



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

concerning the conclusion of two Agreements between the European Community and the State of Israel on procurement by government and telecommunications operators

(presented by the Commission)

EXPLANATORY MEMORANDUM

The EC and Israel were key participants in the negotiations which led to the WTO's new Government Procurement Agreement (GPA). These negotiations were successfully completed in parallel with the Uruguay Round. For its part, the EC concluded the GPA on 22 December 1994¹. Israel, however, delayed ratification pending an expansion of coverage to include the procurement of telecommunications equipment in the EC. As part of the negotiations toward an EU-Israel Association agreement, both parties reaffirmed their commitment to mutually open their respective procurement markets and in a joint declaration annexed to the draft Association agreement, they agreed to carry out negotiations with a view to reaching an agreement before the end of 1995. Those negotiations, carried out in consultation with the Committee set up under Article 113 of the Treaty, were completed on 22 December 1995 and resulted in the two draft agreements attached. As a result of reaching these agreements, Israel subsequently ratified the GPA prior to its entry into force on 1 January 1996.

As the two draft agreements were negotiated in parallel with each other in accordance with the joint declaration cited above and the advice of the Committee set up under Article 113 of the Treaty, they form one package. The Commission therefore proposes that the two are concluded together. Nevertheless, a possible termination of one agreement in the future does not necessarily affect the operation of the other agreement.

The European Court of Justice, by its judgement of 7 March 1996 in the case C-360/93 concerning the 1993 EU-US procurement agreement, stated that, as Community law stands at present, only transfrontier services fall within the scope of article 113 of the treaty. Since the Agreements to be concluded with Israel also concern services whose nature cannot be considered as merely transfrontier, it is proposed that Articles 113, 66, 57(2) and 228(3) form the legal base for the two draft agreements. This would imply a consultation of the European Parliament.

Government Procurement

The first draft agreement covers government procurement. For the most part, it complements and broadens the scope of commitments under the GPA. The parties agree to notify such additional commitments to the WTO and incorporate them into the GPA coverage. As such, these commitments would be backed up by the WTO's dispute settlement mechanism. Some limited commitments are made outside the scope of the GPA.

This draft agreement represents real progress in the EU's goal to continue to open up public procurement markets beyond what has already been achieved in the GPA. In spite of the fact that at the time of completing negotiations the new GPA had not entered into force, as a result of the draft agreement, Israel will be committed to further market opening in urban transport, services, medical equipment and sub-central government

¹OJ No L 336, 23.12.1994, p.1

procurement. For its part, the EC would open those same sectors to Israel on a reciprocal basis. The draft agreement also safeguards EC interests should the Israel market open further. Negotiations did not lead to any change in offset provisions permitted under the GPA. The latter permits Israel to require the limited incorporation of domestic content or offset procurement of up to 35 per cent of the contract. Over a period of nine years this limit is reduced to 20 per cent while thereafter Israel will review its offset policy in consultation with other GPA members.

(i) The addition of urban transport (except buses), a sector where the EC is particularly competitive and successful in international markets, virtually completes the coverage of utilities sectors by Israel in the GPA (total spending in this sector accounts for roughly ECU 1.2 billion annually). This addition guarantees that EC suppliers will be able to compete on an equal footing as Israel and/or its municipalities develop urban metro systems. In the EC, the provisions of Article 36 of the Utilities Directive (93/38/EEC)² would be disapplied against tenders comprising products of Israeli origin as a result of this draft agreement.

(ii) As service coverage under the GPA operates only on the basis of strict reciprocity, the addition by Israel of three services which are already contained in the EC's GPA Annex, increases mutual coverage.

(iii) The removal of one product coverage exception by Israel (a certain type of bandage) is welcome. Given that at the point of finishing negotiations the new GPA had not even entered into force, Israel was unwilling, at this stage, to consider removing all product coverage exceptions which it had successfully negotiated in the GPA. Nevertheless, of the product exceptions in the field of medical equipment, the one removed as a result of the draft bilateral agreement is one which the EC successfully exports to Israel (about 14 tonnes a year) and therefore is potentially of most economic value. The European textile industry specifically requested the coverage of this exception under our bilateral agreement.

(iv) On sub-central procurement not yet covered by the GPA, Israel was not in a position to guarantee GPA procurement and challenge procedures. However, by agreeing to grant EC suppliers national treatment above a specified threshold, Israel disapplies domestic price preferences for EC suppliers, thus opening up the market for procurement opportunities beyond what was originally covered in the GPA.

(v) Finally, to safeguard EC suppliers against potential discrimination resulting from agreements between Israel and other GPA parties, the draft agreement commits Israel to grant the same benefits to the EC.

Telecommunications procurement

The second draft agreement, on telecommunications procurement, is purely bilateral. It is, therefore, a stand-alone agreement with no impact on coverage under the GPA. It provides for a mutual opening of procurement by telecommunications operators by granting an exchange of national treatment. In the main segment of telecommunications procurement, provision is made to enhance transparency and guarantee suppliers' rights by setting out minimum procurement and national challenge procedures. While this does not imply any procedural change for European operators, the main Israeli operator,

²OJ No L 199, 9.8.93, p.84

Bezeq, is obliged to follow procedures based on those set out in the GPA. The agreement is enforced through the bilateral dispute settlement procedure provided for in the interim Association Agreement (and subsequently the Association Agreement when it enters into force).

It is a liberal and broad agreement with no product exceptions. This means that there would be a mutual dismantling of domestic price preference provisions. In Israel, a price preference of 15% in favour of Israeli products would not apply against EC bidders. In the EC, the provisions of Article 36 of the Utilities Directive (93/38/EEC)² would be disapplied for tenders comprising products of Israeli origin. With regard to the offset provision, the agreement ensures that the EC would benefit from better terms than Israel provides under the GPA and the offset is to be eliminated after a transition period of five years.

While the Israeli market is small (procurement opportunities will be around ECU 170 million in 1996 for switching and cable equipment), it is a growing market. Moreover, as the Middle-East peace process may help to bring about regional economic integration, successful penetration into the Israeli market could lead to further opportunities in neighbouring countries.

* * *

The two draft agreements build on the closer political and economic relationship established between Israel and the EC under the draft Association Agreement, making a concrete contribution to the region's economic development and political stabilisation. They offer the EC more favourable treatment than Israel has been prepared to offer any other third country, bringing further economic opportunities to EC suppliers. Moreover, the draft agreements protect such suppliers from further discrimination should access to the Israeli market improve as a result of negotiations with other third countries. They provide for joint review of progress made and for areas where further improvement can be achieved in the future. Their conclusion would send a positive message to the ongoing GATS negotiations, in particular those in the field of telecommunications services and government procurement. As a further result of the telecommunications procurement agreement, Israel has decided to participate in the GATS basic telecommunications services negotiations.

* * *

The main elements of the agreements reached on 22 December 1995 are as follows:

1. Public procurement

Israeli commitments:

GPA:

- Ratification of the 1996 GPA
- Coverage of urban transport sector under the 1996 GPA (with the exception of buses)

- Extension of list of services covered under the GPA, thus increasing mutual coverage
- With regard to the EC, removal of a product coverage exception (specific medical bandage) under Annex 1 of its GPA offer,

Further bilateral concessions

- as regards municipalities not covered under the GPA, national treatment for EC above a threshold of 550,000 SDR
- MFN treatment for the EC with regard to any changes on coverage exceptions, thresholds and offset requirements in the GPA.

EC Commitments:

GPA

- extend the benefits of its GPA offer to Israel with regard to the urban transport sector (except buses).

2. Telecommunications procurement

The main elements of this agreement are:

- Exchange of national treatment above and below thresholds, including mobile and cable operators.
- Israel to remove a 15% price preference provision.
- EC to disapply the application of Article 36 of the Utilities directive with regard to tenders containing goods of Israeli origin.
- In the case of Israel's main operator, Beseq, Israel applies GPA procurement and challenge procedures.
- EC applies Utilities Directive procedures and Remedies Directive.
- Thresholds - Israel has a lower threshold than the EC for telecommunications equipment but a higher threshold for construction.
- No product exceptions.
- Israel maintains an offset provision of up to 30% of the contract value which will expire after 5 years. This is below the offset granted to Israel in the GPA (35%).
- Dispute settlement is provided for, using the provisions of the draft Association Agreement.
- Linked to the conclusion of the telecom procurement agreement, Israel has joined the ongoing GATS negotiations on the liberalisation of basic telecom services.

The Council is invited to approve the agreements and adopt the proposal for a Decision concerning the conclusion of two Agreements on government procurement and telecommunications procurement between the EC and Israel.

Proposal for a Council Decision

concerning the conclusion of two Agreements between the European Community and the State of Israel on procurement by government and telecommunications operators

THE COUNCIL OF THE EUROPEAN UNION;

Having regard to the Treaty establishing the European Community, and in particular Articles 113, 66, 57, second paragraph, in connection with article 228, third paragraph, first sentence, and fourth paragraph thereof;

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament,

Whereas the Agreements between the European Community and the State of Israel on procurement by government and telecommunications operators should be approved,

Whereas these agreements concern public procurements to award contracts for goods, works and other services; whereas the latter cannot be reduced to the sole hypothesis of transfrontier services; whereas in its recent judgement of 7 March 1996 the Court of Justice has indicated that, in the present state of Community law, article 113 of the Treaty is not sufficient to base a Council decision to conclude an agreement which concerns, on an independent basis, the provision of services whose nature cannot be considered as merely transfrontier; whereas it is therefore appropriate to base the present decision also on article 66 of the treaty, in conjunction with article 57, second paragraph, which provides the procedural requirements necessary for its application;

Whereas it is appropriate that the Council authorises the Commission, in consultation with a special committee to be appointed by the Council, to approve modifications on behalf of the Community of the Annexes I and II of the telecommunications agreement; however, such authorisation will be limited, as far as the Annex I is concerned, to the modifications resulting from the application of the procedure of article 8 of the Council Directive 93/38/EEC of 14 June 1993, and as far as Annex II is concerned, to the results of future negotiations within the framework of the GPA.

HAS DECIDED AS FOLLOWS:

Article 1

The Agreements between the European Community and the State of Israel on procurement by government and telecommunications operators are hereby approved on behalf of the Community.

The texts of the Agreements are attached to this Decision,

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the Agreements in order to bind the Community.

Article 3

The Commission is authorised to approve, on behalf of the Community, modifications to Annexes I and II of the telecommunications agreement.

The Commission is assisted in this task by a special committee appointed by the Council.

The authorisation referred to in paragraph 1 of this Article shall be limited, as far as Annex I is concerned, to the modifications that will be necessary if the procedures laid down in article 8 of Council Directive 93/38/EEC were to be applied and, as far as Annex II is concerned, to the results of future negotiations to be conducted in the framework of the 1996 Government Procurement Agreement (GPA).

Done at Brussels,

For the Council

The President

**AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE STATE
OF ISRAEL ON PROCUREMENT BY TELECOMMUNICATIONS
OPERATORS**

The EUROPEAN COMMUNITY (hereinafter "the EC"),

of the one part, and

THE GOVERNMENT OF THE STATE OF ISRAEL, acting on behalf of the State of Israel (hereinafter "Israel"),

of the other part,

hereinafter referred to as the "Parties",

CONSIDERING the Parties' efforts and commitments to liberalize their respective public procurement markets notably through the draft EC-Israel Association Agreement of 20 November 1995, and the Government Procurement Agreement (1996 GPA);

DESIROUS to pursue liberalization efforts among themselves by granting reciprocal access to procurement by their respective telecommunications operators, subject to the conditions provided for in this agreement;

Have agreed as follows:

Article 1

Objective, Definitions and Scope

1. The aim of this Agreement is to secure a reciprocal, transparent and non-discriminatory access of the Parties' suppliers and services providers to purchases of products and services, including construction services, by telecommunications operators of both Parties.
2. For the purpose of this Agreement:
 - (a) "telecommunications operators" (hereinafter referred to as "TOs") shall mean entities that provide or operate public telecommunications networks or provide one or more public telecommunications services and which either are public authorities or undertakings or operate on the basis of special or exclusive rights granted by a state authority;
 - (b) "public telecommunications network" shall mean the telecommunications infrastructure available to the public which enables signals to be conveyed between defined network termination points by wire, microwave, optical means or other electromagnetic means;

(c) "public telecommunications services" shall mean services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of radio-broadcasting and television.

3. This Agreement applies to any law, regulation or practice affecting procurement by the Parties' TOs as defined in paragraph 1 and to the award of all procurement contracts by such TOs. Annex I contains a list of the TOs covered by this Agreement. The Parties shall update this list as appropriate.
4. Article 3 on procurement procedures and Article 4 on challenge procedures shall apply only to contracts, or series of contracts, awarded by TOs listed under A in Annex I the estimated value of which, excluding VAT or comparable turnover tax, is not less than:

in the case of the EC

- (a) 600,000 ECU as regards supplies and services;
- (b) 5,000,000 ECU as regards construction services.

in the case of The State of Israel

- (a) 355,000 SDR as regards supplies and services;
- (b) 8,500,000 SDR as regards construction services.

The value of SDR in NIS shall be fixed in accordance with the procedures applied in the Government Procurement Agreement (1996 GPA).

5. With regard to services, including construction services, this Agreement applies to those listed in Annex II of this Agreement.
6. This Agreement shall not apply to contracts, awarded by TOs, that are operating under full and effective competition in accordance with relevant legislation. This legislation shall be applied following the notification to and review by the other Party. Each Party shall promptly inform the other Party about those services in regard to which such contracts are excluded by this paragraph from the provisions of the Agreement."
7. This Agreement shall not be applicable to the award of contracts entered into before 1 January 1997 by TOs established in Spain or to the award of contracts entered into before 1 January 1998 by TOs established in Portugal or Greece. Israel will not extend the benefits of this Agreement to suppliers and service providers established in these countries for the respective periods."



Article 2

Non-Discrimination

1. The Parties shall ensure that, in all their procurement procedures and practices and in the award of procurement contracts, regardless of the threshold referred to in Article 1(5), TOs duly established in their respective territories shall not:
 - (a) treat products, services, suppliers and service providers of the other Party less favourably than
 - (i) domestic products, services, suppliers and service providers; and
 - (ii) third country products, services, suppliers and service providers.
 - (b) treat a locally-established supplier or service provider less favourably than another locally-established supplier or service provider on the basis of the degree of affiliation to, ownership of or control by natural or legal persons from the other Party;
 - (c) discriminate against a locally-established supplier or service provider on the basis of the fact that the product or service being supplied originates from the other Party.

2. As a result of the principles set out in paragraph 1, any offsets prescribed in the qualification and selection of products, services, suppliers or service providers, or in the evaluation of tenders and award of contracts shall be prohibited. Likewise, any law, procedure or practice, such as price preference, local content requirements, local investment or production requirements, terms of licence, authorisation, funding or bidding rights which discriminate, or require a Party's TO to discriminate, against the other Party's products, services, suppliers or service providers in the award of procurement contracts shall be prohibited.

By way of derogation from the first two sentences of this paragraph and until 1 January 2001, Israel may, with regard to procurement contracts by TOs listed under A of Annex I, apply provisions which require the limited incorporation of domestic content, offset procurement or transfer of technology in the form of objective, clearly defined and non-discriminatory conditions. Such requirements shall be used only for qualification to participate in the procurement process and not as criteria for awarding contracts. They shall be notified to the EC and applied under the following terms:

- (a) Israel shall ensure that TOs listed under A in Annex I indicate the existence of such conditions in its tender notices and specify them clearly in the contract documents.
- (b) Suppliers will not be required to purchase goods that are not offered on competitive terms, including price and quality, or to take any action which is not justified from a commercial standpoint.



(c) Offsets in any form may be required up to 30 per cent of the contract.

At the end of two years, Parties will examine the implementation of this provision on the basis of a report submitted by Israel.

3. The principles set out in paragraph 1 shall also apply with regard to the treatment granted by the Parties and their TOs listed under A in Annex I in the context of challenge procedures.
4. The Parties shall apply the provisions of the Agreement on Technical Barriers to Trade of the WTO with regard to procurement by their respective TOs.

Article 3

Procurement Procedures

1. The Parties shall ensure that the procurement procedures and practices followed by their TOs listed under A in Annex I comply with the principles of non-discrimination, transparency and fairness. Such procedures shall at least contain the following elements:
 - (a) the call for competition shall be made by means of a tender notice inviting submission of tenders, an indicative notice or a notice on the existence of a qualification system. These notices, of a summary of the important elements thereof, shall be published at least in one of the 1996 GPA official languages on a national level or, as regards the EC, on a Community level. They shall contain all necessary information about the intended procurement, including where applicable the type of award procedure being followed;
 - (b) time-limits shall be adequate to allow suppliers or service providers to prepare and submit tenders;
 - (c) tender documentation shall contain all information necessary, notably technical specifications and selection and award criteria, to enable tenderers to submit eligible tenders. Tender documentation shall be forwarded to suppliers or service providers upon request;
 - (d) selection criteria shall be objective. Where a TO runs a qualification system, such a system shall operate on the basis of pre-defined and objective criteria and the procedure and conditions for participation shall be made available upon request;
 - (e) award criteria may be either the most economically advantageous, involving specific evaluation criteria such as delivery or completion date, cost-effectiveness, quality, technical merit, after-sales service, commitments with regard to spare parts, price, etc., or the lowest price only.

2. The Parties shall also ensure that their TOs listed under A in Annex I define the technical specifications set out in the tender documentation in terms of performance rather than design or descriptive characteristics. Such specifications shall be based on international standards, where such exist, otherwise on national technical regulations, recognized national standards or building codes. Any technical specifications adopted or applied with a view to, or with the effect of, creating obstacles to procurement by a Party's TO of products or services from the other Party and to related trade between the Parties shall be prohibited.

Article 4

Challenge Procedures

1. With respect to procurements by TOs under A in Annex I, the Parties shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers or service providers to challenge alleged breaches of this Agreement arising in the context of procurements in which they have, or have had, an interest. The challenge procedures laid down in Annex III shall apply.
2. The Parties shall ensure that their respective TOs listed under A in Annex I retain relevant documentation relating to procurement procedures covered by this Agreement for at least three years.
3. The Parties shall ensure that decisions taken by bodies responsible for challenge procedures are enforced effectively.

Article 5

Information Exchange

To the extent necessary to ensure effective implementation of this Agreement, the Parties shall, upon the request of either Party, exchange information on legislation, other measures or imminent changes affecting or likely to affect TOs' procurement policies or practice.

Article 6

Dispute Settlement

1. The Parties shall seek to resolve any dispute concerning the interpretation or application of this Agreement by means of prompt consultations.
2. If a dispute has not been settled by means of consultations within three months from the date of the initial request for consultations, either Party may refer the dispute to the EC-Israel Cooperation Council in accordance with Article 32 of the Interim Association Agreement, and, as from its entry into force, to the EC-Israel Association Council in accordance with Article 75 of the Association Agreement.

Article 7

Safeguard

1. If either Party considers that the other Party has failed to fulfil an obligation under this Agreement or if one Party fails to take measures specified in the decision by the arbitration panel or if a law, regulation or practice of either Party substantially reduces or threatens to reduce substantially the benefits accruing to the other Party under this Agreement, and the Parties are unable to agree promptly on appropriate compensation or other remedial action, the adversely affected Party may, without prejudice to its other rights and obligations under international law, suspend partly or completely, as appropriate, the application of this Agreement and immediately notify the other Party thereof.
2. The scope and duration of such measures shall be limited to what is necessary in order to remedy the situation and to secure, if necessary, a fair balance of rights and obligations under the Agreement.

Article 8

Consultations

The Parties shall, upon the request of either Party, and at least once a year, hold consultations on the functioning of this Agreement.

Article 9

Information Technology

1. The Parties shall cooperate with a view to ensuring that the type of procurement information, notably in tender notices and documentation, held on their respective databases is comparable in terms of quality and accessibility. Likewise, they shall cooperate with a view to ensuring that the type of information exchanged through their respective electronic means between interested parties for the purposes of public procurement is comparable in terms of quality and accessibility.
2. Paying due attention to issues of interoperability and interconnectivity, and after having agreed that the type of procurement information referred to in paragraph 1 is comparable, the Parties shall secure reciprocal access of suppliers and service providers of the other Party to relevant procurement information, such as tender notices, held on their respective databases. They shall also ensure reciprocal access of suppliers and service providers of the other Party to their respective electronic procurement systems, such as electronic tendering. The Parties shall also take due account of Article XXIV(8) of the 1996 GPA.

Article 10

Final Provisions

1. This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Hebrew languages, each of these texts being equally authentic. It shall apply to the same territories as mentioned in Article 38 of the Interim Agreement on trade and trade related matters and, as from its entry into force, in Article 83 of the Association Agreement.
2. This Agreement shall enter into force on the first day of the month following the date on which the Parties have notified each other that their ratification or conclusion or adoption process, according to the rules applicable to each Party, has been completed.
3. This Agreement does not affect the rights and obligations of the Parties under the WTO or other multilateral instruments concluded under the auspices of the WTO.
4. The Parties shall complete a review of the functioning of this Agreement not later than three years from the date of its entry into force with the aim of improving its operation, if necessary.
5. This Agreement is concluded for an unlimited period. If a Party wishes to withdraw from this Agreement, it shall notify the other Party in writing of its intention. The withdrawal shall take effect six months from the date on which the notification was received.
6. The annexes to this Agreement shall form an integral part thereof.

Annex I
(referred to in Article 1(3) on TOs covered)

List of TOs*

European Community

Israel

A

A

- Belgacôm (Belgium)
- Tele Danmark A/S and subsidiaries (Denmark)
- Deutsche Bundespost Telekom (Germany)
- OTE/Hellenic Telecom Organisation (Greece)
- Telefonica de España S.A. (Spain)
- France Telecom (France)
- Telecom Eireann (Ireland)
- Telecom Italia (Italy)
- Administration des postes et télécommunications (Luxembourg)
- Koninklijke PTT Nederland NV and subsidiaries (Netherlands)
- Portugal Telecom S.A. and subsidiaries (Portugal)
- British Telecommunications (BT) (United Kingdom)
- City of Kingston upon Hull (United Kingdom)
- Österreichische Post und Telekommunikation (PTT) (Austria)
- Telecom Finland (Finland)
- Telia (Sweden)

- Bezeq

B

B

- mobile telecommunication operators
- cable operators when they provide telecommunication services

- mobile telecommunication operators
- cable operators when they provide telecommunication services
- international operators (licence pending)

* and successor entities thereto.

Annex II

CPC	Description
6112, 6122, 633, 886	Maintenance and repair services
874, 82201 - 82206	Building-cleaning services and property management services
88442	Publishing and printing services on a fee or contract basis
8672-3	Architectural services
8671	Engineering services
8674	Urban planning
841-3	Computer and related services
871	Advertising services
864	Market research and public opinion
865-6	Management consulting
94501-5	Environmental services

Annex III

(referred to in Article 4 on challenge procedures)

1. Challenges shall be heard by a court or by an impartial and independent review body having no interest in the outcome of the procurement, the members of which are secure from external influence and the decisions of which are legally binding. A review body which is not a court shall either be subject to judicial review or shall have procedures which provide that:

- (a) the time-limit, if any, within which a challenge procedure may be initiated, shall in no case be less than 10 days and shall run from the time when the basis of the complaint is known or reasonably should have been known;
- (b) participants shall be heard before a decision is reached, they may be represented and accompanied during the proceedings and shall have access to all proceedings;
- (c) witnesses may be presented and documentation relating to procurement under challenge and necessary to the proceedings shall be disclosed to the review body;
- (d) proceedings shall take place in public and decisions shall be given in writing and shall state the reasons on which they are based;

2. The Parties shall ensure that measures concerning challenge procedures include at least either provisions for the powers:

- (a) to take, at the earliest opportunity and by way of interlocutory procedure, interim measures with the aim of correcting the alleged infringement or preventing further injury to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a contract or the implementation of any decision taken by the TO; and
- (b) to set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the tender notices, in the tender documentation or in any other document relating to the contract award procedure in question;

or provisions for powers enabling to exert effective indirect pressure on the TOs in order to make them correct any infringements or prevent them from committing infringements, and to prevent injury from occurring.

3. Challenge procedures shall also provide for the award of damages to persons injured by the infringement. Where damages are claimed on the grounds that a decision has been taken unlawfully, either Party may provide that the contested decision must first be set aside or declared illegal.

Article 1(6) side letters

Dear of Israel,

In accordance with Article 1(6) of the draft agreement between the European Community and Israel on procurement by telecommunications operators, I hereby notify that the relevant legislation referred to is Council Directive 93/38/EEC, and in particular, its Article 8.

I have transmitted a copy of this legislation through diplomatic channels.

from the EC

Dear of the EC,

Further to your letter of today's date and recent discussions between our services, I can inform you that Israel has completed its review of the legislation (Council Directive 93/38/EEC and in particular, its Art 8) that you notified under Article 1(6) the draft agreement between the European Community and Israel on procurement by telecommunications operators.

from Israel.

Agreed minutes

As regards the Agreement on the procurement by telecommunications operators, the two Parties agree that with respect to Israel Article 3 of the Agreement requires the application of procurement procedures as specified in the 1996 GPA. As regards the EC, the procurement procedures set out in Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ No L 199, 09.08.1993, p.84) fulfil the requirements of Article 3 of this Agreement.

**AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE STATE
OF ISRAEL ON GOVERNMENT PROCUREMENT**

THE EUROPEAN COMMUNITY (hereinafter "the EC"),

of the one part, and

THE GOVERNMENT OF THE STATE OF ISRAEL, acting on behalf of the State of
Israel (hereinafter "Israel"),

of the other part,

hereinafter referred to as the "Parties",

CONSIDERING the Parties' efforts and commitments to liberalize their respective public
procurement markets through the Government Procurement Agreement (1996 GPA);

DESIROUS to improve access to their respective procurement markets and to broaden
the scope of their respective Appendices I to the GPA;

Have agreed as follows:

Article 1

Obligation of the EC

1. In order to complement and broaden the scope of its commitments under the GPA
vis-à-vis Israel, the EC undertakes to amend its General Notes to Appendix I of the GPA
as follows:

- alter General Note 1, second indent, letter (e) to read:

"(urban transport) to the suppliers and service providers of Canada, Japan,
Korea and the USA; to the suppliers and service providers of Israel, as
regards bus services";

2. The EC shall notify the WTO Secretariat of such amendment within one month
from the entry into force of this Agreement.

Article 2
Obligations of Israel

1. In order to complement and broaden the scope of its commitments under the GPA vis-à-vis the EC, Israel undertakes to amend its Annexes and Notes to Appendix I of the GPA as follows:

(a) add to the *List of Entities* in Annex 3:

"... All entities operating in the field of urban transport, except those operating in the field of bus services...";

(b) add to Note 2 in Annex 3 the following paragraph:

"With regard to procurement by entities operating in the field of urban transport, except those operating in the field of bus services, this Agreement shall apply only to goods and services, including construction services, of the European Community."

Israel is willing to negotiate the opening of procurement by entities operating in the field of urban transport, except those operating in the field of bus services, to other code members under the condition of reciprocity

(c) add the following services to the list of Annex 4:

6112, 6122, 633, 886	Maintenance and repair services
874, 82201 - 82206	building -cleaning services and property management services
88442	Publishing and printing services on a fee or contract basis

" The Parties agree that Israel shall use its best endeavours to extend its list of services under the GPA with regard to the EC, in accordance with the terms provided for in Article 4(4) of this Agreement.

(d) Amend Note 1 to Annex 1, the following:

- Medical dressings (bandages, adhesive tapes excluding gauze bandage and gauze pads)

2. Israel shall notify the WTO Secretariat of such amendments within one month from the entry into force of this Agreement.

3. Notwithstanding Article 2(d) above, if Israel, with respect to another GPA Party, reduces or disapplies its exceptions as set out in Notes to Annex 3 in the 1996 GPA, it shall offer the same benefit to the EC on a reciprocal basis.

Israel will not, by law, procedure or practice, require hospitals not covered under the 1996 GPA to discriminate against EC's products, services or suppliers.

Without prejudice to any separate agreement between the Parties to this agreement, with regard to its offset requirements and procedures and its thresholds' levels, Israel shall treat EC suppliers, service providers, products and services no less favourably than other GPA Parties' suppliers, service providers, products and services.

4. With respect to the procurements above a threshold of 550,000 SDR by the municipalities not covered by the List of Entities in Annex 2 of the 1996 GPA Israel shall treat product, services and suppliers of the EC no less favourably than domestic products, services and suppliers.

Israel shall use its best endeavours to apply to these procurements the procedures set out in the GPA. To this end Israel will submit in due time to the GPA Secretariat a list of entities to be added to the present Annex 2 to the GPA under the condition of reciprocity.

Article 3

Consultations

The Parties shall, upon the request of either Party, and at least once a year, hold consultations on the functioning and implementation of this Agreement. This provision shall be without prejudice to the consultation procedures provided for by the GPA.

Article 4

Final Provisions

1. This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Hebrew languages, each of these texts being equally authentic. It shall apply to the same territories respectively of the EC and of Israel as the GPA applies.

2. This Agreement shall enter into force on the first day of the month following the date on which the Parties have notified each other that their ratification or conclusion or adoption process, according to the rules applicable to each Party, has been completed.

3. This Agreement does not affect the rights and obligations of the Parties under the WTO or other multilateral instruments concluded under the auspices of the WTO.

4. The Parties shall complete a review of the functioning of this Agreement not later than three years from the date of its entry into force with the aim of improving its operation and coverage, if necessary.

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