advice from such persons or undertakings, where this would have the effect of precluding competition.

### Article 20 (2) (f) Recourse to negotiated procedures without prior call for competition in relation to additional works or services.

22. As required by the Agreement, a further condition has been introduced for the use of a negotiated procedure without prior call for competition regarding additional

works or services, namely that this procedure may be used only in respect of an aggregate 50% of the value of the original contract. This brings the provision in line with the other public procurement directives.

Article 21 (2) (c) Information requirements in relation to periodic indicative notices used as a means of calling for competition.

23. Where a contracting entity decides to carry out its call for competition by means of the publication of a periodic indicative notice, the entity is required to invite all candidates to confirm their interest. In keeping with the Agreement's provisions aimed at guaranteeing a high level of transparency, it is required that the information given in the invitation to confirm interest must be at least as detailed as the information required of tender notices established in conformity to Annex XII.

Article 22 (1) Further consequences of the new threshold for procurement of works.

24. The introduction of a new threshold also implies a slight change with regard to the requirement of contracting entities to publish an indicative notice, not serving as a call for competition, on works contracts they intend to award, as this obligation, set out in Article 22 (1) of the Directive, is linked, by means of a cross-reference, to the general threshold for works above which the Directive is applicable (currently Art. 14(1)). In order to maintain this coherence and to avoid a multiplication of thresholds, the existing system of cross-references has not been changed. Contracting entities are thus obliged to publish indicative notices, not serving as calls for competition, with respect to works, when the value of the work is estimated to be not less than either 5.000.000 ECU as regards contracting entities operating in the telecommunications sector or than the equivalent in ecus of SDR 5.000.000 as regards contracting entities operating in the other sectors covered by the Directive.

Article 22 (3)

25. This amendment is a simple consequence of the amendments to Article 26.

Article 23 (1) and (2) Further consequences of the new threshold for procurement of services.

26. Currently, the Directive applies to design contests organised as part of a procedure leading to a service contract whose estimated value is not less than the general threshold for services above which the Directive is applicable (Art. 23 (1)), or in which the total amount of prizes and payments to participants is not less than ecus 600.000 as regards contracting entities operating in the telecommunications sector or ecus 400.000 for the other sectors (Art. 23 (2)). Due to the fact that the general threshold, to which Article 23 (1) and (2) of the Directive refers, has, as far as the other sectors than the telecommunications sector are concerned, changed following the Agreement, it was felt appropriate to align Article 23 (1) and (2) of the Directive accordingly as regards these sectors while leaving the current thresholds for the telecommunications sector unaltered. The amendments to Article 23 of the Directive do not only safeguard the existing coherence and avoid a multiplication of thresholds. In addition, they allow for the continuation of the possibility, foreseen under the Directive, of awarding a service contract to the winner or one of the winners of a design contest by negotiated procedure without prior call for competition (Article 20 (2) (l)).

Article 26 (1) Shortened deadlines in open procedures following publication of an indicative notice.

27. Art. 26 (1) of the Directive, allowing for shortened deadlines in open procedures following the publication of an indicative notice, had to be amended to take account

of the Agreement, as it makes this exemption conditional upon further requirements than those set out in the relevant rules up to now. Recourse to the derogation will thus only be permitted if the indicative notice had been published forty days and not more than twelve months in advance, and provided that it contained, in this case, at least as much information, as far as available at that time, as would be required in the tender notices regarding open procedures. The amendment is useful, closing an existing gap in the relevant provisions, as it limits recourse to the derogation to those cases where the indicative notice may have fulfilled its "warning function" with regard to interested parties, justifying shorter deadlines in the later award procedure. See also point 27 below.

#### Article 26 (2) and (3) Deadlines under restricted or negotiated procedures.

28. In order to conform to the general minimum deadlines for the receipt of requests to participate in restricted or negotiated procedures with prior calls for competition, required by the Agreement, it is necessary to prolong the deadline by 2 days from 5 weeks to 37 days, while leaving the absolute minimum time limits, to which the general deadline may be shortened, unaltered.

As regards the deadlines for the receipt of the tenders in restricted or negotiated procedures with prior calls for competition, it was felt appropriate to introduce the general minimum deadline required by the Agreement, i.e. at least 40 days from the date of the invitation to tender. This general deadline may, however, be shortened, as the main rule, to 24 days and in any case to not less than 10 days:

- where a periodic indicative notice, which does not serve as a call for competition, has been published and this notice meets the requirements as to transparency and the time of its publication, cf. also point 26 above for the parallel situation under open procedures, or
- where it is not possible to agree the deadline for the receipt of tenders with the selected candidates.

It should be noted that the possibility of shortening the deadline for the receipt of tenders in restricted or negotiated procedures in case of publication of a periodic indicative notice is new. The current possibility of agreeing the deadline for the receipt of tenders, remains unaltered, whereas the principal deadline to be applied in case it is not possible to agree the deadline has been prolonged by 3 days from 3 weeks to 24 days to be in conformity with the Agreement. The absolute minimum of 10 days remains unaltered.

#### Article 28 (5)

29. This amendment simply corrects a factual error in the current text and specifies that requests to participate do not need to be confirmed by letter when transmitted by electronic mail.

#### Article 28 (6) Submission of tenders by telex etc.

30. This provision, while acknowledging that some contracting entities allow for tenders to be submitted by telex, telegram, fax or any electronic means, establishes minimum rules to be fulfilled in such cases, in particular with regard to the information these tenders must contain and the requirement, except when transmitted by electronic mail that they must be confirmed by letter afterwards, within a certain deadline. These rules, aimed at ensuring fair and transparent award procedures, will contribute to legal certainty, without minimising the contracting entities' choice of derogating from the general rule that tenders should be submitted in writing directly or by mail.

### Article 30 (1) Access to qualification systems

31. In line with the Agreement, paragraph 1 requires that access to qualification systems must be possible at all times.

### Article 35 (1)

32. This amendment corrects a previous factual error (the current reference to Article 27 (1))

### Article 41 Information to rejected candidates and tenderers.

33. The Agreement obliges contracting entities to inform the candidates whose application has been turned down and the tenderers whose tenders have been rejected, where they so request, of the reasons for the rejection of their application or tender and, in addition, information on the relevant advantage of the tender selected. As the Directive does not currently contain any such requirements, new provisions have been inserted in Article 41, paragraphs 1 and 2. These provisions closely follow the formulation of the corresponding provisions in the other public procurement directives (Art. 12 (1) Directive 92/50/EEC on services, Art. 7 (1) Directive 93/36/EEC on supplies, Art. 8 (1) Directive 93/37/EEC on works). Taking account of the fact that contracting entities may have legitimate reasons for not releasing certain information on the contract award, the amended provision, in line with the Agreement, provides for an exception to this rule.

The amendment of paragraph 3, letter c, simply constitutes the correction of a factual error in the current text.

### Article 42, paragraph 2 Statistical obligations.

34. In order to permit assessment of the new coverage of the rules, the statistical reporting obligations of the Member States needed to be amended (Art. 32). In line with the Agreement, this implies requesting statistical information on contracts with a value above the relevant thresholds. In order not to impose statistical burdens beyond what is strictly required by the Agreement, it is proposed to limit the obligation to supply statistical information to the sectors of activity covered by the Agreement and to propose that the information shall thus not include information on R&D contracts (Cat. 8 of Annex XVI A) or "residual services" as referred to in Annex XVI B to the Directive.

35. It is, on the other hand, proposed that information must be given regarding all types of contracting entities operating in the sectors concerned, since the resulting statistics would otherwise be practically useless in any other context than the GATT context.

36. In order to ensure that the European Union is in a position to fulfil its statistical obligations pursuant to the Agreement under all circumstances, it is proposed to extend the "Advisory Committee procedure" set out in the Directive (Art. 40 (4) to (8)) to vest the Commission with a mandate to establish if other information and, where applicable, what kind, must be furnished by the Member States in order to comply with the Agreement.

### Article 42 A

37. This provision, which is based on the current Article 28 of Directive 93/36/EEC, has been introduced to ensure that the opportunities for access to Community public

contracts available under the Treaty to undertakings, products and services 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 in the Agreement to undertakings, products and services from third countries which are signatories to the Agreement.

Annexes XII to XV (model notices).

38. The model notices have been modified as required by the Agreement. As regards the model notices under Annex XII and XV ("ad-hoc" notices and notices on the award of contracts) the amendments are on minor points, whereas the amendments of Annex XIII and XIV (notices on the existence of qualification systems and periodic indicative notices) are slightly more substantial. In keeping with the Agreement, it is, *inter alia*, necessary to distinguish clearly between the cases where such notices do not serve as a means of calling for competition and the cases where the notices do have such function.

Obligation of transposition of this Directive and Communication of Measures

39. Article 4 of the proposal contains the standard provision on the obligations of Member States to transpose a Directive and to communicate the measures taken, accompanied by a correlation table, to the Commission.

**Proposal for a  
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
amending**

**Directive 93/38/EEC coordinating the procurement procedures of entities  
operating in the water, energy, transport and telecommunications sectors**

**THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN  
UNION**

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

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

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

Acting in accordance with the procedure referred to in Article 189b of the Treaty<sup>3</sup>

1. Whereas by its Decision 94/800/EC concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994)<sup>4</sup>, the Council approved on behalf of the European Union 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;
2. Whereas Directive 93/38/EEC coordinated the national procedures relating to the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, in order to introduce equal conditions of competition for such contracts in all the Member States;
3. Whereas, in view of the international rights and commitments devolving on the Union 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;
4. Whereas, certain provisions of the Agreement introduce more favourable conditions for tenderers than those laid down in Directive 93/38/EEC;
5. Whereas, when contracts are awarded by contracting entities within the meaning of the agreement, the opportunities for access to public supplies, works and service contracts available under the Treaty to undertakings and products from the Member

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<sup>1</sup> OJ N. C

<sup>2</sup> OJ N. C

<sup>3</sup> OJ N. C

<sup>4</sup> OJ N. L 336, 23.12.1994, p. 1

- States must be at least as favourable as the conditions of access to public contracts within the Union accorded under the arrangements contained in the Agreement to undertakings and products from third countries which are signatories to the Agreement;
6. Whereas it is therefore necessary to adapt and supplement the provisions of Directive 93/38/EEC;
  7. 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 continues to require that the entities to be covered must be identified on a different basis than by reference to their legal status;
  8. Whereas the extension of the benefits of the provisions of Council Directive 93/38/EEC to third countries must be granted in such a way that equal treatment between private and public entities is ensured;
  9. Whereas it must be ensured that the rules in Member States governing the system of property ownership shall not be prejudiced (Art. 222 of the Treaty);
  10. Whereas the application of the Directive must be simplified and the equilibrium, which has been reached in the current Community legislation in the field of public procurement in these sectors, must be maintained;
  11. Whereas it is therefore necessary to extend the applicability of the adaptations of the Directive to all the contracting entities and sectors covered by Directive 93/38/EEC;
  12. Whereas the opening-up of contracts in the sectors covered by this Directive might have an adverse effect upon the economy of the Kingdom of Spain; whereas the economies of the Hellenic Republic and the Portuguese Republic will have to sustain even greater efforts; whereas it is appropriate that these Member States be granted adequate additional periods to implement this Directive,

## **HAS ADOPTED THIS DIRECTIVE:**

### **Article 1**

Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors is hereby amended as follows:

1. Article 14 (1) and (2) are replaced by the following:
  - "1. This Directive shall apply to contracts awarded by entities *carrying out an activity defined in Article 2 (2) (d)*, provided that the estimated value, net of VAT, is not less than:
    - (a) ECU 600 000 in the case of supply and service contracts;
    - (b) ECU 5 000 000 in the case of works contracts.
2. *This Directive shall apply to contracts awarded by entities carrying out an activity defined in Article 2 (2) (a), (b) and (c) provided that the estimated value, net of VAT, is not less than:*
  - (a) *the equivalent in ECU of 400 000 SDR for supply and service contracts;*
  - (b) *the equivalent in ECU of 5 000 000 SDR for works contracts.*
3. For the purposes of calculating the estimated amount of a service contract, the contracting entity shall include the total remuneration of the service provider, taking account of the elements specified in paragraphs **4 to 14.**"

2. Article 14 (10) and (11) are replaced by the following:
  - "11. The basis for calculating the value of a works contract for the purposes of *paragraphs 1 or 2* shall be the total value of the work. "Work" shall mean the result of building and civil engineering activities, taken as a whole, which are intended to fulfil an economic and technical function by themselves. In particular, where a supply, work or service is the subject of several lots, the value of each lot shall be taken into account when assessing the value referred to in *paragraphs 1 or 2*. Where the aggregate value of the lots equals or exceeds the value laid down in *paragraphs 1 or 2*, that paragraph shall apply to all the lots. However, in the case of works contracts, contracting entities may derogate from *paragraphs 1 or 2* in respect of lots the estimated value net of VAT for which is less than ECU 1 million, provided that the aggregate value of those lots does not exceed 20 % of the overall value of the lots.
  12. For the purposes of *paragraphs 1 or 2*, contracting entities shall include in the estimated value of a works contract the value of any supplies or services necessary for the execution of the contracts which they make available to the contractor."
3. The current paragraphs 3 to 9, 12 and 13 are renumbered as paragraphs 4 to 10, 13 and 14.
4. The following paragraphs are added to Article 14:
  - "15. *The value in national currencies of the thresholds specified in paragraphs 1 and 2 shall, in principle, be revised every two years with effect from the date provided for in Directive 93/36/EEC as far as the thresholds for supply and service contracts are concerned and from the date provided for in Directive 93/37/EEC as far as the thresholds 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 August 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.*
  16. *The thresholds of the GATT Agreement expressed in ecus shall in principle be revised every two years with effect from 1 January 1996. The calculation of these values shall be based on the average daily value of the euro expressed in SDRs over the 24 months terminating on the last day of August preceding the revision with effect from 1 January. These values shall be published as provided for in paragraph 15.*
  17. *The method of calculation laid down in paragraphs 15 or 16 shall be examined pursuant to the provisions of Directive 93/36/EEC.*
5. The following paragraph 9 is added to article 18
  - "9. *Contracting 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 anyone that may have a commercial interest in the procurement.*
6. Article 20 (2) (f) is replaced by the following:
  - "(f) for additional works or services not included in the project initially awarded or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the execution of the contract, on condition

that the award is made to the contractor or service provider executing the original contract:

- when such additional works or services cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities,
  - or when such additional works or services, although separable from the execution of the original contract, are strictly necessary to its later stages
- however, the aggregate value of contracts awarded for additional works or services may not exceed 50% of the amount of the main contract;***"

7. Article 21 (2) (c) is replaced by the following :

- "(c) contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations. ***The information must be at least as detailed as that required in Annex XII B or Annex XII C.***"

8. Article 22 (1) (b) is replaced by the following:

- "(b) in the case of works contracts, the essential characteristics of the works contracts which the contracting entities intend to award, the estimated value of which is not less than:
  - the threshold laid down in Article 14 (1) as regards ***contracts intended to be awarded by entities carrying out an activity defined in Article 2 (2) (d), or***
  - ***the threshold laid down in Article 14 (2) as regards contracts intended to be awarded by contracting entities carrying out an activity defined in Article 2 (2) (a), (b) and (c).***"

9. Article 22 (3) is replaced by the following:

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

10. Article 23 (1) and (2) are replaced by the following:

- "1. This Article shall apply to design contests organized as part of a procedure leading to the award of a service contract the estimated value net of VAT for which is not less than:
  - the value referred to in Article 14 (1) as regards entities carrying out an activity defined in Article 2 (2) (d), or
  - ***the value referred to in Article 14 (2) as regards contracting entities carrying out an activity defined in Article 2 (2) (a), (b) and (c).***"

2. This Article shall apply to all design contests where the total amount of contest prizes and payments to participants is not less than ***the threshold laid down in Article 14 (2)*** for design contests organized by entities exercising an activity referred to in Article 2 (2) (a), (b) and (c) and ECU 600 000 for design contests organized by entities exercising an activity referred to in Article 2 (2) (d)."

11. Article 26 (1) is replaced by the following:

"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 22 (1), provided that, in addition to the information required in Part I of Annex XIV, this notice contains at least as much of the information required in notices established in conformity to Annex XII A as is available at the time of publication of the notice referred to in Article 22 (1). This notice must furthermore have been published not less than 40 days and not more than twelve months before the publication of the notice provided for in Article 21 (1)."

12. Article 26 (2) is replaced by the following:

- "2. In restricted procedures and in negotiated procedures with a prior call for competition, the time limit for receipt of requests to participate, in response to a notice published in accordance with Article 21 (1) (a) or in response to an invitation from a contracting entity in accordance with Article 21 (2) (c), shall, as a general rule, be at least 37 days from the date of dispatch of the notice or invitation and shall in any case not be less than the time limit for publication laid down in Article 25 (3), plus 10 days.
3. *In restricted procedures and in negotiated procedures with a prior call for competition, the time limit for receipt of tenders shall be not less than 40 days from the date of the invitation to tender. However, this time limit may:*
- (a) *be shortened to 24 days as a general rule and in any case not less than 10 days where contracting entities have published a notice in accordance with Article 22 (1), provided that, in addition to the information required in Part I of Annex XIV, this notice contains at least as much of the information required in notices established in conformity to Annex XII B or C as is available at the time of publication of the notice referred to in Article 22 (1). This notice must furthermore have been published not less than 40 days and not more than twelve months before the publication of the notice provided for in Article 21 (1); or*
- (b) *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. Where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least 24 days and shall in any case not be less than 10 days from the date of the invitation to tender; the time allowed shall be sufficiently long to take account in particular of the factors mentioned in Article 28 (3)."*

13. Article 28 (5) is replaced by the following:

- "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, telephone or any electronic means, they must, except when transmitted by electronic mail, be confirmed by letter dispatched before the expiry of the time limit referred to in Article 26 (2)".

14. The following paragraph 6 is added to article 28:

- "6. *Tenders shall normally be submitted in writing directly or by mail. Where tenders by telex, telegram, telecopy or any electronic means are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender; in open or restricted procedures, this information must in particular include the definitive price proposed by the tenderer and a statement that the tenderer agrees to all terms, conditions and provisions of the invitation to tender. Where tenders are submitted by such means, they must, except when transmitted by electronic mail, be confirmed by letter dispatched before the expiry of the time limits referred to in Article 26 (1) or Article 26 (3). Tenders presented by telephone shall not be permitted."*

15. Article 30 (1) is replaced by the following:

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

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

16. Article 35 (1) is replaced by the following:

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

17. Article 38 is deleted.

18. Article 41 is replaced by the following:

"1. *The contracting entity shall, within fifteen days of the date on which the request is received, inform any eliminated candidate or tenderer who so requests in writing of the reasons for rejection of his application or his tender, and, in the case of a tender, of the characteristics and relevant advantages of the tender selected as well as the name of the successful tenderer.*

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

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

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

- (a) the qualification and selection of contractors, suppliers or service providers and award of contracts;
- (b) recourse to derogations from the use of European specifications in accordance with Article 18 (6);
- (c) use of procedures without prior call for competition in accordance with Article 20 (2);
- (d) non-application of Titles II, III and IV in accordance with the derogations provided for in Title I.

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

19. The following paragraph is inserted in Article 42:

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

- (a) statistics on estimated value of contracts awarded above the threshold values provided for in Article 14 (2), broken down by category of activity and categories of works, products and services;*

- (b) statistics on the total value of contracts awarded above the threshold values provided for in Article 14 (2), broken down by category of activity, under each of the cases of Article 20 (2);
- (c) statistics, broken down by category of activity, on the total value of contracts awarded under derogations to the GPA; and
- (d) other information, to be determined pursuant to the procedure provided for in Article 40 (4) to (8), which is necessary to satisfy the obligations under the GPA regarding statistical reports, in particular as regards statistics on the country of origin of products and services.

*The statistical information required under this provision shall not include information concerning contracts having as their object services listed in category 8 of Annex XVI A or in Annex XVI B.*

20. The current paragraph 2 is renumbered as paragraph 3.

21. The following article 42 A is inserted, reading as follows :

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

22. Annexes XII, XIII, XIV and XV to Directive 93/38/EEC are replaced by the Annex to this Directive.

#### Article 2

1. Member States shall adopt the measures necessary to comply with the provisions of this Directive and shall apply them by 1 January 1996. They shall forthwith inform the Commission thereof.
2. Nevertheless, the Kingdom of Spain may provide that the measures referred to in paragraph 1 shall apply from 1 January 1997 only and the Hellenic Republic and the Portuguese Republic may provide that the measures referred to in paragraph 1 shall apply from 1 January 1998 only.

#### Article 3

When Member States adopt the provisions referred to in Article 2, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

#### Article 4

Member States shall communicate to the Commission the main provisions of national law, whether laws, regulations or administrative provisions, which they adopt in the field covered by this Directive together with a correlation table between this Directive and the national measures adopted.

#### Article 5

This Directive is addressed to the Member States.

## ANNEX XII

### A. OPEN PROCEDURES

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement).  
Category of service within the sense of Annex XVI A or XVI B and description (CPC classification).  
*Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or more than one of these.*
3. Place of delivery, site or place of performance of service.
4. For supplies and works:
  - (a) nature and quantity of the goods to be supplied, *including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, cf. Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured;*  
or  
nature and extent of the services to be provided and general nature of the work;
  - (b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (c) for works contracts: Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
5. For services:
  - (a) *nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, cf. Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;*
  - (b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;
  - (c) reference of the law, regulation or administrative provision;
  - (d) indication whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services;
  - (e) indication whether suppliers can tender for a part of the services concerned.
6. Authorization to submit variants.
7. Derogation from the use of European specifications, in accordance with Article 18 (6).
8. Time limits for *starting*, delivery or completion or duration of service contract.
9. (a) Address from which the contract documents and additional documents may be requested.  
(b) Where appropriate, the amount and terms of payment of the sum to be paid to obtain such documents.
10. (a) Final date for receipt of tenders.  
(b) Address to which they must be sent.  
(c) Language or languages in which they must be drawn up.
11. (a) Where appropriate, the persons authorized to be present at the opening of tenders.  
(b) Date, hour and place of such opening.
12. Where appropriate, any deposits and guarantees required.

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

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

16. Where applicable, date(s) of previous publications in the Official Journal of the European Communities.
17. Other information.
18. Where appropriate, the reference to publication of the periodic information notice in the Official Journal of the European Communities to which the contract refers.
19. Date of dispatch of the notice by the contracting entities.
20. 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

#### I. NOTICES NOT USED AS A MEANS OF CALLING FOR COMPETITION

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Purpose of the qualification system (description of the goods, services or works or categories thereof to be procured through the system).
3. *Conditions to be fulfilled by suppliers, contractors and service providers in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested suppliers, contractors and service providers, a summary of the main conditions and methods and a reference to those documents shall be sufficient.*
4. Address where further information and documentation (e. g. the documents mentioned under point 3) concerning the qualification system can be obtained (if different from the address mentioned under 1).
5. Period of validity of the qualification system *and the formalities for its renewal.*
6. *(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 (if known).*
7. *Date of dispatch of the notice by the contracting entities.*
8. *Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).*

## **II NOTICES USED AS A MEANS OF CALLING FOR COMPETITION**

1. *Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.*
2. *Nature of the contract or contracts (supply, works or service, where appropriate, state if framework agreement(s) are envisaged). Category of service within the sense of annex XVI A or XVI B and description (CPC classification).*  
*Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or more than one of these.*
3. *For supplies and works:*
  - (a) *nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, cf. Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured;*  
*or*  
*nature and extent of the services to be provided and general nature of the work;*
  - (b) *indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and possibility of tendering for one, for several or for all the lots;*
  - (c) *for works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.*
4. *For services:*
  - (a) *nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, cf. Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;*
  - (b) *indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;*
  - (c) *reference of the law, regulation or administrative provision;*
  - (d) *indication whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services;*
  - (e) *indication whether suppliers can tender for a part of the services concerned;*
5. *Conditions to be fulfilled by suppliers, contractors and service providers in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested suppliers, contractors and service providers, a summary of the main conditions and methods and a reference to those documents shall be sufficient.*
6. *Address where further information and documentation (e. g. the documents mentioned under point 5) concerning the qualification system can be obtained (if different from the address mentioned under 1).*
7. *Period of validity of the qualification system and the formalities for its renewal.*
8. (a) *Estimated date of the commencement of the selection of candidates regarding specific contract(s)] (if known).*  
(b) *Type of award procedure to be used (if known).*
9. *Date of dispatch of the notice by the contracting entities.*
10. *Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).*

ANNEX XIV

PERIODIC INFORMATION NOTICE

**I. NOTICES NOT USED AS A MEANS OF CALLING FOR COMPETITION**

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.
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. Name, address, telegraphic address, telephone, telex and telecopier number of the contracting entity.
2. (a) Site.  
(b) 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) Date scheduled for initiating the award procedures in respect of the contract or contracts.  
(c) Date scheduled for the start of the work.  
(d) Planned timetable for completion of the work.
4. Terms of financing of the work and of price revision.
5. Other information.
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).

C. For service 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. Intended total procurement in each of the service categories listed in Annex XVI A.
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.
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).

## **II NOTICES USED AS A MEANS OF CALLING FOR COMPETITION**

*Contracting entities shall supply as much of the below information as is available, including in any case the information requested under points 1, 2, 4 or 5 as appropriate, 10 and 11.*

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Nature of the contract or contracts (supply, works or service, where appropriate, state if framework agreement(s) are envisaged). Category of service within the sense of annex XVI A or XVI B and description (CPC classification). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or more than one of these.
3. Place of delivery, site or place of performance of service.
4. For supplies and works:
  - (a) nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, cf. Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured;  
or  
nature and extent of the services to be provided and general nature of the work;
  - (b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and possibility of tendering for one, for several or for all the lots;
  - (c) for works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
5. For services:
  - (a) nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurrent contracts, cf. Article 14 (8), also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;
  - (c) reference of the law, regulation or administrative provision;
  - (d) indication whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services;
  - (e) indication whether suppliers can tender for a part of the services concerned;
6. Authorization to submit variants.
7. Derogation from the use of European specifications, in accordance with Article 18 (6).
8. Time limits for starting, delivery or completion or duration of service contract.
9. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or providers to whom the contract is awarded.
10. The address to which interested undertakings must express their interest in writing. If different, also the address from which documents relating to the contract may be requested.
11. Type of award procedure to be used (restricted or negotiated). No further notices calling for competition will be published.
12. (a) Final date for receipt of requests to participate.  
(b) Address to which they must be sent.  
(c) Language or languages in which they must be drawn up.
13. Where appropriate, any deposits and guarantees required.

- 14. Main terms concerning financing and payment and/or references to the texts in which these are contained.**
- 15. Information concerning the supplier's, contractor's or provider's position and minimum economic and technical conditions required of him.**
- 16. Criteria for the award of the contract where they are not mentioned in the invitation to tender.**
- 17. Other information.**
- 18. Where appropriate, the reference to publication of the periodic information notice in the Official Journal of the European Communities to which the contract refers.**
- 19. Date of dispatch of the notice by the contacting entities.**
- 20. 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 (supplies, works or services; where appropriate state if it is a framework agreement).
  3. At least a summary indication of the nature *and quantity* of the products, works or services provided.
  4. (a) Form of the call for competition (notice on the existence of a qualification procedure; periodic information notice; call for tenders).  
(b) Reference of publication of the notice in the Official Journal of the European Communities.  
(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 20 (2), or Article 16.
  5. Award procedure (open, restricted or negotiated).
  6. Number of tenders received.
  7. Date of award of the contract.
  8. Price paid for bargain purchases pursuant to Article 20 (2) (j).
  9. Name and address of successful supplier(s), contractor(s) or service provider(s).
  10. State, where appropriate, whether the contract has been, or may be, subcontracted.
- 11. Price paid (or range of prices).**
12. Optional information:
    - value and share of the contract which may be subcontracted to third parties,
    - award criteria,

#### **II. Information not intended for publication**

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

## FINANCIAL STATEMENT

### **1. TITLE OF OPERATION**

Proposal for a Parliament and Council Directive amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

### **2. BUDGET HEADING INVOLVED**

Article B5-304.

### **3. LEGAL BASIS**

Article 57 paragraph 2, Article 66, Article 100a of the Treaty establishing the European Union.

### **4. DESCRIPTION OF OPERATION**

#### **4.1 Specific objectives of operation**

The aim of amending Directive 93/38/EEC (procurement procedures of entities operating in the water, energy, transport and telecommunications sectors) is to take certain provisions of the GATT Agreement on Government Procurement into account. This will notably ensure that the undertakings of the European Union benefit from a treatment, which is as favourable as that reserved for undertakings from third countries having signed the Agreement.

#### **4.2 Duration**

Permanent operation, although specific decisions are taken each year.

#### **4.3 Target population**

Contracting entities and Community firms.

## **5. CLASSIFICATION OF EXPENDITURE**

5.1 Non-compulsory expenditure.

5.2 Differentiated appropriations.

## **6. TYPE OF EXPENDITURE**

This Directive will have only a limited impact on the budget; the lowering of certain thresholds is limited and should result in a slight increase in the number of notices to be published in the Supplement to the Official Journal.

The resulting additional costs will be charged to the Community budget.

## **7. FINANCIAL IMPACT**

### **7.1 Method of calculating total cost of operation.**

It is difficult to quantify the extra expenditure that will be occasioned by the entry into force of this Directive.

The Commission's information and monitoring activities are generally prompting the public authorities covered by the Directives to fulfil their advertising obligations more and more scrupulously.

The Commission has also taken major steps to reduce the costs of publishing notices, e.g. by standardizing them.

On the assumption that the Directives will enter into force at the beginning of 1996, the following method has been used for calculating the total cost of the operation:

- number of additional notices: 100
- cost of publishing each notice in the Official Journal: ECU 500
- total translation and publication costs: ECU 50.000.

The additional expenditure can therefore be estimated at ECU 50.000 in 1996.

### **7.2 Indicative schedule of commitment and payment appropriations.**

Not applicable (one-off operation).

## **8. ANTI-FRAUD MEASURES PLANNED**

The relevant Commission departments carry out checks on projects funded and on the performance of services and studies requested before making any

payment, with due regard to contractual obligations and the principles of economy and sound financial or general management. Fraud prevention measures (monitoring, submission of reports, etc) are written into all agreements or contracts concluded between the Commission and the recipients of funds.

## **9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS**

### **9.1 Specific and quantifiable objective of proposed operation**

The amendment of the public procurement directive for the utilities will help to ensure that undertakings of the European Union benefit from a treatment, which is as favourable as that reserved for undertakings from third countries in particular as regards the information contained in the notices or given by contracting entities when undertakings are eliminated from award procedures.

### **9.2 Grounds for the operation**

This operation is a consequence of the international commitments entered into by the European Union under the GATT Agreement on Government Procurement.

### **9.3 Monitoring and evaluation of the operation**

See point 7.1.

## **COMPETITIVENESS AND EMPLOYMENT IMPACT STATEMENT**

### **I. Title of the proposal**

Proposal for a Parliament and Council Directive amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

### **II. What is the main reason for introducing the measures?**

The taking into account in the above-mentioned Directive of the international obligations deriving from the new GAT Agreement on Government Procurement.

### **III. Features of the businesses concerned**

1. In particular, are many SMEs involved?  
Public supply, public works and public service contracts are in many cases likely to interest SMEs, either directly or indirectly.
2. Are they concentrated in regions of the Community which are:
  - eligible for national regional aid schemes? No.
  - eligible for ERDF assistance? No.

### **IV. What direct obligations do these measures impose on businesses?**

None.

### **V. What indirect obligations are local authorities likely to impose on businesses?**

None.

### **VI. Do any special measures apply in respect of SMEs.**

This proposal does not contain any new measures applicable to SMEs.

**VII. What is the likely effect on:**

**1. Business competitiveness?**

The abovementioned Directives are aimed at boosting business competitiveness across the Community. The amendments pursue the same aim.

**2. Employment?**

The impact on employment can be regarded as limited.

**VIII. Have both sides of industry been consulted? Please indicate their opinions.**

Consultations are taking place through the Advisory Committee on the Opening-up of Public Procurement, on which industry and the European Trade Union Confederation are represented.

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# **DOCUMENTS**

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